

SB

4

<target><bill>SB 4</bill><subject>SB
4</subject><comm>SFIN26</comm></target>

ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON



ALASKA
STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182

(907) 465-3707
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CSSB 4 (CRA) – Coastal Management Programs

Version 26-LS0019/R, January, 2009

STAFF: Tim Benintendi, 465-4989

SPONSOR STATEMENT

In 2003, HB 191 instituted significant changes to the Alaska Coastal Management Program (ACMP). It unduly impacted local participation in development reviews and approvals affecting both state and federal actions in the coastal zone. Prior to 2003, the program was not felt to be significantly problematic. Currently, there are 28 management districts either approved, or under review for approval. For a list of current districts, see the Alaska Coastal Management Program website at (<http://alaskacoast.state.ak.us/district/html/progressfinal.htm>). To identify a community within a particular coastal district, see <http://alaskacoast.state.ak.us/explore/communityindex.pdf>.

The authority for a Consistency Review Process, used to implement the ACMP, is found at 11 AAC 110. This process reviews proposed development activities for conformity with state laws and regulations,, and district enforceable policies. 11 AAC 112 and 11 AAC 114 also apply. The governing statutes are AS 46.39 and AS 46.40. With the changes from 2003, regulations adopted by the Department of Natural Resources severely limited the ability of coastal districts to establish enforceable policies regarding the eventual effects of development on coastal resources and uses. So dramatic were the changes that the federal Office of Oceans and Coastal Resource Management formally reviewed state actions for compliance, and took two years to determine acceptance.

Since the 2003 changes, Alaska's coastal districts have dealt with controversy and delay by DNR where achieving suitable district management plans are concerned. Formerly, disputes over approval of district plans were resolved by the Coastal Policy Council. Disbanding the Council under HB 191 concentrated all decision-making power within DNR.

CSSB 4 (CRA) would establish the Alaska Coastal Policy Board within the Department of Natural Resources, and restore an authoritative role for local residents, one that was working acceptably prior to 2003. The new board would be much trimmer than the pre-2003 panel of seventeen members. Nine members would compose the new board, including five public members appointed by the governor. One of the five would be at-large from any of the coastal districts, and the others would be appointed from four defined regions: Northwest Alaska, Southwest Alaska, Upper Cook Inlet, and Southeast Alaska. Filling out the board membership

would be the commissioners of DEC, F&G, DNR, and CCED. DNR would continue to provide day-to-day management and support.

This bill would also reinstate locally-generated enforceable policies, streamline project reviews, provide Board approval of agency-generated regulations, provide for district management plan approvals, allow for receiving grants and other monies, and empower the Board with other authorities.

The primary thrust of CSSB 4 (CRA) is to return significant authority to local district residents by sharing power over the Alaska Coastal Management Program between them and the identified commissioners. Since 2003, all authority has rested solely with the Commissioner of the Department of Natural Resources.

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SECTIONAL ANALYSIS

Senate Bill 4 – Coastal Management Programs

Version 26-LS0019/A, January, 2009

STAFF: Tim Benintendi, 465-4989

SECTION 1: Establishes the ALASKA COASTAL POLICY BOARD, composed of four coastal district members and the commissioners of DNR, F&G, and DEC. One co-chair will come from the district membership, and one co-chair from the commissioners. Also provides administrative guidelines.

SECTION 2: Allows but does not mandate that regulations approved by the Board may be adopted by DNR.

SECTION 3: Establishes powers for the Board, including taking reasonable action to carry out provisions of AS 46.39 (administration) and AS 46.40 (ACMP).

SECTION 4: Establishes the duties of the Board.

SECTION 5: Makes the Board subject to the Administrative Procedures Act, AS 46.39.900.

SECTION 6: Establishes authority for the Board to approve ACMP program changes and to evaluate the effectiveness of district plans.

SECTION 7: Adds "subsistence" to the list of values included in the ACMP objectives.

SECTION 8: Makes a conforming amendment requiring approval of ACMP regulations adopted by DNR, and exclusion of DEC from the ACMP. This provides that permits issued by DEC are automatically considered "consistent" with ACMP requirements.

SECTION 9: Retains DEC's authority for determining consistency of matters it regulates. It also requires public notice for DEC consistency findings for projects located on federal lands and waters when there are no DEC authorizations.

SECTION 10: Moves language deleted from AS 46.40.040(a) to a new section outlining the responsibilities of the Board. Subsection (d) clarifies that aspects of air and water discharges not covered by DEC laws or regulations may be reviewed for consistency with the statewide standards and district enforceable policies. DEC retains authority to determine a project's consistency with its laws.

SECTION 11: Establishes authority for the Board to approve coastal district plans that are required to be submitted every ten years, as well as outlining criteria for new coastal district management plans.

SECTION 12: Establishes authority for the Board to approve coastal district plans if it finds the plans meet the district plan criteria. It also establishes the Board's role in mediation of decisions on the approval of district plans.

SECTION 13: Outlines requirements for Board approval of district plans, and amends three criteria for approval of enforceable policies to clarify what policies may address.

SECTION 14: Clarifies the legislative intent of HB 191 (Chapter 24 SLA 03) to allow districts to establish enforceable policies for activities that may affect a coastal use or resource.

SECTIONS 15, 16, 17: Make conforming amendments regarding approval of ACMP regulations by the Board.

SECTION 18: Makes a conforming amendment regarding approval of ACMP regulations by the Board and replaces the term "subsequent review" with the commonly used term "elevation." This section also requires the concurrence of resource agencies for resolutions of elevations of a proposed consistency determination.

SECTION 19: Clarifies that the aspect of an activity covered by a general or nationwide permit is removed from the scope of an ACMP consistency review while allowing individual review of aspects of an activity not covered by the general or nationwide permit. It also eliminates the exemption of air and water quality permits from the coordinated ACMP review process.

SECTION 20: Makes a conforming amendment regarding Board approval of coastal district plans.

SECTION 21: Clarifies that the ACMP regulations shall address activities on federal waters, and that seismic surveys in federal Outer Continental Shelf waters are subject to ACMP reviews.

SECTION 22: Makes a conforming amendment regarding approval of ACMP regulations by the Board, including regulations listing which authorizations trigger a consistency review and the list of activities that are categorically or generally consistent (i.e., activities that do not require an individual ACMP review).

SECTION 23: This section exempts federal activities and federally-permitted activities from the 90-day review schedule. This exemption allows extension of reviews for projects with federal approvals which tend to be more complex reviews. It also requires suspension of the 90-day time frame when an applicant is required to provide additional information.

SECTION 24: Establishes the Board's role in reviewing a petition regarding non-implementation of a coastal district program.

SECTION 25, 27, 28: These sections make conforming amendments to Board action on a petition regarding non-implementation issues. Ties to SECTION 24.

SECTION 26: Provides that the Superior Courts have jurisdiction to enforce orders of the Board.

SECTION 29: Makes a confirming amendment to Board approval of district plans including areas meriting special attention.

SECTION 30: Makes a conforming amendment to the definition of "coastal zone" regarding the Board's role in approving coastal boundary changes.

SECTION 31: Makes a conforming amendment to the definition of "district coastal management plan" regarding the Board's role in approving district plans.

SECTION 32: Makes a conforming amendment to the definition of "enforceable policy" regarding the Board's role in approving policies included in district plans.

SECTION 33: Defines "Board."

SECTION 34: Repeals AS 46.40.096(i) because DEC authorizations are no longer removed from the consistency review process.

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SECTIONAL ANALYSIS

CSSB 4 (CRA) Coastal Management Programs

Version 26-LS0019/ R, February 5, 2009

STAFF: Tim Benintendi, 465-4989

(Compared to SB 4)

Section 1: Establishes the ALASKA COASTAL POLICY BOARD, composed of five coastal district members and the commissioners of DNR, F&G, DEC, and COMMERCE. One co-chair will come from the district membership, and one co-chair from the commissioners. This board is smaller than the 17-member panel prior to the 2003 changes. Differences from SB 4 are: Added one district member, and added commissioner of CCED to Board.

Section 2: Clarifies that DNR coordinates all project consistency reviews for projects with only departmental permits or for projects that involve two or more other state resource agency permits. Not included in SB 4.

Section 3: Allows but does not mandate that regulations approved by the Board may be adopted by DNR. Same provision is in SB 4, Section 2.

Section 4: Establishes powers of the Board, including taking reasonable action to carry out provisions of AS 46.39 (administration) and AS 46.40 (ACMP). Same provision is in SB 4, Section 3.

Section 5: Provides for the Board to approve statewide ACMP standards and criteria, as developed by the department, for district plan approval.

Section 6: Defines "Board" in AS 46.39.900. Same provisions in SB 4, Section 5.

Section 7: Provides for approval of ACMP program changes by the Board. Same provisions in SB 4, Section 6.

Section 8: Adds "subsistence" to the list of values included in the ACMP objectives. Same provisions in SB 4, Section 7.

Section 9: Subsection (a) removes requirement for district enforceable policies to meet the statewide standards. Clarifies that district enforceable policies apply to all land and water issues subject to the plan. Removes requirement to describe proper and improper uses. Changes the term "areas meriting special attention" to "special management areas." Subsection (b) requires district enforceable policies to be clear and concise, either prescriptive (how to proceed toward goal) or performance-based (goal achievement by various methods), and stricter or more specific policy than state or federal laws. If stricter, support may include traditional, local knowledge. This section was not included in SB 4.

Section 10: Makes conforming changes for Board approval of ACMP regulations. Deletes language in AS 46.40.040(a)(2) - (5); moved to a new subsection (d). Compares to SB 4, Section 8, changing "areas of the coast that merit special attention," to "special management areas."

Section 11: Moves language deleted from Section 10, to a new section outlining responsibilities of the Board. Not included in SB 4.

Section 12: Makes conforming amendments to clarify that district plans must be approved by the Board. Not included in SB 4.

Section 13: Establishes the review and approval process for coastal district plans, including provisions for districts to work with DNR to resolve issues before the Board approves a plan. Allows districts to request mediation of the Board's decision. Not included in SB 4.

Section 14: Establishes criteria for Board approval of district plans and clarifies that district enforceable policies may not address matters pre-empted by state or federal laws. Rewritten from SB 4.

Section 15: Makes conforming changes for Board approval of ACMP regulations governing the consistency review and determination process. Same provision is in SB 4, Section 15.

Section 16: Changes the term "subsequent review" to the commonly used term "elevation" and clarifies that the three state resource agencies make the final decision on a project elevation. Modifies SB 4, Section 18, by allowing more autonomy for state resource agencies in preparing a consistency review and determination.

Section 17: Clarifies that aspects of an activity covered by a general or nationwide permit are excluded from a consistency review (rather than the entire activity). Same provision is in SB 4, Section 19.

Section 18: Makes conforming changes for Board approval of district enforceable policies. Same provision is in SB 4, Section 20.

Section 19: Allows for ACMP consistency reviews of projects inland of the coastal zone, if there would be direct and significant effects to coastal uses or resources. Clarifies that seismic survey activities in federal waters are subject to consistency reviews. Differences from SB 4, Section 21, are the inclusion of activities and impacts "inland from the coastal zone," in federal "waters," and "seismic survey activity" on the Outer Continental Shelf. DNR currently exempts this activity from review.

Section 20: Clarifies that categorically or generally consistent activities are for routine projects. From SB 4, Section 22 of this version, deletes a reference mandating Board approval.

Section 21: Exempts federal activities and federally-permitted projects from the 90-day consistency review time limit. Allows extension of the time limit for adjudication of coastal district permits. Differs from SB 4, Section 23 by adding language for a 30-day extension period for an affected coastal resource district to accommodate the adjudication process.

Section 22: Clarifies that the term "affected coastal resource district" includes districts with a publicly-reviewed draft plan or approved plan. Not included in SB 4.

Section 23: Requires an individual consistency review for each Outer Continental Shelf lease sale. Not included in SB 4. Would make each lease sale a separate consistency review.

Section 24: Gives the Board authority to act on a petition regarding non-implementation of a coastal district plan. Same provision is in SB 4, Section 24.

Sections 25, 27, 28: Make conforming amendments regarding Board action on a petition regarding non-implementation of a coastal district plan. Ties to Section 24. Same provisions are in SB 4, Sections 25, 27, 28.

Section 26: Provides that the Superior Courts have jurisdiction to enforce orders of the Board, as well as the department. Same provision is in SB 4, Section 26.

Section 29: Clarifies that a coastal resource service area (CRSA) may accept new matter submitted by a city or village into its coastal management plan. Not included in SB 4.

Section 30: Clarifies that municipalities are part of a CRSA unless they choose to be excluded. Not included in SB 4. There are currently no 3rd class boroughs in Alaska.

Section 31: Removes language about boroughs that do not exercise planning and zoning authority. Not included in SB 4.

Section 32: Makes a conforming amendment clarifying the board's role in coastal boundary changes. Same provision is in SB 4, Section 30.

Section 33, 34: Make conforming amendments regarding the Board's role in approving district plans and district enforceable policies. Same provisions are in SB 4, Sections 31, 32.

Section 35: Clarifies that the term "project" applies to federal activities and federally-permitted activities, including individual lease sales. Not included in SB 4.

Section 36: Adds new definitions for the terms "Board" and "special management areas." Definition of "special management areas" was not included in SB 4.

Section 37: Repeals the exemption for DEC permits from consistency reviews (eliminates DEC carve-out) (AS 46.40.040(b)-(c), not included in SB 4,

and AS 46.40.096(i)). Only this reference was included in SB 4.

Removes the requirement for re-submittal of district plans every 10 years (AS 46.40.050(a)). Not included in SB 4.

Removes the exemption of shallow gas projects from ACMP reviews (AS 46.40.205). Not included in SB 4.

Removes the definition for "areas meriting special attention" (AS 46.40.210(1)). Not included in SB 4.

SENATE FINANCE COMMITTEE REPORT

DATE: 3/24/10

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 4

SB 4 COASTAL MANAGEMENT PROGRAM

"An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board."

and recommends:

- be replaced with SCS or CS SB 4 (FIN)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

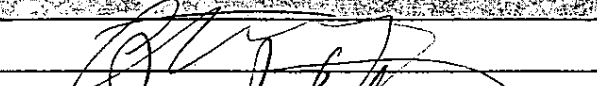

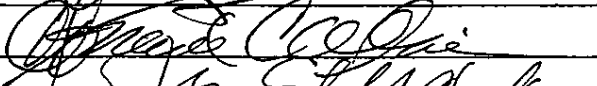
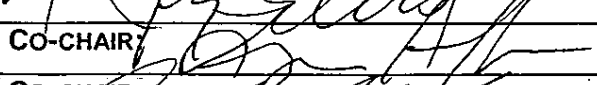
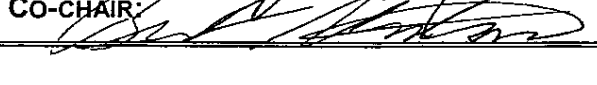

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DNR	3/30	✓			
DEC	3/29	✓			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Huggins		X		
	Thomas		✓		
	Olson	X	✓		
	Ellis	X			
CO-CHAIR: 	Hoffman	✓			
CO-CHAIR: 	Stedman			✓	

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB004
() Publish Date: _____

Identifier (file name): SB004-DNR-DCOM-03-30-10 Dept. Affected: Natural Resources
Title An Act relating to the Alaska Coastal Management Program. RDU Resource Development
Component Coastal and Ocean Management
Sponsor Sen. Olson
Requester Senate Finance Committee Component Number 2680

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	82.0	0.0	82.0	82.0	82.0	82.0	82.0
Contractual	80.0	0.0	30.0	30.0	30.0	30.0	30.0
Supplies	3.0	0.0	3.0	3.0	3.0	3.0	3.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	165.0	0.0	115.0	115.0	115.0	115.0	115.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	165.0	0.0	115.0	115.0	115.0	115.0	115.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	165.0	0.0	115.0	115.0	115.0	115.0	115.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 4 will have the following fiscal impact:

- Travel - It is expected that the Coastal Policy Board (CPB) will need to meet at least four times annually to fulfill the obligations and provide the services outlined in SB 4. Travel (including air, hotel, and per diem) for appointed members, designated members, and state agency staff is included.
- Contractual - In order to re-write the guiding regulations, DNR must secure contractual services for the promulgation and final Department of Law review of the regulations (FY 2011 only). In addition, contractual services for the CPB meetings must be procured, and will be an annual expense.
- Supplies - The CPB meetings will require some level of supplies for ensuring the members have proper materials.

Prepared by: Randy Bates, Director
Division Coastal and Ocean Management
Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 465-8797
Date/Time March 30, 2010
Date March 30, 2010

FISCAL NOTE

**STATE OF ALASKA
2010 LEGISLATIVE SESSION**

BILL NO. SB004

ANALYSIS CONTINUATION

4. Although not contemplated above as an additional expense, it is expected that coastal districts will choose to revise, amend, and seek approval for their coastal district plans. No funding is included in this fiscal note for Coastal District Plan revisions. DNR does not typically set aside any funding for plan revisions. With passage of HB 191 DNR distributed one-time federal grant awards to districts (\$1,166,600) for coastal community improvements, and funds to support the efforts of Alaska Coastal Management Program (ACMP) (\$909,700) and state agencies (\$833,700) in the management and development of Alaska's coastal resources.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS SB 4 (CRA)
 () Publish Date: _____

Identifier (file name): SB004CS(CRA)-DEC-CO-3-26-10 Dept. Affected: Environmental Conservati
 Title Coastal management Program RDU Administration
 Component Office of the Commissioner
 Sponsor Senator Olson
 Requester Senate Finance Committee Component Number 633

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	93.1		93.1	93.1	93.1	93.1	93.1	93.1
Travel	7.5		7.5	7.5	7.5	7.5	7.5	7.5
Contractual	11.2		11.2	11.2	11.2	11.2	11.2	11.2
Supplies	0.5		0.5	0.5	0.5	0.5	0.5	0.5
Equipment	6.4							
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	118.7	0.0	112.3	112.3	112.3	112.3	112.3	112.3

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts	118.7	0.0	112.3	112.3	112.3	112.3	112.3	112.3
TOTAL	118.7	0.0	112.3	112.3	112.3	112.3	112.3	112.3

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation amends Alaska statutes related to the Alaska Coastal Management Program (ACMP). The bill requires that the Department of Environmental Conservation process its permits in accordance with the ACMP coastal consistency review procedures where permits are currently processed independent from those procedures. The fiscal note reflects the personnel and support costs of a new (Range 20) position to serve as DEC's ACMP Program Coordinator. First-year costs include one-time equipment costs that are not reflected in subsequent years.

Prepared by: Marit Carlson-Van Dort
 Division: Office of the Commissioner
 Approved by: Dan Easton
Deputy Commissioner

Phone 465-5871
 Date/Time 3/29/10, 9:45 AM
 Date 3/29/2010

26-LS0019AS

Cook

4/10/10

CS FOR SENATE BILL NO. 4()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATOR OLSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska coastal management program; establishing the Alaska**
2 **Coastal Policy Board; and providing for an effective date by repealing the effective date**
3 **for the repeal of certain provisions relating to the Alaska coastal management**
4 **program."**

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

6 *** Section 1.** AS 46.39 is amended by adding a new section to article 1 to read:

7 **Sec. 46.39.005. Alaska Coastal Policy Board.** (a) The Alaska Coastal Policy
8 Board is created in the Department of Natural Resources. The board consists of

9 (1) five public members appointed by the governor, including one at-
10 large member from any coastal district; one public member shall be appointed from
11 each of the following regions:

12 (A) northwest Alaska, including, generally, the area of the
13 North Slope Borough and the Northwest Arctic Borough; and the Bering Strait
14 area, including, generally, the area of the Bering Strait regional educational

1 attendance area;

2 (B) southwest Alaska, including, generally, the area within the
3 Lower Yukon, Lower Kuskokwim, and Southwest regional educational
4 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and
5 the Kodiak-Aleutians area, including the Kodiak Island and area of the
6 Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof
7 regional educational attendance areas;

8 (C) Upper Cook Inlet area, including the Municipality of
9 Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area,
10 including, generally, the Kenai Peninsula Borough; and the Prince William
11 Sound area, including, generally, the area east of the Kenai Peninsula Borough
12 to 141 West longitude; and

13 (D) Southeast Alaska, generally the area east of 141 West
14 longitude;

15 (2) each of the following:

16 (A) the commissioner of environmental conservation;

17 (B) the commissioner of fish and game;

18 (C) the commissioner of natural resources; and

19 (D) the commissioner of commerce, community, and economic
20 development.

21 (b) Each public member appointed by the governor under (a)(1) of this section
22 serves a term of two years and until a successor is appointed and qualified. A public
23 member may be reappointed.

24 (c) The board shall designate co-chairs, one of whom shall be selected from
25 among the public members appointed under (a)(1) of this section and one from among
26 the members designated in (a)(2) of this section.

27 (d) The governor shall appoint a permanent alternate for each member of the
28 board. If a member of the board is unable to attend, the member shall advise the
29 alternate, who may attend and act in the place of the member. The alternate for a
30 commissioner serving under (a)(2) of this section shall be a deputy commissioner or
31 the director of a division in the commissioner's department. The names of alternates

1 shall be filed with the board.

2 (e) Three public members and two designated members of the board constitute
3 a quorum, but the board may delegate to one or more of its members the power to hold
4 hearings. All decisions of the board shall be by a majority vote of the members present
5 and voting.

6 (f) Members of the board or their alternates are entitled to per diem and travel
7 expenses authorized by law for members of boards and commissions.

8 (g) Administrative support for the board shall be provided by the division in
9 the department responsible for coastal and ocean management. The director of the
10 division in the department responsible for coastal and ocean management, under
11 direction of the co-chair designated by the board from the individuals listed in (a)(2)
12 of this section, may contract with or employ persons as necessary to assist the board in
13 carrying out the board's duties and responsibilities.

14 * **Sec. 2.** AS 46.39.010(a) is amended to read:

15 (a) The Department of Natural Resources shall render, on behalf of the state,
16 all federal consistency determinations and certifications authorized by 16 U.S.C. 1456
17 (Sec. 307, Coastal Zone Management Act of 1972), and each conclusive state
18 consistency determination when a project requires a permit, lease, or authorization
19 **from the department or** from two or more state resource agencies.

20 * **Sec. 3.** AS 46.39.010(b) is amended to read:

21 (b) The department may adopt regulations **approved by the board** necessary
22 to implement this chapter.

23 * **Sec. 4.** AS 46.39.030 is amended to read:

24 **Sec. 46.39.030. Powers of the department and board.** (a) The department
25 may

26 (1) **with the approval of the board,** apply for and accept grants,
27 contributions, and appropriations, including application for and acceptance of federal
28 funds that may become available for coastal planning and management;

29 (2) contract for necessary services; [;]

30 **(b) The board may**

31 **(1) [(3)]** consult and cooperate with

1 (A) persons, organizations, and groups, public or private,
2 interested in, affected by, or concerned with coastal area planning and
3 management;

4 (B) agents and officials of the coastal resource districts of the
5 state, and with [FEDERAL AND] state agencies concerned with or having
6 jurisdiction over coastal planning and management;

7 (2) [(4)] take any reasonable action necessary to carry out the
8 provisions of this chapter or AS 46.40.

9 * Sec. 5. AS 46.39.040 is amended to read:

10 Sec. 46.39.040. Duties of the board [DEPARTMENT]. In conformity with
11 16 U.S.C. 1451 - 1464 (Coastal Zone Management Act of 1972), as amended, the
12 board [DEPARTMENT] shall

13 (1) approve [DEVELOP] statewide standards for the Alaska coastal
14 management program [,] and criteria for the preparation and approval of district
15 coastal management plans developed by the department in accordance with
16 AS 46.40;

17 (2) establish continuing coordination among state agencies to facilitate
18 the development and implementation of the Alaska coastal management program; in
19 carrying out its duties under this paragraph, the department shall initiate an
20 interagency program of comprehensive coastal resource planning for each geographic
21 region of the state;

22 (3) ensure [ASSURE] continued provision of data and information to
23 coastal resource districts to carry out their planning and management functions under
24 the program.

25 * Sec. 6. AS 46.39.900 is amended to read:

26 Sec. 46.39.900. Definitions [DEFINITION]. In this chapter, unless the
27 context requires otherwise,

28 (1) "board" means the Alaska Coastal Policy Board established in
29 AS 46.39.005;

30 (2) "department" means the Department of Natural Resources.

31 * Sec. 7. AS 46.40.010 is amended to read:

1 **Sec. 46.40.010. Development of Alaska coastal management program. (a)**

2 The Alaska Coastal Policy Board [DEPARTMENT] shall approve, in accordance
3 with this chapter, program changes to the Alaska coastal management program.

4 (b) The board [DEPARTMENT] may approve the Alaska coastal
5 management program for a portion or portions of the coastal area before approving the
6 [COMPLETE] program changes under (a) of this section. Portions of the program
7 approved under this subsection shall be incorporated into the Alaska coastal
8 management program.

9 (c) The Alaska coastal management program shall be reviewed by the board
10 [DEPARTMENT] and, when appropriate, revised to

11 (1) add newly approved district coastal management plans [,] or
12 revisions and amendments to the Alaska coastal management program;

13 (2) integrate newly approved district coastal management plans [,] or
14 revisions and amendments of district coastal management plans [,] with existing
15 approved plans and with plans developed by state agencies;

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

18 (4) evaluate [REVIEW] the effectiveness [OF IMPLEMENTATION]
19 of district coastal management plans; and

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

22 (d) All reviews and revisions shall be in accordance with the statewide
23 standards and district plan criteria adopted under AS 46.40.040.

24 * **Sec. 8.** AS 46.40.020 is amended to read:

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

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

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

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(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 that [WHICH] are economically or physically dependent on a coastal location are given higher priority when compared to uses that [WHICH] do not economically or physically require a coastal location;

(5) the protection and management of significant historic, cultural, natural, subsistence, 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 and subsistence 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.

* Sec. 9. AS 46.40.030 is amended to read:

Sec. 46.40.030. Development of district coastal management plans. (a)

Coastal resource districts shall develop and adopt district coastal management plans in accordance with the provisions of this chapter. The plan adopted by a coastal resource district shall be based on [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 plan must meet the [STATEWIDE STANDARDS AND] district plan criteria adopted under AS 46.40.040 and must include

(1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management plan;

(2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management plan;

(3) a statement of policies to be applied to all [THE] land and water

uses subject to the district coastal management plan as well as policies that apply only to an area that merits special attention; and

(4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND WATER WITHIN THE COASTAL AREA; AND

(5)] a designation of an area that merits special attention under [, AND THE POLICIES THAT WILL BE APPLIED TO THE USE OF AREAS WITHIN] the district coastal management plan and enforceable policies that must be applicable within an area that merits special attention [RESOURCE DISTRICT THAT MERIT SPECIAL ATTENTION].

(b) In developing enforceable policies in its coastal management plan under (a) of this section, a coastal resource district shall ensure that the enforceable policies are

(1) clear and concise as to the activities and persons affected by the policies and the requirements of the policies

(2) necessary given local conditions; and

(3) supported by evidence, including scientific or local knowledge, if the policies are more specific than state or federal statutes or regulations

[MEET THE REQUIREMENTS OF AS 46.40.070 AND MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE OR FEDERAL AGENCIES].

* Sec. 10. AS 46.40.040(a) is amended to read:

(a) Except as provided in [(b) OF THIS SECTION AND] AS 41.17, the department shall, by regulations approved by the board,

(1) [BY REGULATION,] adopt under the provisions of AS 44.62 (Administrative Procedure Act) for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, statewide standards and district coastal management plan criteria for

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

1 Alaska coastal management program;

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

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

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

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

11 (F) designating and developing policies for areas that merit
12 special attention [THE USE OF AREAS OF THE COAST THAT MERIT
13 SPECIAL ATTENTION]; and

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

16 [(2) DEVELOP AND MAINTAIN A PROGRAM OF TECHNICAL
17 AND FINANCIAL ASSISTANCE TO AID COASTAL RESOURCE DISTRICTS IN
18 THE DEVELOPMENT AND IMPLEMENTATION OF DISTRICT COASTAL
19 MANAGEMENT PLANS;

20 (3) UNDERTAKE REVIEW AND APPROVAL OF DISTRICT
21 COASTAL MANAGEMENT PLANS IN ACCORDANCE WITH THIS CHAPTER;

22 (4) INITIATE A PROCESS FOR IDENTIFYING AND MANAGING
23 USES OF STATE CONCERN WITHIN SPECIFIC AREAS OF THE COAST;

24 (5) DEVELOP PROCEDURES OR GUIDELINES FOR
25 CONSULTATION AND COORDINATION WITH FEDERAL AGENCIES
26 MANAGING LAND OR CONDUCTING ACTIVITIES POTENTIALLY
27 AFFECTING THE COASTAL AREA OF THE STATE;

28 (6) BY REGULATION,] establish a consistency review and
29 determination or certification process that conforms to the requirements of
30 AS 46.40.096.

31 * Sec. 11. AS 46.40.040 is amended by adding new subsections to read:

1 (d) Except as provided in AS 41.17, the board shall

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

5 (2) undertake review of and, after public hearing, approve district
6 coastal management plans in accordance with this chapter;

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

9 (4) develop procedures or guidelines for consultation and coordination
10 with federal agencies managing land or conducting activities potentially affecting the
11 coastal area of the state;

12 (e) Regulations adopted by the department under this section for district plan
13 criteria may not require designation of areas as a precondition for the establishment of
14 a coastal resource district enforceable policy.

15 * **Sec. 12.** AS 46.40.050(b) is amended to read:

16 (b) Within 30 months after certification of the organization of a new coastal
17 resource district, the coastal resource district shall complete and submit to the **board**
18 [DEPARTMENT] a proposed district coastal management plan. If, after receipt of a
19 written request for extension from the coastal resource district, the **board**
20 [DEPARTMENT] considers an extension proper, the **board** [DEPARTMENT] may
21 grant an extension to a date that is within 54 months after certification of the results of
22 the coastal resource district's organization. A request under this subsection must
23 include the reasons for the extension.

24 * **Sec. 13.** AS 46.40.060 is repealed and reenacted to read:

25 **Sec. 46.40.060. Review and approval.** (a) A coastal resource district shall
26 submit its district coastal management plan for review by the department. The division
27 in the department responsible for coastal and ocean management shall attempt to reach
28 a consensus with a coastal resource district concerning any changes required to
29 comply with the district plan criteria approved by the department and the board.

30 (b) If a consensus between the division and the coastal resource district is
31 reached, the division shall forward a recommendation to the commissioner, and the

1 commissioner shall submit the recommendation to the board.

2 (c) If a consensus between the division and the coastal resource district is not
3 reached, the division shall forward a recommendation to the commissioner with an
4 explanation of the reasons for its recommendation and, if applicable, offer
5 recommended changes to the district coastal management plan that would meet the
6 district plan criteria. The coastal resource district may request that the commissioner
7 reconsider the division's recommendation before the commissioner submits the
8 recommendation to the board.

9 (d) If, after receiving the commissioner's recommendation, the board finds that
10 the district coastal management plan meets the provisions of this chapter and the
11 district plan criteria adopted by the department, the board may approve the district
12 coastal management plan or may approve portions of the district coastal management
13 plan that meet those requirements.

14 (e) If the board finds that a district coastal management plan is not approvable
15 or is approvable only in part under (d) of this section, the board shall direct the
16 department to meet with officials of the coastal resource district to resolve differences.
17 If requested by a coastal resource district, the board shall direct that deficiencies in the
18 district coastal management plan submitted by the coastal resource district be resolved
19 through mediation conducted by a neutral third party. During mediation, the board
20 may call for one or more public hearings in the district.

21 (f) If, after mediation, the differences have not been resolved and mutually
22 agreed to by the coastal resource district and the board, the board shall enter findings
23 and, by order, may require

24 (1) that the district coastal management plan be amended to satisfy the
25 provisions of this chapter or meet the statewide standards and district plan criteria
26 approved by the board;

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

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

31 (g) An order of the board entered under (f) of this section is a final

1 administrative order that the coastal resource district may appeal to the superior court
2 under AS 44.62 (Administrative Procedure Act). The attorney general, at the request
3 of the board, may file an action in superior court to enforce an order issued under (f)
4 of this section.

5 * Sec. 14. AS 46.40.070 is repealed and reenacted to read:

6 **Sec. 46.40.070. Requirements for board review and approval.** (a) The board
7 shall approve a district coastal management plan submitted for review and approval if
8 the

9 (1) district coastal management plan meets the requirements of this
10 chapter and the district plan criteria adopted by the department; and

11 (2) enforceable policies of the district coastal management plan

12 (A) do not duplicate, restate, or incorporate by reference state
13 or federal statutes or regulations;

14 (B) are not preempted by federal or state law; and

15 (C) do not arbitrarily or unreasonably restrict a use of state
16 concern.

17 (b) In (a)(2)(B) of this section, an enforceable policy of the district coastal
18 management plan is preempted by

19 (1) federal statutes or regulations when the United States Congress
20 expressly declares that local law or regulation is preempted if the United States
21 Congress demonstrates the intent to occupy the field exclusively or if there is an actual
22 conflict between federal and local law or regulation;

23 (2) state law if it is prohibited by express legislative direction or direct
24 conflict with a state statute or regulation, or where a local law or regulation
25 substantially interferes with the effective functioning of a state statute or regulation or
26 the underlying purposes of a state statute or regulation.

27 * Sec. 15. AS 46.40.096(a) is amended to read:

28 (a) The department shall, by regulation approved by the board, establish a
29 consistency review and determination process that conforms to the requirements of
30 this section.

31 * Sec. 16. AS 46.40.096(d) is amended to read:

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

3 (1) request consistency review comments for the proposed project
4 from state resource agencies, affected coastal resource districts, and other interested
5 parties as determined by regulation adopted by the department;

6 (2) prepare proposed consistency determinations;

7 (3) coordinate elevations [SUBSEQUENT REVIEWS] of proposed
8 consistency determinations prepared under (2) of this subsection; an elevation [A
9 SUBSEQUENT REVIEW] of a proposed consistency determination under this
10 paragraph

11 (A) is limited to a review by state resource agencies [THE
12 DEPARTMENT];

13 (B) may occur only if requested by

14 (i) the project applicant;

15 (ii) a state resource agency; or

16 (iii) an affected coastal resource district; and

17 (C) shall be completed by the resource agencies
18 [DEPARTMENT] within 45 days after the initial request for subsequent
19 review under this paragraph;

20 (4) render the final consistency determination and certification.

21 * Sec. 17. AS 46.40.096(g) is amended to read:

22 (g) The reviewing entity shall exclude from the consistency review and
23 determination process for a project

24 (1) an aspect of an activity that

25 [(A)] is specifically authorized under a general or nationwide
26 permit that has previously been determined to be consistent with the Alaska
27 coastal management program; [OR

28 (B) IS SUBJECT TO AUTHORIZATION BY THE
29 DEPARTMENT OF ENVIRONMENTAL CONSERVATION UNDER THE
30 REQUIREMENTS DESCRIBED IN AS 46.40.040(b);]

31 (2) activities excluded from a consistency review under AS 41.17; and

1 (3) the issuance of an authorization or permit issued by the Alaska Oil
2 and Gas Conservation Commission.

3 * Sec. 18. AS 46.40.096(k) is amended to read:

4 (k) Except as provided in (g) of this section, AS 41.17, [AS 46.40.040(b),] and
5 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)
6 of this section, is limited to activities that are located within the areas described in (l)
7 of this section and that either are subject to a state resource agency permit, lease,
8 authorization, approval, or certification or are the subject of a coastal resource district
9 enforceable policy approved by the board [DEPARTMENT] under this chapter. The
10 scope of a consistency review subject to 16 U.S.C. 1456 is determined under 16
11 U.S.C. 1456 and 15 C.F.R. Part 930.

12 * Sec. 19. AS 46.40.096(l) is amended to read:

13 (l) The regulations adopted under (a) of this section apply, as authorized by 16
14 U.S.C. 1456(c), to

15 (1) activities within the coastal zone; and

16 (2) activities on federal land, including the federal outer continental
17 shelf, that would affect any land or water use or natural resource of the state's coastal
18 zone; for purposes of this paragraph, those activities consist of any activity on the
19 federal outer continental shelf, including seismic survey activity, and any activity on
20 federal land that are within the geographic boundaries of the state's coastal zone
21 notwithstanding the exclusion of federal land in 16 U.S.C. 1453(1).

22 * Sec. 20. AS 46.40.096(m) is amended to read:

23 (m) As part of the regulations adopted under (a) of this section, the department
24 shall establish a list of permits, certifications, leases, approvals, and authorizations
25 issued by a state resource or federal agency that will trigger a consistency review
26 under (j) of this section. In addition, the department shall establish in regulation
27 categories and descriptions of uses and activities that, for purposes of evaluating
28 consistency with the Alaska coastal management program, are determined to be
29 categorically consistent or generally consistent after the inclusion of standard
30 alternative measures. These categories of uses and activities must be as broad as
31 possible so as to minimize the number of routine projects that must undergo an

1 individualized consistency review under this section.

2 * Sec. 21. AS 46.40.096(o) is amended to read:

3 (o) The time limitations in (n) of this section

4 (1) do not apply to a consistency review involving

5 (A) the disposal of an interest in state land or resources;

6 (B) an activity proposed by a federal agency; or

7 (C) an activity permitted by a federal agency;

8 (2) are suspended

9 (A) from the time a review schedule is modified in response
10 to [THE REVIEWING ENTITY DETERMINES THAT THE APPLICANT
11 HAS NOT ADEQUATELY RESPONDED IN WRITING WITHIN 14 DAYS
12 AFTER THE RECEIPT OF] a written request from the reviewing entity for
13 additional information, until the time the reviewing entity determines that the
14 applicant has provided an adequate written response;

15 (B) during a period of time requested by the applicant;

16 (C) during the period of time a consistency review is
17 undergoing a subsequent review under (d)(3) of this section;

18 (D) for 30 days if requested by an affected coastal resource
19 district exercising authority under AS 29 to accommodate the
20 adjudication process of an authorization issued by a coastal resource
21 district pending the results of the adjudication.

22 * Sec. 22. AS 46.40.096(q)(1) is amended to read:

23 (1) "affected coastal resource district" means a coastal resource district
24 with a publicly reviewed draft or approved plan in which a project is proposed to
25 be located or that [WHICH] may experience a direct and significant impact from a
26 proposed project;

27 * Sec. 23. AS 46.40.096 is amended by adding new subsections to read:

28 (r) Notwithstanding any provision of this section, for federal agency activities
29 defined in 15 C.F.R. 930.31, including Outer Continental Shelf lease sales and
30 development projects, the department shall conduct a full consistency review and
31 provide its consistency response with respect to proposed uses or activities involved in

1 the project regardless of whether an earlier consistency review for a similar project has
2 been completed.

3 (s) Regulations adopted by the department under this section may not require
4 that a draft permit be prepared before the initiation of the consistency review.

5 * Sec. 24. AS 46.40.100(b) is amended to read:

6 (b) A party that is authorized under (g) of this section may file a petition
7 showing that a district coastal management plan is not being implemented. A petition
8 filed under this subsection may not seek review of a proposed or final consistency
9 determination regarding a specific project. On receipt of a petition, the **board**
10 [DEPARTMENT], after giving public notice in the manner required by (f) of this
11 section, shall convene a hearing to consider the matter. A hearing called under this
12 subsection shall be held in accordance with regulations adopted under this chapter.
13 After the hearing, the **board** [DEPARTMENT] may order that the coastal resource
14 district or a state resource agency take any action with respect to future
15 implementation of the district coastal management plan that the **board**
16 [DEPARTMENT] considers necessary, except that the **board** [DEPARTMENT] may
17 not order that the coastal resource district or a state agency take any action with
18 respect to a proposed or final consistency determination that has been issued.

19 * Sec. 25. AS 46.40.100(c) is amended to read:

20 (c) In determining whether an approved district coastal management plan is
21 being implemented by a coastal resource district that exercises zoning authority or
22 controls on the use of resources within the coastal area or by a state resource agency,
23 the **board** [DEPARTMENT] shall find in favor of the district or the state resource
24 agency, unless the **board** [DEPARTMENT] finds a pattern of nonimplementation.

25 * Sec. 26. AS 46.40.100(e) is amended to read:

26 (e) The superior courts of the state have jurisdiction to enforce lawful orders
27 of the **board and the** department under this chapter.

28 * Sec. 27. AS 46.40.100(f) is amended to read:

29 (f) Upon receipt of a petition under (b) of this section, the **board**
30 [DEPARTMENT] shall give notice of the hearing at least 10 days before the
31 scheduled date of the hearing. The notice must

1 (1) contain sufficient information in commonly understood terms to
2 inform the public of the nature of the petition; and

3 (2) indicate the manner in which the public may comment on the
4 petition.

5 * Sec. 28. AS 46.40.100(h) is amended to read:

6 (h) If the board [DEPARTMENT] finds a pattern of nonimplementation
7 under (c) of this section, the board [DEPARTMENT] may order a coastal resource
8 district or a state resource agency to take action with respect to future implementation
9 of the district coastal management plan that the board [DEPARTMENT] considers
10 necessary to implement the district coastal management plan. The board's
11 [DEPARTMENT'S] determination under (c) of this section and any order issued under
12 this subsection shall be considered a final administrative order for purposes of judicial
13 review under AS 44.62.560.

14 * Sec. 29. AS 46.40.180(b) is amended to read:

15 (b) If a city or village within a coastal resource service area fails to approve a
16 portion of the district coastal management plan prepared and submitted for approval
17 under (a) of this section, the governing body shall advise the coastal resource service
18 area board of its objections to the proposed plan and suggest alternative elements or
19 components for inclusion in the district coastal management plan. New matter
20 submitted by a city or village that meets the [STATEWIDE STANDARDS AND]
21 district plan criteria adopted under this chapter may [SHALL] be accepted by the
22 district and the district coastal management plan modified accordingly. If a city or
23 village fails to provide objections and suggested alternatives within the time limits
24 established in this section, the coastal resource service area board may adopt the
25 district coastal management plan as initially offered.

26 * Sec. 30. AS 46.40.190(b) is amended to read:

27 (b) This chapter does not restrict or prohibit cooperative or joint
28 administration of functions between a municipality and a coastal resource service area
29 organized under the provisions of this chapter upon initiation of a mutual agreement
30 for the purpose. [A CITY THAT ELECTS TO BE EXCLUDED FROM AN
31 ADJACENT COASTAL RESOURCE SERVICE AREA UNDER (a) OF THIS

1 SECTION SHALL ENTER INTO A MUTUAL AGREEMENT FOR
 2 COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS WITH THE
 3 COASTAL RESOURCE SERVICE AREA BOARD FROM THE ADJACENT
 4 COASTAL RESOURCE SERVICE AREA.]

5 * Sec. 31. AS 46.40.210(2) is amended to read:

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

8 (A) unified municipalities;

9 (B) organized boroughs of any class that exercise planning and
 10 zoning authority;

11 (C) home rule and first class cities of the unorganized borough
 12 [OR WITHIN BOROUGHS THAT DO NOT EXERCISE PLANNING AND
 13 ZONING AUTHORITY];

14 (D) second class cities of the unorganized borough [, OR
 15 WITHIN BOROUGHS THAT DO NOT EXERCISE PLANNING AND
 16 ZONING AUTHORITY,] that have established a planning commission, and
 17 that, in the opinion of the commissioner of commerce, community, and
 18 economic development, have the capability of preparing and implementing a
 19 comprehensive district coastal management plan under AS 46.40.030;

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

22 * Sec. 32. AS 46.40.210(4) is amended to read:

23 (4) "coastal zone" means the coastal water including land within and
 24 under that water, and adjacent shoreland, including the water within and under that
 25 shoreland, within the boundaries approved by the former Alaska Coastal Policy
 26 Council and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465
 27 (Coastal Zone Management Act of 1972, as amended); "coastal zone" includes areas
 28 added as a result of any boundary changes approved by the board [DEPARTMENT]
 29 and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465;
 30 "coastal zone" does not include

31 (A) those lands excluded under 16 U.S.C. 1453(1); or

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1 (B) areas deleted as a result of any boundary changes by the
2 **board** [DEPARTMENT] in conformance with 16 U.S.C. 1451 - 1465;

3 * Sec. 33. AS 46.40.210(7) is amended to read:

4 (7) "district coastal management plan" means a plan developed by a
5 coastal resource district, including enforceable policies of that plan, setting out
6 policies and standards to guide public and private uses of land and water within that
7 district and approved by the **board** [DEPARTMENT] as meeting the requirements of
8 this chapter and the regulations adopted under this chapter;

9 * Sec. 34. AS 46.40.210(8) is amended to read:

10 (8) "enforceable policy" means a policy established by this chapter or
11 approved by the **board** [DEPARTMENT] as a legally binding policy of the Alaska
12 coastal management program applicable to public and private activities;

13 * Sec. 35. AS 46.40.210(9) is amended to read:

14 (9) "project" means all activities that will be part of a proposed
15 development and includes all federal agency activities as defined in 15 C.F.R.
16 930.31, including lease sales and development projects affecting a coastal use or
17 resource, and proposed rules that alter uses of the coastal zone;

18 * Sec. 36. AS 46.40.210 is amended by adding a new paragraph to read:

19 (13) "board" has the meaning given in AS 46.39.900;

20 * Sec. 37. AS 46.40.040(b), 46.40.040(c), 46.40.050(a), 46.40.096(i), and 46.40.205 are
21 repealed.

22 * Sec. 38. Sections 1 - 13 and 18, ch. 31, SLA 2005, are repealed.

23 * Sec. 39. Section 22, ch. 31, SLA 2005, is repealed.

adopted 4-13-10 n/o

26-LS0019\S
Cook
4/10/10

CS FOR SENATE BILL NO. 4()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATOR OLSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska coastal management program; establishing the Alaska**
2 **Coastal Policy Board; and providing for an effective date by repealing the effective date**
3 **for the repeal of certain provisions relating to the Alaska coastal management**
4 **program."**

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

6 *** Section 1.** AS 46.39 is amended by adding a new section to article 1 to read:

7 **Sec. 46.39.005. Alaska Coastal Policy Board.** (a) The Alaska Coastal Policy
8 Board is created in the Department of Natural Resources. The board consists of

9 (1) five public members appointed by the governor, including one at-
10 large member from any coastal district; one public member shall be appointed from
11 each of the following regions:

12 (A) northwest Alaska, including, generally, the area of the
13 North Slope Borough and the Northwest Arctic Borough; and the Bering Strait
14 area, including, generally, the area of the Bering Strait regional educational

1 attendance area;

2 (B) southwest Alaska, including, generally, the area within the
3 Lower Yukon, Lower Kuskokwim, and Southwest regional educational
4 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and
5 the Kodiak-Aleutians area, including the Kodiak Island and area of the
6 Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof
7 regional educational attendance areas;

8 (C) Upper Cook Inlet area, including the Municipality of
9 Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area,
10 including, generally, the Kenai Peninsula Borough; and the Prince William
11 Sound area, including, generally, the area east of the Kenai Peninsula Borough
12 to 141 West longitude; and

13 (D) Southeast Alaska, generally the area east of 141 West
14 longitude;

15 (2) each of the following:

16 (A) the commissioner of environmental conservation;

17 (B) the commissioner of fish and game;

18 (C) the commissioner of natural resources; and

19 (D) the commissioner of commerce, community, and economic
20 development.

21 (b) Each public member appointed by the governor under (a)(1) of this section
22 serves a term of two years and until a successor is appointed and qualified. A public
23 member may be reappointed.

24 (c) The board shall designate co-chairs, one of whom shall be selected from
25 among the public members appointed under (a)(1) of this section and one from among
26 the members designated in (a)(2) of this section.

27 (d) The governor shall appoint a permanent alternate for each member of the
28 board. If a member of the board is unable to attend, the member shall advise the
29 alternate, who may attend and act in the place of the member. The alternate for a
30 commissioner serving under (a)(2) of this section shall be a deputy commissioner or
31 the director of a division in the commissioner's department. The names of alternates

1 shall be filed with the board.

2 (e) Three public members and two designated members of the board constitute
3 a quorum, but the board may delegate to one or more of its members the power to hold
4 hearings. All decisions of the board shall be by a majority vote of the members present
5 and voting.

6 (f) Members of the board or their alternates are entitled to per diem and travel
7 expenses authorized by law for members of boards and commissions.

8 (g) Administrative support for the board shall be provided by the division in
9 the department responsible for coastal and ocean management. The director of the
10 division in the department responsible for coastal and ocean management, under
11 direction of the co-chair designated by the board from the individuals listed in (a)(2)
12 of this section, may contract with or employ persons as necessary to assist the board in
13 carrying out the board's duties and responsibilities.

14 * **Sec. 2.** AS 46.39.010(a) is amended to read:

15 (a) The Department of Natural Resources shall render, on behalf of the state,
16 all federal consistency determinations and certifications authorized by 16 U.S.C. 1456
17 (Sec. 307, Coastal Zone Management Act of 1972), and each conclusive state
18 consistency determination when a project requires a permit, lease, or authorization
19 **from the department or** from two or more state resource agencies.

20 * **Sec. 3.** AS 46.39.010(b) is amended to read:

21 (b) The department may adopt regulations **approved by the board** necessary
22 to implement this chapter.

23 * **Sec. 4.** AS 46.39.030 is amended to read:

24 **Sec. 46.39.030. Powers of the department and board.** (a) The department
25 may

26 (1) **with the approval of the board,** apply for and accept grants,
27 contributions, and appropriations, including application for and acceptance of federal
28 funds that may become available for coastal planning and management;

29 (2) contract for necessary services; [;]

30 **(b) The board may**

31 **(1) [(3)]** consult and cooperate with

1 (A) persons, organizations, and groups, public or private,
2 interested in, affected by, or concerned with coastal area planning and
3 management;

4 (B) agents and officials of the coastal resource districts of the
5 state, and with [FEDERAL AND] state agencies concerned with or having
6 jurisdiction over coastal planning and management;

7 (2) [(4)] take any reasonable action necessary to carry out the
8 provisions of this chapter or AS 46.40.

9 * Sec. 5. AS 46.39.040 is amended to read:

10 **Sec. 46.39.040. Duties of the board [DEPARTMENT].** In conformity with
11 16 U.S.C. 1451 - 1464 (Coastal Zone Management Act of 1972), as amended, the
12 **board** [DEPARTMENT] shall

13 (1) **approve** [DEVELOP] statewide standards for the Alaska coastal
14 management program [,] and criteria for the preparation and approval of district
15 coastal management plans **developed by the department** in accordance with
16 AS 46.40;

17 (2) establish continuing coordination among state agencies to facilitate
18 the development and implementation of the Alaska coastal management program; in
19 carrying out its duties under this paragraph, the department shall initiate an
20 interagency program of comprehensive coastal resource planning for each geographic
21 region of the state;

22 (3) **ensure** [ASSURE] continued provision of data and information to
23 coastal resource districts to carry out their planning and management functions under
24 the program.

25 * Sec. 6. AS 46.39.900 is amended to read:

26 **Sec. 46.39.900. Definitions [DEFINITION].** In this chapter, unless the
27 context requires otherwise,

28 **(1) "board" means the Alaska Coastal Policy Board established in**
29 **AS 46.39.005;**

30 **(2) "department" means the Department of Natural Resources.**

31 * Sec. 7. AS 46.40.010 is amended to read:

1 **Sec. 46.40.010. Development of Alaska coastal management program.** (a)
2 The Alaska Coastal Policy Board [DEPARTMENT] shall approve, in accordance
3 with this chapter, program changes to the Alaska coastal management program.

4 (b) The board [DEPARTMENT] may approve the Alaska coastal
5 management program for a portion or portions of the coastal area before approving the
6 [COMPLETE] program changes under (a) of this section. Portions of the program
7 approved under this subsection shall be incorporated into the Alaska coastal
8 management program.

9 (c) The Alaska coastal management program shall be reviewed by the board
10 [DEPARTMENT] and, when appropriate, revised to

11 (1) add newly approved district coastal management plans [,] or
12 revisions and amendments to the Alaska coastal management program;

13 (2) integrate newly approved district coastal management plans [,] or
14 revisions and amendments of district coastal management plans [,] with existing
15 approved plans and with plans developed by state agencies;

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

18 (4) evaluate [REVIEW] the effectiveness [OF IMPLEMENTATION]
19 of district coastal management plans; and

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

22 (d) All reviews and revisions shall be in accordance with the statewide
23 standards and district plan criteria adopted under AS 46.40.040.

24 * **Sec. 8.** AS 46.40.020 is amended to read:

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

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

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

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

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

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

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

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

16 (8) the full and fair evaluation of all demands on the land and water in
17 the coastal area.

18 * Sec. 9. AS 46.40.030 is amended to read:

19 **Sec. 46.40.030. Development of district coastal management plans.** (a)
20 Coastal resource districts shall develop and adopt district coastal management plans in
21 accordance with the provisions of this chapter. The plan adopted by a coastal resource
22 district shall be based on [UPON] a municipality's existing comprehensive plan or a
23 new comprehensive resource use plan or comprehensive statement of needs, policies,
24 objectives, and standards governing the use of resources within the coastal area of the
25 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
26 criteria adopted under AS 46.40.040 and must include

27 (1) a delineation within the district of the boundaries of the coastal area
28 subject to the district coastal management plan;

29 (2) a statement, list, or definition of the land and water uses and
30 activities subject to the district coastal management plan;

31 (3) a statement of policies to be applied to all [THE] land and water

1 uses subject to the district coastal management plan as well as policies that apply
2 only to an area that merits special attention; and

3 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
4 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
5 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
6 WATER WITHIN THE COASTAL AREA; AND

7 (5)] a designation of an area that merits special attention under [,
8 AND THE POLICIES THAT WILL BE APPLIED TO THE USE OF AREAS
9 WITHIN] the district coastal management plan and enforceable policies that must
10 be applicable within an area that merits special attention [RESOURCE DISTRICT
11 THAT MERIT SPECIAL ATTENTION].

12 (b) In developing enforceable policies in its coastal management plan under
13 (a) of this section, a coastal resource district shall ensure that the enforceable
14 policies are

15 (1) clear and concise as to the activities and persons affected by the
16 policies and the requirements of the policies

17 (2) necessary given local conditions; and

18 (3) supported by evidence, including scientific or local knowledge,
19 if the policies are more specific than state or federal statutes or regulations
20 [MEET THE REQUIREMENTS OF AS 46.40.070 AND MAY NOT DUPLICATE,
21 RESTATE, OR INCORPORATE BY REFERENCE STATUTES AND
22 ADMINISTRATIVE REGULATIONS ADOPTED BY STATE OR FEDERAL
23 AGENCIES].

24 * Sec. 10. AS 46.40.040(a) is amended to read:

25 (a) Except as provided in [(b) OF THIS SECTION AND] AS 41.17, the
26 department shall, by regulations approved by the board,

27 (1) [BY REGULATION,] adopt under the provisions of AS 44.62
28 (Administrative Procedure Act) for the use of and application by coastal resource
29 districts and state agencies for carrying out their responsibilities under this chapter,
30 statewide standards and district coastal management plan criteria for

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

1 Alaska coastal management program;

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

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

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

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

11 (F) designating and developing policies for areas that merit
12 special attention [THE USE OF AREAS OF THE COAST THAT MERIT
13 SPECIAL ATTENTION]; and

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

16 [(2) DEVELOP AND MAINTAIN A PROGRAM OF TECHNICAL
17 AND FINANCIAL ASSISTANCE TO AID COASTAL RESOURCE DISTRICTS IN
18 THE DEVELOPMENT AND IMPLEMENTATION OF DISTRICT COASTAL
19 MANAGEMENT PLANS;

20 (3) UNDERTAKE REVIEW AND APPROVAL OF DISTRICT
21 COASTAL MANAGEMENT PLANS IN ACCORDANCE WITH THIS CHAPTER;

22 (4) INITIATE A PROCESS FOR IDENTIFYING AND MANAGING
23 USES OF STATE CONCERN WITHIN SPECIFIC AREAS OF THE COAST;

24 (5) DEVELOP PROCEDURES OR GUIDELINES FOR
25 CONSULTATION AND COORDINATION WITH FEDERAL AGENCIES
26 MANAGING LAND OR CONDUCTING ACTIVITIES POTENTIALLY
27 AFFECTING THE COASTAL AREA OF THE STATE;

28 (6) BY REGULATION,] establish a consistency review and
29 determination or certification process that conforms to the requirements of
30 AS 46.40.096.

31 * Sec. 11. AS 46.40.040 is amended by adding new subsections to read:

1 (d) Except as provided in AS 41.17, the board shall

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

5 (2) undertake review of and, after public hearing, approve district
6 coastal management plans in accordance with this chapter;

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

9 (4) develop procedures or guidelines for consultation and coordination
10 with federal agencies managing land or conducting activities potentially affecting the
11 coastal area of the state;

12 (e) Regulations adopted by the department under this section for district plan
13 criteria may not require designation of areas as a precondition for the establishment of
14 a coastal resource district enforceable policy.

15 * **Sec. 12.** AS 46.40.050(b) is amended to read:

16 (b) Within 30 months after certification of the organization of a new coastal
17 resource district, the coastal resource district shall complete and submit to the **board**
18 [DEPARTMENT] a proposed district coastal management plan. If, after receipt of a
19 written request for extension from the coastal resource district, the **board**
20 [DEPARTMENT] considers an extension proper, the **board** [DEPARTMENT] may
21 grant an extension to a date that is within 54 months after certification of the results of
22 the coastal resource district's organization. A request under this subsection must
23 include the reasons for the extension.

24 * **Sec. 13.** AS 46.40.060 is repealed and reenacted to read:

25 **Sec. 46.40.060. Review and approval.** (a) A coastal resource district shall
26 submit its district coastal management plan for review by the department. The division
27 in the department responsible for coastal and ocean management shall attempt to reach
28 a consensus with a coastal resource district concerning any changes required to
29 comply with the district plan criteria approved by the department and the board.

30 (b) If a consensus between the division and the coastal resource district is
31 reached, the division shall forward a recommendation to the commissioner, and the

1 commissioner shall submit the recommendation to the board.

2 (c) If a consensus between the division and the coastal resource district is not
3 reached, the division shall forward a recommendation to the commissioner with an
4 explanation of the reasons for its recommendation and, if applicable, offer
5 recommended changes to the district coastal management plan that would meet the
6 district plan criteria. The coastal resource district may request that the commissioner
7 reconsider the division's recommendation before the commissioner submits the
8 recommendation to the board.

9 (d) If, after receiving the commissioner's recommendation, the board finds that
10 the district coastal management plan meets the provisions of this chapter and the
11 district plan criteria adopted by the department, the board may approve the district
12 coastal management plan or may approve portions of the district coastal management
13 plan that meet those requirements.

14 (e) If the board finds that a district coastal management plan is not approvable
15 or is approvable only in part under (d) of this section, the board shall direct the
16 department to meet with officials of the coastal resource district to resolve differences.
17 If requested by a coastal resource district, the board shall direct that deficiencies in the
18 district coastal management plan submitted by the coastal resource district be resolved
19 through mediation conducted by a neutral third party. During mediation, the board
20 may call for one or more public hearings in the district.

21 (f) If, after mediation, the differences have not been resolved and mutually
22 agreed to by the coastal resource district and the board, the board shall enter findings
23 and, by order, may require

24 (1) that the district coastal management plan be amended to satisfy the
25 provisions of this chapter or meet the statewide standards and district plan criteria
26 approved by the board;

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

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

31 (g) An order of the board entered under (f) of this section is a final

1 administrative order that the coastal resource district may appeal to the superior court
2 under AS 44.62 (Administrative Procedure Act). The attorney general, at the request
3 of the board, may file an action in superior court to enforce an order issued under (f)
4 of this section.

5 * **Sec. 14.** AS 46.40.070 is repealed and reenacted to read:

6 **Sec. 46.40.070. Requirements for board review and approval.** (a) The board
7 shall approve a district coastal management plan submitted for review and approval if
8 the

9 (1) district coastal management plan meets the requirements of this
10 chapter and the district plan criteria adopted by the department; and

11 (2) enforceable policies of the district coastal management plan

12 (A) do not duplicate, restate, or incorporate by reference state
13 or federal statutes or regulations;

14 (B) are not preempted by federal or state law; and

15 (C) do not arbitrarily or unreasonably restrict a use of state
16 concern.

17 (b) In (a)(2)(B) of this section, an enforceable policy of the district coastal
18 management plan is preempted by

19 (1) federal statutes or regulations when the United States Congress
20 expressly declares that local law or regulation is preempted if the United States
21 Congress demonstrates the intent to occupy the field exclusively or if there is an actual
22 conflict between federal and local law or regulation;

23 (2) state law if it is prohibited by express legislative direction or direct
24 conflict with a state statute or regulation, or where a local law or regulation
25 substantially interferes with the effective functioning of a state statute or regulation or
26 the underlying purposes of a state statute or regulation.

27 * **Sec. 15.** AS 46.40.096(a) is amended to read:

28 (a) The department shall, by regulation approved by the board, establish a
29 consistency review and determination process that conforms to the requirements of
30 this section.

31 * **Sec. 16.** AS 46.40.096(d) is amended to read:

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

3 (1) request consistency review comments for the proposed project
4 from state resource agencies, affected coastal resource districts, and other interested
5 parties as determined by regulation adopted by the department;

6 (2) prepare proposed consistency determinations;

7 (3) coordinate elevations [SUBSEQUENT REVIEWS] of proposed
8 consistency determinations prepared under (2) of this subsection; an elevation [A
9 SUBSEQUENT REVIEW] of a proposed consistency determination under this
10 paragraph

11 (A) is limited to a review by state resource agencies [THE
12 DEPARTMENT];

13 (B) may occur only if requested by

14 (i) the project applicant;

15 (ii) a state resource agency; or

16 (iii) an affected coastal resource district; and

17 (C) shall be completed by the resource agencies
18 [DEPARTMENT] within 45 days after the initial request for subsequent
19 review under this paragraph;

20 (4) render the final consistency determination and certification.

21 * Sec. 17. AS 46.40.096(g) is amended to read:

22 (g) The reviewing entity shall exclude from the consistency review and
23 determination process for a project

24 (1) an aspect of an activity that

25 [(A)] is specifically authorized under a general or nationwide
26 permit that has previously been determined to be consistent with the Alaska
27 coastal management program; [OR

28 (B) IS SUBJECT TO AUTHORIZATION BY THE
29 DEPARTMENT OF ENVIRONMENTAL CONSERVATION UNDER THE
30 REQUIREMENTS DESCRIBED IN AS 46.40.040(b);]

31 (2) activities excluded from a consistency review under AS 41.17; and

1 (3) the issuance of an authorization or permit issued by the Alaska Oil
2 and Gas Conservation Commission.

3 * Sec. 18. AS 46.40.096(k) is amended to read:

4 (k) Except as provided in (g) of this section, AS 41.17, [AS 46.40.040(b),] and
5 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)
6 of this section, is limited to activities that are located within the areas described in (l)
7 of this section and that either are subject to a state resource agency permit, lease,
8 authorization, approval, or certification or are the subject of a coastal resource district
9 enforceable policy approved by the board [DEPARTMENT] under this chapter. The
10 scope of a consistency review subject to 16 U.S.C. 1456 is determined under 16
11 U.S.C. 1456 and 15 C.F.R. Part 930.

12 * Sec. 19. AS 46.40.096(l) is amended to read:

13 (l) The regulations adopted under (a) of this section apply, as authorized by 16
14 U.S.C. 1456(c), to

15 (1) activities within the coastal zone; and

16 (2) activities on federal land, including the federal outer continental
17 shelf, that would affect any land or water use or natural resource of the state's coastal
18 zone; for purposes of this paragraph, those activities consist of any activity on the
19 federal outer continental shelf, including seismic survey activity, and any activity on
20 federal land that are within the geographic boundaries of the state's coastal zone
21 notwithstanding the exclusion of federal land in 16 U.S.C. 1453(1).

22 * Sec. 20. AS 46.40.096(m) is amended to read:

23 (m) As part of the regulations adopted under (a) of this section, the department
24 shall establish a list of permits, certifications, leases, approvals, and authorizations
25 issued by a state resource or federal agency that will trigger a consistency review
26 under (j) of this section. In addition, the department shall establish in regulation
27 categories and descriptions of uses and activities that, for purposes of evaluating
28 consistency with the Alaska coastal management program, are determined to be
29 categorically consistent or generally consistent after the inclusion of standard
30 alternative measures. These categories of uses and activities must be as broad as
31 possible so as to minimize the number of routine projects that must undergo an

1 individualized consistency review under this section.

2 * Sec. 21. AS 46.40.096(o) is amended to read:

3 (o) The time limitations in (n) of this section

4 (1) do not apply to a consistency review involving

5 (A) the disposal of an interest in state land or resources;

6 (B) an activity proposed by a federal agency; or

7 (C) an activity permitted by a federal agency;

8 (2) are suspended

9 (A) from the time a review schedule is modified in response

10 to [THE REVIEWING ENTITY DETERMINES THAT THE APPLICANT
11 HAS NOT ADEQUATELY RESPONDED IN WRITING WITHIN 14 DAYS
12 AFTER THE RECEIPT OF] a written request from the reviewing entity for
13 additional information, until the time the reviewing entity determines that the
14 applicant has provided an adequate written response;

15 (B) during a period of time requested by the applicant;

16 (C) during the period of time a consistency review is
17 undergoing a subsequent review under (d)(3) of this section;

18 (D) for 30 days if requested by an affected coastal resource
19 district exercising authority under AS 29 to accommodate the
20 adjudication process of an authorization issued by a coastal resource
21 district pending the results of the adjudication.

22 * Sec. 22. AS 46.40.096(q)(1) is amended to read:

23 (1) "affected coastal resource district" means a coastal resource district
24 with a publicly reviewed draft or approved plan in which a project is proposed to
25 be located or that [WHICH] may experience a direct and significant impact from a
26 proposed project;

27 * Sec. 23. AS 46.40.096 is amended by adding new subsections to read:

28 (r) Notwithstanding any provision of this section, for federal agency activities
29 defined in 15 C.F.R. 930.31, including Outer Continental Shelf lease sales and
30 development projects, the department shall conduct a full consistency review and
31 provide its consistency response with respect to proposed uses or activities involved in

1 the project regardless of whether an earlier consistency review for a similar project has
2 been completed.

3 (s) Regulations adopted by the department under this section may not require
4 that a draft permit be prepared before the initiation of the consistency review.

5 * Sec. 24. AS 46.40.100(b) is amended to read:

6 (b) A party that is authorized under (g) of this section may file a petition
7 showing that a district coastal management plan is not being implemented. A petition
8 filed under this subsection may not seek review of a proposed or final consistency
9 determination regarding a specific project. On receipt of a petition, the board
10 [DEPARTMENT], after giving public notice in the manner required by (f) of this
11 section, shall convene a hearing to consider the matter. A hearing called under this
12 subsection shall be held in accordance with regulations adopted under this chapter.
13 After the hearing, the board [DEPARTMENT] may order that the coastal resource
14 district or a state resource agency take any action with respect to future
15 implementation of the district coastal management plan that the board
16 [DEPARTMENT] considers necessary, except that the board [DEPARTMENT] may
17 not order that the coastal resource district or a state agency take any action with
18 respect to a proposed or final consistency determination that has been issued.

19 * Sec. 25. AS 46.40.100(c) is amended to read:

20 (c) In determining whether an approved district coastal management plan is
21 being implemented by a coastal resource district that exercises zoning authority or
22 controls on the use of resources within the coastal area or by a state resource agency,
23 the board [DEPARTMENT] shall find in favor of the district or the state resource
24 agency, unless the board [DEPARTMENT] finds a pattern of nonimplementation.

25 * Sec. 26. AS 46.40.100(e) is amended to read:

26 (e) The superior courts of the state have jurisdiction to enforce lawful orders
27 of the board and the department under this chapter.

28 * Sec. 27. AS 46.40.100(f) is amended to read:

29 (f) Upon receipt of a petition under (b) of this section, the board
30 [DEPARTMENT] shall give notice of the hearing at least 10 days before the
31 scheduled date of the hearing. The notice must

1 (1) contain sufficient information in commonly understood terms to
2 inform the public of the nature of the petition; and

3 (2) indicate the manner in which the public may comment on the
4 petition.

5 * **Sec. 28.** AS 46.40.100(h) is amended to read:

6 (h) If the board [DEPARTMENT] finds a pattern of nonimplementation
7 under (c) of this section, the board [DEPARTMENT] may order a coastal resource
8 district or a state resource agency to take action with respect to future implementation
9 of the district coastal management plan that the board [DEPARTMENT] considers
10 necessary to implement the district coastal management plan. The board's
11 [DEPARTMENT'S] determination under (c) of this section and any order issued under
12 this subsection shall be considered a final administrative order for purposes of judicial
13 review under AS 44.62.560.

14 * **Sec. 29.** AS 46.40.180(b) is amended to read:

15 (b) If a city or village within a coastal resource service area fails to approve a
16 portion of the district coastal management plan prepared and submitted for approval
17 under (a) of this section, the governing body shall advise the coastal resource service
18 area board of its objections to the proposed plan and suggest alternative elements or
19 components for inclusion in the district coastal management plan. New matter
20 submitted by a city or village that meets the [STATEWIDE STANDARDS AND]
21 district plan criteria adopted under this chapter may [SHALL] be accepted by the
22 district and the district coastal management plan modified accordingly. If a city or
23 village fails to provide objections and suggested alternatives within the time limits
24 established in this section, the coastal resource service area board may adopt the
25 district coastal management plan as initially offered.

26 * **Sec. 30.** AS 46.40.190(b) is amended to read:

27 (b) This chapter does not restrict or prohibit cooperative or joint
28 administration of functions between a municipality and a coastal resource service area
29 organized under the provisions of this chapter upon initiation of a mutual agreement
30 for the purpose. [A CITY THAT ELECTS TO BE EXCLUDED FROM AN
31 ADJACENT COASTAL RESOURCE SERVICE AREA UNDER (a) OF THIS

1 SECTION SHALL ENTER INTO A MUTUAL AGREEMENT FOR
2 COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS WITH THE
3 COASTAL RESOURCE SERVICE AREA BOARD FROM THE ADJACENT
4 COASTAL RESOURCE SERVICE AREA.]

5 * Sec. 31. AS 46.40.210(2) is amended to read:

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

8 (A) unified municipalities;

9 (B) organized boroughs of any class that exercise planning and
10 zoning authority;

11 (C) home rule and first class cities of the unorganized borough
12 [OR WITHIN BOROUGHs THAT DO NOT EXERCISE PLANNING AND
13 ZONING AUTHORITY];

14 (D) second class cities of the unorganized borough [, OR
15 WITHIN BOROUGHs THAT DO NOT EXERCISE PLANNING AND
16 ZONING AUTHORITY,] that have established a planning commission, and
17 that, in the opinion of the commissioner of commerce, community, and
18 economic development, have the capability of preparing and implementing a
19 comprehensive district coastal management plan under AS 46.40.030;

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

22 * Sec. 32. AS 46.40.210(4) is amended to read:

23 (4) "coastal zone" means the coastal water including land within and
24 under that water, and adjacent shoreland, including the water within and under that
25 shoreland, within the boundaries approved by the former Alaska Coastal Policy
26 Council and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465
27 (Coastal Zone Management Act of 1972, as amended); "coastal zone" includes areas
28 added as a result of any boundary changes approved by the board [DEPARTMENT]
29 and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465;
30 "coastal zone" does not include

31 (A) those lands excluded under 16 U.S.C. 1453(1); or

1 (B) areas deleted as a result of any boundary changes by the
2 **board** [DEPARTMENT] in conformance with 16 U.S.C. 1451 - 1465;

3 * Sec. 33. AS 46.40.210(7) is amended to read:

4 (7) "district coastal management plan" means a plan developed by a
5 coastal resource district, including enforceable policies of that plan, setting out
6 policies and standards to guide public and private uses of land and water within that
7 district and approved by the **board** [DEPARTMENT] as meeting the requirements of
8 this chapter and the regulations adopted under this chapter;

9 * Sec. 34. AS 46.40.210(8) is amended to read:

10 (8) "enforceable policy" means a policy established by this chapter or
11 approved by the **board** [DEPARTMENT] as a legally binding policy of the Alaska
12 coastal management program applicable to public and private activities;

13 * Sec. 35. AS 46.40.210(9) is amended to read:

14 (9) "project" means all activities that will be part of a proposed
15 development **and includes all federal agency activities as defined in 15 C.F.R.**
16 **930.31, including lease sales and development projects affecting a coastal use or**
17 **resource, and proposed rules that alter uses of the coastal zone;**

18 * Sec. 36. AS 46.40.210 is amended by adding a new paragraph to read:

19 (13) "board" has the meaning given in AS 46.39.900;

20 * Sec. 37. AS 46.40.040(b), 46.40.040(c), 46.40.050(a), 46.40.096(i), and 46.40.205 are
21 repealed.

22 * Sec. 38. Sections 1 - 13 and 18, ch. 31, SLA 2005, are repealed.

23 * Sec. 39. Section 22, ch. 31, SLA 2005, is repealed.



ALASKA MINERS ASSOCIATION, INC.

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April 14, 2010

Honorable Bert Stedman
Honorable Lyman Hoffman
Senate Resources Committee
Capitol Building
Juneau, AK 99801

Re: SB-4, Alaska Coastal Zone Management

Dear Senator Stedman and Senator Hoffman.

We have reviewed CSSB-4(FIN) Version S which proposes major changes to the Alaska Coastal Zone Management Program. The Finance CS makes some changes to SB-4 but the bill still contains other concerns that must be addressed before we can support it.

At the hearing on this bill yesterday you asked for specific concerns that we have with CSSB-4(FIN) Version S and these follow:

The Legislative Budget & Audit review of the program that is scheduled for this year should be allowed to proceed as directed in past legislation.

Section 1. Eliminate the Coastal Policy Board. The actions and attempted actions of this board have been a source of controversy for the ACMP. We are not aware of other states that have this type of board and there is no need for it in Alaska. In other states, and in Anchorage, the ACMP is incorporated into the municipal ordinances. All coastal municipalities could do the same. Eliminating the Board would correct many of the problems with the bill and would alleviate many of the concerns of both the State and industry. This board is not in the current program and should not be added.

If the Coastal Policy Board is not eliminated, it will be necessary to Balance the Board. The board should be balanced to have 1/3 from agencies, 1/3 from the districts and 1/3 from the regulated community. If there is a board, it is essential that the regulated community have a voice on the board. Without including the regulated community, this group that can create new jobs and economy for the state will not have the input necessary.

Section 2. Do not expand the items requiring consistency determination. Remove the phrase "from the department or" that was added by SB-4. This phrase would increase the number of permits, leases and authorizations that would require consistency determinations. The workload of each office in DNR, including DCOM, would be increased.

4-13-10

STATE OF ALASKA

SEAN PARNELL
GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF COASTAL AND OCEAN MANAGEMENT
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April 13, 2010

The Honorable Senator Lyman Hoffman
Alaska State Senate
Senate Finance Committee
State Capitol
Juneau, Alaska 99801-1182

RE: The Alaska Coastal Management Program

Dear Senator Hoffman:

Thank you for your request that the Department of Natural Resources (DNR) respond to the identified issues associated with the changes proposed in Senate Bill 4 (SB 4) as they relate to the Alaska Coastal Management Program. Your request for a response was shared during the March 30, 2010 Senate Finance Committee hearing on Senate Bill 4 (SB 4) addressing the ACMP.

Attached to this letter is written testimony submitted on behalf of three departments – Law, Environmental Conservation, and Natural Resources. This written testimony highlights general concerns and issues with the committee substitute for SB 4. Although I recognize your desire to affect change to the ACMP through statutory revisions, the proposed changes within SB 4 will not help resolve concerns between local coastal districts, project proponents, and the State agencies, and as such DNR is unable to recommend specific changes to SB 4 that would achieve the balance needed to successfully implement the ACMP.

It is also important to note and recognize that, under AS 44.66.020, the ACMP is listed as a program subject to termination in 2011. Although the Legislative Budget and Audit Committee did not designate the ACMP for termination (AS 44.66.030), the continuation of the ACMP is subject to hearings in front of a committee of each house next year (AS 44.66.050). Pursuant to AS 44.66.050(b), and within the context of the committee hearing, it is the responsibility of the department to demonstrate a public need for the existence of the ACMP, and whether there are any changes that would increase the efficiency of administration or operation consistent with the public interest. At that time, it would be appropriate to discuss whether the department recommends statutory changes that would generally benefit the public interest. As well, under AS 44.66.050(e), and based on the hearings and committee findings and summary, the committee may introduce a bill providing for the reorganization or continuation of the ACMP. Given the existing ACMP review and evaluation process already established in statute and scheduled for next year, it would seem imprudent to pass

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Senator Lyman Hoffman
April 13, 2010
Page 2

SB 4 this year affecting significant change to the ACMP before the legislatively designated committee process described in AS 44.66 has run its course.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,



Randy Bates
Director

cc: Senate Finance Committee Members
Tom Irwin, Marty Rutherford, Dick Lefebvre, DNR
Larry Hartig, Dan Easton, DEC
Daniel Sullivan, DOL
Jerry Gallagher, Heather Brakes, Office of the Governor

CS Senate Bill 4 (26-LS0019\R)
Senate Finance Committee

Department of Natural Resources Testimony

The Department of Natural Resources (department) has serious and substantive concerns with the Committee Substitute (CS) for Senate Bill (SB) 4:

1. It creates a new oversight body, the Coastal Policy Board, and vests that body with the ability to approve enforceable policies that would override agency authority, effectively trumping the legislative establishment of laws relative to resource management and protection.
2. It would allow enforceable policies to be more restrictive, more stringent, and more prescriptive than existing state and federal laws by allowing the Coastal Policy Board to modify the standards and authority of the resource agencies, but without the science that may be required by State or federal law, and without the requirement that the district demonstrate the ability to enforce the chosen requirement.
3. It allows enforceable policies to address issues not otherwise addressed in resource agency authorities, including those issues the legislative body specifically chose not to address.
4. This bill changes the structure of the ACMP from one of local input to one of local control – it authorizes broad authority for coastal district enforceable policies to address and decide upon resource development projects.
5. It is a bill specific to the issues of one group of ACMP participants, but is not a bill that balances or represents the interests of other ACMP participants and stakeholders.

The department recognizes that there are significant differences of opinion on how much influence and input coastal districts have or should have regarding resource development and permitting decisions. The department believes that the voice, input, perspective, and influence of rural Alaska and the coastal communities are critical to our function and success as a department and a state – the ACMP is one of many programs that considers that voice, input, and perspective. We value that input, but do not believe that the input the State solicits should allow a coastal district to control, dictate, or otherwise replace the State's decision-making process on those issues that are so important to the State and its collective residents.

The following are proposed coastal district enforceable policies that could be approved by the Coastal Policy Board if SB 4 were to be enacted:

- "Subsistence is a priority over all other proposed activities"
- "No disturbance or take from the lead group of caribou during the annual migration"
- "No drill operations if there is any chance of an oil spill"
- "No net loss of habitat from proposed activities"

Within the context of a consistency review of a project, these enforceable policies are applied to the proposed project to determine compliance. If the reviewing entity – either the state or the coastal district – determines that the project does not comply with the enforceable policy, the project may be denied and NO State or federal permits may be issued for that project.

By allowing the coastal district to write an enforceable policy establishing the locally important issue as a priority to the exclusion of activities that may be in the best interest of the state, this bill would change the structure of the ACMP and would significantly change the authority and control a coastal district has over resource development projects that are important to the state and its collective residents.

In addition to the establishment of the Coastal Policy Board and the expansion of coastal district enforceable policies, the department has significant concerns with the following aspects of the CS for SB 4:

- Section 19 – expanding the inland reach of the ACMP and listing seismic surveys within the statute.
- Section 21 – amending certain timing requirements for conducting consistency reviews.
- Section 22 and 35 – amending certain definitions.
- Section 23 – requiring the duplication of consistency reviews after a final consistency determination has been issued for a given project.

The department also recognizes that other state departments have presented important testimony and significant concerns regarding the CS for SB 4.

It is important to recognize that the department's goal is to implement a coastal program that provides opportunity for important local input, that is streamlined and minimizes the administrative burden associated with a networked program, that is predictable in its requirements, that is meaningful to the participants, and that is appropriate and balanced in managing the coastal uses and resources of the coastal zone.

From the department's perspective, the CS for SB 4 does not accomplish these goals.

Thank you for the opportunity to provide this written testimony, and to present the department's perspective on this legislation.

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Testimony of
Alaska Department of Environmental Conservation
Senate Bill 4
Senate Finance Committee
March 2010

SB 4 eliminates provisions referred to as the "DEC carve-out." In so doing, it raises serious concerns.

Background on the "DEC Carve-Out."

The DEC carve out is comprised of two provisions. The first is that the process DEC uses to develop and issue environmental permits is excluded from the Alaska Coastal Management Program consistency review and determination process. DEC permits are developed using the specific procedures set out in the permitting programs with their own timeframes, requirements for public notice and comment, rules regarding production of preliminary drafts, and requirements for collection of baseline data and appeal procedures.

The second provision of the DEC carve out is that environmental standard setting -- whether for water quality standards, ambient air quality standards, spill response planning standards, or standards for managing solid wastes -- is reserved to the state. Moreover, issuance of a state environmental permit is sufficient to establish consistency with ACMP standards. Under current statutes, coastal districts may not develop their own standards.

Effects of SB 4.

With respect to the first provision, eliminating the DEC carve-out would mean that development of state permits would fall under ACMP procedures. This situation has occurred in the past and resulted in conflicts between environmental permit and ACMP procedures and presented significant problems with prescribed timeframes, duplicative appeal processes, and different rules for public notice and comment. DEC's permitting procedures are often circumscribed by federal law and cannot be modified without running afoul of federal program rules.

With respect to the other DEC carve-out provision, SB 4 allows the coastal districts to develop environmental standards as enforceable policies as long as they are more stringent than state standards. The state would no longer be the sole environmental standard-setting authority and standards may vary from one district to the next.

We note that the DEC standard setting process is exhaustive. State standards must often comply with federal guidance which, in turn, reflects extensive

Testimony of
Alaska Department of Environmental Conservation
Senate Bill 4
Senate Finance Committee
March 2010

compilation and rigorous peer-reviewed analysis of scientific data from around the nation and world. Development or amendment of a single standard is a long and careful process and can take years. State air and water standards must comply with federal law and are subject to approval of the U.S. Environmental Protection Agency after consultation with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and Tribes. Good standards are protective of human health and resources without being overly-protective and needlessly burdensome on permittees whether for municipal sewage treatment plants or resource development industries. State standards are promulgated as regulations with the accompanying public process and right to appeal. Standards established by coastal districts, even while subject to coastal policy board approval would not be subject to the same level of effort and scrutiny as state water and air quality standards.

SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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March 30, 2010

The Honorable Lyman Hoffman
State Capital, Room 518
Juneau, AK 99801

The Honorable Bert Stedman
State Capital, Room 516
Juneau, AK 99801

Dear Senator Hoffman and Senator Stedman:

This letter describes the legal issues raised by Committee Substitute for Senate Bill 4, relating to the Alaska Coastal Management Program (ACMP).

A. Appointment of Coastal Policy Board Members

Section 1 of the bill states that the public members of the Coastal Policy Board would be appointed by the Governor. The board would be made up of nine members. Five members would be from the coastal districts divided by geographic area, and would be referred to as "public members." These public members would be appointed by the Governor from a list composed of at least three names from each coastal region. These names would be nominated and submitted by the coastal districts of each region. Such a list limits the Governor's appointment powers, and that limitation may create constitutional problems.

B. Board Approval of ACMP Regulations

Section 3 states that the Department of Natural Resources may adopt regulations approved by the Coastal Policy Board. The board would be made up of nine members, five of which are mentioned in Section A of this letter. The four remaining members, referred to as "designated members," would be from state personnel: the Commissioners of the Department of Environmental Conservation, Department of Fish and Game, Department of Natural Resources, and Department of Commerce, Community, and Economic Development. A quorum of three public members and two designated members would be required before a vote could be taken. All decisions of the board would be by a majority vote of the members present and voting.

The board would be responsible for approving ACMP regulations and for approving coastal district plans. As such, the board would also be responsible for approving the enforceable policies developed by coastal districts. This is a significant amount of work. Practically speaking, it may be very difficult for the board to assemble a quorum and to pass a vote (only a majority vote would pass; a tie would not) to accomplish the tasks assigned to the board by the bill. The Department of Law advises against requiring a board to approve regulations for these reasons.

C. Negotiations with Federal Authorities

Section 11 permits the Coastal Policy Board to develop procedures and guidelines for the consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state. Negotiations with the federal government should not be conducted by the board; they should be conducted by the state. It is possible this provision would infringe on the Governor's executive powers and that these direct negotiations may be problematic from the standpoint of developing consistent state policies. This provision could be eliminated from Section 11 without otherwise undermining the purpose of the bill.

D. Standards for District Plan Review and Approval

Section 13 addresses district plan review and approval. It provides that once a plan is submitted to the Department of Natural Resources for review, the department must attempt to reach a "consensus" with the district concerning any changes to the plan. It is not clear what is meant by "consensus." Does this mean there must be full agreement? Or partial agreement? Or something in between? It would be helpful for this term to be defined by the legislature.

E. Lack of Language Providing for Transition Between the Current and Proposed Systems

The bill lacks transition language that would allow existing district plans and regulations to remain in effect while the Coastal Policy Board and the Department of Natural Resources work together to approve new district plans and create new regulations consistent with this bill. If existing district plans and regulations do not remain in effect, it is unclear how consistency reviews, of which there are hundreds, if not thousands, every year, would be conducted.

The bill also lacks transition language stating that the Department of Natural Resources must apply for federal approval of a revised ACMP and that the

March 30, 2010

Page 3

bill would take effect only if federal approval is obtained. Prior to this bill becoming effective, federal approval must be obtained by the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management. These problems can easily be fixed by adding transition language, which the Department of Law could provide and/or help draft.

I hope that this legal summary is helpful. If I can provide additional information, please let me know.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:

Lindsay A. Wolter
Assistant Attorney General

cc: Senator Donald Olson
Jerry Gallagher, Governor's Legislative Liason
Deborah Behr, DOL
Mike Ford, DOL
Craig Tillery, DOL
Randall Bates, DNR

BY TOPIC

4-13-10
Jim Benintendi

SB 4 Alaska Coastal Management Program
Explanation of Proposed Changes to SB 4
April 11, 2010

Topic	Sec.	Changes in Proposed CS for SB 4
Board	1	Change: Allow Governor to appoint public members from each region <u>without nominations</u> from coastal districts. Purpose: This change would address concerns that districts have too much power in deciding who will be on board.
	4	Change: Remove provision for board consultation with federal agencies. Purpose: This change addresses concerns raised about board powers.
	4,10	Change: Address inconsistencies in bill regarding board's role in regulations. Clarify that the <u>board only approves regulations</u> proposed by DNR. Purpose: This change would fix problems identified by Legislative Legal that there are conflicting provisions regarding the board's role in approving regulations.
Inland of Coastal Zone	19	Change: Eliminate proposed change in AS 46.40.096(l)(1) that would allow ACMP reviews inland of the coastal zone. Purpose: This compromise responds to concerns raised by industry.
Enforceable Policies	14	Change: These changes adopt language in CSHB74(CRA) including a clarification that policies cannot conflict with state statutes or regulations. Purpose: While current language in SB 4 prohibits duplication of state or federal law, this addition would clarify the policies cannot conflict with state or federal laws.
	9	Change: These changes adopt language from CSHB74(CRA) by removing "prescriptive or performance based" from AS 46.40.030(b)(1) and removing "contemporary or traditional" from AS 46.40.030(b)(2). Purpose: This change responds to concerns raised by industry.
	11(e)	Change: Add a new subsection making it clear that the district plan criteria in regulations cannot require designation of areas as a precondition for the establishment of coastal district enforceable policies. Purpose: These requirements have been costly to coastal districts, have resulted in significant delays during some project reviews and added no benefits (This change would implement a provision in the DNR December 2008 draft regulations that would eliminate requirements for designated areas).
DEC Carve-Out	23(s)	Change: Add a new subsection AS 46.40.096(s) clarifying draft permits are not required to initiate an ACMP review, but permit applications would be required. Purpose: This change addresses a concern raised by AOGA about project delays by delaying start up of some ACMP reviews.

Special Management Areas	9, 10, 36, 37	<p>Change: Delete new term “special management area” and return to existing statutory language “areas that merit special attention.” Section 36 removes new definition, and section 37 deletes repeal of the existing definition.</p> <p>Purpose: This new term, included in DNR’s December 2008 draft legislation, has been misinterpreted as adding a new requirement. Deleting the new term eliminates unnecessary confusion.</p>
OCS	19	<p>Change: Remove proposed words “and water” from AS 46.40.096(l).</p> <p>Purpose: This change removes unnecessary confusion and responds to concerns raised by industry. The addition of the words “and water” resulted in a misunderstanding that this bill would add a new provision to allow review of projects in the OCS. The ACMP has always allowed review of OCS projects.</p>
Proposed Rules	35	<p>Change: Language added to definition of “project” to allow review of proposed federal rules (regulations).</p> <p>Purpose: This addition allows the state to take advantage of a provision in the federal coastal zone management law to allow review of proposed rules that alter uses of the coastal zone (e.g., ESA regulations about endangered species)</p>
Cooperative Administration	31	<p>Change: Removes proposed changes to subsection AS 46.40.190(a) regarding cooperative administration.</p> <p>Purpose: The change incorporates an amendment to HB 174 that responds to a concern raised by a coastal district.</p>
Repeal of ACMP	38, 39	<p>Change: New sections repeal provisions in Ch. 31, SLA 2005 that repealed the coastal management program in 2011.</p> <p>Purpose: These new sections will avoid unnecessary action during the 2011 legislative session.</p>

Replaced
FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: **SB004**
() Publish Date: _____

Identifier (file name): **SB004-DNR-DCOM-03-25-10** Dept. Affected: **Natural Resources**
Title: **An Act relating to the Alaska Coastal Management Program.** RDU: **Resource Development**
Component: **Coastal and Ocean Management**
Sponsor: **Sen. Olson**
Requester: **Senate Finance Committee** Component Number: **2680**

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required		Information				
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	82.0	0.0	82.0	82.0	82.0	82.0	82.0
Contractual	80.0	0.0	30.0	30.0	30.0	30.0	30.0
Supplies	3.0	0.0	3.0	3.0	3.0	3.0	3.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	165.0	0.0	115.0	115.0	115.0	115.0	115.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	165.0	0.0	115.0	115.0	115.0	115.0	115.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	165.0	0.0	115.0	115.0	115.0	115.0	115.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 4 will have the following fiscal impact:

- Travel - It is expected that the Coastal Policy Board (CPB) will need to meet at least four times annually to fulfill the obligations and provide the services outlined in HB 74. Travel (including air, hotel, and per diem) for appointed members, designated members, and state agency staff is included.
- Contractual - In order to re-write the guiding regulations, DNR must secure contractual services for the promulgation and final Department of Law review of the regulations (FY 2010 only). In addition, contractual services for the CPB meetings must be procured, and will be an annual expense.
- Supplies - The CPB meetings will require some level of supplies for ensuring the members have proper materials.

Prepared by: Randy Bates, Director Phone 465-8797
Division: Coastal and Ocean Management Date/Time March 25, 2010
Approved by: Tom Irwin, Commissioner Date March 25, 2010
Natural Resources

(Revised 9/10/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SB004

ANALYSIS CONTINUATION

4. Although not contemplated above as an additional expense, it is expected that coastal districts will choose to revise, amend, and seek approval for their coastal district plans. No funding is included in this fiscal note for Coastal District Plan revisions. DNR does not typically set aside any funding for plan revisions.

SB 4: Coastal Zone Management
Comparison of Pre-2003 ACMP with Current Provisions and Proposed Changes
 April 11, 2010

Topic	Pre-2003	Current Provisions	Proposed CS for SB4
Location of Agency	Governor's Office	DNR	DNR
Board	17-member state-district board provided <u>broad oversight</u> of the ACMP, including project reviews.	DNR commissioner responsible for all ACMP decisions with <u>no checks and balances</u> .	9-member state-district board with <u>limited authority</u> to approve district plans, grant programs and program changes. Governor appoints all members without nominations. DNR responsible for project reviews.
Enforceable policies:	District programs must:	DNR's regulations more stringent than the legislative intent. Statutes require that policies must:	Policies would be allowed to address impacts to any coastal resource or use if they do not:
<ul style="list-style-type: none"> • General limitations 	<ul style="list-style-type: none"> • Not violate a state law or policy, • Adhere to adopted guidelines and standards, • Not unreasonably restrict a use of state concern. 	<ul style="list-style-type: none"> • Not duplicate state/federal laws, • Be prescriptive, • Only deal with matters not adequately addressed by laws, • Not unreasonably restrict a use of state concern. 	<ul style="list-style-type: none"> • Duplicate state/federal laws, • Address a matter preempted by state or federal law, • Conflict with state law, • Unreasonably restrict a use of state concern.
<ul style="list-style-type: none"> • Limitation of policies to certain statewide standards and designated areas 	Designated areas not required. Impacts to coastal resources and uses on federal lands and waters were considered.	Policies limited to certain statewide standards and designated areas. Impacts to coastal resources and uses on federal lands <u>cannot</u> be considered. States' rights to review impacts are restricted.	Regulations would not be able to restrict policies to certain statewide standards or designated areas. Eliminating requirements for designated areas allows consideration of impacts to coastal resources & uses.
<ul style="list-style-type: none"> • State/federal authority 	Potential for districts and agencies to have conflicting requirements.	Districts <u>cannot</u> override state, federal or legislative authority.	Districts <u>cannot</u> override state, federal or legislative authority.
Citizen Appeals	Allowed citizen lawsuits (pre-2003) and petitions (pre-2002).	Citizen lawsuits and petitions <u>not</u> allowed.	Citizen lawsuits and petitions <u>not</u> allowed.
Special Management Areas	Districts may establish "areas that merit special attention."	Districts may establish "special management areas."	Districts may establish "areas that merit special attention."
Repeal of ACMP	No provision for repeal	ACMP will be repealed July 2011.	No provision for automatic repeal.

Topic	Pre-2003	Current Provisions	Proposed CS for SB 4
Plan Amendments	No requirement to resubmit plans every 10 years.	Districts must resubmit plans every 10 years.	Districts may retain current plans. No 10-year requirement to submit plan.
DEC Participation	DEC participated in ACMP reviews, but some district policies addressed matters regulated by DEC. Some projects delayed because of a requirement for issuance of draft permits before start up of review.	Legislative intent not being implemented: DEC seldom participates in ACMP reviews, and DNR does not allow any air or water quality matters to be addressed during an ACMP review, even for matters not regulated by DEC.	DEC's permits would be included in the ACMP review, but DEC would have final say on matters it regulates. A new provision clarifies draft permits cannot be required before review start up.
Review Timelines	No 90-day limit. Projects with federal permits subject to 3-month and 6-month deadlines. Almost all reviews completed in 30-60 days.	Most reviews must be completed within 90-days regardless of whether there is adequate information to make the decision.	Projects with federal permits would be exempted from 90-day limit. Federal law requires notification why there is a delay at 3 months, and review must be completed in 6 months.
Inland Projects	Projects inland of the coastal zone reviewed only if direct and significant coastal impacts to coastal resources or uses.	Projects inland of the coastal zone cannot be reviewed for consistency with the ACMP.	Projects inland of the coastal zone cannot be reviewed for consistency with the ACMP.
Outer Continental Shelf (OCS)	Federally-initiated activities inland of coastal zone reviewed only if there are coastal effects.	Federally-initiated activities inland of coastal zone reviewed only if there are coastal effects.	Activities in the OCS may be reviewed for consistency with the ACMP.
Activities on federal land & waters	Ability to influence activities that affect coastal resources and uses on federal lands & waters.	Impacts to certain resources & uses cannot be considered due to designated area requirements.	Ability to influence activities that affect coastal resources and uses on federal lands and waters.
Elevations (pre-decision appeals)	DEC, ADFG & DNR made decision by consensus.	DNR commissioner has sole authority to make decision.	DEC, ADFG & DNR decide review participant appeals by consensus.
Proposed Rules	Proposed federal regulations cannot be reviewed for consistency with the ACMP.	Proposed federal regulations cannot be reviewed for consistency with the ACMP.	Proposed federal regulations (e.g., ESA listings) can be reviewed for consistency with the ACMP.

**SB 4: Coastal Zone Management
Comparison of Pre-2003 ACMP with Current Provisions and Proposed Changes**

April 11, 2010

Topic	Pre-2003	Current Provisions	Proposed CS for SB4
Location of Agency Board	Governor's Office	DNR	DNR
	17-member state-district board provided <u>broad oversight</u> of the ACMP, including project reviews.	DNR commissioner responsible for all ACMP decisions with <u>no checks and balances</u> .	9-member state-district board with <u>limited authority</u> to approve district plans, grant programs and program changes. Governor appoints all members without nominations. DNR responsible for project reviews.
Enforceable policies • General limitations	District programs must: • Not violate a state law or policy, • Adhere to adopted guidelines and standards, • Not unreasonably restrict a use of state concern.	DNR's <u>regulations more stringent</u> than the legislative intent. Statutes require that policies must: • Not duplicate state/federal laws, • Be prescriptive, • Only deal with matters not adequately addressed by laws, • Not unreasonably restrict a use of state concern.	Policies would be allowed to address impacts to any coastal resource or use if they do <u>not</u> : • Duplicate state/federal laws, • Address a matter preempted by state or federal law, • Conflict with state law, • Unreasonably restrict a use of state concern.
• Limitation of policies to certain statewide standards and designated areas • State/federal authority	Designated areas not required. Impacts to coastal resources and uses on federal lands and waters were considered. Potential for districts and agencies to have conflicting requirements.	Policies limited to certain statewide standards and designated areas. Impacts to coastal resources and uses on federal lands <u>cannot</u> be considered. States' rights to review impacts are restricted. Districts <u>cannot</u> override state, federal or legislative authority.	Regulations would not be able to restrict policies to certain statewide standards or designated areas. Eliminating requirements for designated areas allows consideration of impacts to coastal resources & uses. Districts <u>cannot</u> override state, federal or legislative authority.
Citizen Appeals	Allowed citizen lawsuits (pre-2003) and petitions (pre-2002).	Citizen lawsuits and petitions <u>not</u> allowed.	Citizen lawsuits and petitions <u>not allowed</u> .
Special Management Areas	Districts may establish "areas that merit special attention."	Districts may establish "special management areas."	Districts may establish "areas that merit special attention."
Repeal of ACMP	No provision for repeal	ACMP will be repealed July 2011.	No provision for automatic repeal.

Topic	Pre-2003	Current Provisions	Proposed CS for SB 4
Plan Amendments	No requirement to resubmit plans every 10 years.	Districts must resubmit plans every 10 years.	Districts may retain current plans. No 10-year requirement to submit plan.
DEC Participation	DEC participated in ACMP reviews, but some district policies addressed matters regulated by DEC. Some projects delayed because of a requirement for issuance of draft permits before start up of review.	<u>Legislative intent not being implemented</u> : DEC seldom participates in ACMP reviews, and DNR does not allow any air or water quality matters to be addressed during an ACMP review, even for matters not regulated by DEC.	DEC's permits would be included in the ACMP review, but DEC would have final say on matters it regulates. A new provision clarifies draft permits cannot be required before review start up.
Review Timelines	No 90-day limit. Projects with federal permits subject to 3-month and 6-month deadlines. Almost all reviews completed in 30-60 days.	Most reviews must be completed within 90-days regardless of whether there is adequate information to make the decision.	Projects with federal permits would be exempted from 90-day limit. Federal law requires notification why there is a delay at 3 months, and review must be completed in 6 months.
Inland Projects	Projects inland of the coastal zone reviewed <u>only if direct and significant coastal impacts</u> to coastal resources or uses. Federally-initiated activities inland of coastal zone reviewed <u>only if</u> there are coastal effects.	Projects inland of the coastal zone cannot be reviewed for consistency with the ACMP.	Projects inland of the coastal zone cannot be reviewed for consistency with the ACMP.
Outer Continental Shelf (OCS)	Activities in the OCS may be reviewed for consistency with the ACMP.	Activities in the OCS may be reviewed for consistency with the ACMP.	Activities in the OCS may be reviewed for consistency with the ACMP.
Activities on federal land & waters	Ability to influence activities that affect coastal resources and uses on federal lands & waters.	Impacts to certain resources & uses cannot be considered due to designated area requirements.	Ability to influence activities that affect coastal resources and uses on federal lands and waters.
Elevations (pre-decision appeals)	DEC, ADFG & DNR made decision by consensus.	DNR commissioner has sole authority to make decision.	DEC, ADFG & DNR decide review participant appeals by consensus.
Proposed Rules	Proposed federal regulations cannot be reviewed for consistency with the ACMP.	Proposed federal regulations cannot be reviewed for consistency with the ACMP.	Proposed federal regulations (e.g., ESA listings) can be reviewed for consistency with the ACMP.

Alaska Oil and Gas Association



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Email: crockett@aoga.org
Marilyn Crockett, Executive Director

March 30, 2010

To the Members of the Senate Finance Committee:

We are writing today to express our strong opposition to and grave concerns with SB 4. During this session, many legislators have expressed a desire to create a better environment for investment in Alaska. Make no mistake, AOGA's members believe that passage of SB 4 would achieve the exact opposite.

If passed, this legislation will have a chilling and negative impact on the oil and gas industry statewide, stifling exploration and development in the Cook Inlet and on the North Slope. We believe offshore exploration and future development would be stopped dead in its tracks. If passed, SB 4 will significantly reduce potential production, and could cost the state significant revenue, billions of dollars in needed industry investment and consequently thousands of jobs.

Because virtually all operations of the members of AOGA take place within, or adjacent to, Alaska's coastal zone, we have been actively engaged in development and implementation of provisions of the Alaska Coastal Management Act (ACMA) and the subsequent Alaska Coastal Management Program (ACMP) since the program's inception in 1977.

AOGA also has long been an advocate of and contributor to sound legislation and regulations which balance resource development with environmental protection. AOGA input to achieve these goals has included support of a timely, smooth functioning and predictable State permitting regime. Prior to the 2003 reforms, experience with the former ACMP demonstrated that it had become a complex, duplicative program with uncertain standards and open-ended review periods, creating an unworkable permitting process. We strongly supported the legislative initiative in 2003 which made major reforms to the ACMP that resulted in significant improvements in Alaska's permitting system.

Unfortunately, SB 4 not only eliminates all those permit streamlining reforms of 2003 but creates, if passed, a permitting regime that is again unpredictable and unworkable. We cannot overemphasize our concern that the impacts of SB 4 to responsible development in Alaska will be chilling; this legislation will be perceived as sending strong signals that Alaska is not open for business. This is at a time of declining oil production and the need to get a gas pipeline and other projects moving.

While we recognize the local concerns that this legislation tries to address, for the reasons we set forth below we do not believe that SB 4 is the right answer. The current permitting system provides a predictable and workable process with numerous opportunities for public input and local review. SB 4 would instead create a duplicative, untimely, and unworkable permitting system far worse than the pre-2003 ACMP.

For example, DEC technical permits are already routinely subject to public review and comment. Bringing hundreds of such DEC permits back into the ACMP for duplicative review under multiple undefined new local standards will add no additional value. It will instead create huge delays and inefficiency while undermining the statewide environmental standards the legislature has directed DEC to establish and enforce.

Our principal concerns and the likely impacts of SB 4 are discussed in more detail below. In summary, these are as follows:

- SB4 would create a new, far reaching, and duplicative ACMP process with unpredictable consequences and open ended timelines for permitting of projects in Alaska.
- State control and management of its lands, air and waters would be relinquished to a largely locally nominated Coastal Policy Board (Board) with extraordinary but standard-less regulatory powers. DNR's role in the ACMP and its constitutional authority over natural resources would be subordinated to the Board, as would the authority of other state resource agencies. The Board and its staff (which would be required to administer its extensive functions) would comprise a duplicative new bureaucracy to administer the ACMP on top of and in addition to the current DNR administration of the program. This would raise significant practical questions about how the system could work.
- Existing state and federal environmental standards would be supplanted by prescriptive or programmatic new local requirements. In effect, local standards would trump existing Federal and state environmental regulatory programs with respect to what permit applicants would have to comply with. The powers vested in the coastal districts and Board to draft and approve new enforceable policies in addition to existing state and federal requirements are without meaningful standards or limitation. These local enforceable standards would expressly no longer be subject to any statewide standards but nevertheless have the force of state law.
- Since the inception of ACMP, and as made explicit in the 2003 reforms, ADEC air, water and other standards in their regulatory and permitting programs were deemed to be the standards in those areas for consistency reviews. Those typically complex, technical permits and lengthy review processes were appropriately "carved out" of the ACMP review, thereby streamlining and shortening permitting time frames. Now under SB 4 consistency reviews and

permitting time frames would be significantly lengthened by inclusion of ADEC permits in consistency reviews.

- Schedule deadlines of the current ACMP would be eliminated for federally permitted projects and weakened for all reviews. This again threatens an indeterminate and open-ended schedule for ACMP reviews, especially in light of the exclusion of the DEC "Carve-out."
- The reach of the ACMP would be vastly but unpredictably expanded inland of the defined coastal zone. Any project anywhere in Alaska could be brought into ACMP's orbit, and a consistency review required, if it were believed to have impacts on a coastal use or resource. The threshold for such determinations appears to be very low given the overall provisions of SB 4.
- SB 4 presents very serious constitutional concerns including the standard-less delegation of legislative and administrative authority to the Board and coastal districts. The vast authority delegated would not only disregard state ACMP standards but create new enforceable local policies which go beyond existing state and federal law. Other serious questions include whether the process for appointments to the Board would improperly interfere with the constitutional power of the governor, and whether the Board's authority to disapprove DNR regulations would in effect comprise an unconstitutional "legislative veto." We strongly recommend that SB 4 be subject to legal review by the legislature and the Attorney General's Office prior to further legislative action to review these and other legal issues. SB 4 otherwise seems certain to give rise to not only permitting uncertainty and delay but extensive new litigation over project reviews on a case by case basis .

BACKGROUND

As you consider this legislation it is important to recall the historical problems with the ACMP that led to the passage of HB 191 in 2003.

In the late 1990's it became apparent to State regulatory agencies and the regulated community that the ACMP was broken both in terms of process and substantive scope. Among the problems, which are documented in Chapter 10 *Program Description for the Alaska Coastal Management Program* (DNR 2005), in testimony on HB 191, and in other documents, were:

- A complex program tiered upon a diverse federal and state permitting system;
- Lack of clarity on the applicability and scope of the ACMP review to a project;
- Lack of clarity and inconsistency on information requirements to support consistency reviews;
- Unpredictable and often lengthy time frames for consistency reviews due to numerous stop clocks and requests for information and interagency disagreements;
- Lack of clarity and inconsistent application of the standards that apply to the consistency review projects;

- Conflicts between permit regulatory conditions and ACMP standards and enforceable policies as a result of duplicative or overlapping requirements;
- Application of "homeless stipulations" to consistency determinations that have no statutory basis;
- Duplication of administrative and ACMP appeals processes;
- Abuse of the ACMP elevation/appeals processes to delay or stop projects.

A very important factor in the problems arising in the ACMP in the 1990's and early part of this decade is the significant evolution in federal and state environmental laws and regulations that occurred after the passage of the ACMA in 1978. Given a more complete and rigorous regulatory environment, much of the scope of consistency reviews, statewide standards and district enforceable policies had become redundant or duplicative. This also created the complexities in the program (characterized in testimony to the legislature in HB 191 hearings as an ACMP "maze" that could not be mapped out) because of the conflicting requirements between the ACMP and individual state and federal permitting programs.

The revisions to the program adopted by the Legislature in 2003 resolved these challenges and transformed the program into one that provides certainty for the State, local districts and the regulated community. The 2003 changes made the consistency review process more efficient and interactions with federal and state permitting programs more certain and consistent. These changes (1) established clear triggers for applicability of the ACMP; (2) identified the information necessary for a complete application and established deadlines for requesting additional information; (3) established the applicable standards for consistency review, removing duplication and subjectivity; and (4) established firm deadlines for completion of consistency reviews.

Unfortunately, SB 4 effectively eliminates the certainty put into place by the Legislature in 2003.

Elimination of the "DEC Carve-Out"

One of the most problematic provisions of SB 4 is elimination of the DEC Carve-out. This provision in existing law implements the original intent of the ACMP...that the air, land and water standards and permits administered by the State are inherently consistent with the ACMP and therefore the additional step of securing a consistency determination is not necessary or required. These standards were developed after years of technical evaluation, and they continue to evolve as science and experience help us better protect the environment, and most importantly, they are implemented through permit processes that are comprehensive and time-consuming, carrying with them statutory and regulatory requirements for extensive public comment. The time periods for these existing permit processes fall well outside of the ACMP review schedules. The ADEC carve-out in no way diminishes a coastal district's opportunity to comment and provide input on a specific ADEC and federal permit applications. ADEC and federal permits have public comment provisions associated with them and both ADEC and federal agencies routinely furnish copies of permit applications and/or draft permits to coastal districts, boroughs and municipalities.

Elimination of the Carve-out will result in consistency determinations on projects being held up until permits with long lead times are finalized, resulting in considerable delays in projects moving forward and a tremendous amount of uncertainty as to final approval for applicants to move forward.

The practical result of ADEC permits being part of the consistency review (the situation prior to passage of HB 191) was:

- ADEC permits had to be submitted with all other state and federal permit applications in order to initiate the consistency review. However, the ADEC permit applications (e.g. air permit, C-plan) are typically the most technical demanding applications requiring very mature engineering and project planning. Thus, the ACMP review schedule was entirely dictated by the applicant's progress on detailed engineering needed for the ADEC permit applications.
- ADEC permit applications, particularly those relating to air emissions and spill response, take significantly longer than most other federal and state permits to process. As a result all permit issuance was held up until ADEC had concluded its processing. This severely limited the flexibility of an applicant with respect to scheduling engineering and project construction and typically extended the project time frame with resultant cost increases.

The ADEC Carve-out in HB 191 eliminated the above problems. Let us provide you with a hypothetical example. Virtually every single oil and gas project in Alaska involves various state and federal permits. For example an ADEC air permit is required for new drill rigs and upgraded power equipment. To satisfy an air permit, often times, one year of ambient air quality data must be collected before the permit application can be submitted. While this data is being collected, other State and federal permit applications, including the ACMP consistency review, have to be submitted and processed. Because of the HB 191 changes, by the time the ADEC air permit is ready for issuance, the consistency review is complete and construction permits are ready to be issued. The project and permitting processes are therefore not delayed by the long lead time of the ADEC air permit, as the ADEC permitting process can occur simultaneously with other applications. However, there is still ample opportunity for public input to ADEC's air quality permit decision on projects and the overall quality of the airshed was still protected by the rigor of the ADEC regulations.

It is also important to realize that DEC issues hundreds of air, water, and contingency plan permits and approvals. These permits are already subject to public review and input. A requirement for such a permit does not even necessarily reflect a new "project" or "activity" in the coastal zone, as they apply to innumerable existing businesses, facilities and vessels. In addition, these are technical permits administered on a statewide basis, often under complex existing federal and state standards administered by ADEC. There is no need or added value to require ACMP review of such State environmental permits. Bringing these permits into ACMP review would simply create a vast and duplicative new work load for businesses and facilities throughout Alaska, as well as for the ACMP itself.

Offshore exploration would also be seriously impacted by removal of the ADEC Carve-out. For example, air permits are typically necessary for exploration operations. These are extremely technically complicated air permits – in fact, EPA has not issued a major source air

permit for the offshore in 10 years. As with this and the two dozen other permits necessary for exploration drilling, many permits are received just prior to activities commencing and the proposed open-ended ACMP review process will begin after EPA has completed its work. The impact of this would be to curtail or cancel programs by placing one additional and repetitive process in place.

Simply put, the ADEC Carve-out avoids duplication of process and effort, eliminates inconsistent and conflicting permitting results, and improves the efficiency of the consistency review process with no adverse impact to the environment. If the State is to have a clear and predictable permitting regime, this provision must be retained.

Finally, if the ADEC Carve-out were to go away each local district would need to resolve the technical issues ADEC's technical staff currently address. Unless considerable local funding of such a capability was to occur local districts could not realistically address the technical complexities they would face.

Creation of a Coastal Policy Board

We are very concerned about the proposed duties and extensive responsibilities that would be vested with the establishment of the Coastal Policy Board. SB 4 empowers the Board to approve all district programs and enforceable policies, changes to the coastal zone boundaries, statewide standards and changes to the program. The Department of Natural Resources (DNR) may still adopt regulations, but only after approval of the Board, which will result in endless back-and-forth as DNR attempts to mesh its requirements under the Administrative Procedure Act with Board approval. Ultimately, however, SB 4 gives the Board veto power over DNR's (and other state resource agency) legislatively mandated authorities.

Further, experience under the previous Coastal Policy Council demonstrates that insertion of a Board with this magnitude of duties into this process will result in considerable delays in program implementation because of the time required for action, given the infrequency of Board meetings, and the addition of another layer of approvals.

Predictability in timelines is eliminated

One of the most challenging aspects of any permitting program is the ability to rely on timelines for decision-making and the inherent risks to a project proponent for a timely decision based on predictable standards. This is especially true for operations in Alaska which often are faced with limited operating seasons where a delay in securing permits may result in multi-year delays in a project proceeding forward. In the offshore environment, the ACMP legislation threatens, even before it begins, any chance of operating during the brief 100-day open water period by placing control of the permitting process in jeopardy with contrasting regional 'open-ended' language and review timeframes that would run into the summer. Critically, SB 4 exempts activities proposed by a federal agency and activities permitted by a federal agency from the required deadlines for decisions. Virtually every project requires at least one federal permit, so the impact of this provision is dramatic. Further, oil and gas and other resource development activities are not the only activities that will be affected. Given the abundance of wetlands in Alaska's coastal zone, almost any

activity, from homebuilding to construction of public facilities, will require a permit from the federal Corps of Engineers and therefore will be subjected to this timeline uncertainty.

Performance based enforceable policies are allowed

SB 4 allows coastal districts to adopt performance-based enforceable policies. Applicants and districts are better served by clear and concise requirements based on sound science because it eliminates the potential for misinterpretation and disagreements between parties as to whether a particular action proposed by the applicant will meet the performance based policy. Further, this will be especially challenging for districts with minimal resources to administer their program because they typically do not have the in-house engineering and scientific expertise for every single type of development that may occur within their districts.

The coastal zone boundary will be expanded

SB 4 expands the reach of review of activities from not only the coastal zone but also to "inland of the coastal zone if the activities would cause direct and significant impacts to a coastal use or resource". During testimony at previous hearings on SB 4 we heard a coastal district representative state that it is their desire to weigh in on projects adjacent to their district even if it means "over the mountain". Such an expansion of the coastal zone boundary was never envisioned by the federal Coastal Zone Management Program or the ACMP. Any project proponent whose project lies inland of the coastal zone now faces the risk of a significant delay of the project; this is a major risk because SB 4 does not offer clear standards on the determination to include a project outside the coastal zone in a consistency review. This is contrary to both the intent of the federal CZMA and the ACMA. Furthermore, a quick review of the current, official ACMP Coastal Boundary Atlas shows that the coastal boundary already extends far inland (in some places over one hundred miles) along Alaska's coast from Southcentral to the North Slope.

Additionally, although over 81% percent of Alaskans support development in offshore areas, officials from several coastal communities and regions are officially opposed to such development. If the Legislature, through passage of the proposed changes to the Alaska Coastal Zone Management Program contained in SB 4, gives local districts the power to veto or delay projects or the ability to place more restrictive conditions on permits than federal and state agencies place on offshore activities, Alaskans will not see the promising OCS development opportunity materialize.

It is that simple – offshore exploration and development will not happen and Alaskans will not benefit from the thousands of jobs, billions of dollars in investments and 20-30 years of oil for the Trans-Alaska Pipeline System.

SUMMARY

To be successful and serve all entities in Alaska, any permitting program, and in particular the Alaska Coastal Management Program, as with any permitting program, must embody the following principles:

- Provide benefit for all Alaska residents
- Contain clear and concise requirements
- Be unambiguous and avoid opportunities for misinterpretation
- Provide predictable and firm timelines
- Provide predictability regarding applicable requirements and scope
- Avoid duplication of other state and federal permitting programs
- Contain clear limits so that district policies not require agencies to implement authorities that were not granted them by the legislature or that contradict agency regulations.
- Not allow special interests to derail development that otherwise meets all state and federal criteria.

SB 4 threatens each and every one of these principles.

We encourage you, in the strongest possible terms, to consider the direct negative impact this legislation will have on the ability of the State of Alaska to develop its resources for the benefit of all Alaskans. This legislation would severely hinder the ability for increased oil production on the North Slope and gas development in the Cook Inlet, at a time when both are desperately needed. Additionally, offshore development, often characterized as the "next Prudhoe Bay", will not occur. Alaska is at a crossroads. We cannot afford the lost jobs, the lost revenue and the lost investment that would result from SB 4.

Sincerely,



MARILYN CROCKETT
Executive Director



Shell Exploration & Production Company

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March 29, 2010

The Honorable Donald Olson
Alaska State Senator
Room 514, State Capitol
Juneau, AK 99801

The Honorable Reggie Joule
Alaska State Representative
Room 502, State Capitol
Juneau, AK 99801

Subject: Senate Bill 4 and House Bill 74 -- An Act relating to the Alaska Coastal Management Program; and establishing the Alaska Coastal Policy Board.

Dear Senator Olson and Representative Joule:

In the two years since I came to Alaska to head Shell's business, I have shared with you our enthusiasm and genuine optimism for the oil and gas potential we see in the Chukchi and Beaufort Seas. We at Shell firmly believe oil and gas exploration and development activities in the Alaska Arctic will create thousands of jobs for Alaskans, including the residents of the North Slope, and generate billions in revenues. These potential developments will result in oil production that could last for 30 to 40 years, thereby extending the life of the Trans Alaska Pipeline and facilitating new, as yet unknown opportunities for additional hydrocarbon production. Most importantly, Shell as well as other industry participants believe that history will repeat itself and that the success industry had 20 years ago, drilling 35 exploration wells in the Beaufort and Chukchi Seas, will once again be achieved. These activities will unquestionably be conducted with the most technologically advanced, environmentally sensitive methods.

To date, Shell and several other world-class offshore companies have invested several billions of dollars just for the opportunity to explore for those resources. Billions have been spent on leases, specialized drilling equipment, baseline science, litigation, permitting and program modifications, including significant expenditures to accommodate local concerns (discussed further below). Shell's planned exploration drilling activities in 2010 alone will cost in excess of \$400 million, requiring more than 100 separate contracts, and as many as 700 people either employed or contracted. We see the real potential for the investment of billions more in future years.

However, all of the potential for future production, as well as all of the investments made to date by my company and others, are in jeopardy by the proposed ACMP legislation being advanced in Juneau. Offshore oil and gas exploration projects in Alaska already face significant challenges in becoming commercial developments, including economics, expansive permitting requirements, extremely high logistics costs, aggressive environmental group litigation, and international competition for investment dollars. Passage of HB 74 or SB 4 would only increase those challenges. I strongly encourage your careful consideration of the impacts and implications of this proposed ACMP legislation. I am available at your convenience to discuss further the concerns I have outlined below.

Key elements of the ACMP bills that threaten future investment in offshore oil and gas exploration and production activities include:

- ADEC Carve Out – Opens extremely technical federal and state air and water permits to contradictory local standards, unnecessarily restrictive requirements, costly last-minute modification and extended approval timelines.
- Delayed Consistency Reviews – Defers consistency reviews until after ALL federal and state permits/authorization are in hand and eliminates all established timelines, which will result in the loss of the short exploration season.
- Expanded Regulatory Authority – Empowers local districts to establish restrictions beyond those imposed by state and federal law.
- Conflicting Standards – Imposes no requirement that local permit standards be consistent with controlling state and federal standards, thereby leading to additional litigation, increased costs and project delays.
- Local Veto – Effectively establishes a local veto over development of the resources that belong to all the people of Alaska and the Nation.

For this year's open water season, Shell proposes to drill two exploration wells in the Beaufort and/or Chukchi Seas, collect shallow hazards information and conduct biological marine surveys. To gain approval for these activities, Shell must secure 37 federal, state and North Slope Borough permits or authorizations. To date, only two permits/approvals have been issued final – we are still waiting for 35 additional approvals! I can assure you it is not because Shell has delayed applying for these permits. Many of the federal agencies deliver what is called 'just-in-time' permits, permits received just prior to operations commencing. All but two of these permits are annual permits, and we have already begun preparing permit applications for 2011.

In addition, Shell has invested significant time, energy and financial resources to address local concerns. Regulatory requirements for permits sought to date require a project applicant to conduct numerous community meetings. Shell believes that local input and participation in the permitting and leasing processes provides valuable information to ensure safe and environmentally sensitive operations. Shell has participated in over **250 engagements since 2007** to explain our plans, identify issues of concern and modify our program to address those concerns. I must add that consultation is the bedrock for all of these permitting processes. There is substantial opportunity for comments from residents. In fact, Shell has modified its program as a result of certain comments from communities.

The Honorable Donald Olson and
The Honorable Reggie Joule
March 29, 2010

Page 3

Permit delays and overly restrictive limits are the single greatest risk to Shell's Alaska offshore exploration program.

This ACMP legislation places control of offshore activities in the hands of the local districts at almost every juncture – with much open-ended language and timeframes, subject to wide interpretation. In effect, it hands veto power over all oil and gas development to a local district that is officially opposed to offshore drilling. Regulatory uncertainty created by the proposed ACMP changes creates a powerful disincentive for Arctic exploration and development.

As an example, blackout dates for migrating bowhead whale cows with calves described in the North Slope Borough's draft District Enforceable Policies of May 10 - July 1 and August 1 - October 15 in effect end any chance of operating during the short open- water season. These restrictions are not even considered by the National Marine Fisheries Service, the agency responsible for protecting bowhead whales, because they are not necessary or supported by science. One needs to remember that over \$500 million in studies have been completed over the last three decades to support these initial exploration leases.

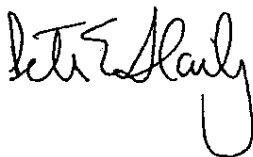
The requirement that all federal and state permits for exploration are final before beginning the ACMP process may effectively kill any attempt to drill an offshore well.

This bill allows districts, without the limitation of respecting the limits of state or federal law, to attach any stipulation they wish to offshore permits.

Once again, Shell is committed to working with local communities in the leasing and permitting processes and has a proven track record of taking steps necessary to address the concerns presented to us. The capital we have expended to date in pursuit of this project is an indication on our part of a desire to modify our program as a result of consultations that already exist in the permitting process. However, placing local districts in charge of whether permits are issued or lease sales are held places unprecedented control of projects that will have statewide and national impact into the hands of only a few individuals. Such an unprecedented transfer of power – from collective decision making to local control - would, have far-reaching impacts on Alaska and the nation.

Alaskans want to see more exploration drilling and new oil for TAPS. The governor, legislature and citizenry are all looking for ways to provide an incentive and encourage companies to explore. And Shell is attempting to conduct just such a multi-year multi-well program with potentially huge benefits for Alaskans. Passage of HB 74 or SB 4 would tremendously compromise our ability to achieve those objectives and put Alaska's future financial stability at risk. I hope this provides you with the reasoning behind Shell's inability to support this legislation.

Sincerely,



Pete Slaiby
Vice President, Shell Alaska

Senate Bill 4
Alaska Coastal Management Program
March 30, 2010



Edward S. Itta
Mayor, North Slope Borough

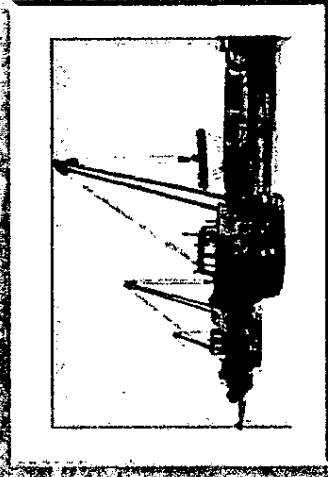
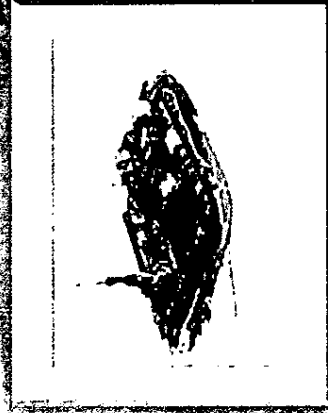
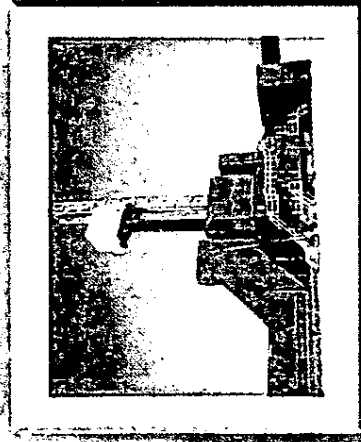
SB 4: North Slope Borough Testimony

• **Testimony will address the following topics:**

- **Why the NSB supports this bill**
- **How SB 4 does not stop development**
- **How the ACMP is broken**
- **Why the Legislature should care**
- **How SB 4 promotes responsible development**
- **Why a meaningful role for coastal districts makes sense for Alaska**

Why the NSB Supports SB 4

- It restores meaningful participation
 - State agencies & coastal districts
- It brings air and water quality back into project review
- It restores state's rights



SB 4 Does Not Stop Development

- **The ACMP has always promoted development**
 - Coastal districts have not stopped projects through the ACMP
 - Before 2003, <1% of projects appealed
 - All of coastal development since 1977 has been approved under the ACMP
- **SB 4 will not override legislative or agency authority**
- **SB 4 does not allow citizen or third-party lawsuits**
 - Citizen lawsuits eliminated in 2003
 - Citizen petitions eliminated in 2002

The ACMP is Broken

- **The ACMP has lost its value to review participants**
 - **Agencies and coastal districts have expressed frustration with the ACMP**
- **Few meaningful opportunities to resolve conflicts that arise at the local level**
 - **The ACMP used to be a tool to identify and resolve conflicts early in the process**
 - **Resolving conflicts early avoids lawsuits**

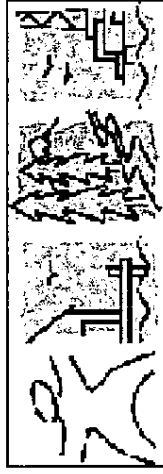
SB 4: Legislative Intent

- 2003 Legislative intent is being ignored
 - DEC Carve-Out
 - 2003 intent was to exclude only matters addressed by DEC laws
 - In practice, no air or water quality issues may be addressed during project reviews
 - Enforceable policies
 - DNR denied most policies proposed by local districts
 - Sample approvable policies requested by the Legislature are no longer allowable
 - Regulations More Stringent
 - DNR testified to the Legislature in 2008 that the regulations were “more stringent” than the Legislature intended.
 - Since then, no changes have been made to the regulations

SB 4: Legislative Intent

- **Regulatory confusion**
 - HB 191 (2003) directed DNR to “avoid regulatory confusion”
 - 2004 regulations are costly and confusing
 - The designated area requirement delays reviews
 - Subsistence impacts can’t be considered unless they are in a designated area
 - DNR disapproved most district proposed subsistence use areas
 - OCS project review process is not clear
 - DNR-DEC coordination procedures are confusing
 - There is no regulatory provision for public comment on the DEC finding (draft DEC findings are only “advisory”)

SB 4: Leadership Needed



- ACMP Re-evaluation
 - Announced in February 2008
 - Not initiated until July 2008
 - Extensive multi-stakeholder involvement in 2008
 - Process abruptly ended after December 2008 with no explanation to participants
 - No way forward to resolve important issues
- Legislation
 - Leadership is needed to restore the ACMP's effectiveness

SB 4: Why Should You Care?

- **Effective Stakeholder Participation**
 - Promotes responsible development
 - Reduces delays during project reviews
 - Reduces lawsuits
 - Improves relations
 - Between state and federal agencies and local government
 - When a project does not require an EIS, the ACMP provides an efficient forum for agency coordination

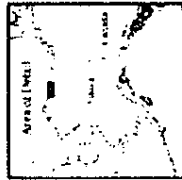
SB 4: Why Should You Care?

- **SB 4 will promote cooperation and approval of responsible development**
- **Congress requires states to have coastal programs in order to receive Coastal Impact Assistance Program (CIAP) funds**
 - **CIAP will bring \$79.8 million to Alaska**

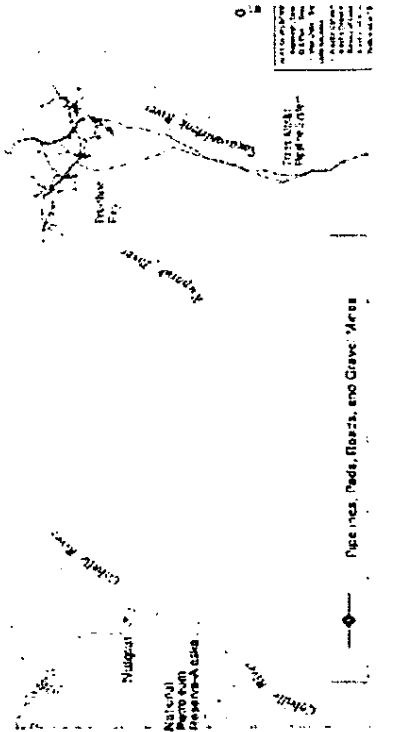
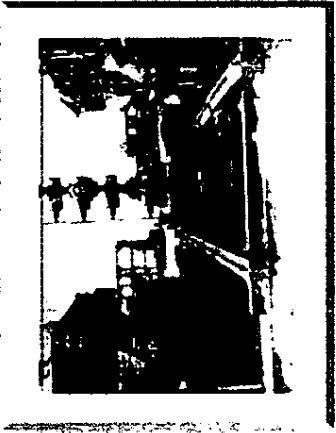


25 Years of Growth Under ACMP

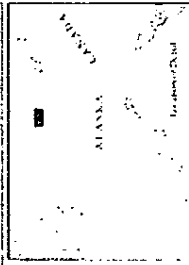
Oil Development in America's Arctic



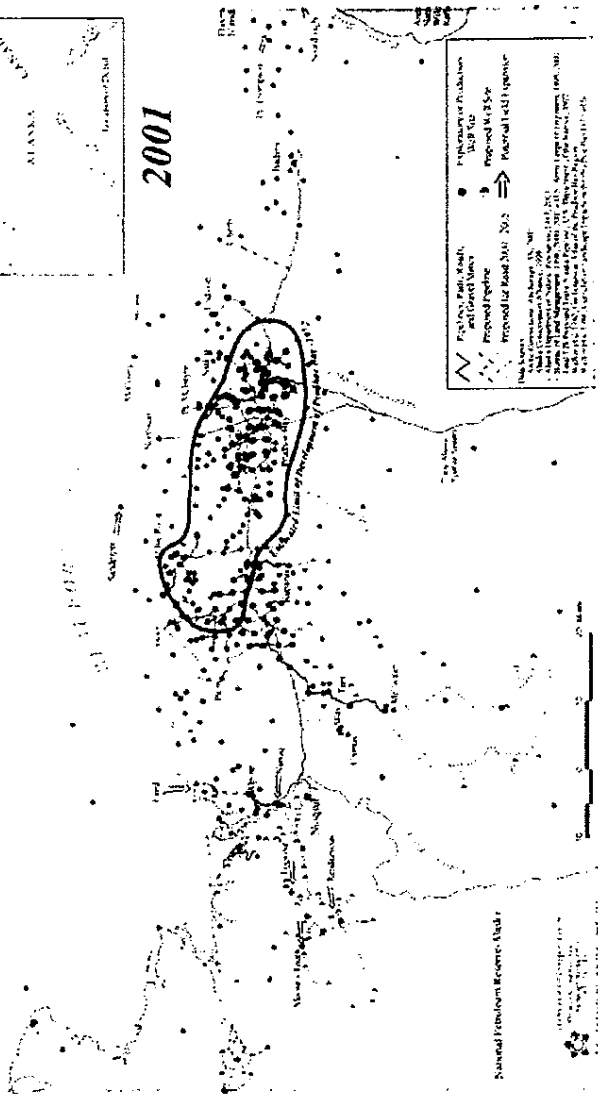
1977



Oil Exploration & Development in America's Arctic



2001



What SB 4 Does

- Restores meaningful participation
- Brings air and water quality back into project review
- Restores state's rights



Restoring Meaningful Participation

- Coastal Policy Board
 - Gives districts and agencies a seat at the table
 - Restore checks and balances
 - More streamlined than the Coastal Policy Council
 - Fewer members (9 rather than 17)
 - Limited responsibilities
 - Approve coastal district plans, grant programs & regulations
 - » DNR would approve regulations after board endorsement
 - The new board would not have any oversight over project “consistency reviews”

Restoring Meaningful Participation

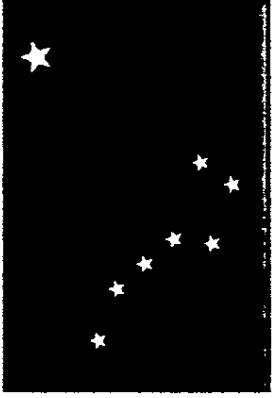
- District enforceable policies
 - SB 4 would allow policies that:
 - Do not conflict with state or federal law
 - Address issues not preempted by state or federal law
 - Address a local concern



SB 4: Air and Water Quality

- **Eliminating the “DEC Carve-Out”**
 - Avoids confusion about scope of ACMP reviews
 - Reinstates public comments for OCS reviews
 - Currently because DEC has no permit for OCS waters, there is no opportunity for public involvement
 - Allows consideration of air and water quality impacts not addressed by DEC’s laws
 - For example, oils spill plans do not address effects of spill
 - DNR’s December 2008 draft statutes eliminate the DEC Carve-Out

SB 4: State's Rights



- **SB 4 Restores State's Rights**
 - **2003-2004 ACMP changes removed some rights provided by the Coastal Zone Management Act**
 - **SB 4 would:**
 - **Allow review of all projects that would have coastal impacts**
 - **Remove 90 day limit for reviews with federal permits**
 - **Most reviews would be completed in 30 or 50 days**
 - **Allow consideration of impacts to coastal resources on federal lands and waters**
 - **Designated area requirements limits the State's ability to influence decisions on federal lands and waters**

Why a Meaningful Role for Coastal Districts Makes Sense for Alaska

- **“One size fits all” does not work for Alaska**
- **Restoring the ability for districts to influence local projects is consistent with Alaska’s position against federal intrusion**
- **Local communities know best what is works, and their expertise improves projects**
- **Most project impacts are felt at the local level**
- **Local involvement through enforceable policies improves project designs and reduces litigation**

SB 4: Summary



- **This bill should be passed because it:**
 - **Encourages coastal partnerships**
 - **Promotes responsible development**
 - **Restores states' rights**
 - **Reduces regulatory confusion**

"The ACMP is one of very few opportunities for local governments to work closely with both the State and federal agencies in reviewing proposed development projects." Edward S. Itta

Quyanaq



Division of Coastal and Ocean Management
 CZMA fund summary
 State Fiscal Year 2008 (federal FY 2007)

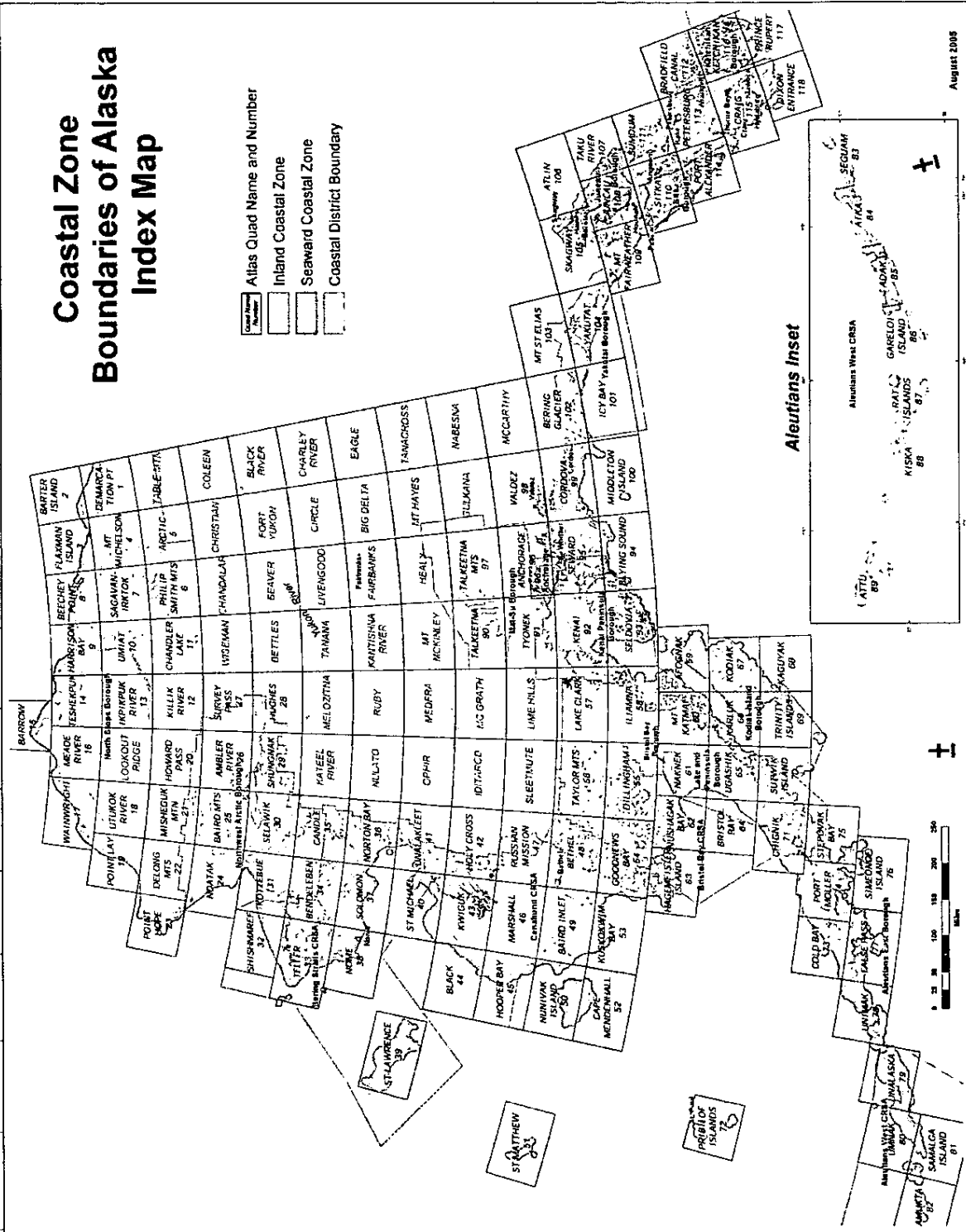
Section 306 - Program Implementation	Federal Funds	State Funds (match)	Total	Notes
<i>Requires 1:1 Match</i>				
DCOM Admin/Implementation of program Coastal District Plan Development and Implementation	\$769,500.00	\$1,214,500.00	\$1,983,999.00	DCOM overmatches federal funds to make up for coastal district match (see below)
State Agency Implementation	\$710,000.00	\$265,000.00	\$975,000.00	DCOM meets the additional match requirements of \$445,000.00
Total 306 Funds	\$1,967,000.00	\$1,967,000.00	\$3,933,999.00	State agencies meet required 1:1 match

Section 309 - Result in Program Change	Federal	State Funds (match)	Total	Notes
<i>No Match Required</i>				
DCOM Publications/Communications	\$103,248.00	\$0.00	\$103,248.00	Outreach & Education
Competitive Grants	\$272,000.00	\$0.00	\$272,000.00	Coastal districts and state agencies compete for funds to make a program change or implement a change to the ACMP.
Information Tech	\$97,759.00	\$0.00	\$97,759.00	Business Information System for DNR
Coastal Nonpoint Source Pollution	\$62,993.00	\$0.00	\$62,993.00	Sub-Awarded out to District(s)
Total 309 Funds	\$536,000.00	\$0.00	\$536,000.00	

Index Map

Coastal Zone Boundaries of Alaska Index Map

- Atlas Quad Name and Number
- Inland Coastal Zone
 - Seaward Coastal Zone
 - Coastal District Boundary



August 2005

Quad Name	Number
ADAK	81
ADAM	82
ADRIAN	83
ADRIAN	84
ADRIAN	85
ADRIAN	86
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ADRIAN	88
ADRIAN	89
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ADRIAN	200

Which Coastal District is Your Community In?

CITY	DISTRICT	CITY	DISTRICT
Adak	Aleutians West CRSA	Chignik Lagoon ...	Lake and Peninsula Borough
Akhiok	Kodiak	Chignik Lake	Lake and Peninsula Borough
Akiachak	Ceñaliulriit CRSA	Chugiak	Anchorage
Akiak	Ceñaliulriit CRSA	Clam Gulch	Kenai Peninsula
Akutan	Aleutians East	Clark's Point	Bristol Bay CRSA
Alakanuk	Ceñaliulriit CRSA	Coffman Cove	None*
Aleknagik	Bristol Bay CRSA	Cohoe	Kenai Peninsula
Alexander Creek	Mat-Su Borough	Cold Bay	Aleutians East
Ambler	Northwest Arctic	Cooper Landing	Kenai Peninsula
Amchitka	Aleutians West CRSA	Cordova	Cordova
Anaktuvuk Pass	North Slope Borough	Council	Bering Straits CRSA
Anchor Point	Kenai Peninsula	Craig	Craig
Anchorage	Anchorage	Cube Cove	None*
Angoon	Angoon	Deadhorse	North Slope Borough
Aniak	Ceñaliulriit CRSA	Deering	Northwest Arctic
Atka	Aleutians West CRSA	Dillingham	Bristol Bay CRSA
Atmautluak	Ceñaliulriit CRSA	Diomede	Bering Straits CRSA
Atkasuk	North Slope Borough	Dora Bay	None*
Attu	Aleutians West CRSA	Douglas	Juneau
Barrow	North Slope Borough	Dutch Harbor	Aleutians West CRSA
Bethel	Bethel	Eagle River	Anchorage
Big Lake	Mat-Su Borough	Edna Bay	None*
Bird Creek	Anchorage	Eek	Ceñaliulriit CRSA
Brevig Mission	Bering Straits CRSA	Egegik	Lake and Peninsula Borough
Buckland	Northwest Arctic	Ekuk	Bristol Bay CRSA
Candle	Northwest Arctic	Ekwok	Bristol Bay CRSA
Cape Chiniak	None*	Elfin Cove	None*
Cape Pole	None*	Elim	Bering Straits CRSA
Cape Yakataga	None*	Elmendorf AFB	Anchorage
Chefornak	Ceñaliulriit CRSA	Emmonak	Ceñaliulriit CRSA
Cheneg Bay	None*	English Bay	Kenai Peninsula
Chevak	Ceñaliulriit CRSA	Excursion Inlet	None*
Chickaloon	Mat-Su Borough	Eyak	Cordova
Chignik	Lake and Peninsula Borough	False Pass	Aleutians East
Chignik Bay	Lake and Peninsula Borough	Fortuna Ledge	Ceñaliulriit CRSA

*Note: "None" means a coastal community not within a coastal district.

CITY	DISTRICT	CITY	DISTRICT
Ft. Richardson	Anchorage	Kipnuk	Ceñaliulriit CRSA
Funter Bay	None*	Kivalina	Northwest Arctic
Gambell	Bering Straits CRSA	Klawock	Klawock
Girdwood	Anchorage	Klukwan	None*
Golovin	Bering Straits CRSA	Kobuk	Northwest Arctic
Goodnews Bay	Ceñaliulriit CRSA	Kodiak	Kodiak
Gravina Island	Ketchikan	Kokhanok	Lake and Peninsula
Gustavus	None*	Kokhanok Bay	Lake and Peninsula
Haines	Haines	Koliganek	Ceñaliulriit CRSA
Halibut Cove	Kenai Peninsula	Kongiganak	Ceñaliulriit CRSA
Happy Valley	Kenai Peninsula	Kotlik	Ceñaliulriit CRSA
Hawkins Island	None*	Kotzebue	Northwest Arctic
Hinchinbrook Island	None*	Koyuk	Bering Straits CRSA
Hobart Bay	None*	Kuiu Island	None*
Hollis	None*	Kupreanof	None*
Homer	Kenai Peninsula	Kwethluk	Ceñaliulriit CRSA
Hoonah	Hoonah	Kwigillingok	Ceñaliulriit CRSA
Hooper Bay	Ceñaliulriit CRSA	Labouchere Bay	None*
Hope	Kenai Peninsula	Lake Louise	Mat-Su Borough
Houston	Mat-Su Borough	Larsen Bay	Kodiak
Hydaburg	Hydaburg	Levelock	Lake and Peninsula
Igiugig	Lake and Peninsula Borough	Long Island	None*
Iliamna	Lake and Peninsula Borough	Lower Kalskag	Ceñaliulriit CRSA
Indian	Anchorage	Manokotak	Bristol Bay CRSA
Ivanof Bay	Lake and Peninsula Borough	Marshall	Ceñaliulriit CRSA
Juneau	Juneau	Mekoryuk	Ceñaliulriit CRSA
Kachemak	Kenai Peninsula	Metlakatla	None*
Kake	Kake	Meyers Chuck	None*
Kaktovik	North Slope Borough	Moose Pass	Kenai Peninsula
Kalgin Island	Kenai Peninsula	Mountain Village	Ceñaliulriit CRSA
Karluk	Kodiak	Mt. Edgecumbe	Sitka
Kasaan	None*	Naknek	Bristol Bay Borough
Kasigluk	Ceñaliulriit CRSA	Nanwalek	Kenai Peninsula
Kasilof	Kenai Peninsula	Napakiak	Ceñaliulriit CRSA
Kenai	Kenai Peninsula	Napaskiak	Ceñaliulriit CRSA
Ketchikan	Ketchikan	Naukati	None*
Kiana	Northwest Arctic	Nelson Lagoon	Aleutians East
King Cove	Aleutians East	New Stuyahok	Bristol Bay CRSA
King Salmon	Bristol Bay Borough	Newhalen	Lake and Peninsula

*Note: "None" means a coastal community not within a coastal district.

CITY	DISTRICT	CITY	DISTRICT
Newtok	Ceñaliulriit CRSA	Prudhoe Bay	North Slope Borough
Nightmute	Ceñaliulriit CRSA	Quinhagak	Ceñaliulriit CRSA
Nikiski	Kenai Peninsula	Red Mountain	Kenai Peninsula
Nikolski	Aleutians West CRSA	Ridgeway	Kenai Peninsula
Niniilchik	Kenai Peninsula	Rowan Bay	None*
Noatak	Northwest Arctic	Russian Mission	Ceñaliulriit CRSA
Nome	Nome	Sand Point	Aleutians East
Nondalton	Lake and Peninsula	Savoonga	Bering Straits CRSA
Noorvik	Northwest Arctic	Sawmill Bay	None*
Nuiqsut	North Slope Borough	Saxman	Ketchikan
Nunapitchuk	Ceñaliulriit CRSA	Scammon Bay	Ceñaliulriit CRSA
Old Harbor	Kodiak	Security Bay	None*
Oscarville	Ceñaliulriit CRSA	Selawik	Northwest Arctic
Ouzinkie	Kodiak	Seldovia	Kenai Peninsula
Palmer	Mat-Su Borough	Seward	Kenai Peninsula
Pedro Bay	Lake and Peninsula Borough	Shaktolik	Bering Straits CRSA
Pelican	Pelican	Sheep Mountain	Mat-Su Borough
Pennock Island	Ketchikan	Sheldon Point	Ceñaliulriit CRSA
Perryville	Lake and Peninsula Borough	Shemya AFS	Aleutians West CRSA
Petersburg	Petersburg	Shishmaref	Bering Straits CRSA
Pilot Point	Lake and Peninsula Borough	Shungnak	Northwest Arctic
Pilot Station	Ceñaliulriit CRSA	Sitka	Sitka
Pitkas Point	Ceñaliulriit CRSA	Skagway	Skagway
Platinum	Ceñaliulriit CRSA	Skwentna	Mat-Su Borough
Point Baker	None*	Soldotna	Kenai Peninsula
Point Hope	North Slope Borough	South Naknek	Bristol Bay Borough
Point Lay	North Slope Borough	Squaw Harbor	Aleutians East
Polk Inlet	None*	St. George Island	None*
Port Alexander	None*	St. Mary's	Ceñaliulriit CRSA
Port Alsworth	Lake and Peninsula	St. Michael	Bering Straits CRSA
Port Armstrong	None*	St. Paul	St. Paul
Port Clarence	Bering Straits CRSA	Stebbins	Bering Straits CRSA
Port Graham	Kenai Peninsula	Sterling	Kenai Peninsula
Port Heiden	Lake and Peninsula Borough	Sunrise	None*
Port Lions	Kodiak	Sutton	Mat-Su Borough
Port Moller	Aleutians East	Talkeetna	Mat-Su Borough
Port Protection	None*	Tatitlek	None*
Portage	Anchorage	Tazlina	None*
Post Lake	Mat-Au Borough	Teller	Bering Straits CRSA

*Note: "None" means a coastal community not within a coastal district.

CITY	DISTRICT	CITY	DISTRICT
Tenakee Springs.....	None*	Valdez.....	Valdez
Thorne Bay.....	Thorne Bay	Wainwright.....	North Slope Borough
Tin City.....	Bering Straits CRSA	Wales.....	Bering Straits CRSA
Togiak.....	Bristol Bay CRSA	Wasilla.....	Mat-Su Borough
Toksook Bay.....	Ceñaliulriit CRSA	Whale Pass.....	None*
Tolstoi Bay.....	None*	White Mountain.....	Bering Straits CRSA
Trapper Creek.....	Mat-Su Borough	Whittier.....	Whittier
Tuluksak.....	Ceñaliulriit CRSA	Willow.....	Mat-Su Borough
Tuntutuliak.....	Ceñaliulriit CRSA	Wrangell.....	Wrangell
Tununak.....	Ceñaliulriit CRSA	Yakutat.....	Yakutat
Tutka Bay.....	Kenai Peninsula		
Twin Hills.....	Bristol Bay CRSA		
Two Moon Bay.....	None*		
Tyonek.....	Kenai Peninsula		
Ugashik.....	Lake and Peninsula		
Umiat.....	North Slope Borough		
Unakwik Inlet.....	None*		
Unalakleet.....	Bering Straits CRSA		
Unalaska.....	Aleutians West CRSA		
Ungalik.....	Bering Straits CRSA		

For more information contact:

The Alaska Coastal Management Program
Juneau — 907- 465-3075
Anchorage — 907-269-7470

*Note: "None" means a coastal community not within a coastal district.

SPONSOR: Administrator

CITY AND BOROUGH OF SITKA

RESOLUTION 2009-32

**A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF SITKA,
ALASKA, SUPPORTING LEGISLATION TO ENABLE ALASKA'S COASTAL
COMMUNITIES TO MORE EFFECTIVELY PARTICIPATE IN THE ALASKA
COASTAL MANAGEMENT PROGRAM (ACMP)**

WHEREAS, the "streamlined ACMP process" which resulted from the passage of House Bill 191 in 2003, and its implementation by regulations and statutory amendments, forced the complete revision of all Alaska Coastal Management Plans in Alaska, including Sitka's; and

WHEREAS, as a result, Sitka lost more than half of its enforceable policies (the only section of coastal plans which had standing to be considered as part of the ACMP review process for permits and management decision-making affecting coastal communities), and those policies remaining were so restricted as to be virtually un-usable in coastal comments; and

WHEREAS, there has been an increasing, widespread effort to revise the ACMP to help coastal Alaskan communities regain a "seat at the table" in management decision making affecting Alaska's coastal zone, and reign in the Department of Natural Resources which is charged with managing the State's resources but now also makes all coastal management decisions on developing those same resources; and

WHEREAS, prior to the ACMP's revisions, the Sitka Coastal Management Program had been a model of effective coastal management, allowing the Sitka community to have due deference and protect local resources and activities while permitting responsible development; and

WHEREAS, House Bill 74 sponsored by Representative Joule and Senate Bill 4 sponsored by Senator Olson are being considered by the Alaska Legislature, and this legislation could help restore a meaningful role for coastal municipalities such as Sitka in the ACMP, including the following key provisions (among others):

- Establishes Alaska Coastal Policy Board with 5 public members representing coastal districts and 5 commissioners of resource agencies to make ACMP policy decisions.
- Establishes duties of the Board to approve ACMP standards and criteria for district plans.
- Adds subsistence to the list of resources included in the ACMP objectives.
- Restores local plan ability to write meaningful enforceable policies by enabling policies to be either prescriptive or performance-based, stricter or more specific than state or federal laws, and clarifies policies apply to all land and water uses subject to the plan.
- Eliminates the "DEC carve-out" exempting DEC permits from consistency reviews.
- Allows ACMP consistency reviews of projects inland of the coastal zone if there would be direct and significant impacts to coastal uses or resources;
- Permits meaningful local participation in the ACMP through expanded enforceable policies

Resolution 2009-32

Page 2

47 addressing a wide range of coastal uses.

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the City and Borough of Sitka, Alaska, supports the revision of the Alaska Coastal Management Program to restore these key provisions and permit the City and Borough of Sitka to better manage its coastal zone per the Alaska State Constitution's provision for maximum local self-government.

PASSED AND APPROVED by the Assembly of the City and Borough of Sitka, Alaska, on this twenty-fourth day of February, 2009.

Scott McAdams, Mayor

ATTEST:

Colleen Ingman, MMC
Municipal Clerk

February 18, 2009

MEMO TO: Administrator Jim Dinley
Mayor and Assembly

FROM: *Marlene Campbell*
Marlene Campbell, Government Relations Director
(and Coastal Management Coordinator)

SUBJECT: Resolution Supporting Revisions to Alaska Coastal Management Program

Your approval or modification of proposed Resolution 2009-32 is requested to affirm CBS support for "legislation to enable Alaska's Coastal Communities To More Effectively Participate in the Alaska Coastal Management Program (ACMP)". There are several bills (HB 74, SB 4, and possibly others) being considered by the Legislature which could help rebuild the ACMP.

When House Bill 191 substantially changed the ACMP in 2003, all coastal plans had to be rewritten. Sitka lost more than half of its enforceable policies which must be considered in coastal consistency reviews and other proposals for projects within the City and Borough of Sitka. Sitka's Coastal Plan has been a model of effective coastal management since it was first approved in 1981. The Sitka Plan's 1989 major amendment was even more specific, with enforceable policies which permitted the City and Borough of Sitka and the Sitka community to have a "seat at the table" in management decision making on uses and activities in Sitka's coastal zone.

This local "due deference" has almost entirely been lost since the forced revision of Sitka's program approved in April, 2007. Other changes such as not permitting policies relating to air or water quality and removing the Department of Environmental Conservation (DEC) from the ACMP process have greatly reduced coastal communities' ability to comment. The movement of the Alaska Coastal Management Program from the Governor's office to the Department of Natural Resources Division of Coastal and Ocean Management has proved damaging to the former positive relationship the coastal communities enjoyed with the former Alaska Division of Governmental Coordination. DNR's mission as manager of the development and use of Alaska's natural resources is inconsistent with the protection and public use of those same resources for which the ACMP previously provided a balanced perspective.

The attached petition discusses some key issues which from Alaska's Coastal Management Program coordinators' perspectives would help restore some of the major losses of the ACMP and greatly improve Sitka's ability to comment on Coastal Management permits and activities. Sitka's program has since its inception supported active involvement in the ACMP, and the proposed legislation will permit Sitka to have "standing" to comment on ACMP issues which is now not possible for the most part. Since the specific bills addressing these issues could change, the resolution supports the key provisions rather than just certain bills.

If there are questions please contact Marlene Campbell at 747-1855 (campbell@cityofsitka.com e-mail).

CS Senate Bill 4 (CR&A)
Alaska Coastal Management Program (ACMP)

HIGHLIGHTS

January 26, 2009

Streamlines Project Reviews and District Plan Approvals

- Brings DEC permits back into the coordinated ACMP project review process
 - Eliminates need for a separate DEC review to determine ACMP consistency
 - Reduces confusion with current process about scope of ACMP review
- Promotes interagency cooperation and issue resolution
 - Encourages coordination of municipal Title 29 permitting with the ACMP process
 - Meaningful district policies will encourage local participation and resolution of issues during the state-coordinated ACMP review¹
 - Reduces chances for conflicting permit conditions (federal, state and local permits)
 - Encourages early resolution of project issues
- Allows coastal districts to have performance-based enforceable policies²

Restores Checks and Balances

- Establishes streamlined Coastal Policy Board (CPB)
 - The 9-member CPB represents coastal districts, DNR, DEC, ADF&G, and DCCED³
 - Board provides guidance on 3 matters by approving:
 - 1) District coastal plans, 2) Grant programs, & 3) ACMP regulations
 - DNR retains day-to-day management of all ACMP matters
 - DNR retains responsibility for project consistency reviews
- Involves all 3 state resource agencies in project elevations (pre-decision appeals)
- Allows districts to keep their existing plan (no requirement to amend plan as in 2003 legislation)
- Encourages districts to resolve issues with DNR before their plan is reviewed by the CPB

Restores Traditional Role of Coastal Districts

- Allows districts to establish local enforceable policies that do not conflict with state or federal law or address matters preempted by state or federal agencies
- Restores intent of the ACMP
 - Original 1977 Alaska Coastal Management Act emphasized role of local coastal districts
 - The 2004 Murkowski Administration ACMP regulations conflicted with 2004 legislation by eliminating ability to establish district enforceable policies for matters not adequately addressed by state or federal law

Restores States' Rights

- Reinstates provisions eliminated by the 2003 legislation to assert state rights
 - Allows extension of the 90-day review limit for reviews with federal permits
 - Allows review of projects inland of the coastal zone if there are coastal effects
 - Allows for review of individual oil and gas lease sales in federal OCS waters

¹ Before the 2003 ACMP changes, less than 1% of projects were appealed.

² Performance-based policies are preferred by industry (rather than policies that prescribe a specific action)

³ The former Coastal Policy Council was originally a 17-member body that had responsibility for project reviews.

Alaska Coastal Management Program



Program Goals and Objectives

The Alaska Coastal Management Program (ACMP) oversees the responsible development of coastal uses and resources, federal activities within the coastal zone, and activities on the Outer Continental Shelf.

ACMP Structure and Organization

The ACMP is a voluntary State program, authorized by the Coastal Zone Management Act of 1972, as amended. The Division of Coastal and Ocean Management (DCOM), within the Department of Natural Resources, is the lead agency for the ACMP. Several State departments and agencies participate in the implementation of the ACMP. In addition, several coastal municipalities and service areas (collectively known as coastal districts) voluntarily participate in the implementation of the ACMP. This structure and organization of State agencies and coastal districts provides for a networked implementation scheme designed to comprehensively manage coastal uses and resources.

The primary tool used to implement the ACMP is the consistency review process at 11 AAC 110. Through this process, proposed resource development activities are reviewed for consistency and compliance with the State's coastal management program which includes State laws, State standards, and district enforceable policies.

Value of ACMP

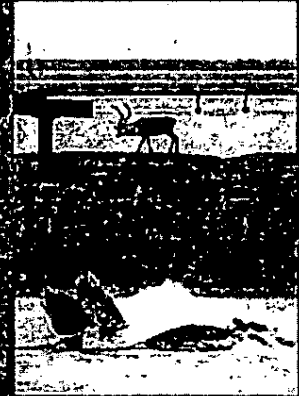
Having a federally-approved coastal management program allows the State the opportunity to:

- Balance the need for economic investment and development in coastal areas with the need to protect and manage the uses and resources of coastal areas
- Act as the State's liaison to federal agencies (1) conducting/permitting activities within the State's coastal area and the Outer Continental Shelf; (2) involving federal laws/initiatives that effect development of the coastal zone, waters, uses or resources of the State
- Act as the department's lead on issues affecting or addressing the coastal waters affecting the State
- Apply State ACMP enforceable policies to federal agency activities
- Provide project applicants with a single point of contact for the State's review of resource development permit applications
- Incorporate coastal district input and knowledge for reasoned decisions

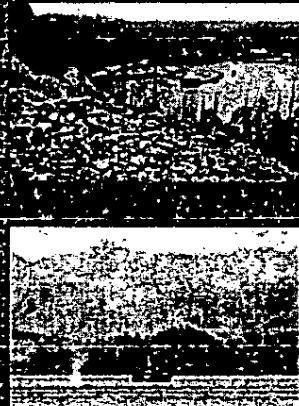
Key FY 2008 and FY 2009 Priorities and Needs

- Educate and train participants on implementation of ACMP
- Re-evaluate the ACMP Statutes (AS 46.39 and 40) and Regulations (11 AAC 110, 112, 114), so to strengthen the ACMP as a State program
- Implement the approved Coastal Impact Assistance Program (CIAP) and act as the liaison between the federal government and the State of Alaska

A Program of the
Division of Coastal and
Ocean Management



"The Alaska Coastal Management Program provides stewardship for Alaska's rich and diverse coastal resources to ensure a healthy and vibrant Alaskan coast that efficiently sustains long-term economic and environmental productivity."



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Alaska Coastal Management Program



Key 2008 Calendar Year Accomplishments

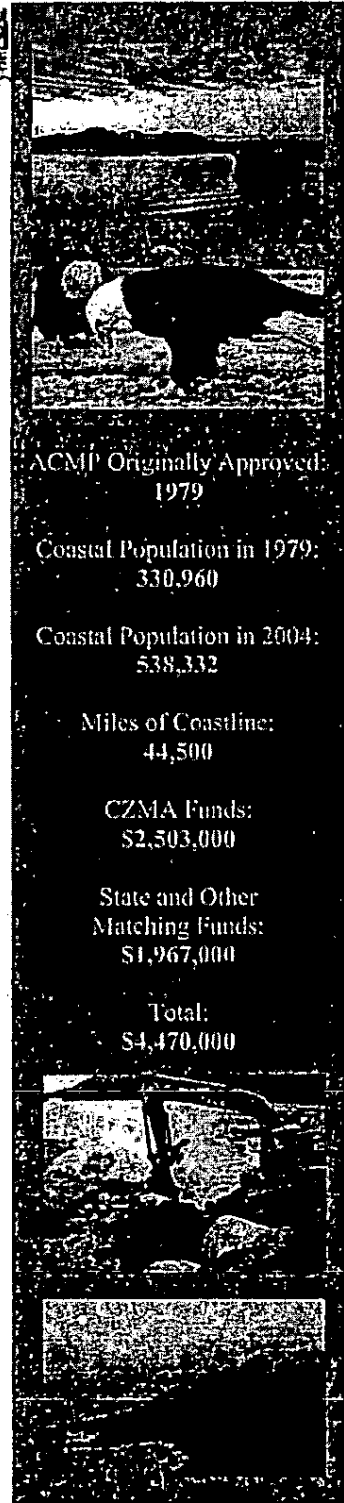
- In June 2008, DNR/DCOM initiated a series of workshops to review the current ACMP statutes (AS 46.39 and 46.40) and regulations (11 AAC 110, 112, and 114). The purpose of the re-evaluation is to strengthen the ACMP as a State program, that will benefit applicants and the public in the coordinating project reviews and that will enhance coastal district participation regarding activities occurring in the coastal area and on the outer continental shelf.
- DNR is currently revising the list of expedited consistency reviews using the ABC List. This revision was initiated to meet the legislative intent of identifying and broadening categories of activities subject to the expedited consistency review process. AS 46.40.096(m) SB 102 (2005) requires that DNR establish in regulation the state resource agency permits and federal permits that would trigger a consistency review. The ABC List categorizes development activities in the Coastal Zone according to expected levels of impact on uses and resources in the Zone. The last time the ABC List was substantively amended was in 1995. The current revision initiative will clarify the review process for certain resource development projects that are "de minimis" in nature or that are routine and can be made consistent with standard alternative measures. By updating the ABC List and developing new expedited consistency reviews for routine activities, DNR expects to reduce the workload for State agencies and coastal districts.
- In September 2008, the federal Minerals Management Service approved the State of Alaska Coastal Impact Assistance Program (CIAP) plan, making Alaska eligible to receive approximately \$9.7 million in federal funds under the CIAP initiative. Due to an increase in OCS revenue off the coast of Alaska, the state's portion of CIAP funds will increase by more than \$53 million in the next two fiscal years. DCOM is currently working on amending the CIAP plan to reflect Alaska's new allocation. A portion of the funds will go to 8 municipalities that are within 200 nautical miles of OCS development, and a portion will be offered to State agencies and the public through a competitive grant process.
- During the 2008 calendar year, nine more coastal district plans went into effect, bring the total of approved coastal district management plans to 25.
- During the 2008 calendar year, DCOM performed 262 coordinated or expedited consistency reviews, issued 415 No Additional Reviews and 29 Single Agency Reviews for resource development projects within the coastal zone.

ACMP State Contact

Randy Bates, Director - DCOM, T: 907.465.8797, F: 907.465.3075
E-mail: randy.bates@alaska.gov



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Roger D. (Dale) Summerlin
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Health, Safety & Environment

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February 4, 2009

The Honorable Donald Olson
Chairman, Senate Committee on Community & Regional Affairs
Alaska State Legislature
Alaska State Capitol, Room 514
Juneau, Alaska 99801

**VIA FAX TO (907) 465-4821
& Next Day UPS Delivery**

RE: Proposed Senate Bill No. 4
An Act Relating to the Alaska Coastal Management Program (ACMP)
Establishment of the Alaska Coastal Policy Board
State Statutes AS 46.39 and AS 46.40

Dear Senator Olson:

ConocoPhillips Alaska, Inc. (CPAI) has prepared this formal response to proposed Senate Bill No. 4, an act relating to the Alaska Coastal Management Program (ACMP) and establishment of an Alaska Coastal Policy Board, and offers the following comments for your consideration.

Retention of the Current Program

CPAI has been, and remains, a supporter of the centralized ACMP process which resulted from the passage of House Bill (HB) 191 in 2003 and was later implemented by regulations and statutory amendments. In 2003, the Alaska Legislature concluded that "the Alaska coastal management program (ACMP) is intended to function with a minimum of delay and avoid regulatory confusion, costly litigation, and uncertainty regarding the feasibility of new investment." In addition, the legislature stated that statewide standards "be clear, and concise and provide the needed predictability as to the application, scope, and timing of the consistency review process of the program."

Proposed changes in Senate Bill (SB) No. 4 would allow districts to restrict selected activities within their coastal district; these activities will undoubtedly involve uses of state concern and/or may involve matters already adequately addressed by existing regulatory programs. Decision-making authority concerning the management and use of state resources vests with the State.

The current program's approach eliminates enforceable policies which may be conflicting between coastal districts, state, and federal agencies, and which could result in a loss of

Page 2
February 4, 2009

conformity of district policies that currently exists in the ACMP program. The existing statewide standards provide clear and concise predictability to the ACMP process. Coastal districts are still afforded the ability to propose enforceable policies that conform to the district plan approval criteria and requirements outlined in 46.40.040 and 46.40.070; or those that are not duplicative, restate existing state or federal policies, and do not redefine, replace, or otherwise modify existing standards. From an applicant's perspective, the retention of the centralized ACMP will provide applicants with assurances of an efficient permitting process.

Elimination of the Alaska Department of Environmental Conservation (ADEC) Carve Out (AS 46.40.040 and 46.40.096)

CPAI believes the ADEC carve out should be retained in its present form and the carve out should not be eliminated from the ACMP program. CPAI believes there is significant misunderstanding by many stakeholders on this matter. Approvals for air, water, and C-Plan permits require public notice and public comment periods which allow for public input. The public notice and comment periods for these permits were not negatively affected by carving out the ADEC permits. Timelines associated with these approval processes are at least six months in duration, far longer than the existing 50- to 90-day ACMP coordination process. In addition, the timelines for public participation do not align with the intent or the process of the ACMP program which is one of thoughtful timely coordination and decision-making.

Eliminating the ADEC carve out will re-introduce conflicting regulatory mandates between ADEC and the ACMP process, and will delay the start of the consistency review process. Adequate public participation and opportunities for review by coastal districts is provided in the existing program. Adequate environmental protection is being provided by ADEC, regardless of whether or not their approvals are part of a consistency review process.

In closing, as we look at the substantial nature of the changes proposed in SB 4, we ask the question: Why? Since the passage of HB 191, have resource development projects been permitted by the state where a coastal district's input and concerns have not been accommodated? Is this change going to help motivate resource development projects in this state? We suggest that the current program is working as intended and changes are neither necessary nor desirable.

Sincerely,

Dale Summerlin
Roger D. (Dale) Summerlin

cc: All Legislators

NORTHWEST ARCTIC BOROUGH

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Kotzebue, Alaska 99752

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February 3, 2009

Honorable Senator Donny Olson
Capitol, Room 514
Juneau, Alaska 99811

Honorable Representative Reggie Joule
Capitol, Room 502
Juneau, Alaska 99801

Re: **SB 4 and HB 74 Alaska Coastal Management Program**

Dear Senator Olson and Representative Joule:

The Northwest Arctic Borough (NWAB) would like to thank you for the introduction of SB 4 and HB 74 on the Alaska Coastal Management Program (ACMP). On behalf of the Borough, I would like to address the substance of HB 74 because we understand the Senate Community and Regional Affairs Committee will consider adoption of the provisions of HB 74 into a senate committee substitute.

The NWAB supports the proposed legislation that would restore the ability of coastal districts to effectively participate in the program and establish meaningful policies under the ACMP; therefore providing valuable local input to development that happens in a very large and unique state. Another important provision in the bills would establish a board made of Alaskans to oversee the major aspects of ACMP as a publicly funded program. The proposed board would jointly represent state agencies and local coastal districts thereby restoring effective public engagement in the ACMP.

Currently, only the Alaska Department of Natural Resources (DNR) as a single agency makes all coastal management decisions. This has proved to be very one-sided and frustrating. For example, as you may know, during 2008 the NWAB attempted mediation with DNR to improve the decisions regarding our coastal management plan. Unfortunately, the mediation ended in an impasse with the majority of the proposed plan flat out denied. According to the

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ACMP now, our only re-course for a fair review is again to go back to the DNR commissioner for re-consideration of a decision that has already been made by the commissioner and his staff. As you can see, the ability to obtain a third party review that involves the public is not possible under the current program, and the new provisions in this bill will help prevent such a future problematic situation and provide state staff the clear criteria and direction for approval of coastal district policies with involvement of the coastal policy board.

The NWAB also supports the addition of subsistence to the ACMP objectives in AS 46.40.020. Until changes made by the Murkowski Administration, the ACMP has been an effective tool balancing resource development and protection of our coastal resources that support healthy subsistence. It is very important that Alaskans have the ability to propose local policies that demonstrate the real life connection of people and communities to coastal areas and actually reflect the close relationship Alaskan residents have to this land, the coastal zones and our valuable subsistence way of life. For the NWAB, the ability to cooperatively work with developers and the state to address subsistence impacts is the primary reason for participating in the ACMP so that development honors our long-time and permanent Alaskans lifestyles.

We also support provisions in the bill that would bring activities covered by the Alaska Department of Environmental Conservation back into the ACMP consistency review process. Impacts to air and water quality also affect habitat and subsistence, and it makes sense to address these issues together in a consolidated format during a single consistency.

The NWAB encourages responsible development of our natural resources. We recognize the economic importance of development in providing new revenues to fund local public services and facilities, and to provide steady employment opportunities in rural areas. However, it is important that local coastal districts have a role in voicing valid concerns and potential impacts to subsistence and other coastal uses and resources - all to ensure that we are doing resource development the right way.

In closing, these bills restore a meaningful role for coastal districts to facilitate effective future development opportunities. I appreciate your interest in improving the ACMP, and I look

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forward to working with you during this legislative session. Please contact me or Ukallaysaq Tom Okleasik if you have any questions about our proposed plan at (907) 442-2500.

Sincerely,



Sikaaraq Whiting, Mayor

Cc: Ukallaysaq Tom Okleasik, Planning Director
Alagiaq Grant Hildreth, Deputy Planning Director
Kill'aq John Chase, Community Planner & Coastal Area Specialist

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North Slope Borough
OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723
Phone: 907 852-2611 or 0200
Fax: 907 852-0337 or 2595
email: edward.itta@north-slope.org

Edward S. Itta, Mayor



February 3, 2009

Senator Donny Olson
Alaska State Legislature
State Capitol, Room 514
Juneau, Alaska 99801

Sent by fax: _____

RE: SB 4 Alaska Coastal Management Program

Dear Senator Olson:

Thank you for pre-filing SB 4 about the Alaska Coastal Management Program (ACMP). I understand the Senate Community and Regional Affairs Committee will be considering adopting a committee substitute similar to the version of this bill in the House. The North Slope Borough (Borough) supports the committee substitute because it will restore meaningful local involvement in the ACMP, implement checks and balances and streamline project reviews.


The Borough appreciates the sections of the proposed committee substitute that clarify the ability of coastal districts to establish enforceable policies, especially the provisions in AS 46.40.030 and 070. While the 2003 legislative changes to the ACMP allowed coastal districts to establish policies for matters not adequately addressed by state or federal law, many of our proposed enforceable policies were denied on the basis that they addressed an agency's authority. We made an extra effort to focus our proposed policies on matters that were not addressed by existing laws, but still they were denied.

The committee substitute for SB 4 would restore checks and balances to the ACMP by establishing the Coastal Policy Board. This body would represent coastal districts and state agencies. It would be responsible for approving changes to ACMP regulations, amendments to coastal district programs and overall grant programs. This body is similar to the former Coastal Policy Council except that it has fewer members and it is not responsible for project consistency reviews. Restoring the responsibility for project elevations to the three state resource agencies will ensure these agencies have a seat at the table.

The Borough also supports the sections of the proposed committee substitute that streamline project reviews. The ACMP used to be an effective program that resolved issues among local, state and federal agencies, but changes to the program statutes and regulations reduced its effectiveness. Bringing the Alaska Department of Environmental Conservation back into the consistency review process will bring air and water quality issues back into ACMP project reviews. Likewise, allowing coastal districts to have meaningful policies will encourage their participation in the coordinated consistency review process. These changes will streamline project reviews because issues can be resolved early in the process by all parties. The changes will also encourage permitting agencies to ensure their permit stipulations are compatible and reasonable.

Again, the North Slope Borough thanks you for introducing SB 4, and I look forward to testifying on this bill as it moves through the committee process.

Sincerely,



Edward S. Itta
Mayor

cc Johnny Aiken, NSB Director Planning & Community Services
Karla Kolash, NSB Mayor's Office
Andy Mack, NSB Mayor's Office



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Congressman Don Young
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March 25, 2010

Senator Donny Olson
Alaska State Legislature
Alaska State Capitol, Room 508
Juneau, AK 99801

Dear Senator Olson:

The Resource Development Council is writing to you about SB4 regarding the Alaska Coastal Management Program. As you know, our membership is extremely diverse and includes local communities and boroughs, including the North Slope and Northwest Arctic Boroughs, all of Alaska's Regional Native Corporations, as well as all of Alaska's major oil and gas, mining, seafood processing, and cruiseship companies. We are proud of this diversity and together, we try to grow Alaska through responsible resource development

RDC recognizes the importance of local input as development projects navigate the permitting system. However, we understand that under the current system, many of those providing that input feel their concerns are being left unheard. Clearly, the perception amongst many is that the current Alaska Coastal Management Program is broken.

At the same time, RDC industry members need clear, timely, and streamlined permitting systems. Prior to the changes that occurred to the program in 2003, the program had open-ended timelines for decision making, contained requirements that were duplicative or overlapping of those of state and federal requirements, resulting in significant conflicts and misinterpretations, and extensive geographic reach of the coastal zone boundaries, oftentimes extending significantly inland. This lack of predictability and clarity clearly frustrated many, from districts to permittees, and likely precipitated the changes that occurred.

For each of the last three years, the RDC Board has met with the Bush Caucus and offered to try to facilitate an improved program that would be a win-win for all involved. We have extended the same offer to the North Slope Borough, Senator Begich, and others. We believe a compromise can be reached.

There is near unanimous agreement in the RDC membership that local input is imperative, but that it should not be allowed to trump state or federal processes, effectively giving veto power to the districts. There is a way to solve this problem. However, we do not believe that SB4 is the solution. We commit to working with you, key RDC stakeholders, and other legislators, now or during the interim, to develop a system that is a win-win for all entities.

Sincerely,

Jason Brune
Executive Director

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CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

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March 26, 2010

The Honorable Lyman Hoffman, Co-Chair
The Honorable Bert Stedman, Co-Chair
Senate Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99810-1182

Re: SB 4 Alaska Coastal Management Program

Dear Senators Hoffman and Stedman,

The City and Borough of Juneau (CBJ) supports the proposed changes to the Alaska Coastal Management Program (ACMP) in Senate Bill 4. The bill addresses the most serious problems in the ACMP which resulted from major changes to the program in 2003. Specifically, the bill would establish a Coastal Policy Board to provide local input in decision-making; the bill would restore the district role in the program by allowing greater flexibility to develop meaningful local policies; and the bill would bring the Department of Environmental Conservation (DEC) back into the review process.

Background. HB 191 approved by the Legislature in 2003, required revision of local coastal management programs to conform with new statutory and regulatory requirements. The legislature approved the bill with the assurance that districts would be able to retain local policies and a strong role in the program. This has not been the case. The Department of Natural Resources (DNR) has acknowledged that subsequent regulations were more restrictive than the legislature intended. As a result, districts across the state have lost 50-95 percent of their previously approved policies. The Juneau Coastal Management Program (JCMP) was reduced from 99 policies to 16. Twelve of these policies were approved only after a lengthy and costly mediation process with the state.

As an example, Juneau's policy requiring a 50-foot setback from catalogued salmon streams could not be accepted under the 2003 program changes. This policy has support from state and federal agencies, it is accepted by developers, and it is non-controversial. However, the policy cannot be approved in the revised ACMP because it addresses water quality issues covered by DEC, mapping requirements are too restrictive, and because various other hurdles in the program, including the "important habitat" designation, cannot be met.

The Juneau Assembly and Planning Commission decided to retain important coastal management policies in the city Land Use Code even though those policies were rejected by the state in the ACMP. As a result, local habitat policies are now reviewed through an entirely separate local process rather than through a coordinated process with the state. This adds significant time and expense to applicants, especially if the project description is modified through the course of the local review. Furthermore, it is contrary to one of the major goals of the ACMP, which is to streamline and coordinate review processes for development.

ACMP as a Management Tool. CBJ has formally participated in the ACMP since our local plan was first approved in 1986. We have used the program to develop our local waterfront areas and to expedite development on lower-value wetlands, in addition to protecting certain sensitive habitat areas. Specifically, the JCMP has established Special Waterfront Areas, which are areas set aside for development. These areas have lower habitat standards, and developments must be approved if basic requirements to minimize impacts have been met. The Special Waterfront Area designation has allowed CBJ to develop four major cruise ship ports, a seafood processing plant, the Alaska Marine Highway Ferry Terminal, and many harbors and marine cargo and transport facilities.

Similarly, the Juneau Wetlands Management Plan, a component of the JCMP, categorizes wetlands into high value and low value. JCMP polices on low value wetlands have much lower review standards to expedite development. These standards must be respected by the Corps of Engineers and other reviewing entities who might otherwise take a more restrictive approach to development.

These policies are very important to CBJ and allow local needs for development to be carried forth formally through the ACMP review process. CBJ has a vested interest in a strong local economy. The ACMP has never been used to slow or stop development, only to manage it in accordance with local needs. DNR has never been able to cite an example, anywhere in the state, of a halted or delayed project from ACMP. Quite simply, there is no justification for reducing or eliminating the district role in the program. There is every reason to restore it, in accordance with the Alaska State Constitution mandate for maximum local self-governance.

How SB 4 Helps Local Districts. SB 4 would allow coastal districts to establish local enforceable policies in the program as long as those policies are not pre-empted by state or federal law and do not interfere with an issue of state concern. It's important to note that with the pre-emption clause, local policies cannot override state or federal authority. Furthermore, all policies must have full scientific support for approval. The changes proposed in SB 4 promote active, meaningful local input, not local control.

The proposed Coastal Policy Board would approve local coastal management programs, approve ACMP regulations, and administer the ACMP grant program. Establishment of this board is critical for restoring balance in the program and a fair review of district policies. As described in the Background section, district plans were drastically reduced by the 2003 changes and DNR has been resistant toward an active district role in the program. The proposed nine-member board

Senate Finance Committee Co-Chairs Hoffman and Stedman
SB 4 Alaska Coastal Management Program
March 26, 2010
Page 3 of 3

would address this imbalance and bring local community representatives back into the decision-making process. The board would not override agency authority as the board would not conduct project reviews, district policies cannot pre-empt state or federal law, and lastly because the board would have full agency representation.

Restoring DEC's role in the ACMP is equally important to districts. Separating DEC and all air and water quality issues from ACMP reviews has resulted in a fragmented review process for applicants and has once again limited local district policies. CBJ lost many valuable enforceable policies in our local program simply because the policies indirectly addressed water quality. These included such minimum protections as Best Management Practices to control erosion. During one project review regarding gravel mining in a salmon stream, the project was approved through the full ACMP review process and then denied by DEC, which added significant time and expense for the applicant.

In closing, CBJ encourages the Senate Finance Committee and subsequent committees to move this bill forward. This legislation is critical for restoring a meaningful role for local communities in coastal management and resource development decisions. Thank you for the opportunity to comment.

Sincerely,


Rod Swope *Rep. City Manager*
City & Borough Manager

cc: Senator Dennis Egan
Senator Joe Thomas
Senator Johnny Ellis
Senator Charlie Huggins
Senator Donald Olson



ALASKA MINERS ASSOCIATION, INC.

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March 29, 2010

Honorable Lyman Hoffman
Honorable Bert Stedman
Senate Finance Committee
Capitol Building
Juneau, AK 99801

Re: CSSB-4(CRA), Changes to Alaska Coastal Zone Management

Dear Senators Hoffman and Stedman,

The mining industry has been involved in the Alaska Coastal Zone Management Program (ACMP) for many years. Several companies have raised concerns regarding CSSB-4(CRA) (referred to as SB-4 in this letter) and its companion bill in the House, HB-74. They agree that ACMP is not working well but they cannot support the changes being proposed. The bottom line is that this bill would create an administrative quagmire for the state permitting process and would create tremendous uncertainty for all permittees. The Alaska Miners Association opposes SB-4.

We have numerous concerns with SB-4 and the major ones are discussed below:

Section 1 establishes a Coastal Policy Board (CPB) (previously called the Coastal Policy Council) whereby the Coastal Districts would control selection of the majority of the members that would then have control over the Alaska Coastal Management Program. The CPB would have 5 public members and 4 state agency (DNR, DF&G, DEC, & DCEED) members. The governor would choose the public members but must select them from a list supplied by the Coastal Districts. The effect is that the districts would control the outcome of the selection process and would therefore control any decisions before the CPB. This is not good for management of coastal resources and is bad public policy.

Section 2 would require consistency determinations and certifications for every permit issued by any office within DNR. This would include items now on the "A,B,C List" that have been determined to be of minimal possible impact to coastal resources. The "A,B,C List" would no longer have any relevance and every activity that required a permit would require a consistency determination.

Section 3 would transfer ultimate authority over regulations from DNR to the CPB. The Coastal Policy Board (CPB) would be the ultimate decision making authority due to the requirement that the CPB must approve the regulations. This too is bad public policy to have an appointed board having control over the regulatory process.

Section 4 would transfer various powers from DNR to the Coastal Policy Board. These powers would include contracting for services and "taking any reasonable action necessary to carry out the provisions of Coastal Zone Management". This is extremely broad power and does not include the numerous checks, reviews and balances that are imposed on DNR. If the CPB decided DNR was not following or interpreting the policies the way they want, it would have the authority to make changes.

Section 5 defines the duties of the CPB and at the same time would make DNR effectively a staff agency for the CPB. DNR would be responsible for developing the coastal management plans but the CPB would have the authority to approve or reject those plans. The CPB would have authority to require coastal management plans that would extend to the off-shore continental shelf (OCS) or inland as far as they believed was "reasonable".

The combined impacts of Sections 1, 3, 4, 5, 6, and 7 would be to give authorities now held by DNR to the CPB. Again, the CPB is an appointed board not elected by the public, nor confirmed by the Legislature.

Section 9 specifies how the district coastal management plans and enforceable policies will be developed and because of the authorities given to the CPB, the CPB will be able to dictate all requirements. This would eliminate the requirement for district plans to meet a set of consistent statewide standards. This would eliminate certainty and be a nightmare for the regulated public, and eventually for the Administration and the Legislature due to the havoc it would create.

One of the several problems with ACMP before the passage of HB-191 in 2003 was that districts were allowed to create so-called "homeless stipulations". These were stipulations that were outside existing statute and regulation that could be added to a permit. SB-4 gives authorization for districts to go beyond state or federal law and this would again be allowing "homeless stipulations". In effect, this means that if the legislature will not pass a statute to require some action, the district would be able to do what the legislature would not approve and thereby go beyond state or federal law. In 2003, and for many years before that, this was a tremendous problem for permittees. Oftentimes due to project schedules and the approaching construction season, permittees could not take the time to challenge these homeless stipulations.

Section 10 would allow the CPB to define the boundaries of the coastal districts as far inland as they wished. Decisions over projects in Interior Alaska could be impacted by the Coastal Management Program and Coastal Districts. This would effectively give the coastal districts authority over any activity in the state. This would include permits for homesites, water wells, water rights, roads, culverts, roads, mines, gas lines, oil wells, etc. anywhere in the state. Rather than the Coastal Management Program applying to the "coastal" areas, the boundaries could, and likely would, be defined hundreds of miles up stream. This compares to some other states where coastal management programs are generally limited to the areas affected by salt water and tidal action.

Section 10 would also allow the coastal districts to designate "special management areas" that, based on Section 9, would have their own set of enforceable policies. These special management areas could be anywhere the districts wished.

One conclusion is that SB-4 would effectively negate "state law". State regulations would no longer be no consistent but could rather be different for Coastal Districts. If a coastal district wanted something different from existing regulation, the district could require it and DNR would have to comply or be unable to act without legal challenge. In whatever the situation, if a coastal district wished to regulate something the legislature has not given DNR, the district could simply require it to be in the coastal management plan.

A second conclusion is that many of the items mentioned above would raise constitutional questions. Because the CPB has the authority to go beyond state law, the bill has the effect of delegating legislative law-making to a public-dominated board. Similarly, it removes interpretation of state regulations from the administrative branch — where the interpretations constitutionally belong — and gives this authority to the CPB. While some constitutional issues existed before passage of HB-191 in 2003 (specifically the homeless stipulations), SB-4 greatly magnifies and expands these legal problems.

A third conclusion is that the bill essentially does away with the concept of state interest. There are some decisions — whether and how a gasline should be constructed, expansion of the railroad, oil & gas development on state lands and waters, and oil & gas development in the OCS — that should be decided by the state, without being subject to veto by coastal districts. It is critical that local land-use issues and local concerns be taken into account by the permitting agencies, but some issues affect the entire state and must be determined on a state-wide basis. SB-4 essentially does away with this concept.

A final conclusion is that the changes proposed would create tremendous uncertainty for the regulated public. There is no way to escape a great deal of uncertainty if coastal districts were to be given the authorities contemplated in SB-4.

Thank you for the opportunity to address our concerns to you.

Sincerely,



Steven C. Borell, P.E.
Executive Director

Cc: Committee Members



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April 13, 2010

Honorable Gary Stevens
Honorable Mike Chenault
Capitol Building
Juneau, AK 99801

Re: SB-4, Alaska Coastal Zone Management

Dear President Stevens and Speaker Chenault,

We have reviewed Work Draft S for CSSB-4, Alaska Coastal Zone Management and have the following comments. Work Draft S makes four beneficial changes to SB-4 that improve the bill. However, the bill still contains other concerns that must be addressed before we can support it.

The beneficial changes in Work Draft S: 1) Allows the Governor to select the public members of the board without being limited to those persons on a list provided. 2) Removes the Board's independent ability to apply for money and make contracts. The Board must approve DNR's grants and contracts but cannot make such contracts itself. 3) Eliminates the language that says coastal districts can go inland. 4) Eliminates the definition of "special management area." 5) A new item expands the definition of "Project" to include agency rules and this is not beneficial.

However, other fundamental concerns remain and these include - The bill still gives the Coastal Policy Board (CPB) power to reject state law as found in statute and regulation by not approving its application to the coastal zone. The basic question is whether the state or the CPB interprets state laws and regulations. Do DEC and DNR interpret their regulations or does each coastal district do it? For example, does the entire state have one set of air and water quality standards, or does each district have the authority to write their own standards (by not approving any standards but the one written by the district)? The basic question is whether districts can include requirements not in state law. Such requirements were known as "homeless stipulations" prior to 2003 and were one of the major problems with ACMP at that time.

Although Work Draft S removes reference to how far the coastal districts can extend inland, it does not answer the fundamental question of just how far inland the boundaries can go. In other states the distance inland is limited to the area affected by salt water or tidal action or to a specific elevation above mean high tide. Work Draft S does not clarify this inland extent.

Equally important is the new addition to the definition of the word "project" in Section 35 to include "proposed rules that alter uses of the coastal zone". Agency regulations are rules specifically intended to alter uses, including those in the coastal zone. This new definition would subject all regulations of DNR, DF&G, and DEC to a veto by each coastal district in the

state with respect to that area. Subjecting every regulation to approval by each coastal district would essentially end the concept of a state-wide government.

These issues are a sample of the various unworkable problems with the program, and with Draft S. Thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Borell", written in a cursive style.

Steven C. Borell, P.E.
Executive Director

CC Senator Lyman Hoffman
Senator Bert Stedman
Senator Lesil McGuire
Senator Bill Wielechowski
Representative Bill Stoltz
Representative Mike Hawker
Representative Craig Johnson
Representative Mark Neuman

4-13-10
Jim Benintendi



SB 4 Alaska Coastal Management Program
Section-by-Section Explanation of Proposed Changes to SB 4
April 11, 2010

- Section 1** Changes to this section allow the governor to appoint coastal district board members without nominations from coastal districts (AS 46.39.005(a)(1)) and to appoint alternates without coastal district approval (AS 46.39.005(d)).
- Section 4** The revised AS 46.39.030(b)(1) removes a provision for the board consultation with federal agencies.
- A change to AS 46.39.030 clarifies the role of DNR and the board in developing and approving regulation changes.
- Section 5** The word "ensure" replaces "assure" to make a grammatical correction.
- Section 9** Changes to this section adopt changes made in CSHB74(CRA). The term "prescriptive and performance based" regarding enforceable policies is removed. The term "contemporary and traditional" is also removed.
- The term "areas that merit special attention" replaces the term "special management areas" in several places in this section.
- The word "on" replaces "upon" to make a grammatical correction.
- Section 10** A change to AS 46.40.040(a) clarifies the role of the board in approving regulation changes.
- The term "areas that merit special attention" replaces the term "special management areas."
- Section 11** A new subsection (e) in AS 46.40.040 clarifies that regulations for district plan criteria cannot require designation of areas as a precondition for establishing district enforceable policies.
- Section 14** The change to this section adds a new paragraph (2) to AS 46.40.070(b) that clarifies enforceable policies cannot conflict with state statute or regulations.
- Section 19** The first change to this section removes the proposed provision to allow reviews inland of the coastal zone to AS 46.40.096(l)(1).
- The second change removes the term "and water" from AS 46.40.096(l)(2).
- Section 23** This change adds a new subsection (s) to 46.40.096 to clarify that draft permits cannot be required before start up of an ACMP consistency review.

- Section 30** This change removes Section 30 from SB 4 to AS 46.40.190 regarding cooperative administration.
- Section 31** The change to this section removes language in the existing definition “coastal resource district” in AS 46.40.210(2) regarding boroughs that do not exercise plan and zoning authority.
- Section 35** The change to this section adds new language to the definition of project in AS 46.40.210(9) that allows ACMP reviews of proposed federal rules (regulations), including proposed rules regarding endangered species.
- Section 36** This change would remove the proposed new definition for “special management areas.”
- Section 37** This change removes the repeal of the existing definition of “areas that merit special attention.”
- Section 38** This new section repeals provisions in Ch. 31, SLA 2005 that repealed the coastal management program in 2011.
- Section 39** This new section repeals provisions in Ch. 31, SLA 2005 that repealed the coastal management program in 2011.