

**HB**

**106**

<TARGET><BILL>HB 106</BILL><SUBJECT>HB  
106</SUBJECT><COMM>HRES27</COMM></TARGET>

STATE CAPITOL  
PO Box 110001  
Juneau, Alaska 99811-0001  
907-465-3500  
fax: 907-465-3532



Governor Sean Parnell  
STATE OF ALASKA

550 West 7th Avenue #1700  
Anchorage, Alaska 99501  
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Governor@alaska.gov

January 14, 2011

The Honorable Mike Chenault  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Chenault,

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill extending the termination date of the Alaska coastal management program by six years and relating to the extension; relating to the review of activities of the Alaska coastal management program; and providing for an effective date by amending the effective date of Sec. 22, Ch. 31, SLA 2005.

The Alaska coastal management program is currently set to automatically terminate on July 1, 2011. I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell".

Sean Parnell  
Governor

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 1  
Bill Version HB 106  
(H) Publish Date 1/18/11

Identifier (file name) 1965-DNR-DCOM-1-7-2011 Dept. Affected Natural Resources  
Title Act extending termination of the Alaska Coastal Mgmt. Pgm. Appropriation Resource Development  
Allocation Coastal and Ocean Management  
Sponsor Rules Committee  
Requester Governor OMB Component Number 2680

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | Appropriation Required | Information    |                |                |                |                |                |
|------------------------|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
|                        | FY 2012                | FY 2012        | FY 2013        | FY 2014        | FY 2015        | FY 2016        | FY 2017        |
| Personal Services      |                        | 3,150.2        | 3,150.2        | 3,150.2        | 3,150.2        | 3,150.2        | 3,150.2        |
| Travel                 |                        | 95.9           | 95.9           | 95.9           | 95.9           | 95.9           | 95.9           |
| Contractual            |                        | 1,404.4        | 1,404.4        | 1,404.4        | 1,404.4        | 1,404.4        | 1,404.4        |
| Supplies               |                        | 41.2           | 41.2           | 41.2           | 41.2           | 41.2           | 41.2           |
| Equipment              |                        |                |                |                |                |                |                |
| Land & Structures      |                        |                |                |                |                |                |                |
| Grants & Claims        |                        |                |                |                |                |                |                |
| Miscellaneous          |                        |                |                |                |                |                |                |
| <b>TOTAL OPERATING</b> | <b>0.0</b>             | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> |

|                             |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|

|                           |  |  |  |  |  |  |  |
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| <b>CHANGE IN REVENUES</b> |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                          |            |                |                |                |                |                |                |
|--------------------------|------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts    |            | 2,679.0        | 2,679.0        | 2,679.0        | 2,679.0        | 2,679.0        | 2,679.0        |
| 1003 GF Match            |            | 1,672.6        | 1,672.6        | 1,672.6        | 1,672.6        | 1,672.6        | 1,672.6        |
| 1004 GF                  |            |                |                |                |                |                |                |
| 1005 GF/Program Receipts |            |                |                |                |                |                |                |
| 1061 CIP Receipts        |            | 244.6          | 244.6          | 244.6          | 244.6          | 244.6          | 244.6          |
| 1007 IA Receipts         |            | 95.5           | 95.5           | 95.5           | 95.5           | 95.5           | 95.5           |
| <b>TOTAL</b>             | <b>0.0</b> | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> | <b>4,691.7</b> |

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

|           |  |    |    |    |    |    |    |
|-----------|--|----|----|----|----|----|----|
| Full-time |  | 33 | 33 | 33 | 33 | 33 | 33 |
| Part-time |  |    |    |    |    |    |    |
| Temporary |  |    |    |    |    |    |    |

**Why this fiscal note differs from previous version**

Prepared by Randy Bates  
Division Coastal and Ocean Management  
Approved by Dan Sullivan, Commissioner  
Natural Resources

Phone 465-8797  
Date/Time 1/6/11 12:00 AM  
Date 1/6/2011

FISCAL NOTE #1

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. HB 106

**Analysis**

The Alaska Coastal Management Program will automatically terminate on July 1, 2011 (SLA2005/Ch31/Sec22). This bill would extend that termination date to July 1, 2017.

This fiscal note reflects the operating budget if the termination date is extended.

# FISCAL NOTE

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

Fiscal Note Number 2  
Bill Version HB 106  
(H) Publish Date 1/18/11

Identifier (file name) LL1965-DEC-CO-01-07-11 Dept. Affected Environmental Conservat  
Title Extending the sunset of the Alaska Coastal Management Appropriation Administration  
Allocation Office of the Commissioner  
Sponsor \_\_\_\_\_  
Requester \_\_\_\_\_ OMB Component Number 633

**Expenditures/Revenues** (Thousands of Dollars)

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

|                               | Appropriation<br>Required | Information |            |            |            |            |            |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|
|                               |                           | FY 2012     | FY 2013    | FY 2014    | FY 2015    | FY 2016    | FY 2017    |
| <b>OPERATING EXPENDITURES</b> |                           |             |            |            |            |            |            |
| Personal Services             |                           |             |            |            |            |            |            |
| Travel                        |                           |             |            |            |            |            |            |
| Contractual                   |                           |             |            |            |            |            |            |
| Supplies                      |                           |             |            |            |            |            |            |
| Equipment                     |                           |             |            |            |            |            |            |
| Land & Structures             |                           |             |            |            |            |            |            |
| Grants & Claims               |                           |             |            |            |            |            |            |
| Miscellaneous                 |                           |             |            |            |            |            |            |
| <b>TOTAL OPERATING</b>        | <b>0.0</b>                | <b>0.0</b>  | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |  |
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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|

|                           |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES</b> |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                            |            |            |            |            |            |            |            |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts      |            |            |            |            |            |            |            |
| 1003 GF Match              |            |            |            |            |            |            |            |
| 1004 GF                    |            |            |            |            |            |            |            |
| 1005 GF/Program Receipts   |            |            |            |            |            |            |            |
| 1037 GF/Mental Health      |            |            |            |            |            |            |            |
| Other Interagency Receipts |            |            |            |            |            |            |            |
| <b>TOTAL</b>               | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

**Why this fiscal note differs from previous version**

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

Phone 465-5871  
Date/Time 1/7/11 10:00 AM  
Date 1/7/2011

**FISCAL NOTE #2**

**STATE OF ALASKA  
2011 LEGISLATIVE SESSION**

**BILL NO. HB 106**

**Analysis**

This bill continues an existing program and, for that reason, does not have a fiscal impact to the Department of Environmental Conservation.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number \_\_\_\_\_  
 Bill Version 27-GHI1965A  
 () Publish Date \_\_\_\_\_

Identifier (file name) HB106-DEC-WQ-03-03-11 Dept. Affected Environmental Conserv  
 Title Coastal Management Program Appropriation Water  
 Allocation Water Quality  
 Sponsor House Rules Committee by Request of the Governor  
 Requester House Resources Committee OMB Component Number 2062

**Expenditures/Revenues** (Thousands of Dollars)

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

|                               | Appropriation<br>Required | Information |             |             |             |             |             |             |
|-------------------------------|---------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
|                               |                           | FY 2012     | FY 2012     | FY 2013     | FY 2014     | FY 2015     | FY 2016     | FY 2017     |
| <b>OPERATING EXPENDITURES</b> |                           |             |             |             |             |             |             |             |
| Personal Services             | 0.0                       | 62.6        | 62.6        | 62.6        | 62.6        | 62.6        | 62.6        | 62.6        |
| Travel                        | 0.0                       | 4.8         | 4.8         | 4.8         | 4.8         | 4.8         | 4.8         | 4.8         |
| Services                      | 0.0                       | 7.6         | 7.6         | 7.6         | 7.6         | 7.6         | 7.6         | 7.6         |
| Commodities                   | 0.0                       | 0.0         | 0.0         | 0.0         | 0.0         | 0.0         | 0.0         | 0.0         |
| Capital Outlay                | 0.0                       | 0.0         | 0.0         | 0.0         | 0.0         | 0.0         | 0.0         | 0.0         |
| Grants                        | 0.0                       | 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         | 0.0         |
| <b>TOTAL OPERATING</b>        | <b>0.0</b>                | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> |

|                             |  |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|--|

|                           |  |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES</b> |  |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|--|

**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                  | 0.0        | 37.5        | 37.5        | 37.5        | 37.5        | 37.5        | 37.5        |
| 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         |
| 1007 IA Receipts         | 0.0        | 37.5        | 37.5        | 37.5        | 37.5        | 37.5        | 37.5        |
| <b>TOTAL</b>             | <b>0.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> | <b>75.0</b> |

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

|           |     |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|-----|
| Full-time | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Part-time | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Temporary | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was modified to reflect the continuing current Alaska Coastal Management Program operating budget which would remain unchanged by the extension of the program.

Prepared by Mary Siroky, Director  
 Division Administrative Services  
 Approved by Dan Easton  
Deputy Commissioner

Phone 465-5256  
 Date/Time 3/3/11, 1:35 PM  
 Date 3/4/2011

**FISCAL NOTE**

**STATE OF ALASKA  
2011 LEGISLATIVE SESSION**

**BILL NO.** HB 106

**Analysis**

The Alaska Coastal Management Program will automatically terminate on July 1, 2011 (SLA2005/Ch31/Sec22). This bill would extend that termination date to July 1, 2017.

The Department of Environmental Conservation Alaska Coastal Management Program operating budget is 75.0 with 37.5 provided via a reimbursable service agreement from the Department of Natural Resources.

This fiscal note reflects continuation of the current Department of Environmental Conservation Alaska Coastal Management Program operating budget if the termination date is extended.

# ALASKA STATE LEGISLATURE

## House Resources Committee

**Rep. Paul Seaton, Co-Chair**

State Capitol Building, Room 102

Juneau, AK 99801 – 1182

Phone (907) 465-2689

Fax (907) 465-3472

[Rep.Paul.Seaton@legis.state.ak.us](mailto:Rep.Paul.Seaton@legis.state.ak.us)



**Rep. Eric Feige, Co-Chair**

State Capitol Building, Room 126

Juneau, AK 99801-1182

Phone (907) 465-4859

Fax (907) 465-3799

[Rep.Eric.Feige@legis.state.ak.us](mailto:Rep.Eric.Feige@legis.state.ak.us)

### HB 106 LETTER OF INTENT

It is the intent of the Legislature that the changes made to the Alaska Coastal Management Program under HB 106 will increase the ability of Alaska Coastal Districts and Coastal Resource Service Areas to draft strong Coastal District Plans with enforceable policies that will be approvable by the State of Alaska Department of Natural Resources. It is the intent of the Legislature that these changes will allow the Alaska Coastal Management Program to meet the concerns of coastal residents while developing Alaska's diverse coastal resources.

A handwritten signature in cursive script that reads "Paul Seaton".

Representative Paul Seaton, Co-Chair

A handwritten signature in cursive script that reads "Eric Feige".

Representative Eric Feige, Co-Chair

# ALASKA STATE LEGISLATURE

## House Resources Committee

**Rep. Paul Seaton, Co-Chair**

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Juneau, AK 99801 – 1182

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Juneau, AK 99801-1182

Phone (907) 465-4859

Fax (907) 465-3799

[Rep.Eric.Feige@legis.state.ak.us](mailto:Rep.Eric.Feige@legis.state.ak.us)

### **HB 106 Letter of Intent**

It is the intent of the Legislature that the changes made to the Alaska Coastal Management Program under HB 106 will increase the ability of Alaska Coastal Districts and Coastal Resource Service Areas to draft strong Coastal District Plans and increase the number of enforceable policies that will be approvable by the State of Alaska Department of Natural Resources. It is the intent of the Legislature that these changes will allow the Alaska Coastal Management Program to meet the concerns of coastal residents while developing Alaska's diverse coastal resources.

*NOT  
adopted*

A M E N D M E N T

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Insert "relating to the duty of the Department of Natural Resources to provide  
3 data and information to a coastal resource district or area; relating to funds provided to  
4 coastal resource districts; relating to regulations adopted by the department regarding  
5 persons authorized to participate in and to receive materials relating to a consistency  
6 review;"

7

8 Page 2, following line 5:

9 Insert new bill sections to read:

10 **\*\* Sec. 2.** AS 46.39.040 is amended to read:

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

13 (1) develop statewide standards for the Alaska coastal management  
14 program, and criteria for the preparation and approval of district coastal management  
15 plans in accordance with AS 46.40;

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

21 (3) assure continued provision of data and information to coastal  
22 resource districts and coastal resource service areas to carry out their planning and  
23 management functions under the program; in providing data and information to a

1 coastal resource district or area under this paragraph, the department shall  
 2 provide the data and information to each member of the governing body of the  
 3 coastal resource district or the board of the coastal resource service area and to  
 4 other persons as may be designated by the district or area.

5 \* Sec. 3. AS 46.39.040 is amended by adding a new subsection to read:

6 (b) If the department provides funds to a coastal resource district or area to  
 7 implement or amend a coastal resource district's or area's coastal management plan  
 8 and the department provides a restriction on how the funds may be used by the district  
 9 or area, the department shall specify the state statute or federal statute or regulation  
 10 that authorizes the restriction.

11 \* Sec. 4. AS 46.40.096(c) is amended to read:

12 (c) The regulations adopted by the department under this section must, in an  
 13 affected coastal resource district, permit the members of the governing body of  
 14 the coastal resource district, the district's coastal management plan coordinator,  
 15 and the district's community planner to participate in the consistency review, and  
 16 the regulations must require the department or reviewing entity to provide the  
 17 persons described in AS 46.39.030(3) materials relating to the consistency review.  
 18 The regulations must also include provisions for public notice and provide the  
 19 opportunity for public comment. Regulations relating to public notice and public  
 20 comment [THE REGULATIONS] adopted under this subsection may make  
 21 distinctions relating to notice based upon differences in project type, anticipated effect  
 22 of the project on coastal resources and uses, other state or federal notice requirements,  
 23 and time constraints. However, a notice given under this subsection must contain  
 24 sufficient information, expressed in commonly understood terms, to inform the public  
 25 of the nature of the proposed project for which a consistency determination is sought,  
 26 and must explain how the public may comment on the proposed project. Notices  
 27 described in this subsection shall be published on the department's Internet  
 28 website. In this subsection,

29 (1) "coastal management plan coordinator" means the person  
 30 designated, by a coastal resource district, with development, maintenance, and  
 31 implementation of the district's coastal management plan;

1                   **(2) "community planner" means the person designated, by a**  
2                   **coastal resource district, with helping to formulate plans and making decisions**  
3                   **relating to the development of the district's natural resources and community**  
4                   **assets and the protection of the district's water, land, and air."**

5

6    Renumber the following bill sections accordingly.

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "**program**";:

2 Insert "**relating to the review of certain consistency determinations for a project in**  
3 **an Alaska coastal resource district**;"

4  
5 Page 2, following line 5:

6 Insert new bill sections to read:

7 **\*\* Sec. 2.** AS 46.40.096(d) is amended to read:

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

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

13 (2) prepare proposed consistency determinations;

14 (3) **conduct elevations** [COORDINATE SUBSEQUENT REVIEWS]  
15 of proposed consistency determinations prepared under (2) of this subsection; **an**  
16 **elevation** [A SUBSEQUENT REVIEW] of a proposed consistency determination  
17 under this paragraph

18 (A) **may only be conducted** [IS LIMITED TO A REVIEW]  
19 by the **commissioners of the resource agencies** [DEPARTMENT];

20 (B) may occur only if requested by

21 (i) the project applicant;

22 (ii) a state resource agency; or

23 (iii) an affected coastal resource district; and

1 (C) shall be completed with the issuance of a written order  
 2 signed by at least two of the commissioners of the resource agencies  
 3 [DEPARTMENT] within 45 days after the initial request for an elevation  
 4 [SUBSEQUENT REVIEW] under this paragraph;

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

6 \* Sec. 3. AS 46.40.096(o) is amended to read:

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

8 (1) do not apply to a consistency review involving the disposal of an  
 9 interest in state land or resources;

10 (2) are suspended

11 (A) from the time the reviewing entity determines that the  
 12 applicant has not adequately responded in writing within 14 days after the  
 13 receipt of a written request from the reviewing entity for additional  
 14 information, until the time the reviewing entity determines that the applicant  
 15 has provided an adequate written response;

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

17 (C) during the period of time a consistency review is  
 18 undergoing an elevation [A SUBSEQUENT REVIEW] under (d)(3) of this  
 19 section.

20 \* Sec. 4. AS 46.40.096(q)(2) is amended to read:

21 (2) "reviewing entity" means the

22 (A) Department of Natural Resources, for a consistency review  
 23 subject to AS 46.39.010;

24 (B) the commissioners of the resource agencies, for the  
 25 elevation of a proposed consistency determination under (d) of this  
 26 section;

27 (C) state agency identified in (b) of this section, for a  
 28 consistency review not subject to AS 46.39.010.

29 \* Sec. 5. AS 46.40.210 is amended by adding a new paragraph to read:

30 (13) "elevation" means a review of a proposed consistency  
 31 determination by the commissioners of the resource agencies."

1

2 Renumber the following bill sections accordingly.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 4, 2011

**SUBJECT:** Drafting issues associated with Amendment 27-GH1965\A.32 to HB 106 (Work Order No. 27-GH1965\A.32)

**TO:** Representative Paul Seaton  
Co-Chair of the House Resources Committee  
Attn: Louie Flora

**FROM:** Alpheus Bullard *TLAB*  
Legislative Counsel

This note accompanies the amendment described above. I have several comments.

I reorganized the material you submitted. The language you provided read in part: "*The department shall approve a district coastal management plan submitted for review and approval if the . . . enforceable policies of the district coastal management plan . . . may establish new standards . . .*" This does not work. Consequently, subparagraphs AS 46.40.070(a)(2)("G") and ("I") in your fax of April 3, are now subsection AS 46.40.070(b) in 27-GH1965\A.32. The meaning is still not clear; please review the amendment to ensure that it remains consistent with your intent.

Existing AS 46.40.070(b) provides that a decision of the department relating to the approval of a district coastal management plan must be given within 90 days after the plan is submitted to the department. No deadline is provided in the repealed and reenacted provision. Is this your intent?

Note also that the removal of the requirement in AS 46.40.070 that a district management plan meet statewide standards may be of little substantive effect. The requirement that a district coastal management plan meet statewide standards is not unique to AS 46.40.070 (the statutory section amended by A.32). Other statutory sections in AS 46.40 also require a plan to "meet" statewide standards adopted by the department. These sections are not addressed in amendment A.32. See AS 46.40.010(d), 46.40.030(a), 46.40.040(a), 46.40.060(a), 46.40.060(c), 46.40.180(b), and (for a consistency review) 46.40.210(5).<sup>1</sup>

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

TLAB:plm  
11-216.plm  
Enclosure

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<sup>1</sup> See also AS 46.39.040(1).



AMENDMENT

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Delete "relating to the approval of district coastal management plans by the  
3 Department of Natural Resources;"

4

5 Page 2, following line 5:

6 Insert a new bill section to read:

7 "\* **Sec. 2.** AS 46.40.070 is repealed and reenacted to read:

8 **Sec. 46.40.070. Requirements for department review and approval.** (a) The  
9 department shall approve a district coastal management plan submitted for review and  
10 approval if the

11 (1) district coastal management plan

12 (A) meets the requirements of this chapter and the district plan  
13 criteria adopted by the department; and

14 (B) does not conflict with the statewide standards adopted by  
15 the department; and

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

17 (A) do not duplicate, restate, incorporate by reference,  
18 rephrase, or otherwise modify or adopt state or federal statutes or regulations;

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

20 (C) do not arbitrarily or unreasonably restrict uses of state  
21 concern.

22 (b) The enforceable policies in a district coastal management plan submitted  
23 for review under this section may establish new standards or requirements that are

1 within the authority of a state or federal agency unless the state or federal agency  
2 specifically objects.

3 (c) In reviewing and approving a district coastal management plan under (a) of  
4 this section, the department may not require a district to designate areas for the  
5 purpose of developing an enforceable policy.

6 (d) In this section, "specifically objects" means that a written objection to the  
7 enforceable policy that establishes the new standards or requirements is filed with the  
8 department by

- 9 (1) the commissioner of a state agency;  
10 (2) the head of a federal agency operating in the state;  
11 (3) the official responsible for a federal agency's operations in the  
12 state; or  
13 (4) legal counsel for a federal agency operating in the state."

14

15 Renumber the following bill sections accordingly.

# LEGAL SERVICES

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## MEMORANDUM

April 4, 2011

**SUBJECT:** Drafting notes relating to Amendment 27-GH1965\A.33 to HB 106  
(Work Order No. 27-GH1965\A.33)

**TO:** Representative Paul Seaton  
Co-Chair House Resources Committee  
Attn: Louie Flora

**FROM:** Alpheus Bullard *TEB*  
Legislative Counsel

This memorandum accompanies the amendment described above.

Amendment 27-GH1965\A.33 (A.33) is based on amendment 27-GH1965\A.26 (A.26). You requested significant changes to AS 46.40.060 as it was amended in A.26. This required conforming changes elsewhere in A.33. Please note my conforming changes to the amendment's sec. 46.40.005(i), 46.40.060(d), and the uncodified transitional provisions (page 5, lines 21 - 25 of A.33).

Please also note that the order of the subsections in the amendment's sec. 46.40.060 is different than suggested. In accordance with the Manual of Legislative Drafting, the suggested subsection "(d)" is added as "(e)" in an additional bill section (see the amendment's sec. 5).

I've also made changes to the language of this subsection. What is missing is any provision that specifies what will happen if the commissioner determines that a decision of the department under AS 46.40.060(c) should be changed.

Note also that the removal of language in the amendment's AS 46.40.060(a) and (c) relating to the requirement that a district management plan meet statewide standards may be of little substantive effect. The requirement that a district coastal management plan meet statewide standards is not unique to AS 46.40.060. Other statutory sections in AS 46.40 also require a plan to "meet" statewide standards adopted by the department. These sections are not addressed in amendment A.33. See AS 46.40.010(d), 46.40.030(a), 46.40.040(a), 46.40.070, 46.40.180(b), and (for a consistency review) 46.40.210(5).<sup>1</sup>

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<sup>1</sup> See also AS 46.39.040(1).



Representative Paul Seaton

April 4, 2011

Page 2

Given the time allotted there may be other issues that I have not identified. Please do not hesitate to contact me if you have questions.

TLAB:ljw  
11-218.ljw

Enclosure

**AMENDMENT**

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HB 106

1 Page 1, line 3, following "**program**";:

2 Insert "**establishing the Alaska Coastal Policy Board**;"

3

4 Page 2, following line 5:

5 Insert new bill sections to read:

6 **"\* Sec. 2.** AS 46.39 is amended by adding new sections 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 the  
9 following:

10 (1) five public members appointed by the governor subject to  
11 confirmation by the legislature in joint session, the public members shall include, one  
12 at-large member from any coastal resource district and four members from a list  
13 composed of at least three names from each region, nominated and submitted by the  
14 coastal resource districts of each region; one public member shall be appointed from  
15 each of the following regions:

16 (A) northwest Alaska, including, generally, the area of the  
17 North Slope Borough and the Northwest Arctic Borough; and the Bering Strait  
18 area, including, generally, the area of the Bering Strait regional educational  
19 attendance area;

20 (B) southwest Alaska, including, generally, the area within the  
21 Lower Yukon, Lower Kuskokwim, and Southwest regional educational  
22 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and  
23 the Kodiak-Aleutians area, including the Kodiak Island and area of the

1 Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof  
2 regional educational attendance areas;

3 (C) Upper Cook Inlet area, including the Municipality of  
4 Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area,  
5 including, generally, the Kenai Peninsula Borough; and the Prince William  
6 Sound area, including, generally, the area east of the Kenai Peninsula Borough  
7 to 141 West longitude; and

8 (D) Southeast Alaska, generally the area east of 141 West  
9 longitude;

10 (2) each of the following designated members:

11 (A) the commissioner of environmental conservation;

12 (B) the commissioner of fish and game;

13 (C) the commissioner of natural resources;

14 (D) the commissioner of transportation and public facilities.

15 (b) Public members serve staggered terms of three years. Except as provided  
16 in AS 39.05.080(4), each member serves until a successor is appointed and qualified.  
17 A public member may be reappointed. A public member may be removed for cause.

18 (c) The board shall designate cochairs, one of whom shall be selected from  
19 among the public members appointed under (a)(1) of this section and one from among  
20 the members designated in (a)(2) of this section.

21 (d) If a member serving under (a)(2) of this section is unable to attend, a  
22 deputy commissioner in the same department may attend and act in place of the  
23 member. The names of alternates serving under (a)(2) of this section shall be filed  
24 with the board.

25 (e) Three public members and three designated members of the board  
26 constitute a quorum. However, action may be taken only upon the affirmative vote of  
27 a majority of the full membership of the board.

28 (f) The board shall meet at least four times a year and as often as necessary to  
29 fulfill its duties under this chapter and AS 46.40. Meetings may be held and members  
30 may vote telephonically, except one board meeting a year shall be held in person.

31 (g) Public members of the board are entitled to per diem and travel expenses

1 authorized by law for members of boards and commissions.

2 (h) Administrative support for the board shall be provided by the division in  
3 the department responsible for coastal and ocean management. The director of the  
4 division in the department responsible for coastal and ocean management, under  
5 direction of the cochair designated by the board from the individuals listed in (a)(2) of  
6 this section, may contract with or employ persons as necessary to assist the board in  
7 carrying out the board's duties and responsibilities.

8 (i) The board shall make recommendations to the department relating to the  
9 approval or modification of a district coastal management plan under  
10 AS 46.40.060(b).

11 \* **Sec. 3.** AS 46.39.030 is amended to read:

12 **Sec. 46.39.030. Powers of the department.** The department may

13 (1) apply for and accept grants, contributions, and appropriations,  
14 including application for and acceptance of federal funds that may become available  
15 for coastal planning and management;

16 (2) contract for necessary services;

17 (3) consult and cooperate with

18 (A) persons, organizations, and groups, public or private,  
19 interested in, affected by, or concerned with coastal area planning and  
20 management;

21 (B) agents and officials of the coastal resource districts of the  
22 state, the Alaska Coastal Policy Board established in AS 46.39.005, and  
23 federal and state agencies concerned with or having jurisdiction over coastal  
24 planning and management;

25 (4) take any reasonable action necessary to carry out the provisions of  
26 this chapter or AS 46.40.

27 \* **Sec. 4.** AS 46.40.060 is amended to read:

28 **Sec. 46.40.060. Review and approval by the department.** (a) If, upon  
29 submission of a district coastal management plan for approval, the department finds  
30 that the plan meets the provisions of this chapter [AND THE STATEWIDE  
31 STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY THE

1 DEPARTMENT AND DOES NOT ARBITRARILY OR UNREASONABLY  
 2 RESTRICT OR EXCLUDE USES OF STATE CONCERN], the department may  
 3 approve the district coastal management plan, or may approve portions of the district  
 4 plan that meet those requirements.

5 (b) If the department finds that a district coastal management plan is not  
 6 approvable or is approvable only in part under (a) of this section, it shall submit the  
 7 plan to the board for review. The board shall review the plan and make  
 8 recommendations relating to whether the department shall approve or modify  
 9 the district coastal management plan in whole or in part [DIRECT THAT  
 10 DEFICIENCIES IN THE PLAN SUBMITTED BY THE COASTAL RESOURCE  
 11 DISTRICT BE MEDIATED. IN MEDIATING THE DEFICIENCIES, THE  
 12 DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC HEARINGS IN THE  
 13 DISTRICT. THE DEPARTMENT SHALL MEET WITH OFFICIALS OF THE  
 14 COASTAL RESOURCE DISTRICT IN ORDER TO RESOLVE DIFFERENCES].

15 (c) After the board has reviewed the district coastal management plan  
 16 and submitted recommendations under (b) of this section [IF, AFTER  
 17 MEDIATION, THE DIFFERENCES HAVE NOT BEEN RESOLVED], the  
 18 department shall enter findings and, by order, may require

19 (1) that the district coastal management plan be amended to satisfy the  
 20 provisions of this chapter [OR MEET THE STATEWIDE STANDARDS AND  
 21 DISTRICT PLAN CRITERIA ADOPTED BY THE DEPARTMENT];

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

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

26 (d) The superior courts of the state have jurisdiction to enforce orders of the  
 27 department or commissioner of natural resources entered under (c) or (e) of this  
 28 section.

29 \* **Sec. 5.** AS 46.40.060 is amended by adding a new subsection to read:

30 (e) A person affected by a decision of the department under this section may  
 31 request reconsideration of the decision within 15 days of the issuance of a decision

1           made by the department under (c) of this section. The request must be in writing and  
2           must include a statement of the specific changes desired. The commissioner of natural  
3           resources may review the department's decision on the basis of the request and  
4           determine whether the decision should be changed. The commissioner may issue a  
5           determination in writing within 20 days of the issuance of the decision. If the  
6           commissioner takes no action, the request for reconsideration shall be considered as  
7           denied. Denial of a request for reconsideration shall be considered a final  
8           administrative order and decision of the department.

9           \* **Sec. 6.** AS 46.39.005 is repealed.

10          \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
11          read:

12                **TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD;**  
13          **STAGGERED TERMS.** (a) Notwithstanding AS 44.39.005(a), added by sec. 2 of this Act,  
14          within 30 days after the effective date of this section, the municipalities of each region  
15          identified in AS 44.39.005(a)(1) shall submit to the governor the names of three persons from  
16          the region qualified under AS 44.39.005(a), added by sec. 2 of this Act. Notwithstanding  
17          AS 44.39.005, added by sec. 2 of this Act, within 60 days after the effective date of this  
18          section, the governor shall appoint, from the lists of names submitted under  
19          AS 46.39.005(a)(1), one member from each region and one at-large member to serve on the  
20          Alaska Coastal Policy Board established by AS 46.39.005, added by sec. 2 of this Act. The  
21          governor shall appoint the public members to three-year staggered terms. The governor shall  
22          specify the term of each member appointed subject to this section.

23                (b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 4 of  
24          this Act, a review by the Alaska Coastal Policy Board relating to a district coastal  
25          management plan, or a portion of a district coastal management plan, shall be delayed until all  
26          the public members of the board are appointed under (a) of this section.

27          \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
28          read:

29                **CONDITIONAL EFFECT.** Section 6 of this Act takes effect only if secs. 1 - 8 and 18,  
30          ch. 31, SLA 2005, take effect."

31

1 **Renumber the following bill sections accordingly.**

2

3 **Page 2, following line 18:**

4 **Insert a new bill section to read:**

5 **"\* Sec. 10. If sec. 6 of this Act takes effect, it takes effect on the date that secs. 1 - 8 and 18,**  
6 **ch. 31, SLA 2005, take effect."**

7

8 **Renumber the following bill section accordingly.**

9

10 **Page 3, line 19:**

11 **Delete "This"**

12 **Insert "Except as provided in sec. 10 of this Act, this"**

# LEGAL SERVICES

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OK

## MEMORANDUM

April 3, 2011

**SUBJECT:** Purpose of retroactivity and revival provision in Amendment 27-GH1965\A.23, and providing that provision as a stand-alone amendment in Amendment 27-GH1965\A.27 (Amendment 27-GH1965\A.27)

**TO:** Representative Paul Seaton  
Representative Eric Feige  
Co-Chairs of the House Resources Committee  
Attn: Louie Flora

**FROM:** Alpheus Bullard  
Legislative Counsel

This memorandum accompanies amendment 27-GH1965\A.27 (A.27) which provides a modified version of the "retroactivity and revival" provision found in Amendment 27-GH1965\A.23 (A.23).<sup>1</sup> You have asked about the purpose of, and need for, such a provision.

What "sec. 3" of A.23 and "sec. 2" of A.27 add respectively, to the bill is a provision that addresses what will occur if the bill becomes law under AS 01.10.070 after July 1, 2011.<sup>2</sup>

---

<sup>1</sup> The "retroactivity and revival provision" in A.23 contains an additional subsection (c) that applies to the "Alaska coastal policy board" and "Alaska coastal policy appeals board" that are established by that amendment. Amendment A.27 does not establish these boards, so this subsection is not included.

<sup>2</sup> Note that subsection (a) of the "retroactivity and revival" provisions of both A.23 and A.27 also serves to make the bill's amendment to AS 44.66.020(a)(5) retroactive to January 1, 2011. AS 44.66.020(a)(5) provides that the Alaska coastal management program is "subject to legislative termination during the regular legislative session" convening in January, 2011.

It is my opinion that this element of the respective "retroactivity and revival" provisions is less significant than the retroactive application of the change to ch. 31, SLA 2005, and the accompanying revival of the provisions that make up the Alaska coastal management program, because a court is unlikely to treat AS 44.62.020(a)(5)'s deadline as mandatory, but rather one that is "directory." The Alaska Supreme Court has relatively recently reiterated the distinction:

Representative Paul Seaton  
Representative Eric Feige  
April 3, 2011  
Page 2

Even though HB 106 has an immediate effective date (see the bill's sec. 3), there exists the possibility that the bill might not become law until after the Alaska coastal management program is repealed, and the program is terminated.<sup>3</sup> The legislature could fail to pass the bill's effective date provision,<sup>4</sup> or even if the immediate effective date provision is passed, the governor could fail to sign the bill on or before July 1, 2011.

The bill will become law only after the bill is either signed by the governor or the period for the governor to sign or exercise a veto has expired.<sup>5</sup> Before the bill is transmitted to the governor, the processes of enrollment, engrossment, and transmittal have sometimes stretched out over a period of months. Given that the immediate effective date provision may not pass, and the possibilities of delay in transmitting the bill to the governor, a "retroactivity and revival" provision is included in A.23 and A.27 because it is my opinion that, if the bill does not become law on or before July 1, 2011, under

---

Whether a party must strictly comply with a procedural rule, regulation, or statute turns on whether the language of the law is mandatory or directory. If a statute is mandatory, strict compliance is required; if it is directory, substantial compliance is acceptable absent significant prejudice to the other party. A statute is considered directory if (1) its wording is affirmative rather than prohibitive; (2) the legislative intent was to create "guidelines for the orderly conduct of public business"; and (3) "serious, practical consequences" would result if it were considered mandatory.

*South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Bd. of Adjustment*, 172 P.3d 768, 771 - 772 (Alaska 2007).

<sup>3</sup> Under sec. 22, ch. 31, SLA 2005, on July 1, 2011, the statutory provisions that set out the Alaska Coastal Management Program will be repealed, and the program will cease to statutorily exist.

<sup>4</sup> Article II, section 18 of the state constitution requires that an immediate effective date for an Act, be approved by two-thirds of the membership of each house. If an effective date provision fails, an Act will become effective 90 days after enactment.

<sup>5</sup> The governor has 15 days during sessions and 20 days outside of sessions to either sign or veto a bill once the legislature passes the bill and transmits it to the governor, under article II, sec. 17, of the Alaska Constitution. Sundays are not included in these computations.

Representative Paul Seaton  
Representative Eric Feige  
April 3, 2011  
Page 3

AS 01.10.100(c),<sup>6</sup> a court is likely to hold that the statutes that establish the Alaska coastal management program, and are repealed by sec. 22, ch. 31, SLA 2005 on July 1, 2011, cannot be revived unless their revival is specifically provided for.

Louie also asked whether a temporary repeal of the program followed by its revival, as is provided for in the amendments, would result in issues under federal law for the program. Given the time allotted, I have not had time to fully research the matter, but it seems to me that an answer would not be significant to the question of whether a "retroactivity and revival" provision should be included in HB 106.

If the bill does not become law before July 1, 2011, and if it is to be revived under state law, such a provision is required. While such a revival might lead to issues for the program under federal law, if it is not included, the program will be terminated under state law. If it is the intent of the legislature to pass the bill and see it become law, the inclusion of such a provision can only contribute towards that end.

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

TLAB:plm  
11-214.plm

Enclosure

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<sup>6</sup>AS 01.10.100(c) provides:

(c) When an act repealing a former act, section, or provision is itself repealed, that repeal does not revive the former act, section, or provision, unless it is expressly so provided.

Adopted  
UC

27-GH1965\A.27  
Bullard  
4/3/11

AMENDMENT #7

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 2, following line 5:

2 Insert a new bill section to read:

3 **\*\* Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 **RETROACTIVITY AND REVIVAL.** (a) The amendment to AS 44.66.020(a)(5)  
6 made by sec. 3 of this Act is retroactive to January 1, 2011.

7 (b) If, under AS 01.10.070(c), sec. 3 of this Act takes effect on or after July 1, 2011,  
8 sec. 3 of this Act is retroactive to July 1, 2011, and sections repealed by sec. 18, ch. 31, SLA  
9 2005, are revived. If a revived section is amended by this Act, it is revived as amended by this  
10 Act. The revived sections are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended  
11 by sec. 3 of this Act."

12

13 Renumber the following bill sections accordingly.

adopted  
u c

OK ✓

27-GH1965\A.28  
Bullard  
4/2/11

AMENDMENT #8

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

- 1 Page 2, following line 53:
- 2       Insert a new bill section to read:
- 3       **\*\* Sec. 2.** AS 46.39.010 is amended by adding a new subsection to read:
- 4               (d) Not later than January 20 each year, the department shall prepare an annual
- 5       report summarizing the department's efforts to draft and adopt regulations under this
- 6       chapter and AS 46.40 during the prior calendar year. The department shall notify the
- 7       legislature that the report is available and shall also post the report on the department's
- 8       Internet website."
- 9
- 10       Renumber the following bill sections accordingly.

**Amendment A.27** Retroactivity and Revival

Provides that if HB 106 is not signed into law by the sunset date and the program terminates it can be revived.

**Amendment A. 28** Report to the Legislature

Requires an annual report on the progress that the Department of Natural Resources has made in drafting and adopting ACMP regulations

**Amendment A.30** Information to Coastal District Representatives

Provides that the Department shall provide planning and consistency review data and information to members of the governing body of a coastal resource district or coastal resource service area. States that if the department provides funds to implement or amend a coastal district plan along with a restriction on the use of the funds, they will specify the state statute or federal regulation or statute that authorizes the restriction.

**Amendment A.31** Elevations of Consistency Determinations

Provides that a dispute over a consistency determination between a coastal district and the Department of Natural Resources shall be elevated to the Commissioners of the Department of Natural Resources, the Department of Fish and Game and the Department of Environmental Conservation. The commissioners shall issue a written order signed by at least two of the commissioners that renders the final determination.

**Amendment A.** Coastal Policy Board (waiting for this still)

Establishes a nine-member Alaska Coastal Policy Board to review Coastal District plans and recommend that the Department of Natural Resources approve or modify the plan in whole or in part.

**Amendment A.32** Enforceable Policies

Deletes requirement that district enforceable policies may be drafted on items that are not “adequately addressed” by state or federal law. States that the policies must not duplicate state or federal statutes or regulations, must not be preempted by federal or state law, must not arbitrarily or unreasonably restrict a use of state concern, and would not be unlawful for a state or federal agency to adopt. Districts may establish new standards or other requirements within the authority of a state or federal agency unless they are specifically objected to by that state or federal agency.

**Amendment # 1 (A.2) - ADOPTED and AMENDED BY Amendment 6**  
**Administration language – Designated Areas** - Repeals Designated Area Requirement. Clarifies that district enforceable policies apply to all land and water issues subject to the plan. Requires Coastal district plans to be clear and concise, prescriptive or performance-based, necessary given local conditions, and supported by evidence including scientific or local knowledge if more specific than state or federal statutes or regulations.

27-GH1965A.2  
Bullard  
3/25/11

AMENDMENT #1

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 2, following "extension;":

2 Insert "relating to the development, review, and approval of district coastal  
3 management plans;"

4

5 Page 2, following line 5:

6 Insert new bill sections to read:

7 "\* Sec. 2. AS 46.40.030 is amended to read:

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

9 Coastal resource districts shall develop and adopt district coastal management plans in  
10 accordance with the provisions of this chapter. The plan adopted by a coastal resource  
11 district shall be based upon a municipality's existing comprehensive plan or a new  
12 comprehensive resource use plan or comprehensive statement of needs, policies,  
13 objectives, and standards governing the use of resources within the coastal area of the  
14 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan  
15 criteria adopted under AS 46.40.040 and must include

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

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

20 (3) a statement of policies to be applied to all [THE] land and water  
21 uses subject to the district coastal management plan as well as policies that apply  
22 only to special management areas; and

23 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT

1 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT  
 2 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND  
 3 WATER WITHIN THE COASTAL AREA; AND

4 (5)] a designation of any special management [, AND THE  
 5 POLICIES THAT WILL BE APPLIED TO THE USE OF,] areas under [WITHIN]  
 6 the district coastal management plan and enforceable policies that will be  
 7 applicable within those special management areas [RESOURCE DISTRICT THAT  
 8 MERIT SPECIAL ATTENTION].

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

12 (1) clear and concise as to the activities and persons affected by the  
 13 policies and the requirements of the policies, whether the policies are prescriptive  
 14 or performance-based;

15 (2) necessary given local conditions; and

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

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

22 \* Sec. 3. AS 46.40.040(a) is amended to read:

23 (a) Except as provided in (b) of this section and AS 41.17, the department  
 24 shall

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

29 (A) identifying the boundaries of the coastal area subject to the  
 30 Alaska coastal management program;

31 (B) determining the land and water uses and activities subject

1 to the Alaska coastal management program;

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

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

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

9 (F) designating and developing policies for special  
10 management areas [THE USE OF AREAS OF THE COAST THAT MERIT  
11 SPECIAL ATTENTION]; and

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

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

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

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

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

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

26 \* Sec. 4. AS 46.40.070 is amended by adding a new subsection to read:

27 (c) In reviewing and approving a district coastal management plan under (a) of  
28 this section, the department may not require a district to designate areas for the  
29 purpose of developing an enforceable policy.

30 \* Sec. 5. AS 46.40.210 is amended by adding a new paragraph to read:

31 (13) "special management area" means a delineated geographic area

1 within the coastal area that is sensitive to change or alteration and that, because of  
2 plans or commitments or because a claim on the resources within the area delineated  
3 would preclude subsequent use of the resources to a conflicting or incompatible use,  
4 warrants special management attention, or that, because of its value to the general  
5 public, should be identified for current or future planning, protection, or acquisition;  
6 these areas, subject to the board's definition of criteria for their identification, include:

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

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

11 (C) areas of substantial recreational value or opportunity;

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

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

16 (F) areas of significant hazard due to storms, slides, flooding,  
17 earthquakes, active faults, tsunamis, volcanoes, liquefaction, ice movement or  
18 snow avalanches, or erosion; and

19 (G) areas needed to protect, maintain, or replenish coastal land  
20 or resources, including coastal flood plains, aquifer recharge areas, beaches,  
21 and offshore sand deposits."  
22

23 Renumber the following bill sections accordingly.

MOVED - Seaton  
object - Kawasaki Henson  
+ others for  
explanation

adopted  
U.C.

27-GH1965\A.16  
Bullard  
3/30/11

AMENDMENT #6

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: Amendment A.2 to HB 106

1 Page 2, line 11, of the amendment:

2 Delete "are"

3

4 Page 2, lines 12 - 17, of the amendment:

5 Delete all material and insert:

6 "(1) are clear and concise as to the activities and persons affected  
7 by the policies;

8 (2) use prescriptive or performance-based standards that are  
9 written in precise and enforceable language; and

10 (3) address a coastal use or resource of concern to the residents of  
11 the coastal resource district as demonstrated by local knowledge or supported by  
12 scientific evidence"

13

14 Page 4, line 6, of the amendment:

15 Delete "board's"

16 Insert "department's"

17

18 Page 4, line 21, of the amendment:

19 Delete the quotation mark.

20

21 Page 4, following line 21, of the amendment:

22 Insert new material to read:

23 **"\* Sec. 6. AS 46.40.210(1) is repealed."**

CONCEPTUAL AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HB 106

In the following sections:

AS 46.40.010(d) Development of Alaska coastal management program

AS 46.40.030(a) Development of district coastal management plans

AS 46.40.040(a) Statewide standards and district plan criteria

AS 46.40.070 Requirements for department review and approval

AS 46.40.180(b) Approval of plans in coastal resource service areas

Delete "meet the Statewide Standards"

Insert "does not conflict with the Statewide Standards adopted by the department"

Alaska Oil and Gas Association

---



121 W. Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907)272-1481 Fax: (907)279-8114  
Email: crockett@aoga.org  
*Marilyn Crockett, Executive Director*

March 23, 2011

To: House Resources Committee

Re: HB106 – Extending the Termination Date of the Alaska Coastal Management Program

The Alaska Oil and Gas Association (AOGA) is writing today to express our support for HB106 which would extend the sunset date for the Alaska Coastal Management Program by six years.

AOGA is a private, nonprofit trade association whose member companies account for the majority of oil and gas exploration, development, production, transportation, marketing and refining activities in Alaska.

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 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.

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

- Provide benefit for all Alaska residents by development of Alaska's resources
- 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

March 23, 2011

Page 2

- 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.

The ACMP as it exists today encompasses these principles, and we support continuance of the program in its current form.

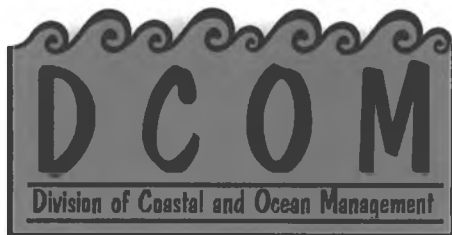
Sincerely,

A handwritten signature in black ink that reads "Marilyn Crockett". The signature is written in a cursive, flowing style.

MARILYN CROCKETT  
Executive Director

# Alaska Coastal Management Program (ACMP)

Consistency Review Process  
House Resources Committee Hearing





# ACMP Authority

- ACMP recognizes Alaska's unique management needs and issues with the coastal zone
- Managing coastal uses and resources requires supplemental authority to the already existing State and federal authorities.
- Statutes AS 46.39 and 46.40
- Regulations
  - 11 AAC 110 (Project Review);
  - 11 AAC 112 (Statewide Standards)
  - 11 AAC 114 (District Plan Regulations)



# Project Consistency Reviews

## Implement the ACMP

- Review process is to determine if proposed project is consistent with the ACMP authorities.
- Review process is designed to evaluate and modify projects to better protect and manage coastal uses and resources while addressing applicants' development project.



# What Triggers A Consistency Review?

## A. Project Location:

- Within the coastal zone – Coastal waters and adjacent shorelands within the boundaries established under AS 46.40.210(4)
- Outside the coastal zone and is:
  - Federal activity with reasonably foreseeable coastal effects; or
  - Requires certain federal authorizations

## B. Authorizations:

- The project requires a listed state or federal permit



# The Review Process Involves:

- Applicant
- Affected Coastal Districts
  - District Input Process
- State Resource Agencies
  - Department of Environmental Conservation (DEC)
  - Alaska Department of Fish and Game (ADF&G)
  - Department of Natural Resources (DNR)
- Federal Agencies
  - Coordinate with, if federal permits required
- Public
  - Public Input Process

# ACMP Consistency Review Process Timelines



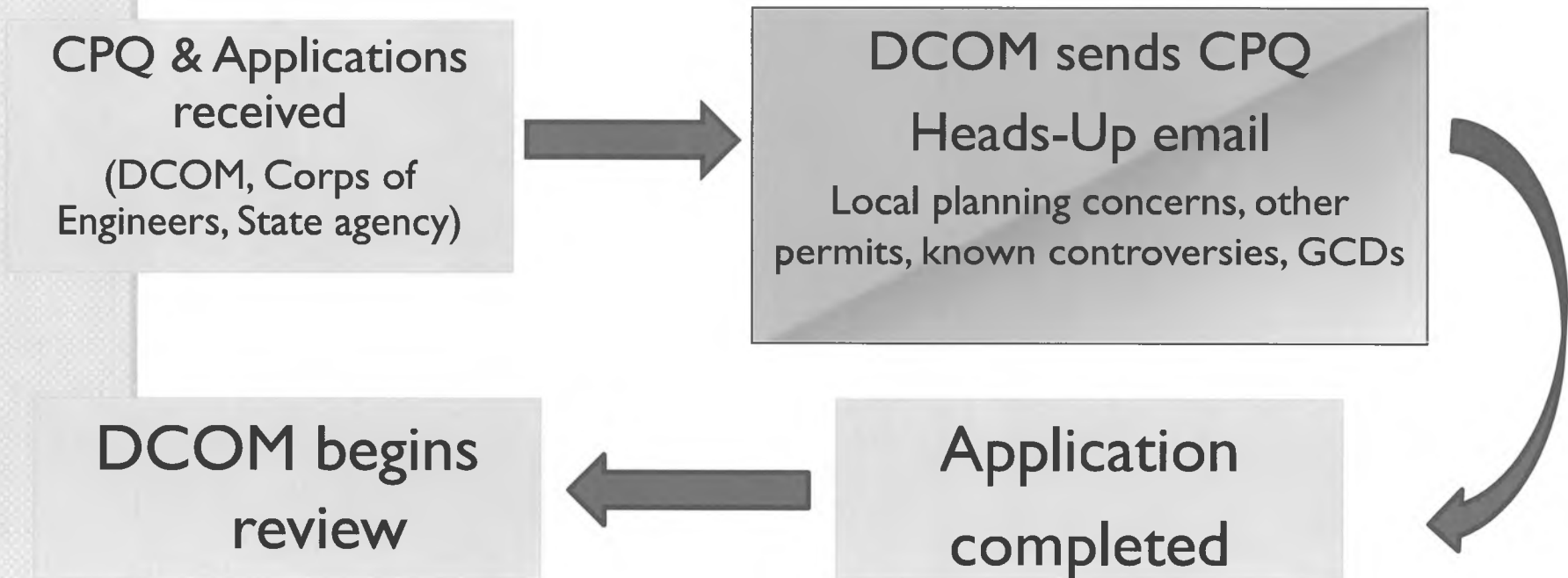
Determine  
**Applicability**

**Pre-Review  
Assistance**

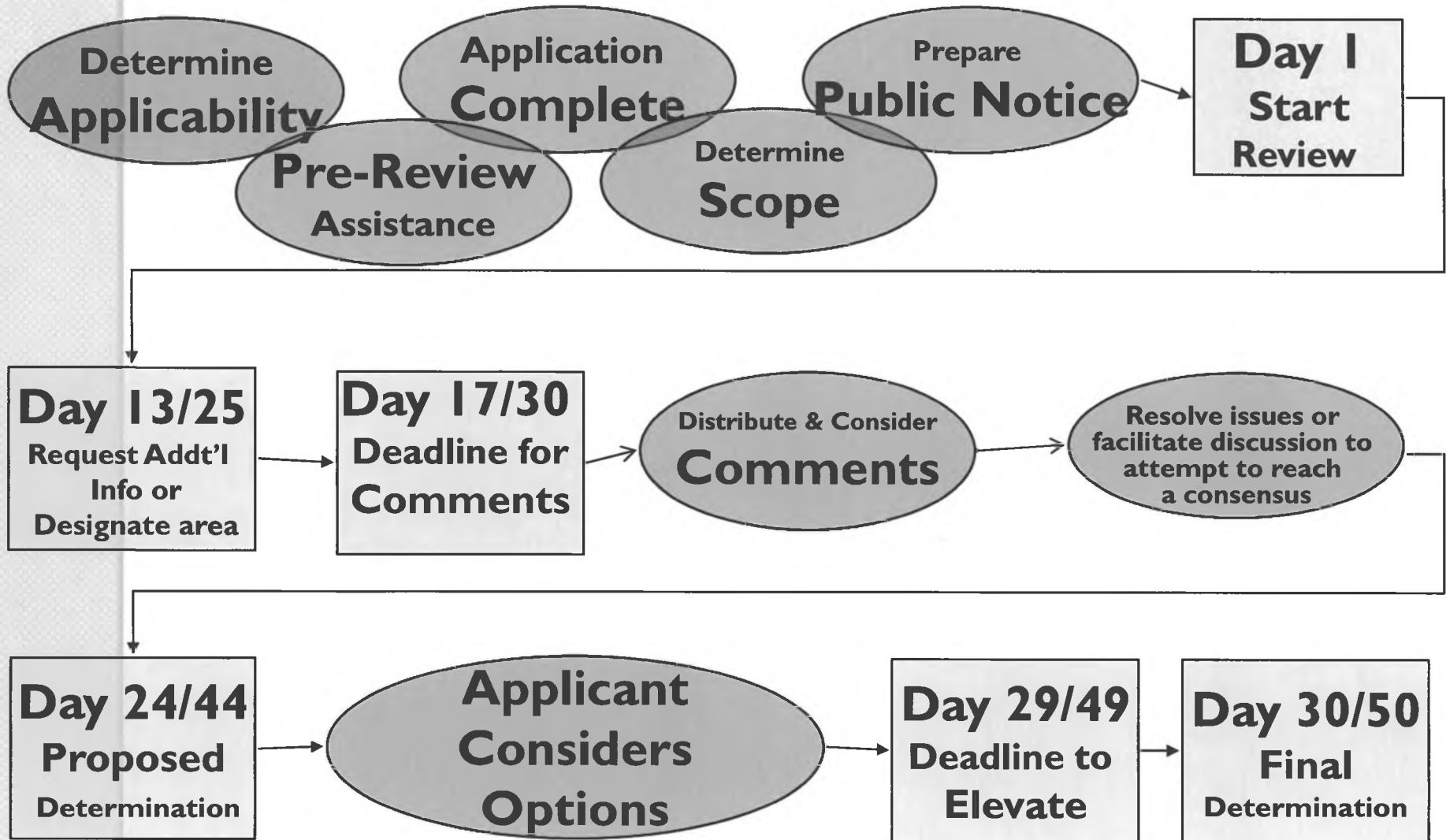
# Coastal Project Questionnaire (CPQ)

## What its purpose?

- Determines State and federal permitting requirements as well as which State agency will coordinate the consistency review.



# ACMP Consistency Review Process Timelines





# ABC List and The Role It Plays

- **A List** – Permits for low impact projects
- **B I** – Activities that are “generally consistent” when alternative measures in force
- **B II** – List of Federal General and Nationwide Permits
- **C List** – State Permits subject to consistency review & length of review required for that permit



# How to use the ABC List

- No review is necessary if all activities are listed on the A or B List.
- Parts of a project may be excluded if resource agencies and affected district agree that the A or B List activity has a *de minimis* impact.
- Aspects of a project shall be excluded if authorized by a general permit or nationwide permit.

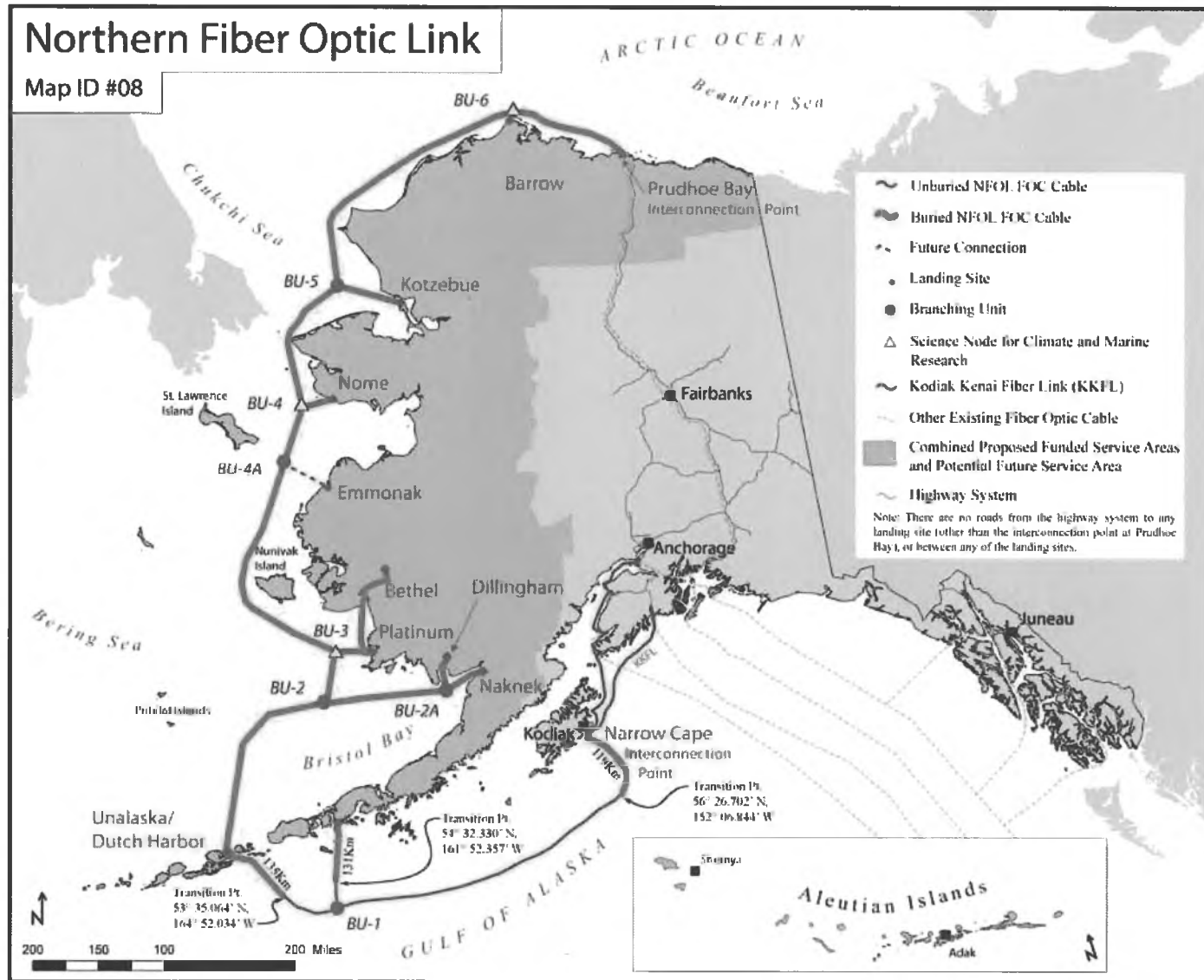


# The ACMP Is Unique and Valuable

- Brings all affected participants together and each has a seat at the table
- Federal consistency gives Alaska strong influence on:
  - Federal agency activities, and
  - Federally permitted activities including activities on the OCS.

# Northern Fiber Optic Link

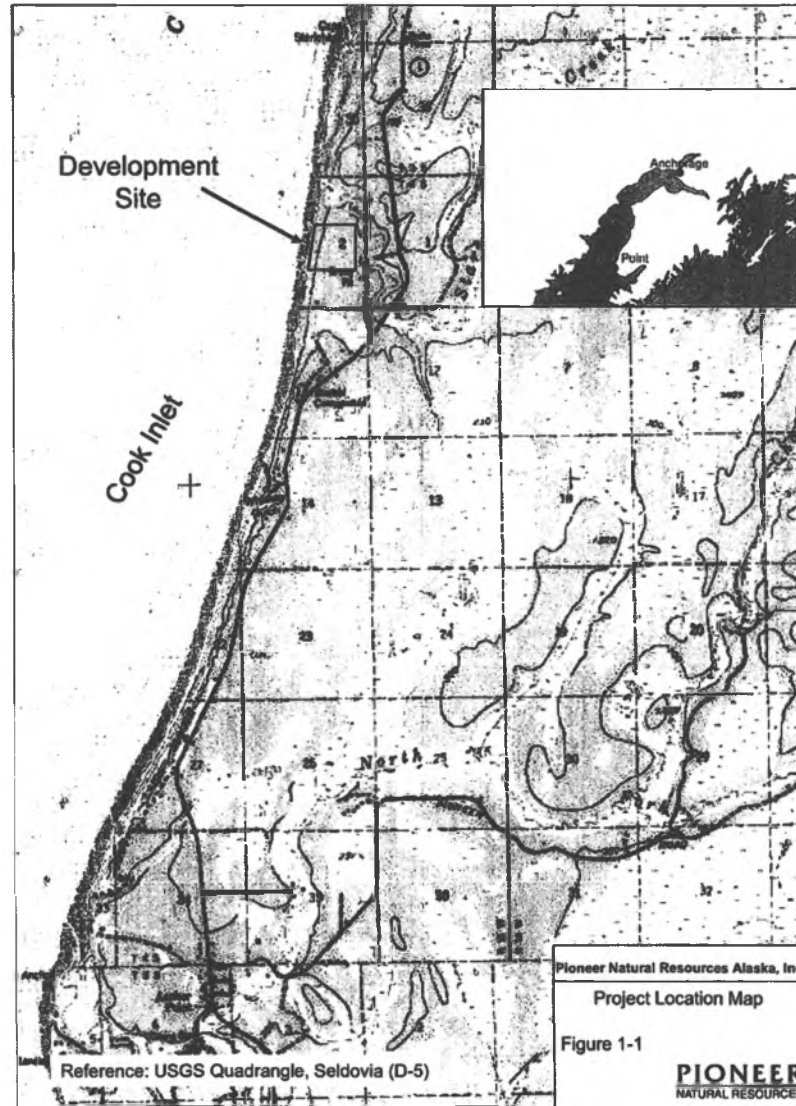
## Cable Burial Overview Map



# Sitka Runway Safety Area Project



# Cosmopolitan Oil Development Project



# Kenai Watershed Project

- Good Culvert



- Bad Culvert





**THANK YOU**

**QUESTIONS?**

**[www.alaskacoast.state.ak.us](http://www.alaskacoast.state.ak.us)**

## ACMP Work-draft Sectional

**Section 1:** Extends ACMP sunset date to 2017.

**Section 2:** Establishes the membership and terms of the Alaska Coastal Policy and Appeals Board. Staggered three-year terms for public members. One year terms for Administration members. Establishes the duties of the Alaska Coastal Policy and Appeals Board.

**Section 3:** Establishes that the Department of Natural Resources shall render consistency reviews except for the occasions when disagreements over consistency determinations that are elevated to the Coastal Policy and Appeals Board.

**Section 4:** Adds consultation and cooperation with the Alaska Coastal Policy and Appeals Board to the powers of the Department of Natural Resources.

**Section 5:** Establishes that the Department of Natural Resources shall provide data and information to a person serving as representative of a Coastal District, which could include a consultant.

**Section 6:** Establishes that if the Department provides funding to a Coastal District they shall allow the Coastal District to use the funds to employ or retain consultants.

**Section 7:** Adds definition of “board” for purposes of the chapter, as the Alaska Coastal Policy and Appeals Board.

**Section 8:** Subsection (a) removes the requirement for district enforceable policies to meet statewide standards. The plan must meet district plan criteria. 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 enforceable policies to be clear and concise, prescriptive or performance-based, necessary given local conditions, and supported by evidence including scientific or local knowledge if more specific than state or federal statutes or regulations.

**Section 9:** Deletes reference to DEC carve-out. Change of term to Special Management Areas from Areas of the Coast the Merit Special Attention.

**Section 10:** Establishes that DNR shall submit the Coastal District plan or disputed portion of a Coastal District plan to the Coastal Policy and Appeals Board if issues have not been resolved during mediation.

**Section 11:** Establishes that the Coastal Policy and Appeals board shall render a decision on the dispute within 45 days after submission.

**Section 12:** Establishes new standard for DNR review of Coastal District plans. Repeals the “Adequately Addressed” standard. Establishes that DNR shall approve a Coastal District Plan if the plan’s enforceable policies do not duplicate, restate, or incorporate by reference state or federal statutes or regulations; are not preempted by federal or state law; and do not arbitrarily or unreasonably restrict a use of state concern. Clarifies how an enforceable policy is preempted.

**Section 13:** Clarifies that for consistency reviews and determinations DNR must permit a Coastal District to designate a person to represent the District, and provide the representative with material pertinent to the consistency review.

**Section 14:** Changes the term “subsequent review” to the commonly used term “elevation” in reference to disagreements between the Coastal District and DNR. Clarifies that the Alaska Coastal Policy and Appeals Board makes the final decision on a project elevation.

**Section 15:** Deletion of the “DEC Carve-out”. States that the necessity of a completed application for a “prevention of significant deterioration” DEC Air Quality Permit is not necessary for a consistency review.

**Section 16:** Deletes reference to a DEC Carve-out.

**Section 17:** Exempts projects requiring an Environmental Impact Statement from 90-day consistency review time limit. Establishes that the 90-day limit for a review is suspended upon a request for additional information or when a municipality is adjudicating an authorization under their Title 29 zoning and land use authorizes.

**Section 18:** Establishes that the Alaska Coastal Policy and Appeals Board will review elevations of proposed consistency determinations.

**Section 19:** Gives the superior court the authority to enforce Coastal Policy and Appeals Board orders.

**Section 20:** Clarifies that a coastal resources service area (CSRA) may accept new matters submitted by a city or village into its coastal management plan.

**Section 21:** Clean-up of statutes. The eliminated provision no longer applies because no new CRSAs may be established.

**Section 22:** Defines that “Project” under ACMP statutes “means all activities described in AS 46.40.096(l) and all activities on the list of permits, certifications, leases, approvals, and authorizations that trigger a consistency review developed pursuant to AS 46.40.096(m), including federal agency activities as defined in 15 C.F.R. 930.31.”

**Section 23:** References definition of Alaska Coastal Policy and Appeals Board.

**Section 24:** Repeals DEC-Carveout.

**Section 25:** Sunset provisions.

**Section 26:** Transition provisions on creation of Coastal Policy and Appeal Board membership.

**Section 27:** Retroactive sunset and revival provisions.

**Section 28:** Conditional Sunset provisions.

**Section 29:** Extension of sunset date to 2017.

**Section 30:** Conditional sunset language.

**Section 31:** Conditional sunset language.



# **Alaska Coastal Management Program**

## **Consistency Review Process & Effects of 2003-2004 Changes**

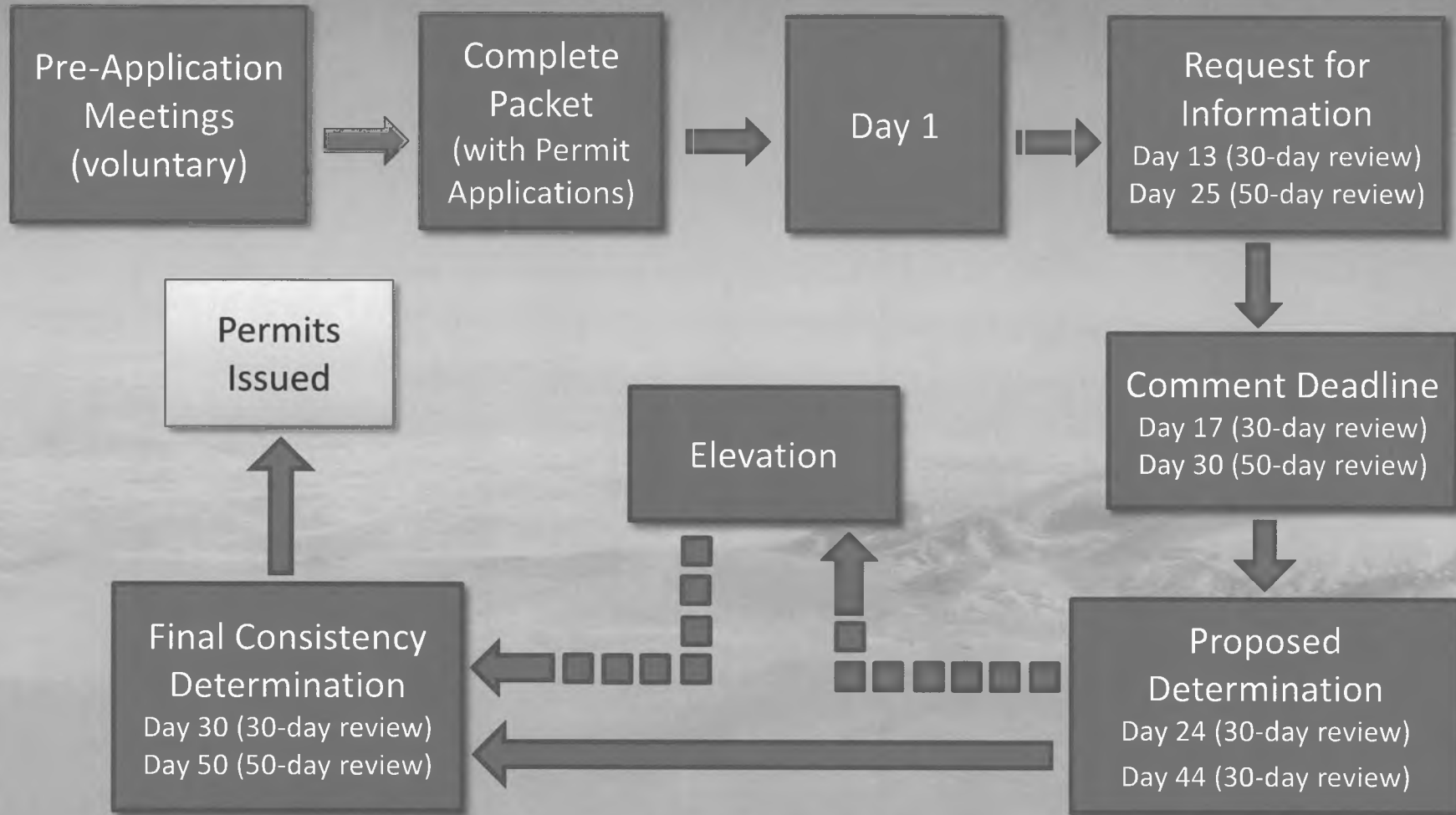
**House Resources Committee**

**March 16, 2011**

**Glenn Gray**

# ACMP Consistency Review Process\*

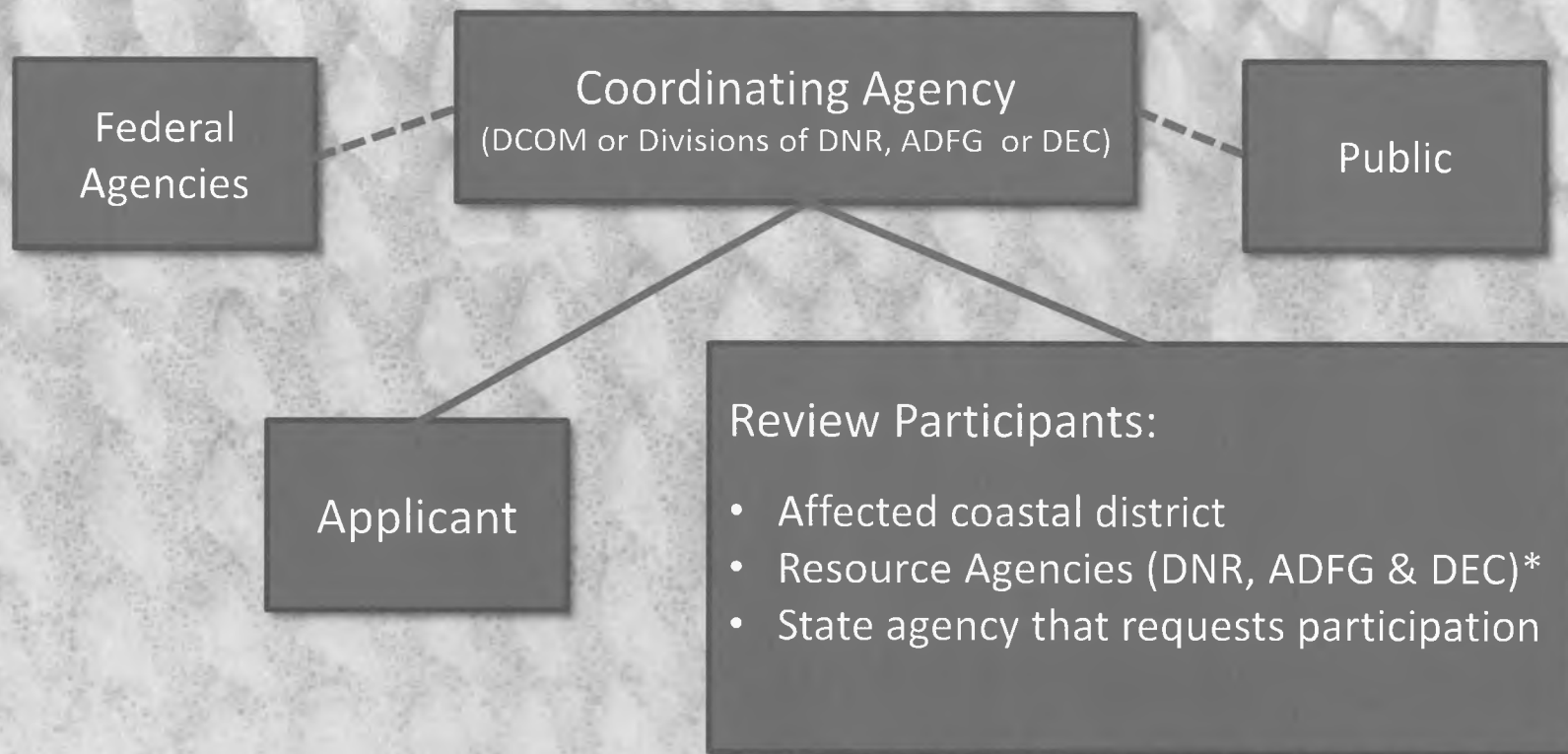
“One Size Fits All” – Same process for all reviews



\* Projects reviewed for “consistency” with statewide standards & district enforceable policies

# ACMP Consistency Review Process

## Who is at the Table



**\*Note:** DEC seldom participates in consistency reviews

# ACMP Consistency Review Process

## Types of Reviews & Timelines

- **Only State Authorizations** (i.e., permits)
  - Timeline: Maximum 90-days including extensions (30- or 50-day reviews)
- **Federal Authorizations** (may include State Authorizations)
  - Federal timeline: No more than 6 months\*
- **Federal Activities** (e.g., oil and gas lease sales, Corps dredging, General Permits)
  - Federal consistency determination: State reviews federal determination
  - Federal timeline: Up to 75 days - additional extensions if approved
- **Outer Continental Shelf Projects**
  - Plans: Exploration or Development Plans are reviewed (not permit applications)
  - Federal timeline: No more than 6 months\*

\***Note:** The Alaska statutory 90-day timeline for reviews overrides the federal timelines

# ACMP Consistency Review Process

## Enforceable Policies

- Projects are reviewed for consistency with:
  - Statewide standards (11 AAC 112)
  - Coastal district enforceable policies
- DNR’s regulations require that policies “flow from:”

| <b>Statewide ACMP Standards<br/>(11 AAC 112)</b> | <b>Designated Areas<br/>(11 AAC 114.250)</b>  |
|--|---|
| Natural Hazards                                  | Natural Hazard Areas                          |
| Coastal Access                                   | Recreation Areas                              |
| Coastal Development                              | Tourism Areas                                 |
| Energy Facilities                                | Major Energy Facility Areas                   |
| Transportation Routes & Facilities               | Commercial Fishing & Seafood Processing Areas |
| Subsistence                                      | Subsistence                                   |
| Sand & Gravel Extraction                         | Important Habitat                             |
| Utility Routes & Facilities                      | History & Prehistory                          |

# ACMP: Enforceable Policies

- **Statutory Requirements:**
  - Can't restate or duplicate federal or state law
  - Can't unreasonably restrict a use of state concern
  - Must be clear and concise
  - Must be prescriptive
  - **Local Concern:** Must address a coastal resource or use that is:
    - Sensitive to development
    - Of unique concern to the coastal district
    - Not adequately addressed by state or federal law.

## ACMP: DNR's More Stringent Requirements

- **Not Adequately Addressed:** DNR currently says policies cannot address a matter under an agency's authority – even if the agency has no regulations that address the matter
  - This requirement conflicts with:
    - 2005 ACMP Program Description approved by NOAA\*
    - 2004 Attorney General memorandum\*
- **Flow From:** Policies may only “flow from” certain statewide standards & designated areas

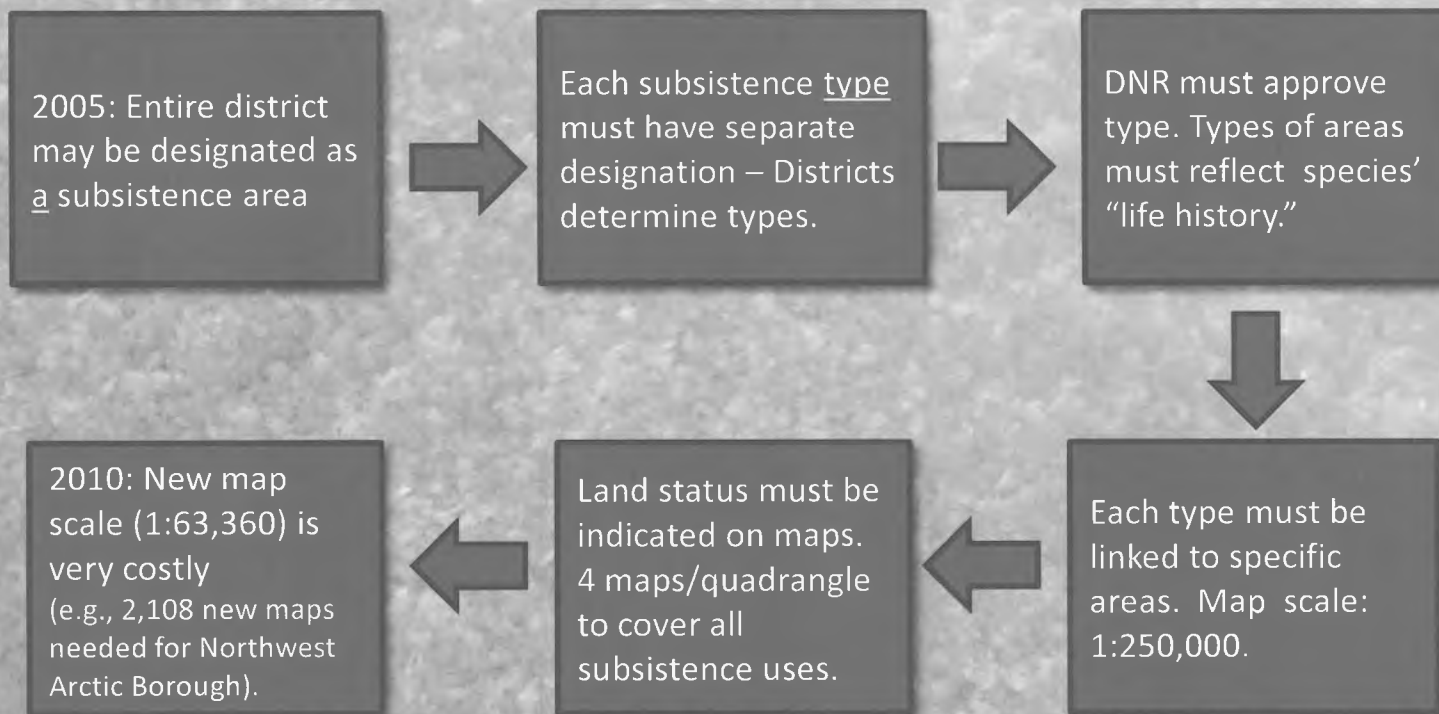
**Note:** These documents clarify that districts may establish policies for matters not addressed in a regulation.

# ACMP: DNR's More Stringent Requirements

- **Designated Areas:**
  - **Important Habitat Areas**
    - Only small areas in 3 districts approved, all in Southeast Alaska
    - Only 16 policies approved (14 in Juneau)
  - **Subsistence Areas**
    - Areas denied for 52% of total coastal district acreage
    - Only 3 subsistence policies approved statewide
  - **Reduced States' Rights**
    - Designated areas eliminate ability to review impacts to coastal uses and resources while they are on federal land or in the OCS
  - **Designated Area Requirement:**
    - Recommended for elimination in:
      - 2008 federal ACMP evaluation
      - 2011 Legislative Audit
      - 2008 DNR draft regulations

# ACMP: Designated Areas

## Subsistence Areas: Example of changing Rules



# ACMP: Statewide Standards

- **Significantly weakened** (in regulation)
  - Reduced scope of what is covered
    - e.g., for offshore areas – consideration of impacts limited to competing uses (not habitats themselves)
    - e.g., mining standards changed to sand & gravel
  - Reduced geographic coverage
    - Some standards reduced to a small part of coastal zone
  - 2008 federal evaluation of ACMP
    - Recommended DNR look at effectiveness of new standards

# ACMP: Statewide Standards

**Example:** Coverage of habitats standard



**Before 2004**



**Current Coverage**

# ACMP: DEC Carve-Out

- DEC is not at the table
- No air/water quality issues covered during ACMP review
  - No air or water quality policies allowed (even though the Administration told the Legislature in 2003 that districts would be allowed to fill gaps).
- Scope of reviews are not clear
- No provisions for public comment on DEC's OCS findings
- Timelines not coordinated:
  - ACMP review (90-day maximum)
  - DEC permit review (can start after ACMP process is done)
- Carve-out recommended for elimination in:
  - 2011 Audit, 2008 federal evaluation & 2008 DNR draft statutes

# ACMP: Summary of Effects

- **Meaningful Policies:** Inability to establish meaningful district enforceable policies
- **DEC Carve-Out:** DEC is not at the table, districts cannot fill gaps in DEC laws, and no provisions for public comment for OCS reviews
- **Centralized Decision-Making:** No checks and balances for plan approval, regulations & elevations
- **Consensus:** Lack of opportunities for consensus building

# ACMP: Possible Statutory Changes

- **Enforceable policies**

- Clarify criteria
- Allow performance-based policies
- Retain provision for uses of state concern

- **Checks and Balances: Options**

- Establish Coastal Policy Board
- Move agency
- Elevations: Add other resource agency commissioners

- **DEC Carveout**

- Allow districts to fill gaps in air and water quality laws
  - Allow ACMP review to begin without complete PSD Air Permit Application
- Establish a public comment period and elevation provision for OCS reviews

- **Timeline**

- Allow exception to 90-day timeline for large projects

# ACMP: Possible Regulatory Changes

- **Eliminate designated areas**
  - This will allow state to exercise rights under the federal Coastal Zone Management Act (i.e. review of impacts to coastal uses and resources while on federal land & OCS)
- **Enforceable policies**
  - Remove more stringent requirements
  - Allow districts to fill gaps
- **Statewide standards**
  - Allow standards to apply throughout coastal zone
    - Redefine coastal waters and wetlands
  - Amend habitats standard
    - Reinstate upland habitats
    - Allow consideration of impacts to all coastal habitats
  - Reinstate minerals standard

**CITY OF CORDOVA, ALASKA  
RESOLUTION 03-11-14**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA,  
SUPPORTING LEGISLATION THAT WILL PROVIDE FOR LOCAL GOVERNMENT  
PARTICIPATION IN ACMP PLANNING AND AN EXTENSION OF THE ACMP  
BEYOND JULY 2011.**

**WHEREAS**, the City of Cordova supports the preservation of a local government's ability to be responsive to unique circumstances, thereby following the mandate established in the Alaska Constitution "to provide for maximum local self government"; and

**WHEREAS**, since its inception, the Alaska Coastal Management Program (ACMP) has provided Alaska's coastal municipalities with a powerful tool to promote responsible development while protecting coastal resources; and

**WHEREAS**, a cornerstone of the ACMP has been the ability of municipalities to organize as coastal districts to develop enforceable policies that address local circumstances and concerns; and

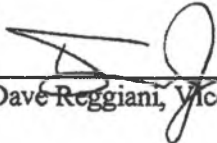
**WHEREAS**, the ACMP will sunset on July 1, 2011, unless the Alaska State Legislature extends the program.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Cordova, Alaska, hereby supports legislation that will provide for:

1. local government participation in ACMP planning
2. an extension of the ACMP beyond July 2011.

**PASSED AND APPROVED THIS 10<sup>th</sup> DAY OF MARCH, 2011**



  
\_\_\_\_\_  
Dave Reggiani, Vice Mayor

ATTEST:

  
\_\_\_\_\_  
Susan Bourgeois, City Clerk

## Linda Hay

---

**From:** Linda Hay  
**Sent:** Wednesday, March 23, 2011 11:52 AM  
**To:** 'Tobish, Thede G.'  
**Subject:** RE: House Resources Committee HB 106 work draft

Will do sir. Thank you again for taking the time to comment.

*Linda Hay  
House Resources Committee Aide  
Representative Eric Feige  
House Resources Co-Chair  
State Capitol Room 126  
907-465-3715  
907-321-1249*

---

**From:** Tobish, Thede G. [mailto:TobishTG@ci.anchorage.ak.us]  
**Sent:** Wednesday, March 23, 2011 11:52 AM  
**To:** Linda Hay  
**Subject:** RE: House Resources Committee HB 106 work draft

OK thanks for the clarification. If you get the chance, please clarify, if needed, for me to the Committee. Thanks.

---

Thede Tobish, Senior Planner  
Municipality of Anchorage-Planning Dept.  
P.O. Box 196650  
Anchorage, AK 99519-6650  
907.343.7918  
907.343.7927 FAX  
[tobishta@muni.org](mailto:tobishta@muni.org)  
Web: [www.muni.org/Planning](http://www.muni.org/Planning)

---

**From:** Linda Hay [mailto:Linda\_Hay@legis.state.ak.us]  
**Sent:** Wednesday, March 23, 2011 11:50 AM  
**To:** Tobish, Thede G.; Louie Flora  
**Subject:** RE: House Resources Committee HB 106 work draft

Mr. Thede - Thank you for your comments and I will share them with Rep. Feige. I would like to clarify that the "committee work draft" you refer to was not put forth by the committee. It is a draft CS put forth by Rep. Seaton, it has been objected to by Rep. Wilson for purposes of discussion and to date, there has been no follow up discussion or adoption by the committee. The bill before the committee at this time is still the original version as put forth by the governor. I will be happy to add your comments to the public record for this bill. If you have any further questions, please feel free to contact me.

lh

*Linda Hay*  
*House Resources Committee Aide*  
*Representative Eric Feige*  
*House Resources Co-Chair*  
*State Capitol Room 126*  
*907-465-3715*  
*907-321-1249*

---

**From:** Tobish, Thede G. [mailto:TobishTG@ci.anchorage.ak.us]  
**Sent:** Wednesday, March 23, 2011 11:44 AM  
**To:** Louie Flora; Linda Hay  
**Subject:** House Resources Committee HB 106 work draft

March 23, 2011

Representative Seaton and Representative Feige.

I am unable to testify at this evening's hearing on **HB 106** but I wanted to convey some thoughts on the work-up and your efforts. First, I support your efforts to obtain the details and understand the essential issues concerning the current shortcomings in the State's CZM program. As you have seen, this is not a simple issue with a simple fix. But, your Committee's work-up provides a very reasonable and achievable redress to the problems in the system. The Anchorage District supports the proposed modifications to the statutes outlined in the Committee work-up and I urge you to pass the work-up and pass the bill out of the Resources Committee.

The past statute changes and ADNR's subsequent interpretations created a void where districts ended up with restrictions and limited ability to provide meaningful local controls over management of coastal resources. The statute changes and ADNR's interpretation of the regulations compromised the district role in coastal management and provided a state of regulatory ambiguity that needs to be addressed. Coastal districts are and should be recognized as expert in all coastal matters. Districts must have the capability to craft meaningful enforceable policies to address impacts anywhere within a district coastal boundary. A district must have the capability to define its coastal boundary and how policies are applied, i.e. the State should not limit the definition of coastal to some arbitrary salinity level or distance from the shoreline. Districts understand best how and when State or federal laws and regulations fall short of local concerns (do not "adequately address") for coastal resources. Your Committee work-up provides the catalyst that promotes an optimal approach to coastal management in the spirit of the program's original intent. It will better meet the needs of the local district.

The new Alaska Coastal Policy and Appeals Board will provide an essential tool to the State's program. As originally intended, this board will check and balance the various processes in the State's program. The work-up changes that address enforceable policies are well conceived and succinct and will serve to return local control, local expertise, and due deference to each district. This was and should remain the backbone of the State's coordinated approach to managing coastal resources.

I have been working with the Alaska Coastal Management Program both in the private sector and with the Municipality of Anchorage's local program since the early 1980's. I cannot recall an instance where the Anchorage District vetoed a coastal project. In circumstances where a project was losing support or could not obtain a State or federal permit, the activity could not be authorized because it did not meet a specific federal or State law or regulation, or it was simply poorly engineered or ill-conceived. The State's coastal management system and our local plan provided an effective venue for compromise and assistance where applicants nearly always achieved an acceptable project that also accounted for important coastal resources. I think the Committee's mark-up adds the necessary elements back into the statutes that will recreate this approach for districts. This is the essence of coastal management in Alaska.

Thank you for your support and for the opportunity to comment.

Thede Tobish

---

Thede Tobish, Senior Planner  
Municipality of Anchorage-Planning Dept.  
P.O. Box 196650



217 Second Street, Suite 200 • Juneau, Alaska 99801  
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

**ALASKA MUNICIPAL LEAGUE  
RESOLUTION #2011-22**

**A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE REGARDING SUPPORT  
FOR AND AMENDMENTS TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

**WHEREAS**, one of the goals of the Alaska Municipal League is to preserve local government options to ensure municipal government can be highly responsive to unique circumstances and to meet the mandate of the Alaska Constitution "to provide for maximum local self government;" and

**WHEREAS**, since its inception in 1977, the Alaska Coastal Management Program (ACMP) has provided Alaska's coastal municipalities a powerful tool to promote responsible development while protecting coastal resources and uses; and

**WHEREAS**, a cornerstone of the ACMP has been the ability for municipalities organized as coastal districts to develop enforceable policies that address local circumstances and concerns; and

**WHEREAS**, changes to the ACMP statutes in 2003 and changes to the ACMP regulations in 2005, reduced the effectiveness of the ACMP, including a diminished role for coastal districts, including the inability to establish meaningful local enforceable policies, the removal of air and water quality from coordinated ACMP project reviews, and elimination of the Coastal Policy Council that facilitated public engagement in administrative and program decisions; and

**WHEREAS**, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program.

**NOW, THEREFORE BE IT RESOLVED** that the Alaska Municipal League supports legislation that will extend the ACMP, establish a coastal policy board, bring back air and water quality issues into the ACMP consistency reviews, eliminate requirements for designation of subsistence use areas, and allow meaningful enforceable policies.

**PASSED AND APPROVED** by the Alaska Municipal League on this 19<sup>th</sup> day of November, 2010.

Signed: Hal Smalley  
Hal Smalley, President, Alaska Municipal League

Attest: Kathie Wasserman  
Kathie Wasserman, Executive Director, Alaska Municipal League

Introduced by: Mayor  
Date: 02/15/11  
Action: Adopted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2011-005**

**A RESOLUTION SUPPORTING AN EXTENSION OF THE  
ALASKA COASTAL MANAGEMENT PROGRAM**

**WHEREAS,** the Alaska Coastal Management Program ("ACMP") has effectively promoted a balance between economic development and protection of coastal resources since 1979; and

**WHEREAS,** the Kenai Peninsula Borough has been an active participant in the ACMP since 1990; and

**WHEREAS,** the ACMP provides boroughs and municipalities with a unique tool through which 28 coastal governments have an opportunity to bring local knowledge to development projects planned in their localities that require state and federal permits; and

**WHEREAS,** the ACMP will sunset on July 1, 2011, in accordance with law adopted in 2003 by the Alaska State Legislature unless the legislature extends the program; and

**WHEREAS,** the Parnell administration supports the continuation of the ACMP in Senate Bill 45 and House Bill 106 for an additional six years;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That the Kenai Peninsula Borough Assembly supports Senate Bill 45 and House Bill 106 extending the Alaska Coastal Management Program.

**SECTION 2.** That copies of this resolution be forwarded to Governor Sean Parnell and all members of the Alaska State Legislature.

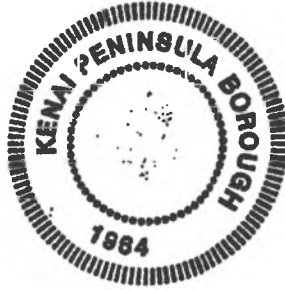
**SECTION 3.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS  
15TH DAY OF FEBRUARY, 2011.**

  
\_\_\_\_\_  
Gary Knopp, Assembly President

**ATTEST:**

  
\_\_\_\_\_  
Jonni Blankenship, Borough Clerk



**Yes:** Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp  
**No:** None  
**Absent:** None



**Yakutat Salmon Board**  
City & Borough of Yakutat  
PO Box 160 Yakutat, AK 99689

Phone: (907) 784-3329  
Fax (907) 784 3481  
[yakutat\\_salmon\\_board@yahoo.com](mailto:yakutat_salmon_board@yahoo.com)

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May 22, 2011

Re: Testimony on HB 106

My name is Bill Lucey I am the coastal district coordinator for the City and Borough of Yakutat

For the record the City and borough would like to support the reinstatement of a streamlined Coastal Policy Council, bring back coordinated DEC reviews and expand local enforceable policies without area restrictions.

I would also like to point out for the record that we are not asking for "veto" power over projects. What we are asking for is strong local input regarding coastal development. There is difference between simply providing comments then sitting at the negotiating table. Regardless of the claim that we are given due deference and allowed to call "balls and strikes", my experience is that we are generally ignored if an agency person disagrees with us. Furthermore we have a handful of very narrow policies requiring us to comment on state standards that have also been whittled down after the program change in 2003.

All municipalities want economic growth. We also want a strong position from which to champion the kind of economic growth our citizens prefer. Sometimes this can cause conflicts between user groups which is exactly why the ACMP exists. It provides a platform to negotiate these conflicts outside the courtroom. That is why all the mayors at the AML convention, excepting one, voted to restore the ACMP to its former structure. That seems to be a clear mandate for this committee and the legislature to act now on amending the ACMP.

If development is pursued irresponsibly we end up using tax payer dollars to clean up after the fact. The majority of my job involves fish habitat restoration; fixing blocked culverts, decommissioning poorly constructed logging and gas exploration roads, wetland restoration and endless tree thinning. Again, all on the backs of taxpayers. These are avoidable expenses. We have the experience locally to know what impacts are likely to occur from proposed projects because we have spent years hunting and



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City & Borough of Yakutat  
PO Box 160 Yakutat, AK 99689

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fishing in our borough and cleaning up after poor management decisions overseen by various agencies and industry.

---

Federal and state agencies don't always have the local knowledge to make good calls. Enforcement is sporadic and there is a constant turnover of personnel producing a wide range of expertise. That is why we want to form customized local enforceable policies specific to our area to *compliment*, not replace, state and federal management.

There has been a lot of talk about predictability. As far as that is concerned I don't recommend getting into commercial fishing. However, a recent report from Northern Economics of Anchorage put the industry at \$5.8 billion dollars annually, producing the largest number of private sector jobs in the state. The vast majority of our past enforceable policies dealt with fish habitat as commercial fishing relies on good habitat and clean water. When you throw the economics of sport fishing tourism into the mix Yakutat gets another \$2-3 million dollars of annual benefit. Our town has an extremely high per capita of commercial permit holders. Though abundance varies the fish come back every year. Long after the gas and minerals are extracted people will still be able to make a living fishing and it is our responsibility to maintain that opportunity for our citizens.

In closing, there are people working hard at DCOM attempting to function within the existing ACMP limitations and I would like to recognize them for their efforts. I frequently work with state, corporate, tribal and federal managers on a wide variety of research and development projects. We are exporting gravel, beginning second growth logging and discussing cruise ship tourism. We *can* work together effectively. We are not going to bring a halt to resource development we wish to move it forward responsibly, protecting our established industries and with maximum benefit for communities, the land, the water and the state as a whole.

Thank You,

Bill Lucey  
Biologist/ Coastal Planner  
City & Borough of Yakutat

# ALASKA COASTAL MANAGEMENT PROGRAM (ACMP)

## COASTAL DISTRICT PLANNING AND ENFORCEABLE POLICIES



# FEDERAL STRUCTURE FOR COASTAL PROGRAMS AND LOCAL PARTICIPATION

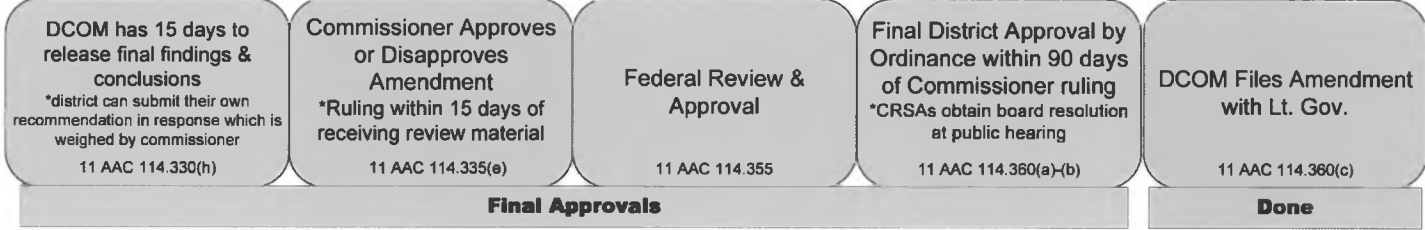
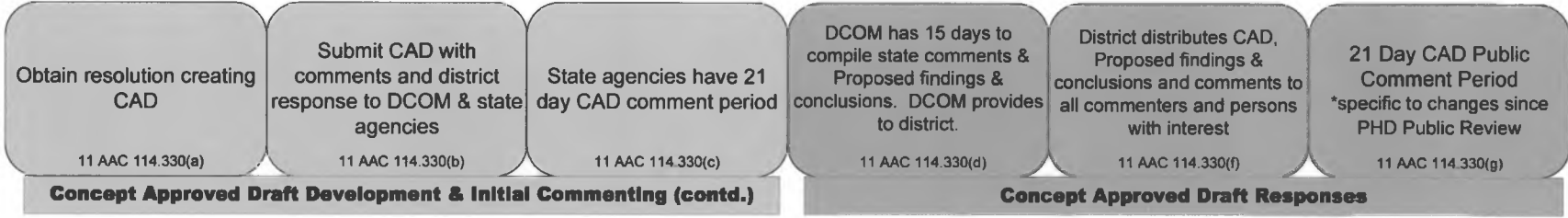
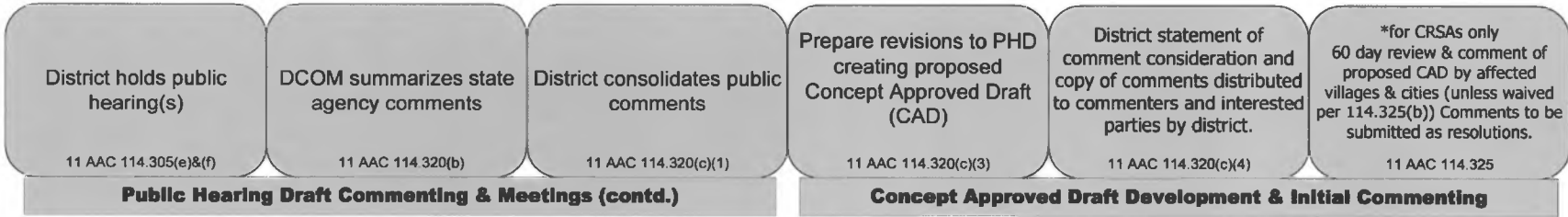
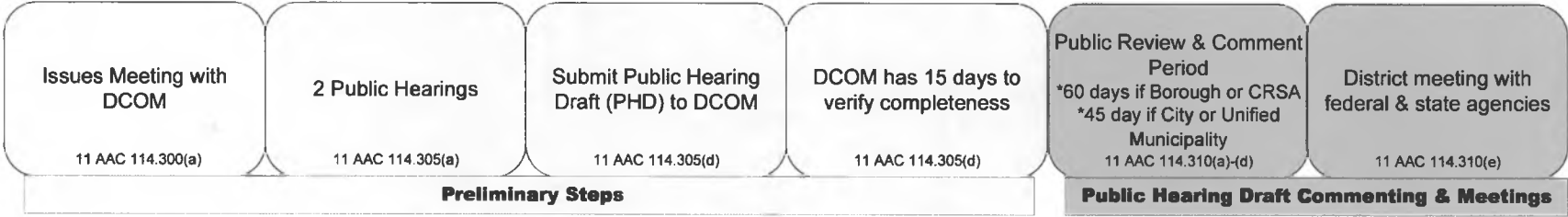
- The CZMA allows states to develop their own coastal programs.
- The ACMP is a state program that manages coastal uses and resources with local input.
- Coastal district participation is important and voluntary.
- Rules for participation set out in statutes and regulations.

# COASTAL DISTRICT PLAN ELEMENTS

## 11 AAC 114.200

- Issues, goals, and objectives
- Organization
- Coastal zone boundaries
- Resource inventory
- Resource analysis
- Subject uses, activities, and designations
- Proper and improper uses and activities
- District enforceable policies
- Implementation
- Public participation

# 11 AAC 114 300-360: Significant Amendment Process



# COASTAL DISTRICT PLAN APPROVAL

- Enforceable components of the plan amendment include:
  - Enforceable policies
  - Designated areas
  - Maps
- The ACMP District Enforceable Policy Decision Tree was created to be used by both the coastal districts and DCOM planning staff in evaluating proposed district enforceable policies.

## HB 191 INTENTIONS

- HB 191 was passed by the Legislature in May 2003.
- Intent of bill was to:
  - Reduce delays and avoid regulatory confusion, costly litigation, and uncertainty to allow new investment in Alaska
  - Update and reform the ACMP statewide standards to be clear and concise
  - Update and reform the coastal district plans so that district enforceable policies are clear, concise, more uniform, related to local concerns, and non-duplicative of state and federal laws

# STATUTORY REQUIREMENTS

AS 46.40.030(B) AND AS 46.40.070(A)(2)

- Shall not duplicate, restate, or incorporate by reference statutes or regulations adopted by state or federal agencies
- Are clear and concise as to the activities and persons affected by the policies
- Use precise, prescriptive, and enforceable language
- Do not address a matter regulated or authorized by state or federal law unless the enforceable policy relates specifically to a matter of local concern.

# MATTER OF LOCAL CONCERN

AS 46.40.070(A)(2)(C)

- Demonstrated as sensitive to development
- Not adequately addressed by state or federal law
- Of unique concern to the coastal resource district as demonstrated by local usage or scientific evidence

## OTHER IMPORTANT CRITERIA

- Adequately addressed – AS 46.40.070
- Flow from – AS 46.40.030, AS 46.40.040

## DESIGNATED AREAS

- Certain subject uses require designated areas
- Each subject use for a designated area has its own requirements (11 AAC 114.250)
- Must be included in enforceable section of the coastal management plan
- Must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area (11 AAC 114.270(g))

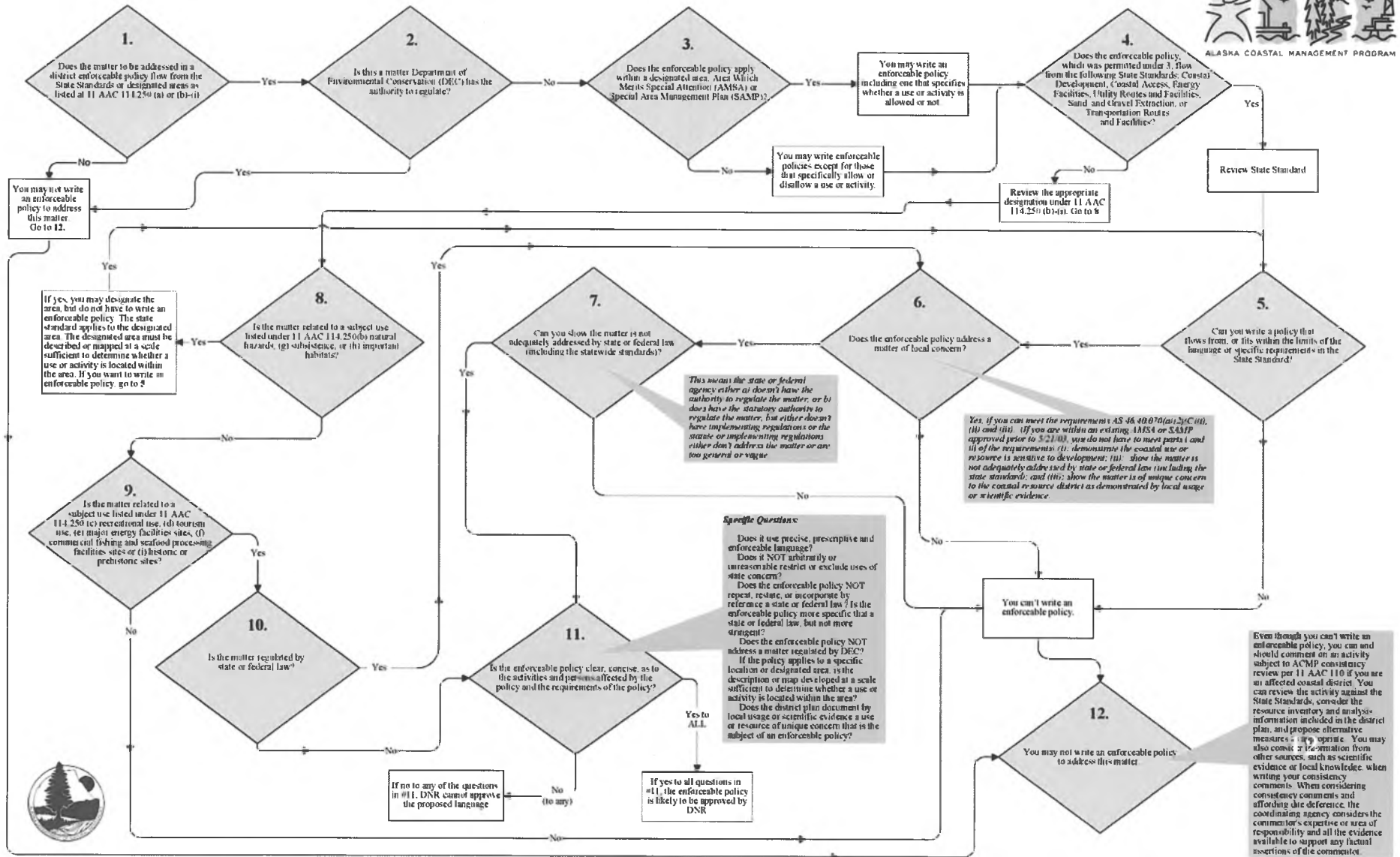
# DESIGNATED AREAS EXAMPLES

Each subject use designated area has own requirements (11 AAC 114.250)

- Subsistence use
  - Consult with appropriate agencies
  - Document subsistence use is an important use of coastal resources
  - Can use “local usage” for documentation
- Important habitat
  - Show direct & significant impact
  - Show by written scientific evidence to be biologically & significantly productive

# ENFORCEABLE POLICY APPROVAL

## ACMP District Enforceable Policy Decision Tree



## EXAMPLES OF ENFORCEABLE POLICIES

- Legislature purposefully limited enforceable policies to:
  - Reduce duplication with existing authorities
  - Focus ACMP on coast and coastal interactions
- Districts would like greater authority and opportunity for enforceable policies, regardless of whether a state or federal agency already manages the issue.
  - Example: Marine Mammals
  - Example: Habitat

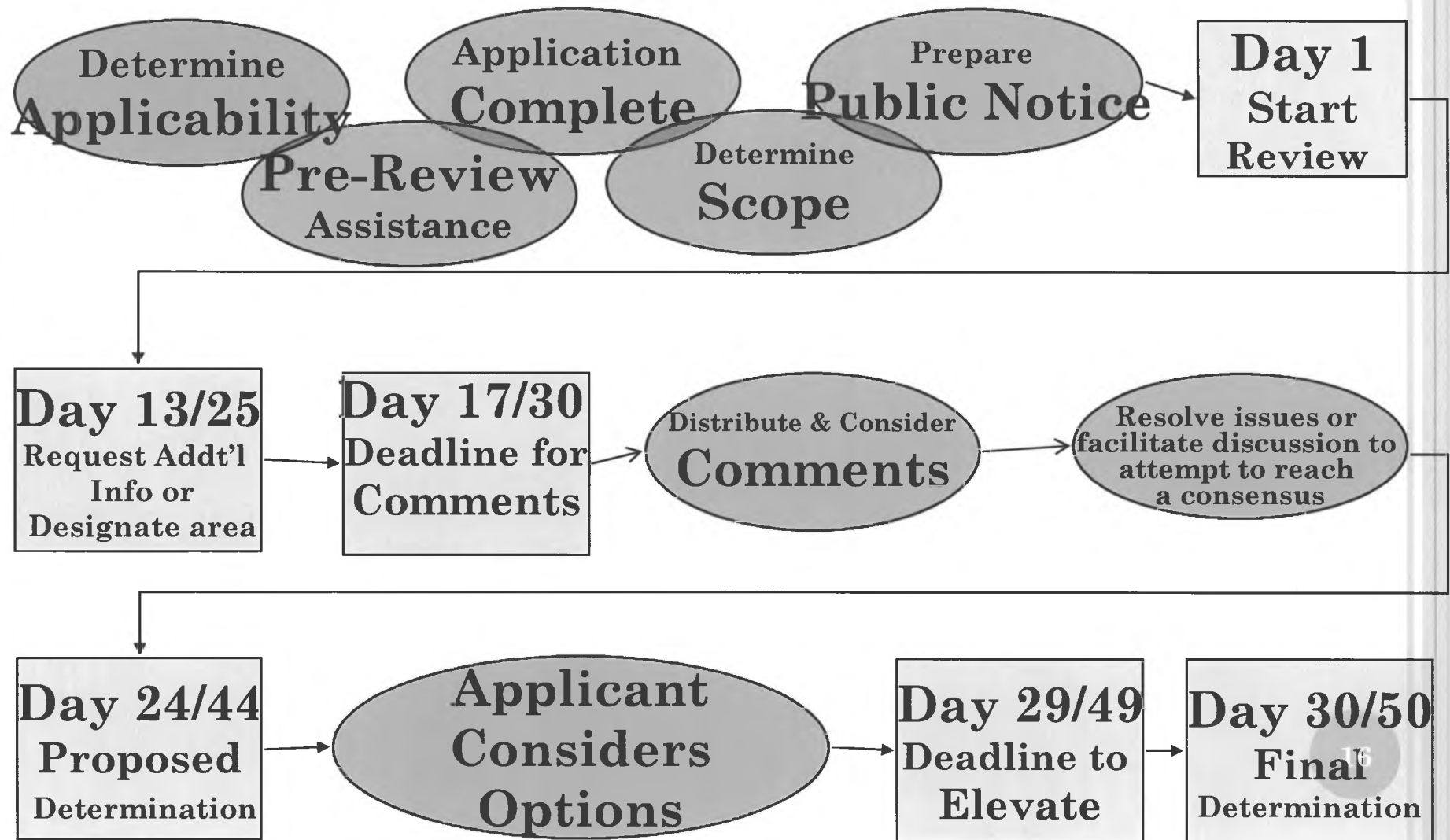
# EXAMPLES OF ENFORCEABLE POLICIES

- Planning
  - CBJ's Wetlands Management Plan
- Consistency reviews
  - Bristol Bay Borough
  - Kenai Peninsula Borough
  - Bristol Bay CRSA

## APPLICATION AND IMPLEMENTATION OF COASTAL DISTRICT ENFORCEABLE POLICIES

- Application of coastal district enforceable policies occur only during a consistency review
- Coastal districts receive implementation funding to do consistency reviews
- Coastal districts are considered to have expertise in the interpretation of their plan
- Coastal districts can comment on a proposed project using both their enforceable policies and the state standards

# ACMP Consistency Review Process Timelines



QUESTIONS?

Thank You

[www.alaskacoast.state.ak.us](http://www.alaskacoast.state.ak.us)

**Testimony on HB 106 – Coastal Management  
North Slope Borough Mayor Edward S. Itta  
House Resources Committee  
Friday, March 25, 2011 – 1 p.m.**

Thank you, Mister Chairman. I appreciate this chance to speak with the committee today. Let me get right to the point. I'm in favor of the work draft of the committee substitute for HB 106, because it makes substantive and logical changes to the existing program, which is really no program at all.

The federal law on coastal management allows a voice for Alaskans in the permitting process when federal lands or waters are considered for development. The State thinks the law is working just fine. But when it comes to the Arctic OCS, the State has been notably **absent** from the discussion of a whole **range** of primarily federal issues that are **important** State concerns—including endangered species rulemaking, development of a National Ocean Policy, and ocean discharge limits.

Instead of being **engaged**, the State simply submits generic written comments saying it supports development, and then it litigates. That **certainly** doesn't address issues of concern to the affected local communities. From the **local** perspective, coastal management as it is **now** practiced in Alaska is a hollow program. It's ineffective because it ignores community input.

Alaskans agree that people who are closest to the action have unique concerns and deserve a voice and a chance to contribute their local expertise, especially when it comes to projects in their own back

yard. Hasn't the State been aggressively making that same point with respect to recent federal actions in Alaska?

Alaskans also care about preserving our unique subsistence cultures. And for communities in the North Slope and Northwest Arctic regions, nothing is more critical. That being said, we also **recognize that** jobs and economic progress are essential to our quality of life and to the preservation of our subsistence culture. We depend on a strong oil and gas industry and state economy as much as anyone else. We are not in any way "anti-development".

Several coastal zone proposals have been placed on the table, and I've asked the Administration to sit with us and go through them point by point. The Borough's position has been that there is **nothing** in these proposals that cannot be modified.

But the State has thus far **declined** to discuss any significant changes in the program. We'll **meet** and they'll hear us out, but they have not **budged on anything**. Their energy goes into explaining how well the program works for the State. This opens the door for industry to argue that local involvement will kill development. If that's the case, then how come we've had so much development on the North Slope and at Red Dog? Until 2003, those developments were permitted through a coastal zone program that was **much stronger** than anything recently proposed.

Many who have commented on this bill say that six more years of deliberation are necessary to identify appropriate changes that would address district concerns. I can't tell you how frustrating it is to hear

that. We and other districts have already spent huge amounts of time and money on that effort over the past eight years. There have been endless workshops, stakeholder meetings, program re-evaluation meetings, a federal review of the program, a legislative audit, and plenty of hearings in Juneau. At this point, delaying action is no action. It's just kicking the issue down the road for **someone else** to deal with later. And when it comes to the Arctic OCS, **later** may be **too late**.

Without a meaningful program, our communities are left with only **one option**. If the State has no interest in addressing our concerns, then we'll have to turn to federal agencies for help. We'll have to see if the U.S. Fish & Wildlife Service, National Marine Fisheries Service, BOEMRE and the EPA will pay more attention. That's the corner we're being forced into.

The Borough has been really clear that on most federal issues—like NPR-A development or Endangered Species listings—we have a **lot more** in common with the State than we have with the feds or the NGOs. I don't see why the State would want to push us away in a direction that could have unintended consequences.

There will be a de facto alignment going forward—either the **State** can align with the local communities whose interests it ought to represent, or the federal **agencies** and local communities can align. I don't like that choice and that's a choice that should concern **all** Alaskans who want urban and rural interests to come together. Alaskans are **most** successful when we're united.

On coastal zone management, the North Slope Borough has tried to play by ever-changing rules since 2003. We have nothing to show for it.

Now it's up to the Administration and the Legislature. If you're going to leave the program as it is, and let coastal management work for everybody **except** those coastal communities who **clearly** have the most at stake, it probably makes more sense to go ahead and let the program sunset.

On the other hand, if the State believes that local communities really **should** have a say in coastal policy, if it values the partnerships that come from working together on important federal issues, and if it is willing to consider reasonable changes to a clearly flawed ACMP, then we're listening.

In closing, the Committee Substitute contains many good proposals. I encourage the Committee to take a positive step forward on this issue by adopting the CS.

Thank you again Chairman Fiege for giving me the opportunity to testify today. Good luck.

###

STATE CAPITOL  
PO Box 110001  
Juneau, Alaska 99811-0001  
907-465-3500  
fax: 907-465-3532



Governor Sean Parnell  
STATE OF ALASKA

550 West 7th Avenue #1700  
Anchorage, Alaska 99501  
907-269-7450  
fax: 907-269-7463  
www.gov.alaska.gov  
Governor@alaska.gov

January 14, 2011

The Honorable Mike Chenault  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Chenault,

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill extending the termination date of the Alaska coastal management program by six years and relating to the extension; relating to the review of activities of the Alaska coastal management program; and providing for an effective date by amending the effective date of Sec. 22, Ch. 31, SLA 2005.

The Alaska coastal management program is currently set to automatically terminate on July 1, 2011. I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell".

Sean Parnell  
Governor

Enclosure

**ALEUTIANS WEST**  
COASTAL RESOURCE SERVICE AREA

RESOLUTION NO. 2010-02

A RESOLUTION OF THE ALEUTIANS WEST COASTAL RESOURCE SERVICE AREA (AWCRSA) BOARD OF DIRECTORS RECOGNIZING THE SIGNIFICANCE OF COASTAL PLANNING AND SUPPORTING LEGISLATION THAT WILL CONTINUE THE ALASKA COASTAL MANAGEMENT PROGRAM (ACMP).

WHEREAS, the AWCRSA was established in 1987 by a vote of the people of the unorganized western Aleutian area and provides representation of local interest in state and federal permitting decisions; and

WHEREAS, the AWCRSA has a recognized coastal management plan with procedures and policies to guide development activities in the coastal zone boundary; and

WHEREAS, the people of the western Aleutians want to provide for a voice in state and federal permitting decisions within their area; and

WHEREAS, the AWCRSA Coastal Management Plan receives its authority as part of the networked Alaska Coastal Management Program; and

WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska State legislature extends the program; and

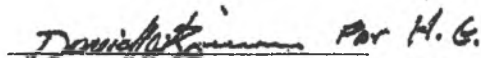
NOW, THEREFORE BE IT RESOLVED THAT the AWCRSA Board recognizes the significance of coastal planning and supports legislation that will continue the Alaska Coastal Management Program.

PASSED AND APPROVED BY THE AWCRSA Board of Directors on this 15th day of December, 2010.

IN WITNESS THERETO:

  
Frank Kelly, Board Chair

ATTEST:

  
Harold Gray, Secretary

# ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

August 14, 2008

Department of Natural Resources  
Division of Coastal and Ocean Management  
Mr. Randy Bates  
302 Gold Street, Suite 202  
P.O. Box 11030  
Juneau, AK 99811-1030

Re: Re-evaluation of ACMP (your letter July 1, 2008)

Dear Mr. Bates,

This letter is written to provide a formal response to comments requested in your above referenced letter. The letter discussed the "ongoing challenges" and "the need to address certain implementation problems" as the catalyst for the re-evaluation of the ACMP laws. Your letter specifically called out four particular needs for the reassessment:

- The DEC carveout
- Coastal district's authority and ability to write enforceable policies, revisit the requirement for designated areas to address certain coastal uses and resources
- Certain consistency review issues including the scope of the project subject to review, requirement of coastal project questionnaire, etc.
- Other clarifying and technical edits to the regulations

Your office has held several informative public teleconferences and hosted weekly district teleconferences for discussion purposes. Additionally, the AWCRSA program director has served as the ACMP Working Group Representative for the Southwest coastal districts and has participated in the June ACMP Workshop and three region specific teleconferences. We have come to understand that in addition to the needs identified above it is your desire to receive comments in any area that might improve the program and that comments should not be limited. As a political subdivision of the state and the state's representative in the unorganized area of the western Aleutian Islands, we appreciate the opportunity to participate in the re-crafting of the Alaska Coastal Management Program. Please consider the following comments.

### The DEC carveout.

The DEC carveout has confused the consistency review process especially where the scope of the project requires permits from more than one agency. The removal of the DEC has been interpreted as the removal of any matter relating to air, land, or water quality through the program implementing regulations. The ACMP is a networked program and it is difficult to extricate air, land and water quality issues from the review process and still have a meaningful review. The AWCRSA recognizes that some DEC permits require a long time to process so perhaps some single agency type permits should be excluded but we do not believe that this should apply to all matters relating to the areas regulated by the DEC. We had many policies that addressed air, land, and water quality standards that are no longer allowed. For example, some concerned storage and transportation of hazardous materials. The AWCRSA would like to work with the DCOM and the DEC to enable consideration of local concerns in the coastal review process. Specifically, the AWCRSA wants due deference and respect for local expertise in the consistency review process unlike the current practice of commenting as a "public member" in a DEC review. To restore the DEC's role in the consistency review process it will be necessary to amend AS 46.40.040(b)(1), AS 46.40.096(g)(i), and (k) and repeal or rework the implementing regulations relating to the carveout. Similarly, coastal districts should be allowed to develop local air and water quality policies that do not duplicate the state standard or DEC statutes or regulations. To do so it will be necessary to amend 11 AAC 114.270(f) to clarify that districts can establish policies that do not duplicate DEC statutes and regulations.

### Coastal district's authority and ability to write enforceable policies, revisit the requirement for designated areas to address certain coastal uses and resources.

There remains a legal question of whether a CRSA has the authority to designate areas for particular uses since they do not have Title 29 authority. The AWCRSA was reluctant to designate areas in the first place out of this concern but found it necessary to do so in order to have any policies that spoke to the matter. Also, the areas designated are important but there are many other significant resource areas within the CRSA as indicated on the Resource Inventory maps. The requirement to designate areas in order to have any policies related to that particular resource fails to consider these other significant areas within the CRSA. It is the viewpoint that the idea of designated areas limits the intent of wise policy making decisions and subsequently limit the effectiveness of any such policy derived with the inclusion of "designated areas". Please consider a subsistence designated area around Adak and the idea of federal permitting within or adjacent to a designated zone. The resource considered around Adak was frequently found outside the boundaries of the designated area and thus diminished the concept and purpose to designate an area for a specific use. Likewise, a resource that migrates into a federal permit zone also experiences diminished purpose when considering ideas of protection, use, and responsibility.

In the case of nationwide or general ABC List type permits it is necessary to identify the designated areas to inform the applicant of their location whereas in the past this was not required as only an applicable policy needed to be considered.

The AWCRSA sees two approaches for resolution of this issue with one being to remove designated areas all together and the other to retain designated areas to highlight areas of particular local interest or resource concerns while removing the requirement for designated areas to write policies.

There are two significant issues with respect to our ability to write meaningful policies. One is the structure of the current program (the statutes and regulations) and the other is the *interpretation* of the regulations.

Structure issues include definitions of terms such as "coastal water" which removed waters that do not have a measurable amount of salt water and the limitation of some standards to coastal waters. This in turn affects our ability to write policies and greatly narrows the coastal zone as the only policies that were allowed are those that "flow from" a specific matter addressed in a state standard.

Interpretation issues include topics such as "adequately addressed" (AS 46.40.070) where DNR has not allowed any policies where an agency has authority to regulate even if they have no specific regulations and "duplication" which has also been related to the authority rather than specific regulations.

Some past regulatory interpretations included the following quote: "The criterion for determining adequacy is whether the matter is already addressed by state or federal law ... even if there is no regulation on a given matter, that the resource agency has the authority to regulate that matter makes the matter one that is "regulated or authorized by state or federal law." The same analysis is true with respect to whether the matter is "adequately addressed."

The AWCRSA recommends strengthening the regulations in several areas to eliminate vagueness and to revisit definitions that have narrowed the scope of the program.

Certain consistency review issues including the scope of the project subject to review, requirement of coastal project questionnaire, etc.

The AWCRSA feels that it is not necessary for the applicant to provide a lengthy CPQ for projects subject to certain permits such as A and B-1 listed projects. However, the new CPQ format works well for AWCRSA as a reviewer as it has the applicant evaluate our policies and detail why the project is consistent with them similar to the federal review process. This has helped to streamline our

reviews and has virtually eliminated the need to request additional information and stop the review clock.

#### Sand and Gravel Standard.

The 2004 revision removed mining from the ACMP standard and, while there has not been a carveout of mining activities, the removal of uplands from the Habitat Standard and mining from the Sand and Gravel standard has combined to deny the ability of the AWCRSA to write policies relating to these activities. The AWCRSA feels that mining is an activity that should be included within the state standards and about which policies can be developed.

#### Subsistence Standard.

This standard is the only one that does not include mitigate in the "avoid, minimize, mitigate" sequence. This lack of a mitigation option can force the district to deny a project when it cannot be minimized and create a "go or no go" situation where it is not in the district's or applicants best interest to do so. AWCRSA recommends that mitigation be included within this standard.

#### Habitat Standard.

Uplands were removed from the standard as part of the 2004 regulatory revisions. Uplands are still within the coastal zone and activities within upland areas can have a direct and significant impact within the coastal area. The AWCRSA had policies directed at some of these potential impacts such as the placement of materials that could erode and natural runoff patterns that are no longer allowed. The federal approval of the program found that all areas within the coastal zone, including uplands, have a direct and significant impact on coastal waters. The AWCRSA recommends the inclusion of uplands in the Habitat Standard.

#### Mitigation.

The sequencing process to avoid, minimize, or mitigate was changed to rely primarily on economic considerations through the use of the term "practicable" and any AWCRSA policies that spoke to mitigation were no longer allowed under the revised program. Subsequent projects which have had a mitigation component within the AWCRSA have seen either on site projects that had debatable value or off site projects that benefited from loss within the AWCRSA. The elimination of monetary compensation as a mitigation tool should be revisited (11 AAC 112.900 (e)(2) as this approach can have merit in some circumstances. The AWCRSA is in the process of completing a project "*Evaluation of Mitigation Opportunities in Unalaska*" in hopes of restoring a meaningful role in the mitigation development process.

### Policy Council.

The AWCRSA recommends a Policy Council that incorporates the positive aspects of the former Coastal Policy Council. The Council should have representation from the coastal districts, the resource agencies and the DCCED Division of Community and Regional Affairs. The mission should include the ability to approve district plans, program related funding, and program changes. The Council would serve as a public forum that can result in more involvement and a more equitable decision making process. It would provide an outreach component that is sorely lacking in the amended program.

### Transfer of ACMP out of DNR and Into Another Division.

Taking the ACMP out of the Governor's office and into DNR has caused the potential for a conflict of interest because it could find itself coordinating a review for the agency within which it works. The location also contributes to the estrangement of the state agency from the coastal districts since the DNR does not have a local government focus. While it does not seem likely or practical to suggest that the Division be returned from whence it came, moving the ACMP to DCCED, Division of Community and Regional Affairs makes sense. Such a move would resolve the permitting conflict since DCCED does not issue any permits. DCRA has a statutory mandate to provide planning assistance to coastal resource districts for coastal management plans, as described in AS 44.33.781, and manages the ACMP grants. The current grant process is more cumbersome than it needs to be with the involvement of two separate divisions.

In the NOAA/OCRM June 2008 ACMP Evaluation, OCRM listed a program suggestion as follows:

OCRM encourages the ACMP to improve communication with coastal districts to rebuild relationships and support their participation in the Program. This will likely need to include a focused outreach strategy and coordination with a number of program partners.

A move to DCCED-DCRA would accomplish the above suggestion by bringing balance and a new team building approach to the program.

### An Expedited Approval Process and Additional Funding for Local Plan Changes and Program Administration.

The AWCRSA expects that the ACMP Re-evaluation process will result in revised legislation and regulations which will allow us a more meaningful role in the networked ACMP. However, having just completed the arduous and expensive revision process resulting from the 2003 legislation and having just prior completed four years of revision work in the previous years, we request that any new legislation establish an expedited approval process and that additional funding be provided to districts to complete any necessary revisions. We understand that the CIAP grant has risen from the predicted \$1.5 million to \$17-

25 million which is a huge increase. The AWCRSA requests that a portion of these funds are made available to districts through grants to fund district plan revisions and general program administration as well as DCOM personnel costs to review those revisions.

The ACMP Re-evaluation is a huge task and we appreciate your commitment to a thorough re-evaluation that will result in positive changes for the program. We have no desire to return to our twenty year old program but we do desire a meaningful role in the management and development of the many resources of the Aleutians West. We appreciate the opportunity to comment and look forward to continued involvement through the re-evaluation process.

Sincerely,



Karol Kolehmainen  
Program Director

Cc: AWCRSA Board members

*Bering Straits Coastal Resource Service Area  
P.O. Box 28  
Unalakleet, Alaska 99684*

February 25, 2011

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

Honorable Neal Foster, Representative  
Alaska State Capitol, Room 434  
Juneau, AK 99801

Honorable Reggie Joule, Representative  
Alaska State Capitol, Room 410  
Juneau, AK 99801

Dear Senator Olson, Representative Foster and Representative Joule:

The Bering Straits Coastal Resource Service Area (CSRA) is pleased to report that our Alaska Coastal Management Program (ACMP) funding has finally been restored. As the CRSA's legislative representatives, we wish to thank you for your support and your interest in addressing problems with the ACMP.

We are also writing this letter to provide clarification about recent statements made by the Alaska Department of Natural Resources (ADNR) and to document events related to our plan approval and funding. Earlier this week the candidate for the CRSA program director position withdrew her name from further consideration citing problems with the grant approval process and the "hostile environment" during completion of the CRSA's coastal management plan. I apologize for the length of this letter, but it is important to provide details about incorrect statements and changing requirements that have been inconsistently applied.

The first issue we would like to address is a statement in ADNR Commissioner Sullivan's February 4, 2011 response to the ACMP Legislative Audit. We believe the Commissioner received incorrect information regarding the following statement:

The DLA analysis on the consultant and coastal district autonomy is based upon an isolated circumstance with a single consultant representing a single coastal resource

service area that did not have an approved plan and was not receiving funding due to significant financial management issues and failures.

A May 13, 2010 email from the ADNR Division of Coastal and Ocean Management (DCOM) to our consultant clearly states that its policy on consultants applies to all contractors: “We do not distribute items we’re required to send to review participants to any district’s contractors. Districts are welcome to forward such items on to their contractors” (emphasis added). Three factors support our request to ADNR to add our consultant to the project distribution list: 1) ADNR denied repeated requests to fund a staff position, 2) the board chair and most board members do not have computer access, and 3) the information sought by our consultant was not available on DCOM’s electronic “FTP site” for the project.

In response to DCOM’s refusal to provide the requested information, our consultant pointed out that DCOM was regularly distributing materials to a consultant contracted with another CRSA. DCOM then changed its consultant policy to require that certain project review information could only be sent to a consultant if they were designated as the coastal district’s “single point of contact” which would include signatory authority for project-related matters. The Bering Straits CRSA, however, wished to retain signatory authority. We were simply asking for the consultant to receive electronic copies of all project-related documents. This single point of contact issue is raised in Part II of the legislative audit.

The CRSA is concerned about the reference to “significant financial management issues and failures.” We believe this may be a reference to an audit of the CRSA’s finances for FY04 – FY05 where our staff person failed to submit adequate backup for expenses, including copies of checks that were later provided. DCRA ensured there would be no future problems like this when it implemented new procedures in late 2006 requiring receipts before the CRSA received reimbursement for expenses. Nevertheless, DCOM referred the matter to the Department of Law. According to DCOM Director Bates in a December 4, 2009 letter to the CRSA, the Department of Law found “no obvious signs that any of the board members or the program director misused the ACMP funding” (emphasis added). Although Mr. Bates concluded his letter by saying he “considered this issue closed”, DCOM continues to raise this issue. We believe it is time to put this issue to rest and move on.

We are also concerned by an incorrect statement made by DCOM Director Randy Bates to the House Resources Committee on January 24, 2011. In response to a question, Director Bates said ACMP funds were provided to the Bering Straits CRSA to “to complete their plan according to the Commissioner’s finding.” DCOM has provided no ACMP funds for revision of our plan to comply with the Commissioner’s November 1, 2007 finding. The only plan revision funds we have received since 2006 were provided by the Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs (DCRA) for a three-

month period. We understand that DCCED used non-ACMP funding because DCOM refused to approve ACMP funds for this competitively-awarded contract. While we are very appreciative of DCRA's generous funding, we wish to acknowledge that it was necessary for our consultant to donate many extra hours to complete all of the contract's required tasks. In addition to revising our coastal management plan, the tasks included setting up a new office, conducting project consistency reviews, and revising our coastal management plan.

During the period where we received no ACMP funding for staff support, we depended on volunteer hours from our board and our consultant. Since 2006, our consultant has donated over 325 hours. During this period, we seldom heard from the DCOM staff person assigned to our CRSA. As an example of the lack of support from DCOM, we were surprised to learn in April 2010 that DCOM was sending project review materials to a former program director who had not been employed by the CRSA since 2004.

Additional clarification is needed to respond to comments made by DCOM Director Bates at the February 22, 2011 House Finance subcommittee meeting on ADNR's budget. In response to a question from Representative Guttenberg about use of consultants by coastal districts, Director Bates said there has been abuse and noncompliance. As an example, he said a coastal district had inappropriately used ACMP funds to pay IRS penalties. Considering ADNR's response to the Legislative Audit targeted only our CRSA, we would like to emphasize that we have not used ACMP funds to pay IRS penalties. Additionally, we are aware of no instances of abuse or noncompliance by our consultant.

At the subcommittee meeting, Director Bates also said it was not appropriate for districts to use consultants to do project consistency reviews. Since we have not had an ACMP-funded position since 2006, it is not clear who Director Bates believes should have been conducting the reviews.

Regarding the hiring process for our program director, we wish to provide some background about some of the problems we faced during the past year. Although there was funding for a program director in our FY10 ACMP grant, DCOM provided substantial obstacles that prohibited the hiring of this position. The CRSA began its hiring process in May 2010 by appointing a hiring committee. Although there were no DCOM procedures for CRSA hiring, DCOM created new rules and asserted itself in a process that was appropriately managed by the CRSA board, all of whom are elected officials. We were surprised to learn that another CRSA completed its hiring process for a program director during this same period in a matter of weeks.

At the February 23, 2011 House Finance Subcommittee meeting, Director Bates stated that it was not necessary for a coastal district to have an approved plan in order to receive ACMP funding. However, DCOM treated the Bering Straits CRSA differently than the other two

districts without approved plans by requiring submittal and approval of our coastal management plan before receiving FY11 funding.

Regarding our plan, the CRSA submitted a substantially revised plan in June 2010 even though ADNR denied all of our subsistence use areas and subsistence policies. The plan isn't much use to us, because we can no longer address potential impacts to subsistence, the main concern of CRSA residents. We submitted the plan only because we were required to do so in order to receive funding. After our submittal, DCOM added new requirements for approval of the plan that were not included in the 2007 Commissioner's Decision. While we reached a compromise in January of this year, we note that DCOM required us to remove language that was approved for another coastal district's plan. Again, it is important to note that DCOM refused to provide any funds for revision of the plan to comply with the Commissioner's Decision.

Director Bates also spoke about mediation of coastal district plans during his testimony at the February 23, 2011 subcommittee meeting. While the Bering Straits CRSA was not mentioned in this discussion, ADNR denied our request for mediation because we did not have funds to pay for it, even though there are no requirements in the regulations for coastal districts to share mediation costs. In addition, ADNR denied the opportunity to use ACMP funds for mediation, an opportunity it offered to the other coastal districts that requested mediation.

We wish to make one more point that may explain why we have been unfairly targeted by ADNR. During initial review of the draft coastal district plans in 2006, our consultant asked for clarification about conflicting guidance from ADNR about its requirements for plan revisions. In response, ADNR staff stated in an email that ". . . continued attempts to debate our office on the changes to the ACMP are putting certain coastal district plan amendments at risk." We believe DCOM has made good on this threat by providing substantial obstacles to our funding and plan approval.

We look forward to working with DCRA and DCOM to strengthen our coastal program. However, we are very concerned that DCOM has made little effort to establish a respectful relationship with our CRSA. We hope the Legislature will take action this year to fix some of the problems with ACMP, including consideration of which agency would be most appropriate to manage the program.

Sincerely,



Ruby Nassuk

Chair, Board of Directors

cc: Representative Seaton, Co-Chair House Resources Committee  
Representative Feige, Co-Chair House Resources Committee  
Representative P. Wilson, Vice-Chair House Resources Committee  
Representative Dick, House Resources Committee  
Representative Herron, House Resources Committee  
Representative Munoz, House Resources Committee  
Representative Gardner, House Resources Committee  
Representative Kawasaki, House Resources Committee  
Representative Costello, Chair, House Finance Committee on ADNR  
Representative Johnson, House Finance Committee on ADNR  
Representative Pruitt, House Finance Committee on ADNR  
Representative Saddler, House Finance Committee on ADNR  
Representative Kerttula, House Finance Committee on ADNR  
Representative Guttenberg, House Finance Committee on ADNR  
Daniel Sullivan, Commissioner, ADNR  
Susan Bell, Commissioner, DCCED  
Randy Bates, Director, DCOM  
Paul Rookok, Sr., Vice Chair, Bering Straits CRSA Board, Savoonga  
Frances A. Degnan, Secretary/Treasurer, Bering Straits CRSA Board, Unalakleet  
Peter P. Martin, Sr., Bering Straits CRSA Board Member, Stebbins  
Wade Okhtokiyuk, Bering Straits CRSA Board Member, Gambell  
Enid J. Lincoln, Bering Straits CRSA Board Member, White Mountain  
Luther C. "Sook" Komonaseak, Bering Straits CRSA Board Member, Wales

***Bering Straits Coastal Resource Service Area******P.O. Box 28******Unalakleet, Alaska 99684***

March 1, 2010

The Honorable Neal Foster  
Alaska State Capitol, Room 434  
Juneau, AK 99801

The Honorable Bob Herron  
Alaska State Capitol, Room 411  
Juneau, AK 99801

Dear Representative Foster and Representative Herron:

The Bering Straits Coastal Resource Service Area (CRSA) recently received a copy of the February 24, 2011 letter from Division of Coastal and Ocean Management (DCOM) Director Randy Bates to you. We are concerned that while our CRSA was referenced throughout this letter, we were not given the courtesy of being included on the distribution list. We are even more concerned with the amount of misinformation included in the letter as well as misleading statements in other recent correspondence and testimony before the Legislature.

I asked our consultant to prepare the attached table to respond to comments in the February 24 letter. Since the issues referenced in the letter occurred before I was elected as Board Chair, I requested that the consultant work with appropriate board members to prepare the table.

We are especially disturbed about the mischaracterizations of how the CRSA operates. In absence of a program director, we have valued assistance provided by our consultant, but we have always retained the authority to make decisions and sign documents.

The CRSA looks forward to working with the Legislature this session to amend the Alaska Coastal Management Program to restore a meaningful role for coastal districts. Please let me know if you need any additional information or to documents related to the issues raised in the attached table.

Sincerely,



Ruby Nassuk  
Chair, Board of Directors

cc: Representative Seaton, Co-Chair House Resources Committee  
Representative Feige, Co-Chair House Resources Committee  
Representative P. Wilson, Vice-Chair House Resources Committee  
Representative Dick, House Resources Committee  
Representative Munoz, House Resources Committee  
Representative Gardner, House Resources Committee  
Daniel Sullivan, Commissioner, ADNR  
Susan Bell, Commissioner, DCCED  
Randy Bates, Director, DCOM  
Paul Rookok, Sr., Vice Chair, Bering Straits CRSA Board, Savoonga  
Frances Degnan, Secretary/Treasurer, Bering Straits CRSA Board, Unalakleet  
Peter Martin, Sr., Bering Straits CRSA Board Member, Stebbins  
Wade Okhtokiyuk, Bering Straits CRSA Board Member, Gambell  
Enid J. Lincoln, Bering Straits CRSA Board Member, White Mountain  
Luther C. "Sook" Komonaseak, Bering Straits CRSA Board Member, Wales

## NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

Kotzebue, Alaska 99752

(907) 442.2500 or (800) 478.1110

Fax: (907) 442.3740 or 2930

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Honorable Senator Donny Olson  
State Capitol, Room 508  
Juneau, AK 99801

Honorable Representative Paul Seaton  
State Capitol, Room 102  
Juneau, AK 99801

RE: Reauthorization of the Alaska Coastal Zone Management Program (ACMP)

Dear Senator Olson and Representative Seaton;

The Northwest Arctic Borough (Borough) is glad to respond to your February 11, 2011, letter to Coastal Coordinators to address changes to the ACMP for making it a more meaningful process for the borough and coastal resource service areas. On behalf of the Borough, I appreciate the opportunity to address the issues of the current program and what specific program changes can be made so that coastal communities can benefit from local enforceable policies.

Overall, the changes we recommend are to update and modernize the program including methods to increase public involvement for effective democracy in the process, update statutes regarding the subsistence policy to reflect life-long Alaskans way of life, facilitate the ability of coastal districts to establish enforceable policies for addressing local needs in responsible resource development, and remove the designated area requirement to reduce unneeded bureaucracy. All these recommendations reflect the importance of the way of life of life-long Alaskans and promote modernizing the program to better reflect the uniqueness of Alaska as the end product of these changes.

### **PUBLIC INVOLVEMENT**

Since the elimination of the Coastal Policy Board in 2003, there are no current checks and balances in the ACMP to provide for effective democracy. Appeals to coastal management plans are now decided by the state staff and Commissioner for the Department of Natural Resources

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(DNR), which gives DNR all decision-making authority to address matters. The establishment of a Coastal Policy Board would provide for public involvement through representatives from coastal districts and state agencies to decide elevations and the approval of coastal district plans. This Board would also oversee amendments to ACMP regulations and ACMP grant programs. A Coastal Policy Board would increase public involvement in administrative and program decisions in the ACMP; therefore promoting modern democracy and good governance.

### **SUBSISTENCE**

As you know, subsistence, which includes the acquisition of subsistence resources, is key to the survival and sustainability of our borough residents. Changes over the years have made the ACMP regulations extremely difficult, if not impossible, to address impacts to subsistence, which have and continue to sustain the economies and culture of life-long Alaskan residents and communities. Subsistence issues need be considered during a project review – it is a reality and important to maintain the uniqueness of the great state of Alaska. The current statewide standard is very general and does not address specific subsistence-related issues; for example, the people of Southeast Alaska have very different subsistence uses than those on the Northwest Arctic, for instance.

A solution to this would be to eliminate the designated area requirement, which has resulted in over bureaucratic administration, and change the program to allow coastal district to design enforceable policies on subsistence for matters to ensure responsible resource development that honors regional knowledge and uses.

### **FACILITATE ENFORCEABLE POLICIES**

Currently, DNR has authorianly limited policies to the specific matters in certain statewide standards; at the same time, the agency has denied policies on the basis that the statewide standards already address the issue. DNR's interpretation of the regulations and statutes (often seen as arbitrary) makes it practically impossible for coastal districts to have meaningful enforceable policies. To make policies effective and meaningful, statutory changes need to clarify that districts may establish enforceable policies that fill-in gaps in state of federal law.

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### DESIGNATED AREAS

There are currently rigorous administrative requirements by DNR that mandate designation of areas before impacts can be considered for subsistence, upland habitat and natural hazards. This requirement has resulted in costly mapping that has not been funded by DNR and many proposed designated areas have been denied by DNR through administrative reviews. A quick and efficient solution to the designated area issue would be to simply eliminate the requirement as overly bureaucratic and unnecessary according to federal coastal management program.

### CONCLUSION

This concludes important list of changes that would dramatically increase the effectiveness and relevance of the ACMP to the Borough communities and our many life-long Alaskan residents. We appreciate your valuable time and efforts in understanding some of the challenges faced by the Northwest Arctic Borough. The challenges we face with the current ACMP is shared with many coastal districts and we look forward to any Legislative changes to increase its effectiveness.

If you have any specific questions about the Borough's recommendations with the ACMP, please feel free to contact Planning Director, Ukallaysaaq at 907.442.2500, extension 109 or at email [tokleasik@nwabor.org](mailto:tokleasik@nwabor.org).

Taikuu,



Silkauraq Martha Whiting, Mayor

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

## Bristol Bay Coastal Resource Service Area

### Resolution #2011-01

A resolution of the Board of Directors of the Bristol Bay Resource Service Area in support of legislation that will continue the Alaska Coastal Management Program (ACMP) without further sunset provisions and restore local participation to allow meaningful and effective coastal community participation.

**WHEREAS**, the Bristol Bay Coastal Resource Service Area has participated in the Alaska Coastal Management Program (ACMP) since 1982; and

**WHEREAS**, the ACMP provided the Bristol Bay region the ability to develop enforceable policies that address local circumstances and concerns; and

**WHEREAS**, HB 191 in 2003 revised all ACMP coastal management plans, including removal of air and water quality policies from local reviews and greatly diminishing the "local voice" that was originally intended; and

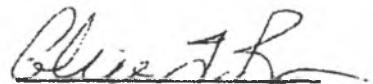
**WHEREAS**, the ACMP as currently written minimizes the effectiveness of allowing regional economic development and resource protection efforts and input; and

**WHEREAS**, if the program were to be eliminated the loss of local voice would be significant to the economy and residents of the region and have a detrimental effect on the economy; and

**WHEREAS**, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program or removes the termination language from existing legislation.

**NOW, THEREFORE BE IT RESOLVED** that the Bristol Bay Coastal Resource Service Area Board of Directors supports legislation to extend the ACMP without a future termination date, eliminate the DEC carve-out of 2003, bring back water and air quality issues on the local level to the review process, allowing more meaningful enforceable policies and appropriate local voice in the permitting process and re-establishes a coastal policy board.

**PASSED AND APPROVED** by the Bristol Bay Coastal Resource Service Area Board of Directors, on this second day of March, 2011.

  
Alice Ruby, Chair, BBCKSA

ATTEST

  
Susan Flensburg, Secretary/Treasurer

Presented by: The Manager  
Introduced: 02/28/2011  
Drafted by: J.W. Hartle

**RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2562**

**A Resolution Expressing Assembly Support for the Extension of, and Amendments to, the Alaska Coastal Management Program.**

WHEREAS, the City and Borough supports the preservation of a local government's ability to be responsive to unique circumstances, thereby following the mandate established in the Alaska Constitution "to provide for maximum local self government"; and

WHEREAS, since its inception in 1977, the Alaska Coastal Management Program (ACMP) has provided Alaska's coastal municipalities with a powerful tool to promote responsible development while protecting coastal resources; and

WHEREAS, a cornerstone of the ACMP has been the ability for municipalities organized as coastal districts to develop enforceable policies that address local circumstances and concerns; and

WHEREAS, changes to the ACMP statutes in 2003 and changes to the ACMP regulations in 2005, reduced the effectiveness of the ACMP, and diminished the role of coastal districts, including the inability to establish meaningful local enforceable policies, the removal of air and water quality from coordinated ACMP project reviews, and elimination of the Coastal Policy Council that facilitated public engagement in administrative and program decisions; and

WHEREAS, the ACMP will sunset on July 1, 2011, unless the Alaska State Legislature extends the program.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

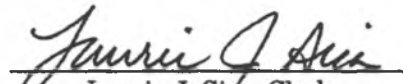
**Section 1.** That the City and Borough of Juneau supports legislation that extends the ACMP sunset date beyond July 1, 2011, establishes a coastal policy board, returns air and water quality issues to the ACMP consistency reviews, eliminates requirements for designation of subsistence use areas, and allows meaningful enforceable policies.

**Section 2. Effective Date.** This resolution shall be effective immediately upon adoption.

Adopted this 28<sup>th</sup> day of February, 2011.

  
Bruce Botelho, Mayor

Attest:

  
Laurie J. Sica, Clerk

## Linda Hay

---

**From:** Louie Flora  
**Sent:** Tuesday, March 01, 2011 2:37 PM  
**To:** tanderson@aeboro.org; aknavi311@yahoo.com; awcrsa@gci.net; tedmeyer@bristolbayboroughak.us; bbcrsant@nushtel.com; cjandrew2003@yahoo.com; teri\_camery@ci.juneau.ak.us; campbell@cityofsitka.com; yakutat\_salmon\_board@yahoo.com; dshea@cityofbethel.net; planning@cityofcordova.net; planner@aptalaska.net; planner@aptalaska.net; jdory@nomealaska.org; carol@pelicanacity.org; administrator@thornebay-ak.gov; lrobertson@valdez.ak.us; citymanager@whittieralaska.gov; sritzinger@haines.ak.us; gwilliams@borough.kenai.ak.us; markj@kgbak.us; jordankeeler@lakeandpen.com; slee@matsugov.us; TobishTG@ci.anchorage.ak.us; e.deach@skagway.org; Dan.Forster@north-slope.org; jchase@nwabor.org; tokleasik@nwabor.org; mlydick@kodiakak.us  
**Cc:** Linda Hay  
**Subject:** HB 106 COASTAL MANAGEMENT PROGRAM - District Coordinator Response Request  
**Attachments:** Letter to Coastal District Coordinators from House Resources Co-Chairs.pdf

ACMP Coordinators:

On Monday, March 7<sup>th</sup> the House Resources Committee will begin to hear HB 106, the Governor's bill to extend the Alaska Coastal Management Program for six years. Per the attached letter, the Co-chairs of House Resources are requesting that Coastal District coordinators submit correspondence on those specific items that would allow the ACMP program to be more meaningful to the District participants.

Please send response letters via e-mail to Linda Hay, Committee Aide for Co-Chairman Representative Eric Feige at [linda\\_hay@legis.state.ak.us](mailto:linda_hay@legis.state.ak.us)

And myself, Committee Aide for Co-Chairman Representative Paul Seaton at [louie\\_flora@legis.state.ak.us](mailto:louie_flora@legis.state.ak.us)

Thank you,

Louie Flora  
House Resources Committee Aide,  
Representative Paul Seaton, Co-Chair  
House Resources Committee  
(907) 465-3923

ALASKA STATE LEGISLATURE  
House Resources Committee

**Rep. Paul Seaton, Co-Chair**

State Capitol Building, Room 102

Juneau, AK 99801 – 1182

Phone (907) 465-2689

Fax (907) 465-3472

[Rep.Paul.Seaton@legis.state.ak.us](mailto:Rep.Paul.Seaton@legis.state.ak.us)



**Rep. Eric Feige, Co-Chair**

State Capitol Building, Room 126

Juneau, AK 99801-1182

Phone (907) 465-4859

Fax (907) 465-3799

[Rep.Eric.Feige@legis.state.ak.us](mailto:Rep.Eric.Feige@legis.state.ak.us)

Dear Coastal District Coordinators,

The legislature is in the process of addressing the reauthorization of Alaska Coastal Zone Management Program (ACMP). People have expressed frustration with the current plan and its applicability to borough & coastal resource service area needs. Can you identify for us what changes to enforceable policies or regulations would be beneficial to the borough to make ACMP a more meaningful process for the borough & coastal resource service areas?

The House Resources Committee will be looking at ACMP on Monday, March 7th; therefore the timeliness of your response is important.

Thank you for your input.

Handwritten signature of Paul Seaton in cursive.

Representative Paul Seaton

Handwritten signature of Eric Feige in cursive.

Representative Eric Feige

## Louie Flora

---

**From:** Timothy Clark  
**Sent:** Monday, March 07, 2011 11:20 AM  
**To:** Louie Flora  
**Cc:** Rep. Bryce Edgmon  
**Subject:** FW: ACMP

Hi Louie,

The message below is from the ACMP coastal coordinator for the Aleutians East Borough. I am forwarding it, with her permission, so that it can be added to the record in anticipation of today's hearing in House Resources on related legislation .

Tim

---

**From:** Tina Anderson [<mailto:tanderson@aeboro.org>]  
**Sent:** Monday, March 07, 2011 10:17 AM  
**To:** Patricia Walker; Timothy Clark  
**Subject:** ACMP

Hi,  
I have been travelling a lot for a couple weeks and have not had an opportunity to do a resolution or support letter for the support of the extension of the ACMP.

The Aleutians East Borough supports the ACMP the way it use to be. The way it is now our participation has been almost diminished to nothing. The regulations have diminished our ability to establish local enforceable policies, the designated areas requirements limits us even further not allowing us to have policies for important habitat. When DEC air and water quality was cut out of the ACMP program, we no longer even heard about air and water permit applications and comments to DEC were just that, comments.

We are a very small municipality, but have a lot of coastal area that is important to AEB. We have always been in support of development provided it is done the right way and feel that we have been cut out of the process – we have 3 enforceable policies in our plan. Frankly, the way it is now, I personally feel why bother with the work involved and the match required for so little local input.

We support restoring the ability of coastal districts to be able to establish enforceable policies that aren't fully addressed by state and also support eliminating the designated areas requirement. We also support returning DEC reviews back into the program.

*Tina Anderson, Clerk/Planner  
Aleutians East Borough  
PO Box 349  
Sand Point, AK 99661  
Phone: (907) 383-2699 Fax: (907)383-3496  
E-mail: [tanderson@aeboro.org](mailto:tanderson@aeboro.org)  
<http://www.aleutianseast.org>*

# MUNICIPALITY OF ANCHORAGE



Community Development Department  
Planning Division

Phone: 907-343-7909

Fax: 907-343-7927

*Mayor Dan Sullivan*

February 23, 2011

The Honorable Donny Olson  
The Honorable Paul Seaton  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

RE: Changes to the Alaska Coastal Management Program (ACMP)

Dear Senator Olson and Representative Seaton:

Per your recent letter of February 11, 2011, I am responding to your request for Alaska's coastal districts to identify changes to the Alaska Coastal Management Program that would better support coastal districts.

As you have learned over the past two sessions, essentially all of Alaska's coastal districts have endured impacts to their ability to participate in the management of coastal resources. Essentially all local district plans were diminished and compromised by the legislative changes to and the Alaska Department of Natural Resources' (ADNR) implementation of Alaska's coastal statutes and regulations. As the Anchorage coastal district representative, I offer the following ideas that could benefit the State's program and re-engage meaningful coastal district participation.

## **Enforceable Policies**

Chief among the items necessary to correct the changes and reductions in the participation of coastal districts is the need to upgrade and expand enforceable policies. The 2004 legislative changes led to unnecessarily stringent regulations that severely limited a district's ability to include or apply enforceable policies. Anchorage's suite of enforceable policies went from dozens in our original 1979 plan to five in our new 2007 plan. Between the restrictive enforceable language in the State's new regulations and the ADNR's staff interpretations of these, our policies have proved inconsequential in the realm of management of local coastal resources. Without enforceable policies, the Anchorage district's role in permit reviews and project scoping is negligible. Enforceable policies allow districts to attach conditions to permits as a means of minimizing project impacts on local resources. The restrictions that policies must flow from statewide standards and designated areas and that these cannot address an item otherwise adequately addressed by another state or federal law or regulation were particularly damaging. The State makes these determinations of adequacy, which severely limited the inclusion of essentially all of Anchorage's proposed policies. We continue to argue, and there is historic evidence that supports this, that many state and federal regulations do not adequately address local matters (e.g., wetlands).

Senator Donny Olson  
Representative Paul Seaton  
February 23, 2011  
Page 2 of 2

The Anchorage district recommends that the legislature amend the statutes (AS 46.40.070 (a)(2)(C) & related) and relevant administrative code (*in 11 AAC 112 & 114.250 & 270*) in ways that enable districts to construct policies for matters of local concern for items or situations not specifically addressed in state or federal laws. This can be accomplished by eliminating or loosening the designation requirements or by the legislative direction that ADNR work with districts to come to new mutually agreeable guidelines for how this might be accomplished. Such changes will restore due deference to local districts on local matters.

#### **Statewide Standards**

ADNR's changes to the ACMP (*11 AAC 112*) dramatically reduced the geographic coverage of the ACMP and decreased the types of impacts that could be considered during an ACMP review. These changes strongly impacted the district plan's ability to address or manage issues and areas of local concern. The Anchorage district strongly encourages changes to correct these restrictions. These restrictive definitions have no scientific foundation nor do they allow for appropriate consideration of impacts on projects at the edges of a coastal boundary.

Adjustments need to be made in the sections of the Habitats Standards that allow full consideration of impacts to any coastal use or resource. The State must change the definition of Coastal Waters in a way that does not restrict application of local policies and better represents realistic coastal boundaries as identified by districts. Coastal Waters cannot simply be limited to some (arbitrary) measurement of salinity. Salinity varies greatly between and within each district and often by the time of the year.

#### **Other Changes**

A recent legislative audit of the ACMP found that the centralized decision-making process within ADNR has lessened consensus building. Legislation considered in 2010 would have established a Coastal Policy Board that would work with ADNR to approve coastal district plans and changes to regulations. The Anchorage district supported this proposal since the original Coastal Policy Council (CPC) was one of the ACMP's original strong points. Anchorage had several projects brought before the CPC. That process worked very well. Anchorage recommends that the statutes be amended to establish a Coastal Policy Board/Council that works with ADNR to approve coastal district plans and changes to the ACMP regulations and for related adjudicatory actions.

Thank you both for your request for comments on ways to adjust the State's coastal program to address existing shortcomings. In the interest of time, I covered a few of the most important items that require changes to better meet the interests of Alaska's coastal districts. Enforceable policies are the centerpiece of a district's ability to manage coastal resources. The changes I suggest would bring due deference for districts back to the levels as had been intended and written into the original statutes and regulations. This approach worked very well and was the strongpoint of the ACMP.

Sincerely,



Thede Tobish  
Senior Planner, Anchorage Coastal District Coordinator

**Additional Information Related to  
Division of Coastal and Ocean Management Director Randy Bates  
February 24, 2011 Letter to Representatives Foster and Herron**

| <b>Comment</b>   | <b>Additional Information</b>   |
|--|---|
| DCOM amended the subsistence and other statewide standards to comply with the revised statutes.  | DCOM Director Bates previously testified to the Legislature that the DNR regulations were more stringent than what the Legislature intended.  |
| The "original regulatory requirement to designate subsistence use areas was retained."   | <p>The provisions in the former 6 AAC 80.120(b) <i>allowed</i>, but <i>did not require</i>, districts to designate areas "in which subsistence uses and activities have priority over all nonsubsistence uses and activities."</p> <ul style="list-style-type: none"> <li>• DNR denied all subsistence use priority policies even though the 2005 federally-approved Program Description states:<br/>". . . a district subsistence priority <i>in a designated area</i> important for subsistence use is appropriate and encouraged."<sup>1</sup></li> </ul> <p>The new requirements at 11 AAC 112.270 <i>require</i> DNR approval of designated areas before impacts to subsistence can be considered during a review and:</p> <ul style="list-style-type: none"> <li>• Before the statewide subsistence standard can apply, and</li> <li>• Before an enforceable policy can be approved.</li> </ul>   |
| "Although the CRSAs demonstrated that subsistence use is an important use of coastal resources in some areas of the coastal zone, neither provided sufficient documentation this for the entirety of their coastal zone . . ." | <p>DNR never explained which areas in the plan were sufficient for the designation and which were not. Without that information, it was not possible for the districts to know what they had to do to meet DNRs <i>unwritten criteria</i> for approval of subsistence areas.<sup>2</sup></p> <p>DNR has not provided clear written guidance on exactly what types of subsistence uses would need to be designated. This unwritten guidance has changed a number of times throughout the plan revision process. For example, at the beginning of the process DNR said a district could designate its entire coastal zone as <i>a subsistence use area</i> if it provided justification. The requirement for designating specific types of subsistence use was imposed later in the process.</p> <p>A September 21, 2005 email from DCOM staff stated that the type of subsistence use designations would best be left up to the districts. The February 2006 draft plans for the CRSA designated two types of subsistence use areas: Offshore and onshore.</p> |

<sup>1</sup> When asked why subsistence use priority policies were denied, DNR stated that the area designation itself establishes the subsistence use priority. However, Subsections 5.3.8.8 and 10.4.10 of the Program Description state that districts can establish a subsistence priority *in an enforceable policy*.

<sup>2</sup> The 2005 federally-approved Program Description includes general criteria for establishing subsistence use areas, but this document does not specify that different types of subsistence use areas must be designated.

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| "Neither [CRSA] linked the subsistence use to the location where the subsistence use activity occurred."  | <p>ADFG has indicated it does not have this kind of information for the Bering Straits CRSA. DNR said the subsistence use maps in the 1984 plan cannot be used because they do not meet DNR's requirements. Most subsistence studies are based a community's use or resources without linking the use to a precise area.</p> <p>DNR imposed the requirement to link a specific type of subsistence use to a specific area <i>after</i> its funding for plan revisions ended. Meeting DNR's stringent mapping requirements would be very expensive, and the data required for this task is not available for the Bering Straits CRSA.</p>  |
| "The proposed designated areas, prepared by the same consultant, were overly broad [and] unsupported . . ."   | Both the Bering Straits and CRSA plans included a detailed description of subsistence use by community. Due to the complex patterns of subsistence use, the subsistence uses were not linked to specific areas.   |
| The Cenaliulriit CRSA did not use information from a prior subsistence study it conducted for the plan revision.  | After DNR denied the subsistence use areas proposed in the February 2006 draft plan, the Cenaliulriit program director began working with a GIS contractor to refine the maps from its prior subsistence study. As a result of the changing rules for designated areas, the frustrating process getting approval for these maps from DNR and the <i>unfunded</i> costs of the maps, the program director gave up on this effort soon after resigned.  |
| "DCOM created an interim opportunity for districts without approved plans to ask for and substantiate an area designation during the course of an individual consistency review for a project."   | <p>Nothing in the regulations indicates the ability to designate areas for a review was an interim measure. It may be necessary to designate an area during a review for any district that obtains site-specific information about subsistence uses.</p> <p>DNR denied Bering Straits CRSA's request for a subsistence use designation during a review in June 2010. The CRSA described the use using information from the maps in its 1984 plan. DNR said it needed the backup information for the maps which is not available.<sup>3</sup></p>  |
| "[a] district is unable [to] write an enforceable policy dealing with marine mammals."  | During the mediation of other coastal district plans, those districts contacted officials from NMFS and FWS, and the federal officials indicated a district could fill in the gaps by establishing policies on marine mammals.  |
| "Even if the designated areas had been approved, all of the proposed subsistence use enforceable policies would have been disapproved because they addressed a matter already adequately addressed by state or federal law, they restated and/or redefined state or federal law." | <p>Other than the statewide subsistence standard itself, there are no laws that address specific impacts to subsistence uses. The statewide standard is inadequate because it only requires that activities "avoid or minimize" impacts to subsistence.</p> <p>In denying proposed subsistence policies, DNR said:</p> <ul style="list-style-type: none"> <li>• The statewide subsistence standard already adequately addresses impacts to subsistence uses, and</li> <li>• Policies can only "allow or disallow" specific activities without any qualifications.</li> </ul> <p>Districts do not want to establish a blanket prohibition on development; they just want to establish policies with measures to protect subsistence while allowing the activities.</p> |

<sup>3</sup> The CRSA created the maps after visiting each village to have subsistence users explain where they conducted subsistence activities. DNR claimed that these maps were not good enough because "underlying information used to draw the lines on the map was not included." This information was not included in the 1984 plan.

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| "At this point, districts that chose not to submit an approvable plan amendment are not eligible for future plan amendment funding until the previously-funded project is finished."  | This policy will make it difficult for districts to complete their plans because of the unfunded requirements to produce detailed maps which are generally based on information over 20 years old. As mentioned earlier, DNR's requirement to designate specific types of subsistence use areas was implemented after districts submitted their draft plans and after finalization of the federally-approved Program Description.   |
| "The most troubling of all four audits was the audit for the BS CRSA, which was done in 2006. This audit showed that the BS CRSA was unable to account for any of the money the BS CRSA received in SFY03-SFY05, which amounted to over \$250,000.00" | The program director at the time did not submit any of the required backup to the auditor. Apparently, the receipts were misplaced during a move of the office from Unalakleet to Koyuk. The CRSA later provided the Dept. of Law copies of all checks written as well as backup for some expenses, including all of the invoices from its consultant.<br><br>According to the Director Bates in a December 4, 2009 letter to the CRSA, the Dept. of Law found "no obvious signs that any of the board members or the program director misused the ACMP funding." Although Director Bates concluded the December 4, 2009 letter by saying he "considered the issue closed," he continues to raise it. |
| The Department of Law concluded that criminal prosecution was not warranted but that civil action may be warranted.   | The CRSA was never provided with the findings of the Dept. of Law other than the explanation in Director Bates' December 4, 2009 letter.  |
| "DCOM offered to assist the BS CRSA in recruiting and hiring a program director."   | The CRSA board, all elected by Alaska voters, chose to do their own recruiting and hiring. DCOM placed substantial obstacles during the hiring process. The CRSA hiring committee provided detailed information about the process that was demanded by DNR with the request that this information be kept confidential. DNR violated this request by sending a widely distributed letter revealing the top 3 candidates <i>before</i> this information was provided to the board by the hiring committee.   |
| "The plan that was submitted on June 30, 2010 . . . was not compliant with DNR Commissioner's final decision."  | The Bering Straits CRSA believes this plan was compliant with the final decision. DNR added new requirements that were not included in the Commissioner's Final Decision that required removal of entire sections of the plan that dealt with impacts from oil and gas activities. DNR later agreed to allow most of these sections. It did require removal of some language even when it was pointed out that this same language was approved for inclusion in the Cenaliulriit plan.  |
| One of the tasks required for the plan approval was deleting unapproved sections of the plan.   | Again, the Commissioners Decision <i>did not require removal of entire sections of the plan</i> . It simply required removal of references to the North Slope Borough that were not related to the CRSA.  |
| The issue of subcontracts has been an issue in only one of the 28 districts and is explained in the Legislative Audit.  | The Legislative Audit does not address subcontracts. Instead, the references to consultants relate to a district's designated point of contact. DNR has not explained what specific issues it had with the subcontract it mentioned in this letter.   |
| "In SFY09 and SFY10, districts were able to use Section 306 operating funds for hiring a contractor to assist with the district's required tasks."  | This practice was allowed in previous years. For example, Sitka employed a contractor for many years to manage its coastal management program.  |

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| "Through this experience, DCOM found that the contracts to consultants were not effective for a number of reasons."   | DCOM has not explained why these contracts were not effective.  |
| "DCOM allows districts to contract with consultants for many consistency review functions, but does not allow a consultant to be a district's official point of contact during a consistency review."   | <p>None of the <i>three districts</i> that requested DNR include its contractor in the project review distribution list wanted the consultant to be a single point of contact. They simply wanted the consultant to receive electronic distribution of project information.</p> <p>This statement is incorrect – <i>DCOM required the Bering Straits CRSA to make its consultant the single point of contact</i> in order for the consultant to receive certain project emails. In a May 13, 2010 email, DCOM stated: "<i>We do not distribute items we're required to send to review participants to any district's contractors.</i>" When the consultant pointed out that this information was being distributed to another CRSA's consultant, <i>DCOM changed its policy</i> to require districts designate its consultant as the single point of contact in order to receive certain project information.<sup>4</sup> In response, the Bering Straits designated its consultant as the single point of contact, but retained its signatory authority.</p> |
| The use of consultants "is most powerful, and most true to the ACMP objective of local representation, when any outside expertise is expressed <i>through the filter</i> of the local coastal district."  | The Bering Straits CRSA always retained a "filter" because it retained signatory authority and never asked to give this authority to its consultant.  |
| "Whether or not a contractor may be the point of contact during a consistency review has been an issue in one district . . ."   | As explained above, DCOM's policy was to withhold information from district consultants. The Bering Straits CRSA only wanted its consultant to receive project information.   |
| "During the same few weeks that the CRSA temporarily employed a consultant last summer, the board vice-chair telephoned and sent faxes to DCOM's staff regarding ongoing consistency reviews. She was available and enjoyed the means to communicate with DCOM staff (I understand that she was also in frequent contact with her consultant, upon whose expertise she could rely). So it was quite possible – and, DCOM maintains the best approach – for the local district official residing in the community to be DCOM's consistency review point of contact." | <p>Again, the Bering Straits CRSA never wanted the consultant to be the single point of contact; it was DCOM's requirement in order for the consultant to receive project materials.</p> <p>The board member was not funded to do this work, and she depended upon a local organization for sending and receiving faxes. In addition to her many donated volunteer hours, she used her own funds for postage and phone calls.</p> <p>Mr. Bates' acknowledges that the CRSA relied on the consultant's expertise, yet DCOM refused to approve ACMP funds for the short-term contract with the consultant. During the period between late 2006 and April 2010, DCOM refused to provide any funding to the CRSA. During this time, its consultant donated over 325 hours.</p>  |

<sup>4</sup> For the project in question, DCOM refused to provide the consultant important project-related information that was not available on the DCOM's FTP website for the project.

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## Louie Flora

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**From:** Dan Shea [dshea@cityofbethel.net]  
**Sent:** Monday, March 07, 2011 4:23 PM  
**To:** Louie Flora; Linda Hay  
**Subject:** AMCP Bills

Dear Flora & Hay,

My name is Daniel Shea, Planning Director and Alaska Coastal Management Coordinator here in Bethel, Alaska. I have ten (10) years of experience in land use & policy development. I have been asked to send you info on AMCP and how it is working here in Bethel region. In evaluating Pat Davidson Legislation Audit parts 1 & 2, Ms. Davidson team did a great analysis in finding AMCP was left out in the process and the changes to AMCP regulations/policies by DEC did have a negative outcome for their ability as reviewer of their local regions for permits.

After having 15 teleconferences with DNR over the passed year I found it some issues;

1. DNR does not include minutes of the teleconferences conversation which can include 20-30 State, federal and local department heads. The other issue is that many of the AMCP Coordinators claim they never got their responses from their comments.
2. That the State DNR is under staff to evaluate projects for accumulative impact assessment (AIA) and to make proper changes to State of Alaska policies.
3. DNR sub-ordinate department leaders don't have the experience/education/training in developing models of AIA that shows how projects affected air, wetlands, wildlife, spawning.
4. I think some blame is also needs to be on AMCP in that their Coastal Management Coordinators don't have the proper training on follow-up questions to their regional project's and developing facts of finding. I have listened to Coastal Coordinators in teleconferences where they waited for months for DNR sub-ordinate departments to send back a response to their questions. In my three years here in Bethel all my questions have always been answered including follow-up phone calls for responses and we have never had a issue (Complaints) like what many are saying they are having throughout Alaska.

Louie Flora & Linda Hay, both of you will need to talk to Senator Olson's & Rep Seaton's about bring in a private firm to evaluate DNR and other state agencies staff on why they are having problems in developing Accumulative Impact Assessment and appropriate policies for the state. I see this being more political than anything else since I have seen this in Kansas, Iowa, Nebraska and Indiana with the Department of Natural Resources (Stepping Stone to Political Office). Please remember, the pressure on the Governor and project owners feeling that to many state agencies are involved in the consistency review process they might feel it is taking too long to get projects developed.

I feel that all consistency reviewers (State, Federal, AMCP Coordinators, Villages) should be done at the same time and in a timely fashion so that project owners understand what they need to change or why their project will not be accepted. it all broils down to \$\$\$\$.

AMCP is the voice of the local regional people of Alaska and we as coordinators must have findings of facts that show how these projects will affect the environment around us and that includes state and federal agencies. I hope this summary I have written helps you in your questioning of State Department Heads on this issue with AMCP. I understand that Senator Hoffman & Rep. Herron is also in support of continuing AMCP for Western Alaska and these two men have worked very hard on this issue.

Sincerely,

Daniel J. Shea, MRCP  
Planning Director  
300 Chief Eddie Hoffman Hwy P.O. Box 1388  
Bethel, Alaska 99559  
Phone: 907-543-5306  
Cell: Bethel 907-545-0411  
Fax: 907-543-4186

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## Louie Flora

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**From:** marvsmith [marvsmith@bristolbayboroughak.us]  
**Sent:** Thursday, March 03, 2011 9:29 AM  
**To:** Louie Flora; David Scott  
**Cc:** 'Kathie Wasserman'  
**Subject:** ACMP Resolution and Fact Sheet from Bristol Bay Borough  
**Attachments:** Resolution Supporting Changes to the ACMP from the Bristol Bay Borough dated 02-07-2011.pdf; ACMP\_Fact\_Sheets (2).pdf

Hello Louie & David,

I am sending this resolution and attached Fact sheet on the changes that need to be made to the Alaska Coastal Management Program (ACMP).

Attached is a resolution I wrote last month the Bristol Bay Borough Assembly passed in support of ACMP changes that are needed. I have some very long experience with this program going back to 2000 and was the ACMP coordinator for the L&P Borough for almost 9 years. To put it very simple in layman terms the legislation passed by the Murkowski administration gutted the ACMP program and the Legislature needs to fix it by putting the power back at local level not at the state level with DNR!

I have also attached a fact sheet that I agree with and helped write some of these facts several years ago. These are the changes we need. However, we could negotiate on some of these changes if DNR is willing to do the same.

The way the program was working prior to the Murkowski legislation was very effective and we need to go back to something similar to that.

Please pass this on to Senator Olson and Rep Seaton!

Sincerely,

Marvin R. Smith  
Manager Bristol Bay Borough  
PO Box 189  
Naknek, Alaska 99633  
Phone: 907-246-4224 Ext: 307  
Cell Phone: 907-469-0550  
FAX: 907-246-6633  
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## *Bristol Bay Borough*

### RESOLUTION NO. 2011-04

#### **A RESOLUTION OF THE BRISTOL BAY BOROUGH SUPPORTING CHANGES TO THE ALASKA COASTAL MANAGEMENT PROGRAM.**

**WHEREAS**, the Bristol Bay Borough has participated in the Alaska Coastal Management Program (ACMP) for over 20 years as a coastal resource district; and

**WHEREAS**, since its inception in 1977 the ACMP has been an important program to promote responsible coastal development; and

**WHEREAS**, changes to ACMP statutes in 2003 and changes to the regulations in 2004 made significant changes to the program, including elimination of the Coastal Policy Council; and

**WHEREAS**, the 2008 evaluation of the ACMP by the federal Office of Coastal, Ocean and Resource Management recommended the Alaska Department of Natural Resources reconsider changes to the program, including the requirement for designated areas and the removal of air and water quality from ACMP reviews; and

**WHEREAS**, the November 2008 draft statutes and regulations prepared by the Alaska Department of Natural Resources would have removed the designated area requirements and brought the Alaska Department of Environmental Conservation back into ACMP reviews; and

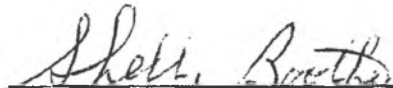
**WHEREAS**, the December 8, 2010 legislative audit found that changes to the ACMP limited the ability for coastal districts to establish enforceable policies; restricted the ability to address impacts to upland habitats, and limited the ability to meet legislative objectives for the program; and

**WHEREAS**, the legislative audit recommended the Alaska Department of Natural Resources review the designated area requirements and develop proposals to reintegrate the Alaska Department of Environmental Conservation into the ACMP; and


**WHEREAS**, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program.

**THEREFORE BE IT RESOLVED** that the Bristol Bay Borough hereby supports legislation that will extend the ACMP, establish a coastal policy board, bring back air and water quality issues into the ACMP consistency review process, eliminate requirements for designated areas, and allow meaningful coastal district policies.

**ADOPTED AND APPROVED BY THE ASSEMBLY OF THE BRISTOL BAY BOROUGH,**  
ALASKA this 7<sup>th</sup> day of February, 2011.

  
\_\_\_\_\_  
Shelby Boothe, Assembly President

**ATTEST:**

  
\_\_\_\_\_  
Tami Johnson, Borough Clerk

# Alaska Coastal Management Program 2011

## ***Fact Sheets: Overview***

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***#1: Enforceable Policies:*** Coastal districts support legislation that would clarify their ability to address local concerns by filling gaps in state and federal laws.

- Changes to the ACMP regulations in 2004 implemented more stringent requirements than what was authorized by the Legislature. The regulations limit policies to selected topics.
- The Legislative Audit found that restrictions to policies have resulted in reduced district participation in project reviews which reduces the ability of the ACMP to resolve problems.

***#2: Designated Areas:*** Elimination of the designated area requirements in the ACMP regulations would reduce project delays and remove unnecessary costs for coastal districts.

- Districts must receive approval for designated areas before impacts to certain coastal resources and uses can be considered during ACMP project reviews.
- DNR's 2008 draft regulations would have eliminated the designated area requirements, as recommended by the federal coastal management agency and the legislative audit.

***#3: DEC Carveout:*** Elimination of the "DEC Carveout" would bring DEC back to the table during ACMP reviews while avoiding project delays that occurred in the past.

- The DEC Carveout has been problematic because air and water quality is related to almost every coastal use and resource. Regulation changes could eliminate previous project approval delays.
- DNR's 2008 draft statutes would have eliminated the DEC Carveout as recommended by the federal coastal management agency and the legislative audit.

***#4: Concentration of Power:*** Revisions to the ACMP statutes would restore checks and balances to the program. The 2003 legislation gave DNR sole decision-making power.

- Legislation considered last year would have established a Coastal Policy Board that would work with DNR to approve coastal district plans and changes to regulations.
- The legislative audit found that centralized decision making has lessened consensus building.

***#5: Statewide Standards:*** Changes to the statewide standards are needed to ensure the ACMP legislative objectives in AS 36.40.020 are met.

- Changes to the ACMP regulations in 2004 limited consideration of impacts to only selected coastal resources and uses and limited application of standards to a small part of the coastal zone.

***#6: State's Rights:*** Changes to the ACMP legislation are needed to take advantage of provisions available in the federal Coastal Zone Management Act, such as consideration of impacts to coastal resources and uses located on federal lands and waters.

***#7: Subsistence:*** Changes to the ACMP regulations are needed to allow districts to address impacts to subsistence uses and resources.

# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #1: Enforceable Policies***

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**Problem:** Restrictions to enforceable policies limit the ability for coastal districts to consider impacts to coastal uses and resources and limit the ability for the ACMP to meet the program objectives in AS 46.40.020. Districts are unable to address gaps in state and federal law.

**Limitations:** The 2004 regulation changes limit what matters a district policy may address. DNR's interpretation of the statutes and regulations make it impossible for districts to have meaningful policies for most subjects.

- DNR's regulations require that policies "flow from" certain statewide standards and designated areas.
- DNR limits policies to the specific matters covered by a statewide standard, but at the same time, it denies policies that address a matter in the standard claiming the standard adequately addresses the issue.

**The Requirement:** DNR's changes to the ACMP regulations in 2004 limit policies to subsistence areas, important habitat areas, natural hazard areas, energy areas, recreation and tourism areas, seafood processing areas, coastal access, siting of coastal facilities, transportation and utility routes, and sand and gravel extraction (11 AAC 114.270).

**Legislative Intent:** In 2003, DNR repeatedly testified to the Legislature that districts would retain the ability to establish meaningful policies under the new law. In response to a request by a legislator, DNR provided sample policies that would be approvable under the new law. After the legislation was enacted, DNR retracted those sample policies.

**Guidance:** The federally-approved program description provides guidance on the ACMP, including criteria for approving coastal district policies. DNR is not implementing these criteria.

- The guidance allows policies that address matters not specifically included in a state or federal law.
- DNR has ignored this guidance by denying policies that address matters under an agency's authority, even though the agency does not have a statute or regulation about the specific matter covered by the policy.<sup>1</sup>

**Potential Solution:** Amend the statutes to clarify that districts may establish policies for matters of local concern not specifically addressed in state or federal law. Retain the requirement that policies may not arbitrarily or unreasonably restrict a use of state concern.

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<sup>1</sup> A July 12, 2004 Attorney General memorandum made it clear that districts could establish policies for DNR area plans, a matter under DNR authority, if the plan was not adopted into regulation.

# Alaska Coastal Management Program 2011

## *Fact Sheet #2: Designated Areas*

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**Problem:** The designated area requirements are difficult and costly for districts to meet, and they limit the ability to address impacts to coastal uses and resources. The 2010 ACMP Legislative Audit found the designated area requirement limits the ability of districts to establish enforceable policies for subsistence and important habitats.

**Areas Denied:** DNR denied many designated areas proposed by coastal districts.

- Almost all proposed important habitat areas were denied.<sup>2</sup>
- On an area basis, most proposed subsistence use areas were denied.<sup>3</sup>

**The Requirement:** Designated areas are required in order to address issues of local concern for: Subsistence, important habitat, natural hazard areas, recreation, history and prehistory areas, commercial fishing and seafood processing areas, and major energy facilities.

**How Areas are Designated:** DNR may approve designated areas for inclusion in a district's coastal management plan or for temporary areas that apply to a single ACMP review.

**Agency Recommendations:** There is widespread recognition that the designated area requirements are too cumbersome and do not add any significant value to the ACMP.

- DNR proposed to eliminate the designated area requirements in the draft regulations it developed during the 2008 ACMP re-evaluation.
- The 2008 federal evaluation of the ACMP recommended DNR revisit the requirements for designated areas.
- Part 1 of the 2010 ACMP Legislative Audit recommended DNR review requirements for designating areas and establishing local concern to determine how districts can write enforceable policies without duplicating state or federal law.

**Potential Solution:** Since DNR has made no progress implementing changes, including changes it proposed during the 2008 re-evaluation, it would be appropriate for the Legislature to address this issue.

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<sup>2</sup> As a result of the 2004 regulation changes, impacts to upland habitats cannot be considered unless the habitats are located in a designated important habitat area.

<sup>3</sup> The legislative audit states that 80% of the subsistence use areas were approved for all districts outside of Northwest Alaska. The audit does not specify how this percentage was calculated, but it likely is not based on acreage. The coastal area in the Cenaliulriit CRSA alone makes up 33% of the coastal area outside of Northwest Alaska, and DNR denied all of the Cenaliulriit subsistence areas.

# Alaska Coastal Management Program 2011

## ***Fact Sheet #3: DEC Carveout***

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***Problem:*** DNR's implementation of the DEC Carveout eliminated the ability to consider any impact to air and water quality during a coordinated ACMP, it resulted in other problems:

- Gaps in DEC regulations and statutes cannot be addressed during ACMP reviews.
- Almost all coastal resources and uses are tied to air and water quality in some way.
- There is no public process for air and water quality matters when DEC does not have a permit (e.g., OCS activities).
- DEC rarely comes to the table during ACMP project reviews which reduces the effectiveness of Alaska's networked coastal program.

***Industry Concerns:*** Before 2003, industry expressed DEC-related concerns about the ACMP.

- Some district policies repeated DEC laws. This issue is no longer a problem because district policies cannot restate or duplicate state or federal law.
- The requirement for complete applications for some DEC air permits delayed the start of ACMP reviews for oil and gas projects. This issue could be easily fixed in the regulations by defining what information is needed to initiate an ACMP review.

***Policies Denied:*** DNR has not approved any air or water quality policies even though it assured the Legislature in 2003 that district policies would be able to address gaps in DEC's laws.

***Agency Recommendations:*** There is widespread recognition that the DEC carve-out is not working well.

- DNR proposed to eliminate the carve-out in its draft statute changes developed as part of the 2008 ACMP re-evaluation.
- The 2008 federal evaluation of the ACMP recommended DNR evaluate the effectiveness of retaining the DEC carve-out.
- Part 1 of the 2010 ACMP legislative audit recommended DNR:
  - Develop proposals to reintegrate the DEC permitting into the ACMP, and
  - Continue dialog with coastal districts and industry regarding the ability of coastal districts to write district enforceable policies for air and water quality.

***Way Forward:*** Since DNR has made no progress addressing this issue, and it requires a statutory change, it would be appropriate for the Legislature to address it in statute.

# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #4: Concentration of Power***

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**Problem:** Changes to the statutes and regulations in 2003 and 2004 made DNR the sole decision maker for ACMP issues. Elimination of the checks and balances of the ACMP has lessened consensus building that was characteristic of the pre-2003 program.

**How the Changes Concentrated Power:** Changes to the ACMP statutes and regulations make DNR the sole decision-maker for all ACMP issues.

- **Program Location:** Part 2 of the legislative audit found that some participants believe moving the ACMP to DNR from the Governor's Office may have led to strained relations among review participants.
- **Coastal Policy Council (CPC):** Elimination of the CPC gave DNR the sole power to approve coastal district plans and make changes to ACMP regulations.
- **Elevations:** DNR makes the decision on appeals of its proposed consistency determinations which were previously made jointly by the three resource agencies.
- **Consensus Building:** Part 2 of the legislative audit found that centralizing decision making in DNR has lessened consensus building among review participants and some participants believe the ACMP lacks impartiality and sufficient local representation.
- **Reduced Participation:** Part 2 of the legislative audit found that districts commented on 45% fewer reviews in 2010 than they did in 1994. Reduced participation diminishes the ability of the ACMP to identify and resolve conflicts.
- **Transparency:** Part 2 of the legislative audit found that the ACMP is lacks transparency in certain respects, such as not responding to comments, insufficient information sharing with coastal districts, not providing information to coastal district consultants, and not recording meetings.

**Potential Solutions:** Checks and balances can be restored to the ACMP.

- Move the program back to the Office of the Governor or a non-resource agency such as the Department of Commerce, Community and Economic Development.
- Amend the statutes to establish a streamlined Coastal Policy Board that works with DNR to approve coastal district plans and changes to the ACMP regulations. Concerns about "veto power" of districts could be allayed by having a majority of the members on the Board represent state agencies.
- Amend the statutes to require a consensus of the state resource agencies for elevations.

# Alaska Coastal Management Program 2011

## ***Fact Sheet #5: Statewide Standards***

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***Problem:*** Changes to the ACMP statewide standards, combined with new restrictions to district enforceable policies, make it impossible for the ACMP to meet all of the legislative objectives for the program in AS 46.40.020.

- Since district enforceable policies must be tied to the statewide standards and designated areas, gaps in state and federal law can no longer be addressed through the ACMP.

***Changes:*** DNR's changes to the statewide standards in the ACMP regulations reduced the geographic scope of the ACMP and decreased the types of impacts that could be considered during an ACMP review.

- **Habitats Standard:** An overhaul to this standard drastically reduced the ability to consider impacts to habitats in the coastal zone.
  - ***Uplands:*** Upland habitats in the coastal zone can no longer be addressed unless DNR approves an important habitat area.
    - DNR has approved only a few small areas for important habitat statewide.
    - Upland habitats make up a considerable part of the coastal zone.
  - ***Wetlands:*** The definition of wetlands was changed to include only areas that drain directly to saltwater. Since the U.S. Army Corps of Engineers only regulates waters of the U.S., many wetlands in the coastal zone can no longer be addressed during ACMP reviews.
  - ***Offshore Areas:*** Only impacts to competing uses can now be considered in offshore areas (not impacts to the habitats themselves).
  - ***Other Habitats:*** Impacts to other habitats have been significantly limited (e.g., to consider only water flow).
- **Subsistence Standard:** The new standard only requires that a project avoid or minimize impacts to subsistence.
- **Coastal Waters:** The definition of coastal waters was changed to apply only to waters with a measurable amount of salt water.
- **Mining Standard:** Revisions to this standard removed hard rock mining activities and limited consideration of impacts to gravel mining in salt water, barrier islands, and spits.
- **Hazards:** This standard was weakened to give deference to applicants when there are no relevant codes or standards.

***Potential Solutions:*** Revise the standards in the ACMP regulations to allow consideration of impacts to any coastal use or resource.

# Alaska Coastal Management Program 2011

## *Fact Sheet #6: State's Rights*

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**Problem:** Changes to the ACMP statutes and regulations placed new limits on opportunities provided under the federal Coastal Zone Management Act (CZMA).

**Limitations:** The following changes to the ACMP limit opportunities provided by the CZMA.

- **Designated Areas:** The DNR requirements for designated areas had an unintended consequence: Impacts to coastal resources and uses are limited to approved designated areas which cannot include federal areas. The CZMA allows states to review impacts to coastal uses and resources while they are on federal lands or waters.
- **Review Timelines:** The CZMA allows states up to 75 days to review federal activities and up to 6 months to review federally-permitted activities.
  - While most reviews can be completed in 30 or 50 days, large or complicated projects may need more time, especially when an EIS is required.
- **Inland Projects:** The CZMA allows states to review project inland of the coastal zone if there are impacts to coastal resources or uses.
  - Before 2003, inland projects could be reviewed under the ACMP, and this provision was never abused.

**Audit Findings:** Part 1 of the ACMP legislative audit found that the ACMP changes did not diminish state's rights under the CZMA, but it found that the changes did affect the purview of the consistency review. The audit did not consider the full impacts to state's rights of designated areas, review timelines or the inability to review impacts to coastal uses and resources from projects inland of the coastal zone.

**Potential Solutions:** The following changes would restore most of the state's rights affected by the ACMP changes:

- Eliminate designated area requirements from the ACMP regulations so impacts to coastal uses and resources on federal lands and waters can be considered.
- Amend the statutes to allow projects with an EIS or a federal permit to exceed the 90-day timeline for reviews.
- Amend the statutes to allow reviews of projects inland of the coastal zone when there are significant impacts to coastal uses or resources.

# Alaska Coastal Management Program 2011

## ***Fact Sheet #7: Subsistence Issues***

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**Problem:** Before impacts to subsistence can be considered during an ACMP project consistency review, DNR must first approve designated subsistence use areas.

- For many coastal districts, the information required by DNR is not available.<sup>4</sup>

**Areas Denied:** DNR denied all subsistence use areas proposed for the four largest coastal districts: North Slope Borough, Northwest Arctic, Borough Bering Straits CRSA, and Cenaliuriiit CRSA.

- These four districts represent 52% of the state's coastal zone.
- Subsistence is extremely important to the people of these coastal districts.

**Policies Denied:** DNR approved only two subsistence policies. According to DNR, subsistence policies can only "allow or disallow" specific uses without any qualification.<sup>5</sup>

**The Requirement:** DNR's 2004 changes to the ACMP regulations require subsistence use designations:

- In order for the statewide subsistence standard to apply, and
- Before subsistence enforceable policies can be approved.

**How Areas are Designated:** DNR may approve: 1) permanent subsistence use areas as part of a coastal district plan, or 2) temporary areas during an ACMP project review.

**Districts Treated Differently:** For the four largest districts, DNR required that each type of subsistence be designated as a separate area. In order to designate all important subsistence areas, expensive maps were necessary. Other districts have been treated differently.

- Aleutians West CRSA and Lake and Peninsula Borough were not required to designate different types of subsistence use areas.
- Bristol Bay CRSA was not required to indicate where the different types of subsistence use occurred in the subsistence use areas it designated through description.
- Haines received approval for several small subsistence areas without being required to follow the same mapping requirements imposed on the northern districts.

**Potential Solution:** Eliminate designated area requirements and allow districts to establish policies to fill gaps in state and federal law.

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<sup>4</sup> DNR added additional mapping and other requirements beyond what is specified in the ACMP regulations.

<sup>5</sup> DNR claims that the "avoid or minimize" requirement in the statewide subsistence standard adequately addresses all matters related to subsistence, other than "allowing or disallowing" specific uses in a designated subsistence area.

Representatives Bryce Edgmon, Paul Seaton and Senator Donny Olson  
Alaska State Legislature  
Juneau, Alaska

Dear Representatives Edgmon, Seaton and Senator Olson,

Per your request, I am forwarding comments regarding the upcoming sunset date of the ACMP and suggestions for changes to the program.

I cannot speak from a historical perspective, having only been the program director since September, 2010, but I have gleaned much from my board members, area residents, conferences and the legislative audit that was recently released. My suggestion would be to consider a one-year extension of the ACMP sunset date which would then afford the legislature an opportunity to review and consider changes to how the ACMP is currently overseen.

BBCRSA gives local "voice" to the state when projects are developed, a voice that is mindful of both protection of natural resources, as well as responsible development. Giving sole power over ACMP to Division of Natural Resources (DNR) is not in the best interest of developing and maintaining that voice when enforceable policies that protect and develop our region are not within our jurisdiction. Consideration of moving the program back to the Governor's office, to ADF&G, or DEC would be appropriate. A recent press release from President Obama (on 2/14/11) wherein he details the re-organization of BOEMRE, and states that CIAP (Coastal Impact Assistance Program) will be moved from under BOEMRE to Fish & Wildlife is a good example of recognizing when overview from one agency is not working. It is probable ACMP would work more efficiently, and with better cohesion, if moved to another agency. The Coastal Policy Board was also an effective tool to balance the power of DNR, and thought could be given to re-establishing this board to assist in approving coastal district plans and changes to regulation.

One of the issues BBCRSA dealt with under the reorganization in 2003, and the move to DNR, was the requirement that we revise our coastal plan and only address additional policies if they were not already "adequately addressed by state law." Some of our revisions were denied on the basis of already being "adequately addressed by state law" and the BBCRSA appealed. Our appeal was denied so we were forced to accept that decision or be dissolved. This type of decision-making defeats the purpose of ostensibly allowing us a voice.

The BBCRSA has been in existence since 1982, and includes board members who have been here since inception. It is on behalf of the BBCRSA board of directors and residents that we suggest a one-year extension of the ACMP sunset date. During the one-year extension, please develop a team of various users/contributors to determine the best way for our state to oversee ACMP. We would be pleased to forward the name of someone from our region who would be an objective, competent team member.

We wish you a productive session and are available to answer any questions you might have regarding our suggestions.

Thank you for your time and attention to this matter.

Sincerely,

*Celeste Novak*

Celeste Novak, Program Director  
Bristol Bay Coastal Resource Service Area  
PO Box 849  
Dillingham, AK 99576  
907.842.2666



## CITY OF CORDOVA

### *Planning Department*

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Louie Flora  
House Resources Committee Aide,  
Representative Paul Seaton  
Co-Chair House Resources Committee

To Whom It May Concern:

In response to your letter asking for input on how enforceable policies or regulations would be beneficial to the coastal communities. I appreciate the effort and time the committee has put forth to ask for our input and feel this is a great way to open communication lines.

I haven't been in this position (city planner) for very long (5 months) and have very little experience with the program. I am still trying to learn the program and understand my role as the coordinator. I do not feel like I have the experience or knowledge to address how the program could be improved or changed. I hope you can understand my position and if in the future, when I am more experienced I would be more than willing to provide input.

Thank you for your time,

Samantha Greenwood  
Cordova City Planner



## **KENAI PENINSULA BOROUGH**

### **Coastal Zone Management Program**

514 Funny River Road • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2216 • FAX: (907) 260-5992

[www.kenairivercenter.org](http://www.kenairivercenter.org)

**DAVE CAREY  
BOROUGH MAYOR**

February 3, 2011

Ms. Katie Koester, Legislative Aide  
Office of Rep. Paul Seaton  
State Capitol, Room 102  
Juneau, Alaska 99801

Subject: Reauthorization of the ACMP

Dear Ms. Koester:

Thanks for your interest in the perspective of the Kenai Peninsula Borough Coastal Zone Management Program on ways to make the ACMP more meaningful with new legislation. Hopefully, with Representative Seaton's assistance, the legislature will reauthorize the ACMP and include many revisions that will enhance the value of the program.

My suggestions are as follows:

#### Statewide Standards of the ACMP

Current regulations severely limit the ability of coastal districts to obtain enforceable policy approval from the Department of Natural Resources because the statewide standards have narrowed or eliminated the purview of coastal districts regarding certain coastal uses and resources.

Habitat Standards. The habitat standard at 11 AAC 112.300 limits the scope of enforceable policy in habitats to "coastal waters"(waters with measurable amounts of salinity). That restriction eliminates the opportunity for districts to take a watershed approach in the evaluation of ecosystem impacts and is inconsistent with the objectives of AS 46.40.020 and in particular subsection (8) which calls for the "full evaluation of all demands on the land and water in the coastal area". The habitat standard should be amended to include all impacts, direct and cumulative, to habitat within the coastal district including fresh water wetlands.

Air and Water Quality Standards. The air and water quality standard at 11 AAC 112.310 removes the ability of districts to comments on these important ecosystem issues. Air and water quality matters overlap virtually all issues in coastal districts and, as we have learned from more developed areas, are essential to ecosystem health. The intent is not to duplicate or assume the authority of DEC in the regulation of air and water quality standards but simply to have the

ability to write enforceable policies that are not duplicative of state law but allow for local government perspectives in the review process.

Designated Areas Current state standards require scientific analysis and extensive mapping to meet the criteria for obtaining a designation and to write enforceable policies. This standard places a significant financial burden on a district to conduct studies that provide meaningful results. Districts should be able to designate areas containing important resources and write enforceable policies based substantial anecdotal information or in light of information found subsequent to district plan adoption. We support the ability of state and local agencies to designate hazards during public review in 11 AAC 112.210, Natural Hazards, and in 11 AAC 114.250, Subject Uses and Designations. The reference to designations should be removed in 11 AAC 112.270, Subsistence, 11 AAC 112.300, Habitat, and 11 AC 112.320, Historic Areas.

Sequencing Process to Avoid, Minimize, or Mitigate. Under 11 AAC 12.900, the requirement to avoid the impact of activities on important habitat follows, in sequence, "avoid, minimize, or mitigate". This sequence relies on the definition of "practicable" as the means of assessing whether an applicant has avoided or minimized impacts. The term "practicable" is defined in statute as the project's feasibility considering cost, existing technology and logistical matters. The definition of "practicable" should be changed to reflect what is "feasible and prudent" in the protection of the environment from significant adverse impacts. With regard to mitigation, statutes and regulations should provide for compensatory mitigation when avoidance and minimization are not feasible and prudent.

#### Enforceable Policy Development

In keeping with the protection of the environment of coastal areas as called out in AS 46.40.20, there are several changes that should be affected in statutes.

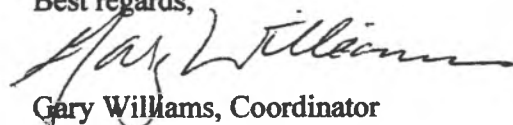
- 1) AS 46.40.070(a)(2)(c)(ii), allows coastal districts to write enforceable policies unless the matter is "adequately addressed" in state or federal law. The definition of "adequately addressed" in our experience is what DNR says it is not whether the state or federal agencies actually administers a particular law. This provision should be removed.
- 2) AS 46.40.070(a)(2)(c)(ii), has resulted in many district policies having been disallowed because the policy did not "flow from" specific state or federal law. The concept of "flow from" should be removed from the enforceable policy evaluation or provide that unless a specific state or federal law addresses the matter in a way the local policy does not, then the local policy should be allowed.
- 3) AS 46.40.070(a)(2)(c)(iii), requires a coastal district to find that a specific coastal use is of "unique concern" and to demonstrate that uniqueness by local usage or scientific evidence. This level of documentation is burdensome in areas where little scientific evidence has been accumulated in sensitive habitats and local usage may be sparse. The term "unique concern" is highly interpretable and should be removed from the statute.
- 4) Cumulative Impacts: Current Alaska Statutes and Administrative Code do not allow for consideration of activities that occur outside the boundaries of "coastal resources". The effect is that, for example, an activity in an upland area that could damage a nearby

wetland (a "coastal resource") may not be considered in a district consistency review. Cumulative impacts must be considered in any rational resource management plan.

Relocation of the ACMP. While it is arguable that with statutory and regulatory guidance a program can be effective under a variety of umbrella agencies, our experience with the ACMP under the Department of Natural Resources has been unfavorable compared with our experience when the ACMP was in the Governor's Office and had the guidance of the Coastal Policy Council. From my perspective the significant changes in the ACMP and its relocation to DNR have combined to reduce the effectiveness of the Program both in fact and in public perception. The KPB Coastal Zone Management Program suggests that moving the ACMP to a permit-neutral, community advocacy agency would signal that the ACMP is seeking to regain its proper and appropriate role in Alaska coastal management. The best alternative agency would be the Division of Community and Regional Affairs.

I sincerely appreciate your efforts to coordinate a meaningful restructure of the ACMP.

Best regards,



Gary Williams, Coordinator  
Kenai Peninsula Borough  
Coastal Zone Management Program

Copy: David Carey, Kenai Peninsula Borough Mayor

## KETCHIKAN GATEWAY BOROUGH

### RESOLUTION NO. 2287

**A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH IN SUPPORT OF CONTINUING THE ALASKA COASTAL MANAGEMENT PROGRAM AFTER JUNE 2011; AND ESTABLISHING AN EFFECTIVE DATE.**

#### RECITALS

**WHEREAS**, the Ketchikan Gateway Borough initiated its Coastal Management Program (CMP) in 1978 and approved its first CMP in 1984; an update of the plan was approved by the Assembly in 2007; and

**WHEREAS**, the ACMP provides Ketchikan the ability to develop enforceable policies that address local circumstances and concerns; and

**WHEREAS**, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program or removes the termination language from existing legislation; and

**WHEREAS**, the ACMP as written facilitates both economic development and personal property development efforts; and

**WHEREAS**, if the program were to be eliminated the quantitative losses could be significant and the services provided to the local businesses and residents would have a detrimental effect on the economy.

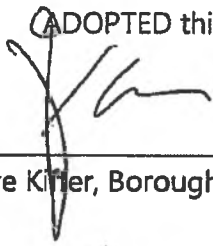
**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH** as follows:

**Section 1.** The Ketchikan Gateway Borough supports reauthorization of the existing ACMP so it continues indefinitely beyond June 30, 2011.

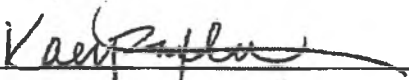
**Section 2.** The Borough Clerk shall provide a copy of this resolution to Senator Bert Stedman and Representative Kyle Johansen.

**Section 3.** This resolution is effective immediately upon adoption.

ADOPTED this 3<sup>rd</sup> day of January, 2011.

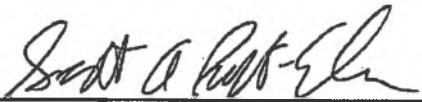


\_\_\_\_\_  
Dave Kifer, Borough Mayor



\_\_\_\_\_  
Kacie Paxton, Borough Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
Scott A. Brandt-Erichsen, Borough Attorney

| EFFECTIVE DATE:        |     | JANUARY 3, 2011 |        |  |
|------------------------|-----|-----------------|--------|--|
| ROLL CALL              | YES | NO              | ABSENT |  |
| Harrington             | ✓   |                 |        |  |
| Moran                  | ✓   |                 |        |  |
| Rotecki                | ✓   |                 |        |  |
| Phillips               | ✓   |                 |        |  |
| Salazar                | ✓   |                 |        |  |
| Shoemaker              | ✓   |                 |        |  |
| Bailey                 | ✓   |                 |        |  |
| Mayor (tie votes only) |     |                 |        |  |

4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE



# *Kodiak Island Borough*

*Office of the Borough Mayor*

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

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March 4, 2011

Representative Alan Austerman  
State of Alaska  
State Capitol Room 204  
Juneau AK, 99801

**RE: Impact of Alaska Coastal Management Program on Kodiak**

Dear Representative Austerman:

In response to your letter regarding potential changes to the Alaska Coastal Management Program (ACMP), the Kodiak Island Borough presents the following replies to your questions:

- 1. Have community conversations arisen on the impacts that the Murkowski changes to the ACMP have had or are having on coastal communities?**

There have been no recent conversations. We have been fortunate that there have been no large federal or state projects (such as oil and gas exploration or a pebble mine type project), or smaller projects with far reaching impacts that are occurring around Kodiak Island. In the past there has been discussion on concentrating projects close to villages that have infrastructure (airports, roads and utilities) versus having projects spread out all along what is currently undeveloped coastline.

- 2. Did Kodiak have local 'enforceable policies' that were impacted during the 2003 ACMP changes? Were ordinances or zoning codes implemented because of the changes?**

The Kodiak Island Borough has reviewed smaller projects with the local enforceable policies that were granted to us, but they lack any real substance. The policies important to citizens of Kodiak (subsistence, commercial and sport fishing, clean air and clean water (i.e. the environment)) are reserved to the state agencies that under the current program do not consult or coordinate with local government.

No ordinances or zoning codes changes were implemented because of the Murkowski era changes; however, the Borough's Coastal Management Plan was rewritten to be consistent with the philosophical change of state government.

Representative Alan Austerman  
Page 2  
March 4, 2011

**3. How would the City and Borough like to see this program addressed?**

In the Borough's most recent Strategic Plan, we identify the need to have the current ACMP changed. The Strategic Plan language (Planning and Zoning Goals and Objectives – Community Development – Provision 5(b)) calls out the need to "allow for the addition of meaningful enforceable policies *that reflect local concerns and which allow borough residents a greater opportunity to interact with state and federal agencies during the coordinated review of projects within the Borough's Coastal zone. Encourage a re-write of this plan to give the Borough maximum authority possible to govern its own coastal zone and resources...*"

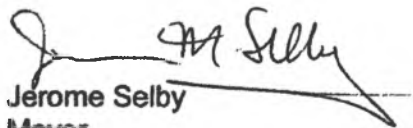
As such, the Borough Assembly approved a resolution at the March 3<sup>rd</sup> meeting supporting the Alaska Municipal League resolution to amend the current ACMP program. The AML resolution promotes a reestablishment of the "good parts" of the former ACMP program with the (re)formation of a Coastal Policy Council, DEC review of air and water quality issues (ADF&G is already back to being a department), and most important to the Borough, the ability to conduct a local consistency review of projects. This review would recognize local knowledge and local experience and give it great weight during the decision making process. Lastly, any project must be consistent with the Kodiak Island Borough's enforceable policies and other borough plans.

We are in favor of a revised ACMP that gives a voice to Borough citizens for projects that could occur on or along our coasts (the KIB zoning code provides for a regulatory framework for shore side improvements, but its authority does not extend beyond the shore). The ACMP provides for that "beyond the shoreline" participation with agencies to create decisions that include local knowledge and local experience. The Kodiak Island Borough desires changes in the program that would provide for maximum local control and the ability to govern our own coastal zone and resources.

The opportunity to provide input on this matter is greatly appreciated. Should you have further questions please feel free to contact me or Bud Cassidy, Community Development Director, whose department coordinates the Kodiak program with the overall state ACMP.

Sincerely,

KODIAK ISLAND BOROUGH

  
Jerome Selby  
Mayor

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Introduced by: Borough Manager  
Requested by: CDD Director  
Drafted by: CDD Director  
Introduced on: 03/03/2011  
Adopted on: 03/03/2011

**KODIAK ISLAND BOROUGH  
RESOLUTION NO. FY 2011-19**

**A RESOLUTION OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH  
SUPPORTING THE ALASKA MUNICIPAL LEAGUE'S RESOLUTION  
TO AMEND THE ALASKA COASTAL MANAGEMENT PROGRAM  
AND EXTEND THE PROGRAM SUNSET DATE**

**WHEREAS,** the Kodiak Island Borough Assembly is the governing body of Kodiak Island; and

**WHEREAS,** the Assembly desires to promote and strengthen the Borough's continued participation in the Alaska Coastal Management Program (ACMP); and

**WHEREAS,** the Kodiak Island Borough's Coastal Management Plan has been an important program that promotes a balance between economic development and protection of coastal resources; and

**WHEREAS,** in recognition that the ACMP gives Alaska's coastal municipalities a powerful tool to promote responsible development while protecting coastal resources and uses, the Alaska Municipal League recently passed a resolution supporting the continuation of the ACMP, reestablishing a coastal policy board, bring back air and water quality issues in the ACMP consistency review process, eliminating requirements for designating subsistence use areas and allowing for meaningful policies; and

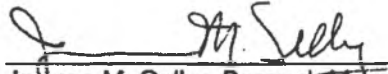
**WHEREAS,** the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program; and

**WHEREAS,** The Borough wishes to join in AML's support of the continued operation and enhancement of the ACMP.

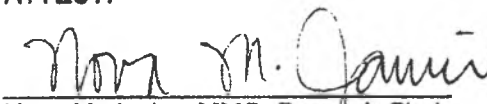
**NOW, THEREFORE BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH** that it supports legislation that will extend the ACMP, that establishes a coastal policy board, that brings back air and water quality issues into the ACMP consistency review, eliminates requirements for designation of subsistence use areas, and allows for meaningful enforceable policies.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH  
THIS THIRD DAY OF MARCH, 2011**

KODIAK ISLAND BOROUGH

  
Jerome M. Selby, Borough Mayor

ATTEST:

  
Nova M. Javier, MMC, Borough Clerk



# CITY OF NOME

Nome Coastal District  
102 Division Street ~ P.O. Box 281  
Nome, Alaska, 99762  
(907)443-6603 ~ (907)443-5435 fax

March 09, 2011

RE: Request for Information, ACMP Reauthorization

Dear Louie Flora and David Scott,

Thank you for the opportunity to provide recommendations for changes to the Alaska Coastal Management Program. The Nome Coastal District has participated in the program since 1983 and recently amended our plan as required in 2004. The following items are submitted for your consideration.

## Enforceable Policies

The Legislature authorized changes to the district's enforceable policies in 2004. The regulations that were subsequently written are more stringent than the Legislature approved. The enforceable policies that we are currently working under limits our ability to participate in project reviews.

## Designated Areas

The federal coastal management agency the Legislative Audit have both recommended that the designated area requirements be deleted. This requirement results in delays and is almost impossible to get approved through DNR.

## DEC Carveout

The DEC Carveout has never been a good idea. Why would air and water quality not be part of the ACMP? There are no coastal uses or resources that do not include impacts to air and water quality. It is not reasonable that districts cannot write air and water quality policies.

### Approval Process

It has not worked well having DNR be the sole decision maker. The Department does not need to work with the districts or even other state agencies to reach a consensus on projects. It is not appropriate for the ACMP to be part of DNR whose mission is development of resources. It seems like it would make more sense to have the program in a non-resource department. When the program was administered by DCCED the districts participated more in permit reviews and had a strong community of coastal coordinators. The Coastal Policy Board was fair and less vulnerable to political pressure. When a project is elevated, DNR does not need to reach a consensus with other resource agencies, a statute change is needed to change that provision of the program.

### Subsistence State Standard

It is unreasonable that local districts have not been able to write policies regarding subsistence (it is near impossible to get a subsistence policy approved) and that the new state standard only requires that a project avoid or minimize impacts to subsistence. As important as subsistence is in our state it is incredible that our ACMP regulations as currently written take away one of the tools that the ACMP provided. Please consider an amendment that would make it easier for the coastal districts to write enforceable policies regarding subsistence.

### Mining

The 2004 revision to the regulations removed mining from the ACMP standard and, while there has not been a carveout of mining activities, the removal of uplands from the Habitat Standard and mining from the Sand and Gravel standard has combined to deny the ability of the Nome Coastal District to write policies that should be included within the state standards and about which policies can be developed.

Thank you again for your work on the ACMP.

Sincerely,

Jim Dory, Nome Coastal Coordinator

# North Slope Borough

## PLANNING AND COMMUNITY SERVICES DEPARTMENT



P.O. Box 69  
Barrow, AK 99723  
☎ (907) 852-0320  
Fax: (907) 852-5991  
E-mail: Dan.Forster@north-slope.org

*Daniel W. Forster, Director*

February 25, 2011

Honorable Senator Donny Olson  
State Capitol, Room 508  
Juneau AK, 99801

Honorable Representative Paul Seaton  
State Capitol, Room 102  
Juneau AK, 99801

Dear Senator Olson and Representative Seaton:

The North Slope Borough (NSB) appreciates this opportunity to respond to your February 11, 2011 letter requesting input for how the Alaska Coastal Management Program (ACMP) could be amended to provide a stronger, more meaningful program for coastal districts. Certainly our views on this topic are informed by several decades of generally positive experiences working with the ACMP prior to the 2003 statute changes and the 2004 regulation changes. Unfortunately, following the changes to the regulations, NSB finds little, if any value to the ACMP as it is currently being implemented by the Department of Natural Resources (DNR). Thus, we urge the Legislature to amend ACMP statutes to provide clarity, predictability and value for coastal districts. The remainder of this letter addresses the following specific topics: enforceable policies, designated areas, the so-called "DEC Carve-out," concentration of power, mediation, and use of consultants.

### **Enforceable Policies**

For NSB, the most problematic ACMP change is that with the amended program, DNR has not approved local enforceable policies that could be used to fill gaps in state and federal law. Particularly troubling is the fact that the new statutes clearly allow districts to establish enforceable policies for matters not adequately addressed by state or federal law, nevertheless, DNR's Division of Coastal and Ocean Management's (DCOM) interpretation of the statutes has made it impossible for districts to secure DNR approval for any meaningful enforceable policies.

Statutes provide guidance for establishing district enforceable policies, including a requirement that policies must address matters of local concern. One criterion for "local concern" is that policies cannot address a matter already adequately addressed by state or federal law. DNR provided further guidance on this subject in its 2005 Program Description approved by the federal Office of Ocean and Coastal Resource Management (OCRM). The guidance effectively states that districts can establish local policies regarding a particular topic where a state or

federal agency with broad authorities to regulate said topic does not have specific regulations addressing the particular matter for which a coastal district wants to write an enforceable policy.<sup>1</sup> This interpretation of AS 46.40.070(a)(2)(C)(ii) was affirmed in a July 12, 2004 Attorney General memorandum that found districts could establish policies for matters addressed in a DNR Area Plan as long as those matters weren't specifically addressed in DNR regulation. However, in marked contrast to these findings, DNR has adamantly disallowed districts to write such policies, asserting that district policies cannot address any matter for which an agency has general authority, regardless of whether that agency has addressed the specific matter in regulation.

As acknowledged by DCOM director, Randy Bates, the final set of 2004 ACMP regulations are more stringent than what was intended by the Legislature. For example, new regulations limit district policies to certain subjects specifically addressed in statewide ACMP standards and within designated areas (11 AAC 114.270(a)(1)). Yet, DNR denied many policies proposed by coastal districts, claiming that these matters are adequately addressed by the statewide standards. Since agencies have broad authorities for almost all coastal issues, DNR's interpretation of its new regulations makes it impossible for districts to establish any meaningful district enforceable policies.

We believe the Legislature should clarify the criteria for approving coastal district policies by specifying that districts may address gaps in state and federal law, regardless of whether the underlying issues would be within the authority of a state or federal agency to address. There are already provisions in statutes that prohibit policies from unreasonably or arbitrarily restricting a matter of state concern, so there should be no opposition to this clarification. Since DNR is not implementing the ACMP according to guidance in the 2005 Program Description and has made no attempt to redress regulations that are more stringent than intended by the Legislature, it is appropriate for the Legislature to remedy this issue.

#### **Designated Areas**

For some coastal uses and resources, DNR must first approve a designated area before a district can establish an enforceable policy. This is another example where DNR's 2004 amended regulations are more stringent than intended by the Legislature. For subsistence issues, DNR went a step further by requiring approval of a designated area before the statewide subsistence standard can be applied. In other words, a coastal district cannot even raise concerns about potential impacts to subsistence unless DNR approves a subsistence-use designated area. Yet, DNR disapproved all proposed subsistence use areas for four of the largest coastal districts representing over 50% of Alaska's coastal area: Cenaliulriit Coastal Resource Service Area (CRSA), Bering Straits CRSA, Northwest Arctic Borough, and North Slope Borough.

Our experience working with DNR on proposed subsistence use designated areas provides another example of DNR's inconsistent implementation of its regulations. Working toward our district plan approval, DNR continually "raised the bar" in terms of what was required for an approvable designated area. When regulations were approved in July 2004, DNR agreed that districts could designate their entire coastal zone as a subsistence use area if they provided

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<sup>1</sup> See subsection 5.3.5.2 of the June 2, 2005 *The Alaska Coastal Management Program*, commonly referred to as the "Program Description."

appropriate supporting information. DNR later changed its policy to require separate designated areas for each type of subsistence use. Answering a question about what DNR meant by type of subsistence use, DNR stated it would be best left up to coastal districts to identify the types of subsistence use that should be designated. But later, DNR disapproved our proposed subsistence use areas described in our February 2006 draft plan. In response, NSB created elaborate subsistence use maps at substantial cost to the Borough (not funded by the ACMP). The tentative agreements reached during meditation of our plan broke down when DNR continued to change the requirements for subsistence maps and associated policies.

To our surprise, during 2010, DNR again changed its mapping requirements without consulting the districts. For NSB, the new scale requirements would involve preparation of 575 new maps. Assuming a cost of \$400 per map, this new requirement would result in \$230,000 of additional costs for the Borough. While DCOM agreed to reconsider this new mapping requirement during a November 2010 coastal district workshop, it has not yet done so.

Similar to subsistence issues, a district must receive approval for designated "important habitats" before it may establish habitat-related enforceable policies, and DNR has approved only a few, very small important habitat areas statewide. Due to changes to the statewide habitats standard in 2004, most habitats within the coastal zone that were previously included under the standard are no longer covered. This change is another example of how ACMP regulations are more stringent than intended by the Legislature. In order to address these habitats, a district would have to receive approval for an important habitat designation.

Although draft regulations prepared by DNR in 2008 as part of its "ACMP reevaluation" would have removed the designated area requirements, these regulations have been tabled. Both the 2008 federal evaluation of the ACMP by OCRM and the recent Legislative Audit recommend that DNR revisit the designated area requirements. Since DNR has made no progress in addressing this issue, we request that the Legislature amend the statutes to clearly eliminate the designated area requirement.

#### **DEC "Carveout"**

The 2003 changes to ACMP statutes removed the Department of Environmental Conservation (DEC) from the coordinated ACMP project review process. While DNR testified to the Legislature in 2003 that districts would be able to establish enforceable policies to address air and water quality matters not adequately covered by DEC laws, DNR has summarily denied all proposed air and water quality district enforceable policies.

The DEC Carveout is problematic because air and water quality relates to almost every coastal resource or use. For example, during an ACMP review of a proposed offshore oil and gas exploration project, the Borough is not allowed to discuss impacts of an oil spill to subsistence, even though no DEC laws address such impacts. Furthermore, the DEC Carveout has eliminated opportunities for public review and comment on the DEC consistency finding of proposed activities in the federal Outer Continental Shelf (OCS). Since DEC's finding has been removed from the coordinated review process and DEC does not have a permit for activities in federal waters, there is no opportunity for public comment on any air or water quality issues.

As with the designated area requirement, DNR's 2008 draft statutory changes would have eliminated the DEC Carveout. Again, both the 2008 OCRM evaluation of the ACMP and the 2011 Legislative Audit strongly recommended that DNR revisit this issue. Since resolution of this issue will require a statutory change, we recommend that the Legislature address it as part of legislation addressing the ACMP sunset.

#### **Concentration of Power**

Legislative changes in 2003 moved the ACMP from the Governor's Office to DNR, eliminated the Coastal Policy Council, and gave the DNR Commissioner sole decisionmaking power for coastal issues, including project appeals (elevations). The recent Legislative Audit found that centralized decisionmaking has lessened consensus building among review participants and that DNR has been criticized for lacking impartiality and local representation.

The Borough supports statutory changes that would restore a cooperative decision-making process among state agencies and coastal districts that implement the ACMP. One way to accomplish this goal would be to establish a streamlined coastal policy board composed of state agency and district representatives. This board would provide an opportunity for districts and the other state resource agencies to work cooperatively with DNR to approve coastal district plans and changes to the ACMP regulations. Another way to restore said checks and balances would be to reestablish the requirement for consensus among the resource agencies during elevations of proposed consistency determinations.

#### **Statewide Standards**

In 2004, DNR substantially limited the ability of the ACMP to address legislative objectives in AS 46.40.020. These changes limited the scope of topics addressed by ACMP standards and severely limited the geographic area covered by the standards. For example, the statewide habitats standard was substantially revised to address only limited impacts to habitats. For offshore habitats, only impacts to "competing uses" may be addressed during ACMP reviews—eliminating the ability to address impacts to particular species using offshore habitats, the productivity of offshore habitats or other potentially adverse impacts to offshore habitats.

Changes to the definitions of "coastal waters" and "wetlands" resulted in some statewide standards, including the habitats standard, applying to only a small part of the coastal zone. As described in the above section on designated areas, an important habitat area would need to be designated in order to consider impacts to most habitat areas within the coastal zone. DNR has approved only a few, small important habitats, all of which are located in Southeast Alaska. So, although most of the oil and gas development is located within the NSB coastal zone, it would be impossible to address impacts to the habitat because the ACMP regulations exclude these areas from possible coverage by the statewide habitats standard.

One unexpected result from the 2004 changes to the statewide habitats standard involves the federal designation of vast expanses of critical habitat for polar bears. One of the reasons cited in the final rule for the designation was the lack of ability to address habitat impacts through the ACMP. NSB believes that if the ACMP had a broader and stronger habitat standard, and if DNR were to facilitate more robust and meaningful involvement from the coastal districts, the ACMP could be a powerful tool to require that federal proposed actions such as the designation of

millions of acres of critical habitat under the Endangered Species Act undergo a full public review through the ACMP consistency determination process.

The Borough supports efforts by the Legislature to direct DNR to amend the statewide standards so they allow consideration of impacts to all coastal resources and uses identified in the ACMP legislative objectives.

**Mediation**

NSB requested mediation of the DNR Commissioner's Decision for our coastal plan in 2007. We found the mediation process frustrating because of DNR's unwillingness to reach a reasonable compromise. While we made some progress in resolving certain issues, we ultimately requested that the mediator declare an impasse due to DNR's ever-changing requirements and unwillingness to implement ACMP regulations as per its 2005 Program Description. The attached mediation brief provides more detail regarding specific concerns raised by the Borough during the mediation.

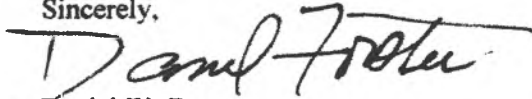
**Use of Consultants**

The Borough uses consultants on a regular basis to assist in its participation in ACMP reviews including ongoing reviews and adjustments to the ACMP itself. Although we have experienced and competent staff, consultants with long-term coastal management experience provide many additional and useful services. Thus, we agree with findings in Part 2 of the ACMP Legislative Audit that DNR's unwritten policy regarding consultants disregards a district's right to determine how and when it chooses to use a consultant.

We wish to provide an example where DCOM's consultant policy provided a problem for us. During an important review coordinated by DCOM a couple of years ago, our staff person assigned to the review was out of the office for a two-week period. We were surprised when DCOM denied our request to have our consultant added to the distribution list for the review during this period. Our request was reasonable and only involved adding a name to the email distribution list. This was the first we had heard about DCOM's policy to not distribute certain information to consultants working for coastal districts.

This concludes our response to your request for information for how the ACMP can be improved. We encourage the Legislature to address the problems outlined in this letter through changes to ACMP legislation. Without meaningful changes to the ACMP, we question whether it would be advisable to extend the sunset date for the program.

Sincerely,



Daniel W. Forster  
Director

Cc: Coastal District Coordinators State-wide    Attachment: NSB Mediation Brief

Edward Itta, NSB Mayor  
Siikauraq Martha Whiting, Mayor, Northwest Arctic Borough  
NSB Planning Commission  
Bessie O'Rourke, NSB Attorney  
Karla Kolash, NSB Mayor's Office  
Andy Mack, NSB Mayor's Office  
Marla Berg, NSB Mayor's Office  
Taulik Hepa, NSB Department of Wildlife Management  
Tom Lohman, NSB Department of Wildlife Management  
Randy Bates, Director, DNR Division of Coastal and Ocean Management

## NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

Kotzebue, Alaska 99752

(907) 442.2500 or (800) 478.1110

Fax: (907) 442.3740 or 2930

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Honorable Senator Donny Olson  
State Capitol, Room 508  
Juneau, AK 99801

Honorable Representative Paul Seaton  
State Capitol, Room 102  
Juneau, AK 99801

RE: Reauthorization of the Alaska Coastal Zone Management Program (ACMP)

Dear Senator Olson and Representative Seaton;

The Northwest Arctic Borough (Borough) is glad to respond to your February 11, 2011, letter to Coastal Coordinators to address changes to the ACMP for making it a more meaningful process for the borough and coastal resource service areas. On behalf of the Borough, I appreciate the opportunity to address the issues of the current program and what specific program changes can be made so that coastal communities can benefit from local enforceable policies.

Overall, the changes we recommend are to update and modernize the program including methods to increase public involvement for effective democracy in the process, update statutes regarding the subsistence policy to reflect life-long Alaskans way of life, facilitate the ability of coastal districts to establish enforceable policies for addressing local needs in responsible resource development, and remove the designated area requirement to reduce unneeded bureaucracy. All these recommendations reflect the importance of the way of life of life-long Alaskans and promote modernizing the program to better reflect the uniqueness of Alaska as the end product of these changes.

### **PUBLIC INVOLVEMENT**

Since the elimination of the Coastal Policy Board in 2003, there are no current checks and balances in the ACMP to provide for effective democracy. Appeals to coastal management plans are now decided by the state staff and Commissioner for the Department of Natural Resources

## NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

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(DNR), which gives DNR all decision-making authority to address matters. The establishment of a Coastal Policy Board would provide for public involvement through representatives from coastal districts and state agencies to decide elevations and the approval of coastal district plans. This Board would also oversee amendments to ACMP regulations and ACMP grant programs. A Coastal Policy Board would increase public involvement in administrative and program decisions in the ACMP; therefore promoting modern democracy and good governance.

### **SUBSISTENCE**

As you know, subsistence, which includes the acquisition of subsistence resources, is key to the survival and sustainability of our borough residents. Changes over the years have made the ACMP regulations extremely difficult, if not impossible, to address impacts to subsistence, which have and continue to sustain the economies and culture of life-long Alaskan residents and communities. Subsistence issues need be considered during a project review – it is a reality and important to maintain the uniqueness of the great state of Alaska. The current statewide standard is very general and does not address specific subsistence-related issues; for example, the people of Southeast Alaska have very different subsistence uses than those on the Northwest Arctic, for instance.

A solution to this would be to eliminate the designated area requirement, which has resulted in over bureaucratic administration, and change the program to allow coastal district to design enforceable policies on subsistence for matters to ensure responsible resource development that honors regional knowledge and uses.

### **FACILITATE ENFORCEABLE POLICIES**

Currently, DNR has authorianly limited policies to the specific matters in certain statewide standards; at the same time, the agency has denied policies on the basis that the statewide standards already address the issue. DNR's interpretation of the regulations and statutes (often seen as arbitrary) makes it practically impossible for coastal districts to have meaningful enforceable policies. To make policies effective and meaningful, statutory changes need to clarify that districts may establish enforceable policies that fill-in gaps in state of federal law.

## NORTHWEST ARCTIC BOROUGH

P.O. Box 111C

Kotzebue, Alaska 99752

(907) 442.2500 or (800) 478.1110

Fax: (907) 442.3740 or 2930

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### **DESIGNATED AREAS**

There are currently rigorous administrative requirements by DNR that mandate designation of areas before impacts can be considered for subsistence, upland habitat and natural hazards. This requirement has resulted in costly mapping that has not been funded by DNR and many proposed designated areas have been denied by DNR through administrative reviews. A quick and efficient solution to the designated area issue would be to simply eliminate the requirement as overly bureaucratic and unnecessary according to federal coastal management program.

### **CONCLUSION**

This concludes important list of changes that would dramatically increase the effectiveness and relevance of the ACMP to the Borough communities and our many life-long Alaskan residents. We appreciate your valuable time and efforts in understanding some of the challenges faced by the Northwest Arctic Borough. The challenges we face with the current ACMP is shared with many coastal districts and we look forward to any Legislative changes to increase its effectiveness.

If you have any specific questions about the Borough's recommendations with the ACMP, please feel free to contact Planning Director, Ukallaysaaq at 907.442.2500, extension 109 or at email [tokleasik@nwabor.org](mailto:tokleasik@nwabor.org).

Taikuu,



Silkauraq Martha Whiting, Mayor

Cc: Ukallaysaaq Tom Okleasik, Planning Director  
Alagiasq Grant Hildreth, Deputy Planning Director  
Kil'faq John Chase, Community Planner & Coastal Area Specialist

**CITY OF PELICAN, ALASKA  
RESOLUTION 2011-23**

**A RESOLUTION SUPPORTING THE EXTENSION OF AND AMENDMENTS  
TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

**WHEREAS**, the City of Pelican desires to promote and strengthen its continued participation in the Alaska Coastal Management Program (ACMP); and

**WHEREAS**, the ACMP has been an important program that promotes a balance between economic development and protection of coastal resources and uses since its inception in 1977; and

**WHEREAS**, the ACMP gives Alaskan coastal communities an essential tool to promote responsible development while addressing impacts to coastal resources and uses;

**WHEREAS**, changes to the ACMP statute in 2003 and changes to the ACMP regulations in 2004 eliminated the Coastal Policy Council, removed consideration of air and water quality impacts during ACMP project reviews and diminished the opportunity for meaningful participation in the program by the City of Pelican and other coastal districts; and

**WHEREAS**, the coastal communities' having a voice in addressing local circumstances and concerns is vital to the future well-being of traditional ways of life; and

**WHEREAS**, recommendations from the June 2008 evaluation of the ACMP by the federal Office of Coastal, Ocean, and Resource Management encouraging the state to reevaluate the implementation of the amended ACMP, revisit the requirements for designated areas, provide more technical assistance, and evaluate the effectiveness of retaining the DEC "carve-out" have not been sufficiently addressed; and

**WHEREAS**, the comprehensive 2008 reevaluation of the ACMP initiated by the State of Alaska in 2008 has not resulted in any changes to the program; and

**WHEREAS**, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program.

RESOLUTION 2011-23

PAGE 2

**NOW, THEREFORE, BE IT RESOLVED THAT:** The City of Pelican supports amendments to the ACMP that will restore checks and balances to the program, allow meaningful participation by coastal districts and promote responsible development.

**BE IT FURTHER RESOLVED THAT:** The City of Pelican supports introduction and passage of legislation that will eliminate sunset provisions for the ACMP, restore the ability for coastal districts to establish enforceable policies for matters not adequately addressed by state or federal law, eliminate requirements for designated areas for the application of enforceable policies, include the Department of Environmental Conservation in project consistency reviews, and establish a Coastal Policy Board to restore checks and balances to the program.

**PASSED, APPROVED AND ADOPTED BY THE PELICAN CITY COUNCIL ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.**

Signed: \_\_\_\_\_  
Clint Bean, Mayor

Attest:

\_\_\_\_\_  
Gunnar E. Combs, Assistant City Clerk



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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March 7, 2011

The Honorable Representative Paul Seaton  
The Honorable Representative Eric Feige  
Alaska State House of Representatives  
by e-mail

Dear Representatives Seaton and Feige:

Thank you for your recent letter to Coastal District Coordinators asking for input on proposed changes to and reauthorization of the Alaska Coastal Management Program (ACMP). The City and Borough of Sitka Assembly approved the attached Resolution 2010-35 SUPPORTING LEGISLATION TO EXTEND AND RESTORE THE ALASKA COASTAL MANAGEMENT PROGRAM TO ENABLE EFFECTIVE COASTAL COMMUNITY PARTICIPATION. This Resolution supports the following areas of changes needed to permit the City and Borough of Sitka's Coastal Management Program to once again meaningfully participate in the ACMP:

- **Sunset** – The Alaska Coastal Management Program will sunset July 1, 2011 unless the Alaska State Legislature extends the program. The ACMP is the only program providing financial assistance and regulatory framework for local coastal communities to have a "seat at the table" in management decisions affecting their local coastal zone. The arbitrary "sunset" provision needs to be eliminated and the program reauthorized.
- **Enforceable Policies** -- Sitka lost more than half its 55 enforceable policies in the "streamlined" process which began in 2003. Those remaining are so limited as to be ineffective. Coastal Districts need to be able to promulgate enforceable policies which address local coastal issues not already addressed by State and Federal laws. This has been a cornerstone of the ACMP to permit districts to address local circumstances.
- **DEC Carve-Out** – Not permitting any enforceable policies or comments relating to air or water quality has virtually eliminated meaningful participation in the ACMP, since almost all coastal uses and resources relate to air or water quality. DEC does not communicate with coastal districts or even other agencies and usually does not address key issues of concern to the coastal districts and agencies. This is untenable. DEC needs to be brought back into the ACMP review process, and coastal districts and agencies need to be able to comment on air and water quality issues in the coordinated review.
- **Designated Areas** – Requiring that any physical area subject to either Subsistence or Habitat Enforceable Policies must be pre-designated before any impacts to coastal resources or uses

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*Providing for today...preparing for tomorrow*

Representatives Seaton and Feige

March 7, 2011

Page 2

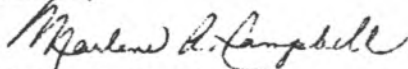
could be considered ignores the reality that resources and habitats occur throughout the entire coastal area (more than 300 miles of coastline in the City and Borough of Sitka), and many are migratory. It is extremely costly and difficult to scientifically document all this coastline required for Designated Areas. Project reviews are site specific; and many of the resources such as deer and fish and uses move around. Designating areas rather than resources or uses themselves is unrealistic and inaccurate. This regulation should be eliminated.

- **Meaningful Local Participation in the ACMP** – The City and Borough of Sitka has participated in the ACMP since its plan was approved in 1981. A costly, multi-year, and frustrating complete revision of Sitka's Coastal Management Plan was finally approved in 2007. DNR Division of Ocean and Coastal Management (DCOM) went beyond the Legislative intent of HB 191 and regulations, leaving the formerly lauded Sitka Coastal Plan as a shell with little substance and the Sitka Coastal Program no longer an active participant in the formerly comprehensive ACMP.

New leadership is needed to restore the ACMP to permit meaningful local participation and ensure a seat at the table for all, including applicants, agencies, and coastal communities. A classic example of DCOM's unwillingness to permit coastal districts to meaningfully participate in the ACMP is its "policy" of not allowing consultants to assist local districts using ACMP 306 funding. If a coastal district wishes to contract for services rather than hire staff, that should be a local decision. I have served as Sitka's Coastal Coordinator since 1987, the first eight years of which were as a consultant under contract. This arbitrary usurping of local community ACMP administration is unwarranted.

The City and Borough of Sitka Coastal Management Program has always tried to balance responsible development with protection of the coastal environment. There has never been an elevation or appeal of a Sitka project, and developers have worked closely with the Coastal Coordinator in the past to address coastal issues and also expedite permitting through the cooperative ACMP review process. The Sitka Coastal Management Program is eager to return to the table and participate in a re-energized coordinated review process which has been lost since the "streamlined ACMP process" was implemented. For further information, contact Marlene Campbell at 907-747-1855 or [campbell@cityofsitka.com](mailto:campbell@cityofsitka.com) e-mail.

Sincerely,



Marlene A. Campbell  
Coastal Management Coordinator

cc: Senator Bert Stedman  
Representative Peggy Wilson  
Sitka Assembly  
Municipal Administrator Jim Dinley

**CITY AND BOROUGH OF SITKA  
RESOLUTION 2010-35**

**A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF  
SITKA, ALASKA, SUPPORTING LEGISLATION TO EXTEND AND RESTORE  
THE ALASKA COASTAL MANAGEMENT PROGRAM TO ENABLE  
EFFECTIVE COASTAL COMMUNITY PARTICIPATION**

**WHEREAS**, the City and Borough of Sitka has participated in the Alaska Coastal Management Program (ACMP) since approval of its first Sitka Coastal Plan in 1981; and

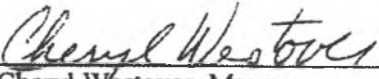
**WHEREAS**, the "streamlined ACMP process" which began with House Bill 191 in 2003 forced the complete revision of all Alaska Coastal Management plans (Sitka's revision was approved in 2007) and resulted in a greatly diminished role for coastal districts, including inability to establish meaningful local enforceable policies and removal of air and water quality from ACMP project reviews; and

**WHEREAS**, Sitka lost more than half of its 55 enforceable policies, the only portion of Sitka's coastal plan with standing in the ACMP permit review process, and the remaining policies are limited and ineffective in coastal comments addressing local issues; and

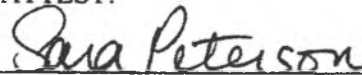
**WHEREAS**, the ACMP will sunset July 1, 2011 and all Coastal Management funding and coordination will cease unless the Alaska State Legislature extends the program;

**NOW, THEREFORE BE IT RESOLVED** that the City and Borough of Sitka Assembly supports legislation to extend the ACMP, eliminate the "DEC carve-out" and bring back air and water quality issues in the ACMP consistency review process, eliminate requirements for pre-designation of subsistence, habitat, or other areas subject to policies, and permit meaningful local participation in the ACMP through expanded enforceable policies addressing a wide range of coastal uses to permit City and Borough of Sitka and other coastal communities to better manage the coastal zone.

**PASSED AND APPROVED** by the Assembly of the City and Borough of Sitka, Alaska, on this twenty-eighth day of December, 2010.

  
\_\_\_\_\_  
Cheryl Westover, Mayor

ATTEST:

  
\_\_\_\_\_  
Sara Peterson  
Acting Municipal Clerk



## Municipality of Skagway

GATEWAY TO THE KLONDIKE

P.O. BOX 415 SKAGWAY, ALASKA 99840

(PHONE) 907-983-2297 – Fax 907-983-2151

[WWW.SKAGWAY.ORG](http://WWW.SKAGWAY.ORG)

March 8, 2011

The Honorable Paul Seaton  
Co-Chair, House Resources Committee  
State Capitol Building, Room 102  
Juneau, AK 99801-1182

Dear Rep. Seaton,

I am new to the position of Coastal District Coordinator for the Alaska Coastal Management Program (ACMP); however, in my short time working with the ACMP I have been aware of the need for the program here in Skagway and would like to see it continue.

The ACMP provides communities with a voice regarding projects that are occurring in the area. Local coordinators are closely acquainted with issues within their communities and are therefore uniquely qualified to review and give feedback on proposed projects.

The ACMP staff has been nothing but helpful orienting me with the program, providing many training opportunities and quick responses to my inquiries. Many district coordinators perform their duties in addition to regular work tasks, so this additional help is invaluable. I fully support the Alaska Coastal Management Program.

Please contact me with any questions.

Sincerely,

Emily A. Deach  
Coastal District Coordinator & Borough Clerk  
Municipality of Skagway



City of Valdez  
**ALASKA**

Department of Community  
& Economic Development

*Dave Cobb, Mayor*  
*John Hozey, City Manager*

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March 10, 2011

**Representative Eric Feige**

Alaska State Legislature House Resources  
Committee  
State Capitol Building, Room 126  
Juneau, AK 99802-1182

**Representative Paul Seaton**

Alaska State Legislature House Resources  
Committee  
State Capitol Building, Room 102  
Juneau, AK 99802-1182

Dear Honorable Representative Feige & Honorable Representative Seaton,

The City of Valdez City Council recently passed a resolution supporting the introduction and passage of legislation that will renew the Alaska Coastal Management Program and extend and/or eliminate the Alaska Coastal Management Program sunset provision. A signed copy of the resolution is attached to this letter. The resolution deliberately divides the sunset issue from any proposed changes to the program because Valdez values the ACMP greatly and the most important issue for us is the continuation of the program. However, we have seen a reduction in our local enforceable policies and do share some of the frustration many of the Coastal Districts have with the recent changes to the program. Overall we still benefit significantly from its implementation.

With the understanding that there are a multitude of differing opinions on what changes need to be made to the ACMP among Valdez citizens, there are two changes that the City of Valdez would like to propose that would help the way the Valdez Coastal District Implements it's Coastal Management Plan.

First, we would like to request a longer time period for consistency reviews. At least 50% of Valdez consistency reviews come to us with a deadline that does not provide enough time to take them before a Commission or the City Council for discussion or action. The City of Valdez feels our comments benefit from more eyes and a healthy discussion before they are submitted. Should the issue be a very hot topic, we most certainly do not have enough time to do a public hearing. Extending the deadline for local consistency reviews would provide much greater flexibility to collect public opinion and allow commissions to consistently weigh in on the issues.

Second, we propose implementing a process that acknowledges our comments are appropriately weighted in the consistency review process. The easiest and best way the Valdez Coastal District can be assured that its comments are taken into consideration and given due deference is in a written response to our submitted comments from the Agency coordinating the review. The written response should also include an explanation of the final outcome of the State's determination. With a written response Valdez can be assured that its comments were relevant to the decision making process and Valdez will gain a better understanding of why decisions were ultimately made.

We appreciate the time the House of Representatives is taking to understand the needs of all coastal communities in Alaska. Certainly the administrative issues presented in any Coastal Management Program are complex and complicated by the fact that around the State, just as it is in Valdez, the issues are also very personal and close to the hearts and identities of the residents. We hope the renewal of the ACMP is successful in this legislative session and look forward to changes in the program that will strengthen and ensure its continued success. Please contact me if you require any additional information or comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Robertson". The signature is fluid and cursive, with the first name "Laura" written in a larger, more prominent script than the last name "Robertson".

Laura Robertson  
Valdez Coastal District Coordinator  
(907) 834-3450  
[lrobertson@ci.valdez.ak.us](mailto:lrobertson@ci.valdez.ak.us)

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 11-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, SUPPORTING THE EXTENSION AND/OR RENEWAL OF THE ALASKA COASTAL MANAGEMENT PROGRAM IN THE 2011 ALASKA STATE LEGISLATIVE SESSION

WHEREAS, the City of Valdez has been an active participant in the Alaska Coastal Management Program (ACMP) since its adoption of the Valdez Coastal Management Plan in 1987; and

WHEREAS, the ACMP has helped shape the way the City of Valdez balances beneficial uses of its coastal areas with protection of coastal resources and development of coastal industries; and

WHEREAS, the ACMP has been an effective tool in management of coastal areas within the City of Valdez; and

WHEREAS, the City of Valdez supports the comprehensive network of government agencies the ACMP provides that allows coordinated communication over each coastal project review; and

WHEREAS, the City of Valdez desires to promote and strengthen its continued participation in the ACMP; and


WHEREAS, the ACMP will sunset and terminate on July 1, 2011 unless the Alaska State Legislature extends the program during the 2011 legislative session.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that:

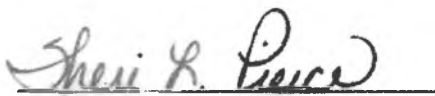
The Valdez City Council hereby supports introduction and passage of legislation that will renew the Alaska Coastal Management Program and extend and/or eliminate the Alaska Coastal Management Program sunset provision.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this 7<sup>th</sup> day of February, 2011.

CITY OF VALDEZ, ALASKA

  
Dorothy M. Moore, Mayor Pro Tem

ATTEST:

  
Sheri L. Pierce, MMC, City Clerk





# THE CITY OF WHITTIER

*Gateway to Western Prince William Sound*

P.O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

March 11, 2011

Honorable Paul Seaton  
Alaska State Capitol, Room 434  
Juneau, AK 99801

Honorable Eric Feige  
Alaska State Capitol, Room 126  
Juneau, AK 99801

Re: Request for Input on the Alaska Coastal Management Program

Dear Representative Seaton and Representative Feige:

This letter responds to your request for suggestions on how enforceable policies or regulations could be improved for the Alaska Coastal Management Program (ACMP).

The City of Whittier passed a resolution on February 15, 2011 about the ACMP that is enclosed with this letter. In addition to extending the sunset date for the program, the resolution supports establishment of a coastal policy board, reintegration of air and water quality issues into ACMP consistency reviews, elimination of requirements for designated areas, and amendments that would allow meaningful coastal district enforceable policies.

A stronger role for coastal communities in the ACMP will help promote balanced economic development. The City of Whittier encourages the House Resources Committee to amend House Bill 106 to ensure that coastal districts have a meaningful role in the ACMP.

Sincerely,



Robert Prunella

City Manager

Please visit our website at  
[www.whittieralaska.gov](http://www.whittieralaska.gov)

**CITY OF WHITTIER, ALASKA  
RESOLUTION 983-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA,  
SUPPORTING CHANGES TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

**WHEREAS**, the City of Whittier has participated in the Alaska Coastal Management Program (ACMP) for over 20 years as a coastal resource district; and

**WHEREAS**, since its inception in 1977 the ACMP has been an important program to promote responsible coastal development; and

**WHEREAS**, changes to ACMP statutes in 2003 and changes to the regulations in 2004 made significant changes to the program, including elimination of the Coastal Policy Council; and

**WHEREAS**, the 2008 evaluation of the ACMP by the federal Office of Coastal, Ocean and Resource Management recommended the Alaska Department of Natural Resources reconsider changes to the program, including the requirement for designated areas and the removal of air and water quality from ACMP reviews; and

**WHEREAS**, the November 2008 draft statutes and regulations prepared by the Alaska Department of Natural Resources would have removed the designated area requirements and brought the Alaska Department of Environmental Conservation back into ACMP reviews; and

**WHEREAS**, the December 8, 2010 legislative audit found that changes to the ACMP limited the ability for coastal districts to establish enforceable policies; restricted the ability to address impacts to upland habitats, and limited the ability to meet legislative objectives for the program; and

**WHEREAS**, the legislative audit recommended the Alaska Department of Natural Resources review the designated area requirements and develop proposals to reintegrate the Alaska Department of Environmental Conservation into the ACMP; and

**WHEREAS**, the ACMP will sunset on July 1, 2011 unless the Alaska Legislature extends the program

**NOW THEREFORE BE IT RESOLVED**; that the City Council of the City of Whittier hereby supports legislation that will extend the ACMP, establish a coastal policy board, bring back air and water quality issues into the ACMP consistency review process, eliminate requirements for designated areas, and allow meaningful coastal district policies.

**PASSED AND APPROVED** by a duly constituted quorum of the Whittier City Council on this 15<sup>th</sup> day of February 2011.

Introduced by: Bob Prunella  
Introduction Date: February 15, 2011

ATTEST: Brenda Krol

Brenda Krol  
City Clerk

Lester Lynceford  
Lester Lynceford  
Mayor

Ayes: 5  
Nays: 0  
Absent: 2  
Abstain: 0

**CITY AND BOROUGH OF YAKUTAT, ALASKA  
RESOLUTION 11-172**

**A RESOLUTION OF THE CITY AND BOROUGH OF YAKUTAT ASSEMBLY SUPPORTING THE ALASKA MUNICIPAL LEAGUE'S RESOLUTION SUPPORTING THE EXTENSION OF THE ALASKA COASTAL MANAGEMENT PLAN AND RESTORATION OF ORIGINAL PLAN PURPOSES**

**WHEREAS,** the City and Borough of Yakutat Assembly is the governing body of the City and Borough of Yakutat; and

**WHEREAS,** the assembly desires to continue and strengthen the Borough's role in the Alaska Coastal Management Program (ACMP); and

**WHEREAS,** The City and Borough of Yakutat's Coastal Management Plan has been a useful program that coordinated development efforts within the Borough ensuring a balance between economic considerations and conservation of coastal resources since it's inception in 1982; and

**WHEREAS,** the Borough is a member of the Alaska Coastal Municipal League; and

**WHEREAS,** with the understanding that the ACMP provides Alaska coastal communities a real tool to promote responsible development while protecting locally important coastal uses and resources; and

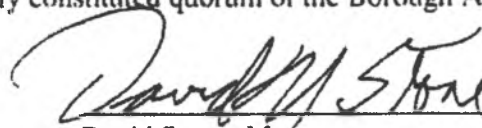
**WHEREAS,** the Alaska Municipal league recently passed a resolution supporting the continuation of the ACMP, reestablishing a Coastal Policy Board, allowing communities to comment on air and water quality impacts during project consistency reviews, eliminating arbitrary designations on subsistence use areas and allowing for the reinstatement of meaningful enforceable policies; and

**WHEREAS,** the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program; and

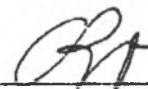
**WHEREAS,** the Borough wishes to join the AML's support of the continued operation and improvement of the ACMP;

**NOW THEREFORE BE IT REOLVED:** that the City and Borough of Yakutat supports legislation that will extend the ACMP, establish a Coastal Policy Board, reinstate the ability to comment on air and water quality issues, eliminate requirements for designations of subsistence use areas and allow meaningful enforceable policies.

**PASSED AND APPROVED** by a duly constituted quorum of the Borough Assembly this \_\_\_ day of January 2011.

  
\_\_\_\_\_  
David Stone, Mayor

ATTEST:

  
\_\_\_\_\_  
CATHY BREMNER, CMC





CITY & BOROUGH of YAKUTAT

P.O. Box 160  
Yakutat, Alaska 99689  
Phone (907) 784-3323  
Fax (907) 784-3281

15 August 2008

To: Randy Bates  
Director, Division of Coastal and Ocean Management  
PO Box 111030  
Juneau, Alaska 99811-1030

Also via email [randy.bates@alaska.gov](mailto:randy.bates@alaska.gov)

SUBJECT: Alaska Coastal Management Program Re-evaluation

Dear Mr. Bates,

Thank you for the opportunity to offer some suggestions for the restructuring of the ACMP. The following comments are intended to represent the suggestions of the Yakutat coastal district staff developed through site-specific experience and communication with other districts.

You are well aware that the general feeling within the Yakutat Borough to the previous changes under the Murkowski Administration was unfavorable. It was our viewpoint that the changes were intended to limit local public involvement from the decision-making process regarding development projects within our Coastal District.

We surmise that the intent of the ACMP overhaul and dissolution of the ADF&G Habitat Division was to reduce the public's role for upcoming development projects; mines, OCS drilling, LNG Pipeline, Forest Plan Revisions, etc. All of these actions generate substantial concern and public interest. In our view, the specific intent in changing the ACMP was to limit the public's ability to access due process in order to streamline planning and permitting. Compatible actions such as shortening the legislative session, reducing NEPA comment durations and generally restricting the public voice simplifies the discussion. This in turn hastens the timeline to production, creating jobs and profit for the state economy.

Unfortunately, these profits tend to centralize and benefits to the state as a whole may not be realized proportionally to what would be considered fair. This is especially true when long-term costs are factored into the balance sheet. What is the true cost when the subsistence, recreational and commercial value of the land is diminished after various industries have exhausted their target commodities and moved on? Such costs are rarely calculated in mitigation negotiations and too frequently, taxpayers shoulder the burden of

cleanup. It is a common global story. However, in the modern era we should have the tools and knowledge to develop in a clear calm manner.

There is always a need for development, resource extraction and jobs. Our interpretation of the intention of the ACMP is that it exists to ensure that the broadest spectrum of minds and authorities review potential projects. The revised ABC list will ease the burden for small actions where excessive oversight can be frustrating and focus analysis on projects with greater potential impacts. The wealth of Alaska is not going anywhere and it will only become more valuable as time progresses. Developing rationally will probably create more cumulative wealth in the end. A strong Coastal Program within the communities is the public's best avenue for traveling this path.

Through our weekly teleconferences, we identified the following items as needing revision.

They are as follows:

- 1) Participation of DEC in the ACMP review process**
- 2) Development of state standards for air and water quality**
- 3) Development of regional metal mining standards**
- 4) Development of sand and gravel mining standards**
- 5) Habitat Standards revisited and strengthened**
- 6) Designated areas and local enforceable policies T**
- 7) Local policy requirements revisited**
- 8) Confirm due deference on consistency review comments considers all evidence**
- 9) Establishment of the Coastal Policy Council**
- 10) Elevations of disagreements**
- 11) Additional emphasis on agency participation and notification requirements**
- 12) An expedited review process and additional funding for local planning**

Specific concerns to CBY are outlined as follows.

**1) Participation of DEC in the ACMP review process.**

The Department of Environmental Conservation has jurisdiction over both air and water quality. It is difficult to assess project impacts without including these key components. For example, potential gravel extraction within the borough would necessitate hauling rock from the mining area to a shipping facility. A potential health issue could be dust blowing off the loads into town. Without being able to cite air quality, the ACMP program would have little authority to negotiate transport routes to minimize public exposure to the dust.

In a past example, DEC was successful in removing Ophir Creek from the impaired waterbodies list. Historically, sewage ran directly into the creek. During coastal reviews of restoration initiatives, this problem was addressed and solved. Further water quality

testing confirmed that the waters are clean and the creek was removed from the list. This is exactly the type of collaboration and results that we expect from the program.

In contrast, during the last days of ADF&G Habitat Division, the oversight on the Yakutat Airport repaving project was hampered as the personnel were removed mid-project. Numerous problems arose. Silt fencing standards were inadequate to contain the abundant glacial flour excavated during the process and salmon streams ran turbid. An overflow of asphalt went into a salmon stream. Local personnel sampled the heavy spill that clearly affected salmon habitat. Due to the chaos surrounding the ACMP changeover no fines, mitigation, cleanup nor monitoring occurred. A large pit of exposed fuel was uncovered and then reburied due to jurisdictional disputes. Overall, oversight failed to keep the project within reasonable standards.

The explanation given for removing DEC from the ACMP review process was that permit issuances were taking too long. This seems to be a departmental issue and does not seem to justify removing air and water quality standards from the rest of the program.

**Citations.** To restore DEC's role in the ACMP, amend AS 46.40.040(b) (1), AS 46.40.096(g) (i), and (k). In addition, repeal regulations associated with the "carve-out".

## **2) Development of Air and Water Quality State Standards and Local Policies**

The ACMP should restore and enhance Statewide Air and Water Quality Standards. Coastal districts should be able to address concerns with these standards and create standards that are more rigorous where they are not adequately addressed by state or federal regulations. The general silt fence requirements during the Yakutat airport project is a clear example of the inadequacy of existing requirements to prevent fine particle entry into spawning tributaries. In this situation, the potential local enforceable policy would require extra settling ponds and straw bales in place of silt fencing.

**Citations.** Amend 11 AAC 114.270(f) to clarify that districts can establish policies that do not duplicate DEC statutes and regulations.

## **3) Mining**

There are 160,000 abandoned mining sites across the nation. Many of these pose safety issues and contamination risks due to lack of appropriate regulation. Alaska should not repeat history. As the mining industry grows in Alaska, CBY would like to see projects responsibly developed. Large portions of the CBY were staked and we had no authority to be involved with operating procedures when mining begins. Some forms of mining are negligible in their impact to water quality while others essentially rearrange the landscape. In response, the borough enacted its own mining ordinance further complicating the regulatory landscape. Without a strong ACMP, the borough will be forced to continue enacting its own code.

In a common theme, there is value in having local knowledge of the landscape at the planning table. Large mining operations should be heavily scrutinized by the ACMP and enhanced by local policies on specific issues not covered by standard state and federal regulations. This would help alleviate potential enduring problems experienced by other states. Many mining impacts are essentially irreversible. The mines play out in time and the after effects can last indefinitely.

Mining must have its own statutes in the ACMP. This is probably the most critical amendment to the program at this time for the CBY.

#### **4) Sand and Gravel**

CBY has vast reserves of sand and gravel. This resource is currently under review for production. The Yakutat Foreland's gravel deposits have been mapped by CBY and appropriate areas and methods for production have been discussed with potential operators, including shipping facilities. Plans for extraction include fishery enhancement and appropriate aesthetic standards. However, without the teeth of good policy these agreements are little more than handshakes. The sand and gravel standard must include the term "**freshwater**" to confirm that it applies to all operations within the coastal zone that can affect coastal uses and resources.

#### **5) Designated Areas and Local Policies**

It is standard federal practice to review habitat issues on a project-by-project basis. The intent of designating areas was, on the surface, a positive one. Developers and landowners can become frustrated by various species maps, public uses and habitat restrictions that arise during the planning process. If the issue is large enough, mitigation becomes cost prohibitive and the desired action cannot be undertaken. The designated areas were intended to highlight sensitive places where developers would be aware of potential problems during scoping phases of project planning. Working around sensitive areas saves time and frustration for all involved.

Unfortunately, the dynamic geology, climatic shift and the sheer "youthfulness" of the Yakutat Forelands makes this method unworkable. Salmon streams shift with uplift and tectonic activity. Recently deglaciated channels are being colonized by new runs of salmon, shorebird colonies take advantage of changing landscapes moving colonies as habitat parameters shift. In summary, various species of commercial, subsistence and non-game value are experiencing rapid population shifts both up and down as conditions alter.

It is difficult to secure monitoring monies to track these trends. Therefore putting the burden of "scientific evidence" upon the districts is somewhat disingenuous. We are attempting to do as much of this work as we can. The CBY works well with USGS and ADF&G for monitoring water discharge, the USFWS for habitat and shorebird monitoring and conservation education, NOAA for tracking marine mammal strandings and research, and we have cooperative projects with the local USFS and ADF&G offices

for recreation development, fisheries, wildlife and habitat issues. This is a daunting task given the limited funding allotted in the annual required tasks grant. Even with these limitations, CBY is doing more than its share to track the quality of our coastal zone.

The concept of "Designated Areas" or "Areas Meriting Special Attention" is still valuable for the aforementioned reasons. However, restricting policies to these areas is a key problem with the existing plan. Funding districts to collaborate with tribes, state and federal agencies to broaden our knowledge of specific areas and ecologies can only help the process of responsible development.

**Citations.** The designated area requirement should be removed in 11 AAC 114.250, 11 AAC 114.270, 11 AAC 112.210 (hazards), 11 AAC 112.270 (subsistence), 11 AAC 112.300 (important habitat), and 11 AAC 112.320 (historic areas).

## **6) Habitat Standards**

Unfortunately, many times habitat function is in the eye of the beholder. For example, reviews of road impacts on water flow by hydrologists, fish biologists, foresters and operators can vary significantly during BMP monitoring trips. Local observations can be an invaluable resource for insight into the region's habitat value. Local hunters, fishermen and trappers contain a large pool of observations that can enhance decision-making. Agency staff turnovers and the resultant lack of experience can hamper good decision making as regulators are tasked across a large array of habitat types.

### **Wetlands.**

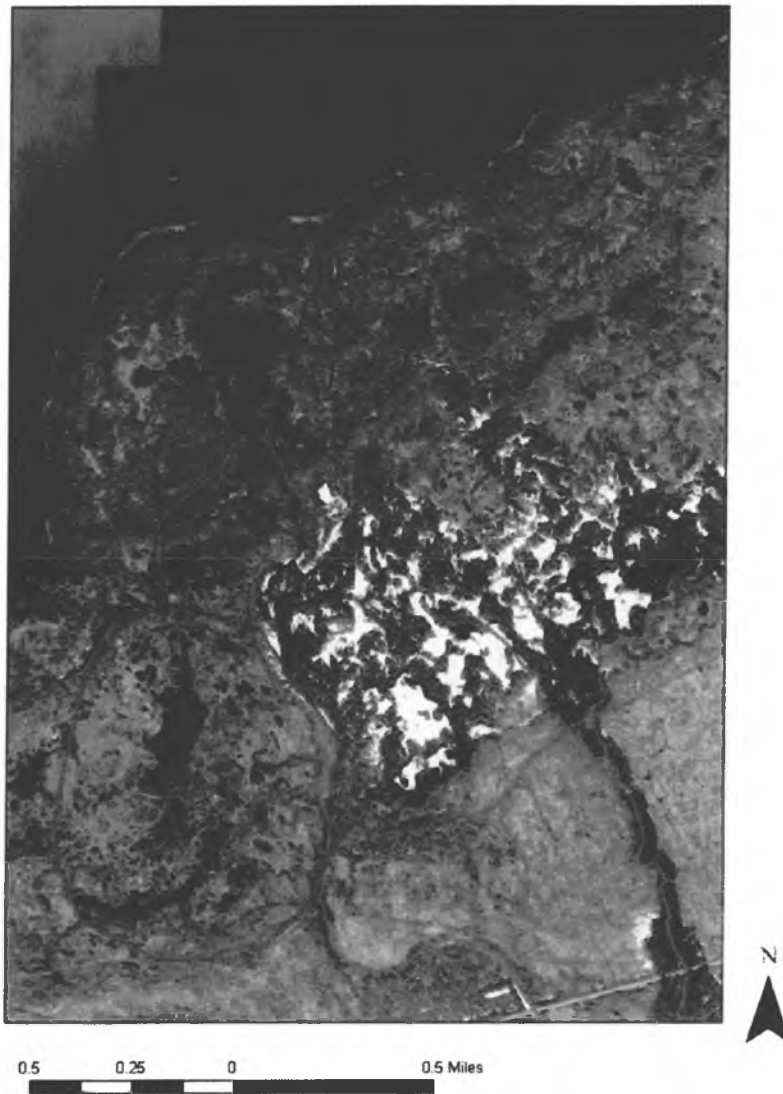
Wetland regulation generally involves filling or dredging regulation. Neither state nor federal regulations have sufficient statutes to protect wetlands in an ecosystem sense. Under current ACMP status, only saltwater wetlands are eligible for review. The following IKONOS satellite imagery illustrates how lack of buffers on wetland habitats can drastically affect the hydrology of an area.

This picture is taken on Yak-tat Kwaan Corporation land where timber harvest was overseen by the State of Alaska. The kettle ponds to the left were not buffered while the ponds to the right were. The stream on the right dries up stranding juvenile salmon while the buffered headwaters typically maintain a wetted channel throughout the year. The trees in the buffer zone create both shade and a snow accumulation zone. The consequent spring melt off is meted out over a longer duration more beneficial to salmon habitat. Shade also keeps water temperatures cooler and more favorable to rearing salmon.

The wetland standard, under AC 112.300(a) (3) and (b) (3), limits the review to looking at impacts to water flow and drainage patterns. Temperature needs to be included as well. Since 11 AAC 112.300(B) (i) and the definition of coastal water and wetlands (11 AAC 112.990), only address saltwater wetlands this previously described situation cannot be addressed by the Coastal Program since it is freshwater habitat. The USFS does not

buffer wetlands either. This photo is clear evidence of significant impact to wetland function. Note that the entire wetland complex around the buffered drainage is clear-cut.

### Buffered vs Unbuffered Wetlands



**Figure 1** Day Glo Creek West Yakutat Forelands

**Upland Habitat.** The elimination of Important Upland Habitat from the ACMP is illogical. The Yakutat Forelands are intricately linked to the near shore marine environment. Seals and sea lions travel miles upstream chasing salmon and eulachon. Murrelet species nesting on glacial scree and in old growth trees travel daily to the sea to

feed, the fisherman living in the uplands descend to the harbor to ply their trade, bears emerge from their dens and travel to the beaches for the first greens of spring and later the vast swaths of strawberries, moose over winter on the coast and calve in the dense woods, many deer survive the winter along the coast yet thrive inland during the summer. Sediments pouring from glaciers and snowfields create our long sandy beaches, which in turn sculpt our estuaries that harbor massive shorebird migrations, rearing salmon and the majority of our fishing economy. They also deposit the gold and other minerals sought after by the mining industry. The Habitat Section should be revised to include Important Upland Habitat, which may be identified by the local district or state or federal resource agencies with supporting evidence. All upland habitats within the current coastal boundary be considered for this classification if science can determine level of importance.

Citations. Important Upland Habitat should be added as a subject area in 11 AAC 112.300, Habitats.

### **Fisheries Habitat.**

Fisheries habitat is an extremely important aspect of the ACMP. The Division of Sport fish has documented that 30% of all freshwater angling effort in SE Alaska occurs in the Yakutat Borough. Our commercial fishery is modest by statewide standards but our local people hold over 200 permits and for many it is their sole source of income. The Habitat Standard section needs to include a separate standard for important fisheries habitat. It should include fish passage, spawning, and rearing as upfront considerations for development activities. Both the State and local policies need to be free to exercise strong conservation standards to protect an increasingly valuable renewable resource..



**Figure 2. Logging road after rains on state managed salvage sale Upper Lost River Watershed**



**Figure 3 Sediment entering salmon stream through silt fencing from previous road.**

Citations. Important Fisheries Habitat should be added in 11 AAC 112.300, Habitats.

### **Rivers, Streams, and Lakes, and Riparian Management Areas.**

There are a number of streams, within the CBY, that were not buffered during logging activity or inadequately buffered given the local wind patterns. The picture below shows a buffer that is failing. There are several more examples across the borough. On the Yakutat Forelands, once a stand is opened to the wind mass blow down events can overwhelm buffers set by current standards. From the USFS West Forelands Assessment it was noted that 90% of the most intense blow down events occur adjacent to timber harvest. This is an example of state and federal guidelines not being adequate for local conditions to ensure protection of the stream corridor, though that is the intent of the law.



**Figure 4 Failed riparian buffer West Fork of the Situk River**

From the photos, it is evident that state standards are falling short. The standard calls for avoiding, minimizing, and mitigating significant adverse impacts to natural water flow, active floodplains, and natural vegetation within Riparian Management Areas. Again, the sediment impacts are part of water quality standards and are not allowed review under the ACMP. On the forelands, buffers should trend towards maximum width given the wind disturbance component of local forest ecology. After experiences on Ophir Creek with excessive blow down preventing fish passage and sewage outflows, a local ordinance was passed to prevent development within 500 feet of the stream bank. Conventional wisdom sees this as too restrictive, but local experience with multiple failed buffer zones indicates that this standard may be the minimum that actually functions..

#### **General Habitat Standard issues.**

The old system of maintaining and enhancing habitats where it is feasible and prudent put the discussion into a precautionary mode. The best-case scenario was maintaining what already existed. It is far easier and cheaper to maintain a watershed than it is to put one back together again after significant alterations.

For example, if logging road construction, culvert installation and timber harvest are implemented according to reasonable policies, mitigation is unnecessary. In a local

scenario, logging roads would be constructed above grade to avoid changing water flow, culverts would pass National Fish Passage standards outlined in the clean water act and timber harvest would occur on a partial harvest sustainable rotation. The result would be no litigation, no pre commercial thinning and no expensive "restoration" or "mitigation" shouldered by the taxpayers. Given the long-term hidden costs post timber sale, doing the job well up front would likely cost less in the end. ACMP policies guiding good habitat decisions could help drive this fundamental change in perspective.

The three-part test allows for projects that cannot avoid impacts, but are essential to the community;

- 1) There is significant public need for the proposed use or activity [deference would go to the local district for determining the need];
- 2) There is no feasible or prudent alternative to meet the public need; and
- 3) All feasible and prudent steps to maximize conformance with the standards have been taken.

An example in Yakutat would be the current multi-use dock project. Since the dock will be constructed of sheet pilings filled with gravel, it cannot avoid destroying intertidal habitats. The need for the dock has been well demonstrated and the loss of habitat to the overall shoreline has been determined to be minimal by the local district. Though the dock will cause an immediate loss of existing spawning substrate for herring, the overall result may well be an *increase* in spawning surface area as the piles become colonized with macrophytes. In turn, the dock will provide economic opportunities from cruise ship off loading and gravel shipment while allowing a larger fuel barge to dock decreasing local gas prices.

## 7) Local policy requirements

**"Adequately Addressed."** Statute (AS 46.40.070) allows districts to have their own policies. Certain rivers, soil types, forest stands and local populations of plants, fish and wildlife have specific needs depending on use, sensitivity and natural history. A great deal is unknown about various natural processes. General jurisdiction authority or blanket statutes often times do not adequately reach the desired intent of the regulation. Local experience can assist in pinpointing these gaps. These regulatory holes can then be addressed through statute or enforceable policy amendments. If the science is not adequate to formulate a concise amendment then funding should be provided to address the information gap and multi-party discussions can collaborate to analyze research results and author a regulatory solution.

An example of this for Yakutat would be the seismic exploration currently scheduled for next month. Though the current ABC list precluded any meaningful comment in this case, it was obvious that the current scientific literature is inadequate in determining effects of underwater noise. An authority on seismic operations in Woods Hole Oceanographic Institute has authored an essay stating that at least a decade of applied research is necessary to determine cause and effect. Several papers indicate significant risks and just as many indicate negligible impacts depending upon the species involved.

For whaling districts, this is a large concern. Much of the CIAP money should be put into researching this question and policies developed. To date the seismic question has not been "Adequately Addressed"

**"Allow/Disallow."** Flexibility is important to problem solving. Sometimes habitats must be altered or a "take" of a protected species authorized for essential projects to go forward. If a policy must be waived for a specific project, it should not be interpreted as unimportant for future consideration.

#### **8) Confirm Local Deference for Standards that Utilize Local Knowledge.**

The due deference definition and 11 AAC 110.250(b) should be changed to confirm consideration of all factual evidence.

11 AAC 110.250(b), allows comments to be submitted without the regulatory authority giving due deference. It is unclear who decides the commentor's expertise. In the case of the recent review of seismic activity in Yakutat Bay, the coastal coordinator reviewed numerous scientific documents. Though the "area of expertise" would be considered to be outside the district's expertise is it not possible to contact various universities and agency personnel who are experts in the field and incorporate their research and comments into local commentary. Many times affected areas are known to local districts while knowledge of potential effects can come from outside "experts" The combination of knowledge in district reviews should not be parsed based on "expertise" of the actual author. This provision runs the risk of inadvertent dismissal.

Though the definition of due deference in 11 AAC 110.990(25) states that:

- "Due deference means that deference is appropriate in the context of
- (A) The commentor's expertise or area of responsibility; and
- (B) All the evidence available to support any factual assertions of the commentor:

The risk is that the burden of collecting "All evidence available" is extremely large. To review all research on acoustic impacts of seismic survey is a long process and currently inconclusive.. This statement should be revised to (B) there is *supporting* evidence to support any factual assertions of the commentor.

#### **9) Establishment of the Coastal Policy Council**

If the CPC had been functioning during the initial changes to the ACMP there would have been another outlet for mediation and this rewrite might not have been necessary. Early signs of this dysfunction occurred during COYAK I & II timber sales on the Yakutat Ranger District in the Tongass National Forest. The CBY filed comments on the COYAK I timber sale through the DGC. The timeline for this state forum on comments ended 9 days after the USFS had, unbeknownst to the CBY, already signed the timber sale Decision Memo. There might as well not have been a state comment period.

The CBY was taken aback at the lack of coordination, which was the DGC's job. This disempowered concerned local citizens who had to accept promises from the USFS that the harvest would be minimal, take only blow down and stay on the road system. The sale proceeded with 40% green trees being harvested and, after the Bush administration's overturning of the roadless rule against overwhelming public support, the sale was doubled in size and included acreage far off the road system. The sale was challenged under NEPA rules, the USFS was found to be acting illegally and a rare **permanent injunction** was issued. The logging contractors were evicted from the job site, the town was in an uproar and lingering hostility remains to this day. All of this could have been avoided if the ACMP and the Council had been properly supported and utilized. It is not sufficient to rely on any one agency to make wise decisions.

### **10) Elevations**

Following the previous testimony, it follows that the DNR Commissioner should not hold the final scepter. The current law gives all decision-making authority for elevations to the DNR Commissioner. AS 46.40.096(d) should be amended to include all state resource agencies in the decision to elevate or not and put the final decision to the CPC.

### **11) Transfer of the ACMP to the State Department of Commerce, Community, and Economic Development, DCRA.**

Vertical integration of reviewing and permitting is problematic as it is difficult to avoid hierarchical pressure when in-agency job promotions, social interactions and impromptu meetings are commonplace. In order to use the time-tested system of checks and balances it is necessary to allow disagreements to occur without political ramifications. Decentralizing decision-making is a key component to power sharing and reviews that are more equitable. Experiences with DCED have been mostly positive with the CBY enjoying a variety of grants including fishery revitalization projects, such as Yakutat Wild Regional Branding. This positive relationship with the communities creates a better format for implementing the ACMP. DNR would still hold various permitting authorities and would still be an integral part of the review process. This has been achieved somewhat by the reinstatement of ADF&G's Habitat Division.

### **12) Additional Emphasis on Agency Participation and Notification Requirements.**

The example illustrating lack of coordination between the USFS and DGC on the recent Yakutat Timber sales clearly shows the need for improved agency participation. However, there has been a relatively good track record recently on notifications in the CBY, which is promising. This, of course, has been simplified by the lack of statutes and appropriate enforceable policies. Several Yakutat constituents have requested comment opportunities on current actions this summer and we had no avenue to offer them. Revamping the program where citizens can effectively use the ACMP for a forum will build trust in public involvement.

### **13) An Expedited Approval Process and Additional Funding for Local Plan Changes.**

There was consensus during the recent conference calls that the districts do not wish to rewrite their plans. It would be sufficient to make these fundamental statute changes and allow us to reinvigorate our local policies. The vast increase in CIAP monies should provide an opportunity for districts to enhance their knowledge within their coastal zone through research and monitoring. If the only intent of the funding is managing the OCS then maybe there needs to be a similar funding source for near shore marine and coastal uplands.

Currently we are facing projects on multiple fronts. Within the borough, over 160,000 acres of BLM land has been opened up to oil, gas and mineral development. In addition, approximately 90 square miles of the eastern forelands was staked for open pit mining, there is talk of oil exploration on mental health trust land and a seismic boat sent 265 dB sound waves throughout Yakutat Bay during the height of the coho season. It is hard to believe that none of these projects is subject to honest review under the neither current ACMP statutes nor beholden to local enforceable policies.

We should be allowed access to the CIAP monies to further the science needed to better research our ecosystem so that future development can coexist with a healthy people and place.

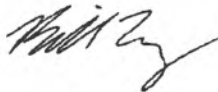
As the mission states:

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.

The Yakutat Coastal District wants to restore functionality to the ACMP. Our suggestions are based on specific experiences outlined throughout this document. We are neither anti-development, nor open to rapid depletion of our borough's natural resources. We believe that the collective wisdom of the community can offer valuable insight to the planning of development within our coastal district. The CBY has a long history of protecting its resources for the benefit of the community. In the end, we have the most at stake.

Thank you for the opportunity to comment on this ACMP revision.

Sincerely



Bill Lucey,  
Yakutat Coastal District

**Alaska Coastal Management Program**  
**Approved Coastal District Enforceable Policies**  
**March 16, 2011**

| <b>Topic</b>  | <b>Total Policies</b> | <b>Percentage</b> |
|---|-----------------------|-------------------|
| <b>Recreation</b><br>(11 AAC 114.250(c))                                  | 74                    | 32%               |
| <b>Coastal Development</b><br>(11 AAC 112.200)                            | 71                    | 31%               |
| <b>History and Prehistory</b><br>(11 AAC 114.250(i))                      | 19                    | 8%                |
| <b>Coastal Access</b><br>(11 AAC 112.220)                                 | 17                    | 7%                |
| <b>Important Habitat</b><br>(11 AAC 114.250(h))                           | 13<br>(11 in Juneau)  | 6%                |
| <b>Sand and Gravel Extraction</b><br>(11 AAC 112.260)                     | 11                    | 5%                |
| <b>Natural Hazards</b><br>(11 AAC 112.210 & 11 AAC 114.250(b))            | 10                    | 4%                |
| <b>Commercial Fishing &amp; Seafood Processing</b><br>(11 AAC 114.250(f)) | 6                     | 3%                |
| <b>Energy Facilities</b><br>(11 AAC 112.230 & 11 AAC 114.250(e))          | 4                     | 2%                |
| <b>Subsistence</b><br>(11 AAC 112.270 & 11 AAC 114.250(g))                | 3                     | 1%                |
| <b>Utility Routes and Facilities</b><br>(11 AAC 112.240)                  | 0                     | 0%                |
| <b>Tourism</b><br>(11 AAC 114.250(d))                                     | 0                     | 0%                |
| <b>Transportation Routes and Facilities</b><br>(11 AAC 112.280)           | 0                     | 0%                |
| <b>Mining</b><br>(can't write a policy)                                   | 0                     | 0%                |

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 2, following "extension;":

2 Insert "relating to the development, review, and approval of district coastal  
3 management plans;"

4  
5 Page 2, following line 5:

6 Insert new bill sections to read:

7 **\*\* Sec. 2. AS 46.40.030 is amended to read:**

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

9 Coastal resource districts shall develop and adopt district coastal management plans in  
10 accordance with the provisions of this chapter. The plan adopted by a coastal resource  
11 district shall be based upon a municipality's existing comprehensive plan or a new  
12 comprehensive resource use plan or comprehensive statement of needs, policies,  
13 objectives, and standards governing the use of resources within the coastal area of the  
14 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan  
15 criteria adopted under AS 46.40.040 and must include

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

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

20 (3) a statement of policies to be applied to **all** [THE] land and water  
21 uses subject to the district coastal management plan **as well as policies that apply**  
22 **only to special management areas; and**

23 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT

1 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT  
 2 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND  
 3 WATER WITHIN THE COASTAL AREA; AND

4 (5)] a designation of any special management [, AND THE  
 5 POLICIES THAT WILL BE APPLIED TO THE USE OF,] areas under [WITHIN]  
 6 the district coastal management plan and enforceable policies that will be  
 7 applicable within those special management areas [RESOURCE DISTRICT THAT  
 8 MERIT SPECIAL ATTENTION].

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

12 (1) clear and concise as to the activities and persons affected by the  
 13 policies and the requirements of the policies, whether the policies are prescriptive  
 14 or performance-based;

15 (2) necessary given local conditions; and

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

22 \* Sec. 3. AS 46.40.040(a) is amended to read:

23 (a) Except as provided in (b) of this section and AS 41.17, the department  
 24 shall

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

29 (A) identifying the boundaries of the coastal area subject to the  
 30 Alaska coastal management program;

31 (B) determining the land and water uses and activities subject

1 to the Alaska coastal management program;

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

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

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

9 (F) designating and developing policies for special  
10 management areas [THE USE OF AREAS OF THE COAST THAT MERIT  
11 SPECIAL ATTENTION]; and

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

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

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

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

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

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

26 \* **Sec. 4.** AS 46.40.070 is amended by adding a new subsection to read:

27 (c) In reviewing and approving a district coastal management plan under (a) of  
28 this section, the department may not require a district to designate areas for the  
29 purpose of developing an enforceable policy.

30 \* **Sec. 5.** AS 46.40.210 is amended by adding a new paragraph to read:

31 (13) "special management area" means a delineated geographic area

1 within the coastal area that is sensitive to change or alteration and that, because of  
2 plans or commitments or because a claim on the resources within the area delineated  
3 would preclude subsequent use of the resources to a conflicting or incompatible use,  
4 warrants special management attention, or that, because of its value to the general  
5 public, should be identified for current or future planning, protection, or acquisition;  
6 these areas, subject to the board's definition of criteria for their identification, include:

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

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

11 (C) areas of substantial recreational value or opportunity;

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

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

16 (F) areas of significant hazard due to storms, slides, flooding,  
17 earthquakes, active faults, tsunamis, volcanoes, liquefaction, ice movement or  
18 snow avalanches, or erosion; and

19 (G) areas needed to protect, maintain, or replenish coastal land  
20 or resources, including coastal flood plains, aquifer recharge areas, beaches,  
21 and offshore sand deposits."  
22

23 Renumber the following bill sections accordingly.

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 2, following "extension;":

2 Insert "relating to the review and approval of district coastal management plans;"

3

4 Page 2, following line 5:

5 Insert a new bill section to read:

6 **\*\* Sec. 2.** AS 46.40.070 is repealed and reenacted to read:

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

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

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

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

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

17 (C) do not arbitrarily or unreasonably restrict a use of state  
18 concern.

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

21 (1) by federal statutes or regulations if the United States Congress  
22 expressly declares that local law or regulation is preempted, if the United States  
23 Congress demonstrates the intent to occupy the field exclusively, or if there is an

1 actual conflict between federal and local law or regulation;  
2 (2) by state law if it is prohibited, either by express legislative  
3 direction or direct conflict with a state statute or regulation, or where the management  
4 plan substantially interferes with the effective functioning of a state statute or  
5 regulation or the underlying purposes of a state statute or regulation."  
6

7 Renumber the following bill sections accordingly.

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Insert "relating to coastal district plan criteria and consistency reviews and  
3 determinations;"

4

5 Page 2, following line 5:

6 Insert new bill sections to read:

7 **\*\* Sec. 2.** AS 46.40.040(a) is amended to read:

8 (a) Except as provided in [(b) OF THIS SECTION AND] AS 41.17, the  
9 department shall

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

14 (A) identifying the boundaries of the coastal area subject to the  
15 Alaska coastal management program;

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

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

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

22 (E) developing policies and procedures to determine whether  
23 specific proposals for the land and water uses or activities subject to the Alaska

1 coastal management program shall be allowed;

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

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

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

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

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

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

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

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

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

21 (1) an activity that

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

25 (B) IS SUBJECT TO AUTHORIZATION BY THE  
26 DEPARTMENT OF ENVIRONMENTAL CONSERVATION UNDER THE  
27 REQUIREMENTS DESCRIBED IN AS 46.40.040(b);]

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

29 [AND]

30 (3) the issuance of an authorization or permit issued by the Alaska Oil  
31 and Gas Conservation Commission; **and**

1                                   **(4) the necessity of a completed prevention of significant**  
2                                   **deterioration of air quality permit application.**

3       \* **Sec. 4.** 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 department under this chapter. The scope of a  
10                                  consistency review subject to 16 U.S.C. 1456 is determined under 16 U.S.C. 1456 and  
11                                  15 C.F.R. Part 930.

12       \* **Sec. 5.** AS 46.40.040(b), 46.40.040(c), and 46.40.096(i) are repealed."  
13

14       Renumber the following bill sections accordingly.

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Insert "relating to the time limitations for a consistency review and determination  
3 for certain projects occurring in a coastal resource district;"

4

5 Page 2, following line 5:

6 Insert a new bill section to read:

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

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

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

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

11 (B) activity requiring an environmental impact statement;

12 (2) are suspended

13 (A) from the time the reviewing entity determines that the  
14 applicant has not adequately responded in writing within 14 days after the  
15 receipt of a written request from the reviewing entity for additional  
16 information, until the time the reviewing entity determines that the applicant  
17 has provided an adequate written response;

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

19 (C) during the period of time a consistency review is  
20 undergoing a subsequent review under (d)(3) of this section."

21

22 Renumber the following bill sections accordingly.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HB 106

1 Page 1, line 3, following "program;":

2 Insert "relating to consistency determinations made under the Alaska coastal  
3 management program;"

4

5 Page 2, following line 5:

6 Insert a new bill section to read:

7 "\* Sec. 2. AS 46.40.096(h) is repealed."

8

9 Renumber the following bill sections accordingly.

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Insert "relating to the application of the consistency review and determination  
3 process for the Alaska coastal management program to activities inland of the coastal  
4 zone;"

5

6 Page 2, following line 5:

7 Insert a new bill section to read:

8 **\*\* Sec. 2.** AS 46.40.096(*l*) is amended to read:

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

11 (1) activities within the coastal zone or inland of the coastal zone if  
12 the activities would cause direct and significant impact to a coastal use or  
13 resource; and

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

20

21 Renumber the following bill sections accordingly.

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Insert "relating to the definition of project under the Alaska coastal management  
3 program;"

4

5 Page 2, following line 5:

6 Insert a new bill section to read:

7 **\*\* Sec. 2.** AS 46.40.210(9) is repealed and reenacted to read:

8 (9) "project" means all activities described in AS 46.40.096(l) and all  
9 activities in the list of permits, certifications, leases, approvals, and authorizations that  
10 trigger a consistency review developed under AS 46.40.096(m), including a federal  
11 agency activity as defined in 15 C.F.R. 930.31;"

12

13 Renumber the following bill sections accordingly.

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Insert "relating to the duty of the Department of Natural Resources to provide  
3 data and information to a coastal resource district; relating to use of consultants by  
4 coastal resource districts; relating to regulations adopted by the department regarding  
5 distribution of materials relating to a consistency review;"

6

7 Page 2, following line 5:

8 Insert new bill sections to read:

9 "\* Sec. 2. AS 46.39.040 is amended to read:

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

12 (1) develop statewide standards for the Alaska coastal management  
13 program, and criteria for the preparation and approval of district coastal management  
14 plans in accordance with AS 46.40;

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

20 (3) assure continued provision of data and information to coastal  
21 resource districts to carry out their planning and management functions under the  
22 program; **in providing data and information to a coastal resource district under**  
23 **this section, the department shall provide the data and information to the person**  
24 **or persons designated by the district.**

1 \* **Sec. 3.** AS 46.39.040 is amended by adding a new subsection to read:

2 (b) If the department provides funds to a coastal resource district to implement  
3 or amend a coastal resource district's district coastal management plan, the department  
4 shall permit the coastal resource district to use the funds to employ or retain  
5 consultants that, in the judgment of the coastal resource district, are necessary.

6 \* **Sec. 4.** AS 46.40.096(c) is amended to read:

7 (c) The regulations adopted by the department under this section must permit  
8 a coastal resource district that has requested to participate in a consistency  
9 review to designate the person or persons who will represent the district and to  
10 whom the department or reviewing entity shall provide materials relating to the  
11 consistency review. The regulations must also include provisions for public notice  
12 and provide the opportunity for public comment. Regulations relating to public  
13 notice and public comment [THE REGULATIONS] adopted under this subsection  
14 may make distinctions relating to notice based upon differences in project type,  
15 anticipated effect of the project on coastal resources and uses, other state or federal  
16 notice requirements, and time constraints. However, a notice given under this  
17 subsection must contain sufficient information, expressed in commonly understood  
18 terms, to inform the public of the nature of the proposed project for which a  
19 consistency determination is sought, and must explain how the public may comment  
20 on the proposed project. Notices described in this subsection shall be published on  
21 the department's Internet website."

22  
23 Renumber the following bill sections accordingly.

## Process for Air quality Construction permit (PSD Permit)

| Applicant Actions   | Department Actions  |
|---|---|
| Pre-application   |   |
| Pre-application assistance (typical 30 – 90 days) <ul style="list-style-type: none"> <li>• Prepare ambient monitoring protocols</li> <li>• Prepare computer modeling protocol</li> </ul>  | Pre-application assistance (typical 30 – 90 days) <ul style="list-style-type: none"> <li>• Review ambient monitoring protocols</li> <li>• Review computer modeling protocol</li> <li>• Advice on applicability questions</li> </ul>   |
| Collect 12 months of Data ( 1 – 2+ years) <ul style="list-style-type: none"> <li>• Ambient/Meteorological Data</li> <li>• Establish monitoring station</li> <li>• Monitor ambient air quality               <ul style="list-style-type: none"> <li>○ One year continuous data</li> <li>○ Must meet data quality</li> <li>○ Must cover all seasons</li> </ul> </li> <li>• Review data and prepare data report</li> </ul> | Answer questions  |
| Prepare application <ul style="list-style-type: none"> <li>• Conduct computer modeling</li> <li>• Adjust operations as needed to comply with AQ standards</li> <li>• Must include Ambient data</li> </ul>   | Review data submittal (typical 60-120 days) <ul style="list-style-type: none"> <li>• Answer questions from applicant</li> <li>• Some applicants do not request data review prior to application submittal</li> </ul>  |
| Submit application  |   |
| Answer questions  | Completeness review (typical 30 to 60 days) <ul style="list-style-type: none"> <li>• Review application to ensure it includes all required information</li> <li>• Request missing information from applicant</li> </ul>   |
| Supplement application (typical 10 to 180 days) <ul style="list-style-type: none"> <li>• Provide missing information</li> <li>• Provide new information/ project changes</li> <li>• TIME HIGHLY DEPENDENT ON DEFICIENCIES AND APPLICANT EFFORT AND WILLINGNESS TO CORRECT.</li> <li>• Worst case can take applicant <b>several years</b></li> </ul>   | Answer questions and review submittals <ul style="list-style-type: none"> <li>• Iterative until application is complete</li> </ul>  |
| Application determined to be complete   |   |
| Answer questions and provide additional information <ul style="list-style-type: none"> <li>• May need to revise project or application</li> <li>• May need to collect more ambient data if monitoring does not meet quality requirements</li> <li>• May need to re-do modeling if original modeling has errors</li> <li>•</li> </ul>  | Review Application (90 to 180 days) <ul style="list-style-type: none"> <li>• Ensure modeling and monitoring done according to protocols</li> <li>• Review Best Available control technology determination</li> <li>• Ensure compliance with Air quality standards</li> <li>• Resolve deficiencies with applicant</li> <li>• Prepare draft permit and technical analysis for public review</li> <li>• Time highly dependent on applicant responsiveness and may take longer than the typical 90 – 180 days.</li> </ul> |

## Process for Air quality Construction permit (PSD Permit)

| <b>Applicant Actions</b>   | <b>Department Actions</b>  |
|--|--|
| Preliminary Decision advertized for public comment                   |  |
|  | Collect Public comment (30 to 90 days) <ul style="list-style-type: none"> <li>• Minimum 30 day comment period</li> <li>• Hearing, if any, must be advertized 30 days in advance</li> <li>• Comment period may be longer or extended for good cause               <ul style="list-style-type: none"> <li>○ Permittee request</li> <li>○ Public request</li> </ul> </li> </ul> |
|  | Prepare final permit action (10 to 60 days) <ul style="list-style-type: none"> <li>• Highly dependent on type and number of comments</li> <li>• Prepare response to comment</li> <li>• Prepare final permit and technical analysis</li> </ul>  |
| Issue Permit   |  |
| Permanent actions to establish source may begin upon permit issuance | Issue permit <ul style="list-style-type: none"> <li>• Issue final permit</li> </ul>  |
| <b>Cumulative time entire process</b>                                | 1½ - 4 years   |
| <b>Cumulative time from initial application</b>                      | 170 – 570 days   |
| <b>Cumulative time from complete application</b>                     | 130 – 330 days   |

- Repeals Designated Area Requirement. Clarifies that district enforceable policies apply to all land and water issues subject to the plan. Requires Coastal district plans to be clear and concise, prescriptive or performance-based, necessary given local conditions, and supported by evidence including scientific or local knowledge if more specific than state or federal statutes or regulations. - **Amendment A.2**
- Repeals the “Adequately Addressed” standard. Establishes that DNR shall approve a Coastal District Plan if the plan’s enforceable policies do not duplicate, restate, or incorporate by reference state or federal statutes or regulations; are not preempted by federal or state law; and do not arbitrarily or unreasonably restrict a use of state concern. Clarifies how an enforceable policy is preempted.- **Amendment A.4**
- Deletes the “DEC Carve-out”. States that the necessity of a completed application for a “prevention of significant deterioration” DEC Air Quality Permit is not necessary to initiate a consistency review. - **Amendment A.5**
- Exempts projects requiring an Environmental Impact Statement from 90-day consistency review time limit. - **Amendment A.6**
- Allows third party litigation by repealing AS 46.40.090(h) **Amendment A.8**
- Allows consistency review on projects inland of the coastal zone. - **Amendment A.9**
- Clarifies definition of Project under the ACMP so it is clear that it includes oil and gas lease sales. **Amendment A.10**
- Establishes that the Department of Natural Resources shall provide data and information to a person serving as representative of a Coastal District, which could include a consultant. Clarifies that for consistency reviews and determinations DNR must permit a Coastal District to designate a person to represent the District, and provide the representative with material pertinent to the consistency review. **Amendment A.11**
- Establishes the Alaska Coastal Policy and Appeals Board to resolve differences between DNR and a Coastal District, review elevations of proposed consistency determinations, and jointly adopt ACMP regulations with DNR – **Amendment forthcoming**

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "program;":

2 Insert "establishing the Alaska Coastal Policy and Appeals Board;"

3

4 Page 2, following line 5:

5 Insert new bill sections to read:

6 "\* **Sec. 2.** AS 46.39 is amended by adding new sections to article 1 to read:

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

10 (1) five public members appointed by the governor, including one at-  
11 large member from any coastal resource district and four members from a list  
12 composed of at least three names from each region, nominated and submitted by the  
13 coastal resource districts of each region; one public member shall be appointed from  
14 each of the following regions:

15 (A) northwest Alaska, including, generally, the area of the  
16 North Slope Borough and the Northwest Arctic Borough; and the Bering Strait  
17 area, including, generally, the area of the Bering Strait regional educational  
18 attendance area;

19 (B) southwest Alaska, including, generally, the area within the  
20 Lower Yukon, Lower Kuskokwim, and Southwest regional educational  
21 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and  
22 the Kodiak-Aleutians area, including the Kodiak Island and area of the  
23 Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof

1 regional educational attendance areas;

2 (C) Upper Cook Inlet area, including the Municipality of  
3 Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area,  
4 including, generally, the Kenai Peninsula Borough; and the Prince William  
5 Sound area, including, generally, the area east of the Kenai Peninsula Borough  
6 to 141 West longitude; and

7 (D) Southeast Alaska, generally the area east of 141 West  
8 longitude;

9 (2) each of the following designated members:

10 (A) the commissioner of environmental conservation;

11 (B) the commissioner of fish and game;

12 (C) the commissioner of natural resources; and

13 (D) the commissioner of commerce, community, and economic  
14 development.

15 (b) Each public member appointed by the governor under (a)(1) of this section  
16 serves a term of three years and until a successor is appointed and qualified. A public  
17 member may be reappointed.

18 (c) The board shall designate cochairs, one of whom shall be selected from  
19 among the public members appointed under (a)(1) of this section and one from among  
20 the members designated in (a)(2) of this section.

21 (d) The governor shall appoint one alternate public member from the lists of  
22 names submitted by the coastal districts under (a)(1) of this section for each of the  
23 public members serving under (a)(1) of this section. If a public member of the board  
24 appointed under (a)(1) of this section is unable to attend, the member shall advise the  
25 public alternate, who may attend and act in place of the member. If a member serving  
26 under (a)(2) of this section is unable to attend, a deputy commissioner in the same  
27 department may attend and act in place of the member. The names of alternates  
28 serving under (a)(2) of this section shall be filed with the board.

29 (e) Three public members and two designated members of the board constitute  
30 a quorum. All decisions of the board shall be by a majority vote of the members  
31 present and voting.

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

3 (g) Administrative support for the board shall be provided by the division in  
4 the department responsible for coastal and ocean management. The director of the  
5 division in the department responsible for coastal and ocean management, under  
6 direction of the cochair designated by the board from the individuals listed in (a)(2) of  
7 this section, may contract with or employ persons as necessary to assist the board in  
8 carrying out the board's duties and responsibilities.

9 **Sec. 46.39.008. Duties of the Alaska Coastal Policy and Appeals Board.**

10 The board shall

11 (1) resolve differences between the department and a coastal resource  
12 district relating to a district coastal management plan under AS 46.40.060;

13 (2) review proposed consistency determinations under  
14 AS 46.40.096(d)(3);

15 (3) with the department, jointly adopt regulations under this chapter  
16 and AS 46.40.

17 \* **Sec. 3.** AS 46.39.010(a) is amended to read:

18 (a) **Except as provided under AS 46.40.096(d), the department** [THE  
19 DEPARTMENT OF NATURAL RESOURCES] shall render, on behalf of the state,  
20 all federal consistency determinations and certifications authorized by 16 U.S.C. 1456  
21 (Sec. 307, Coastal Zone Management Act of 1972), and each conclusive state  
22 consistency determination when a project requires a permit, lease, or authorization  
23 from two or more state resource agencies.

24 \* **Sec. 4.** AS 46.39.030 is amended to read:

25 **Sec. 46.39.030. Powers of the department.** The department may

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

29 (2) contract for necessary services;

30 (3) consult and cooperate with

31 (A) persons, organizations, and groups, public or private,

1 interested in, affected by, or concerned with coastal area planning and  
2 management;

3 (B) agents and officials of the coastal resource districts of the  
4 state, the Alaska Coastal Policy and Appeals Board established in  
5 AS 46.39.005, and federal and state agencies concerned with or having  
6 jurisdiction over coastal planning and management;

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

9 \* Sec. 5. AS 46.39.900 is amended to read:

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

12 (1) "board" means the Alaska Coastal Policy and Appeals Board  
13 established in AS 46.39.005;

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

15 \* Sec. 6. AS 46.40.060(c) is amended to read:

16 (c) If, after mediation, the differences have not been resolved, the department  
17 shall submit the district coastal management plan, or those portions of the plan  
18 over which the coastal resource district and the department differ, to the board.  
19 The board shall enter findings and, by order, may require

20 (1) that the district coastal management plan be amended to satisfy the  
21 provisions of this chapter or meet the statewide standards and district plan criteria  
22 adopted by the department;

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

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

27 \* Sec. 7. AS 46.40.060(d) is amended to read:

28 (d) An order of the board shall be given within 45 days after the plan, or a  
29 portion of the plan, is submitted to the board for decision by the department  
30 under (c) of this section. The superior courts of the state have jurisdiction to enforce  
31 orders of the board [DEPARTMENT] entered under (c) of this section.

1 \* **Sec. 8.** AS 46.40.096(d) is amended to read:

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

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

7 (2) prepare proposed consistency determinations;

8 (3) coordinate elevations [SUBSEQUENT REVIEWS] of proposed  
9 consistency determinations prepared under (2) of this subsection; a subsequent review  
10 of a proposed consistency determination under this paragraph

11 (A) is limited to a review by the board [DEPARTMENT];

12 (B) may occur only if requested by

13 (i) the project applicant;

14 (ii) a state resource agency; or

15 (iii) an affected coastal resource district; and

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

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

19 \* **Sec. 9.** AS 46.40.096(q)(2) is amended to read:

20 (2) "reviewing entity" means the

21 (A) Department of Natural Resources, for a consistency review  
22 subject to AS 46.39.010;

23 (B) board, for the elevation of a proposed consistency  
24 determination under (d) of this section;

25 (C) state agency identified in (b) of this section, for a  
26 consistency review not subject to AS 46.39.010.

27 \* **Sec. 10.** AS 46.40.100(e) is amended to read:

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

30 \* **Sec. 11.** AS 46.40.210 is amended by adding new paragraphs to read:

31 (13) "approved plan" means a plan approved under AS 46.40.060(a) by

1 the department or a plan approved under AS 46.40.060(c) by the board;

2 (14) "board" has the meaning given in AS 46.39.900.

3 \* **Sec. 12.** AS 46.39.005 and 46.39.008 are repealed.

4 \* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

6 **TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY AND**  
7 **APPEALS BOARD; STAGGERED TERMS.** (a) Notwithstanding AS 44.39.005(a), added by  
8 sec. 2 of this Act, within 30 days after the effective date of this section, the municipalities of  
9 each region identified in AS 44.39.005(a)(1) shall submit to the governor the names of three  
10 persons from the region qualified under AS 44.39.005(a), added by sec. 2 of this Act.  
11 Notwithstanding AS 44.39.005, added by sec. 2 of this Act, within 60 days after the effective  
12 date of this section, the governor shall appoint one alternate public member from the lists of  
13 names submitted under AS 46.39.005(a)(1) and one member from each region to serve on the  
14 Alaska Coastal Policy and Appeals Board established by AS 46.39.005, added by sec. 2 of  
15 this Act. The governor shall appoint five public members and the alternate public members to  
16 three-year staggered terms and four administration members to a one-year term. The governor  
17 shall specify the term of each member appointed subject to this section.

18 (b) Notwithstanding the requirements of AS 46.40.060(d), as amended by sec. 7 of  
19 this Act, or AS 46.40.096(d), as amended by sec. 8 of this Act, a review or decision required  
20 of the Alaska Coastal Policy and Appeals Board relating to a district coastal management  
21 plan, or a portion of a district coastal management plan, submitted to the Alaska Coastal  
22 Policy and Appeals Board under AS 46.40.060(c), or to a proposed consistency determination  
23 submitted to the board for review under AS 46.40.096(d), shall be delayed until all the public  
24 members of the board are appointed under (a) of this section.

25 \* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to  
26 read:

27 **RETROACTIVITY AND REVIVAL.** (a) The amendment to AS 44.66.020(a)(5)  
28 made by sec. 1 of this Act is retroactive to January 1, 2011.

29 (b) If, under AS 01.10.070(c), sec. 16 of this Act takes effect on or after July 1, 2011,  
30 sec. 16 of this Act is retroactive to July 1, 2011, and sections repealed by sec. 18, ch. 31, SLA  
31 2005, are revived. If the revived sections are amended by this Act, they are revived as

1 amended by this Act. The revived sections are subject to repeal under sec. 22, ch. 31, SLA  
2 2005, as amended by sec. 16 of this Act.

3 (c) If, under AS 01.10.070(c), this Act takes effect on or after July 1, 2011,  
4 AS 46.39.005 and 46.39.008, added by sec. 2 of this Act, and repealed by sec. 12 of this Act,  
5 are revived. AS 46.39.005 and 46.39.008, as revived, are subject to repeal under secs. 12 and  
6 15 of this Act and sec. 22, ch. 31, SLA 2005, as amended by sec. 16 of this Act.

7 \* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to  
8 read:

9 **CONDITIONAL EFFECT.** Section 12 of this Act takes effect only if secs. 1 - 13 and  
10 18, ch. 31, SLA 2005, take effect."

11

12 Renumber the following bill sections accordingly.

13

14 Page 2, following line 18:

15 Insert a new bill section to read:

16 "\*\* **Sec. 17.** If sec. 12 of this Act takes effect, it takes effect on the date that secs. 1 - 13 and  
17 18, ch. 31, SLA 2005, take effect."

18

19 Renumber the following bill section accordingly.

20

21 Page 3, line 19:

22 Delete "This"

23 Insert "Except as provided in sec. 17 of this Act, this"

## Process for New or Renewal Oil Discharge Prevention and Contingency Plan (C-plan) Application Review and Approval

| Applicant Actions   | Department Actions  |
|---|---|
| <b>Pre-application</b>  |   |
| <p>Pre-application notification and consultation ( ≥ 60 days)</p> <ul style="list-style-type: none"> <li>• New or Renewal C-plan Application or Amendment to an approved C-plan that may diminish an operator’s response capability</li> <li>• May review application and discuss contents of proposed plan</li> </ul> <p><u>Not required for Streamlined Nontank Vessel Plans – this process is handled by approved agents and Response Planning Facilitators and requires only 5 days review.</u></p> <p><u>There is a much more abbreviated process for routine updates and amendments that will not diminish an operator’s response capability.</u></p> | <p>Pre-application assistance (typical 60 – 120 days)</p> <ul style="list-style-type: none"> <li>• Review C-plan requirements and process</li> <li>• Advice on applicability questions</li> <li>• Determine number of copies to be submitted</li> </ul>   |
| <b>Sufficiency Review</b>   |   |
| <p>Submit Application to department. Typically 90 – 180 days before anticipated start of operations or renewal date for C-plan.</p> <p>Work with department to determine start day of the 30-day public comment period (requires scheduling to allow publication of Public Notice and distribution of C-plans).</p>   | <ul style="list-style-type: none"> <li>• Determine if C-plan is sufficient for public review within 7 working days</li> <li>• If not sufficient for review, request necessary additional information from applicant</li> <li>• Repeat process until C-plan is sufficient for public review</li> <li>• Issue Sufficient for Public Review Letter to applicant, Department of Natural Resources, Department of Fish &amp; Game, affected coastal districts, regional citizens’ advisory councils, persons who have made written request for information regarding c-plan submissions. The letter includes the following: <ul style="list-style-type: none"> <li>○ establishes 30-day public comment period</li> <li>○ directs applicant to provide a copy of the application and plan to the above list of departments, coastal districts, regional citizens’ advisory councils and other designated persons</li> <li>○ set the date for submitting Requests for Additional Information (Day 18 – 25 of the comment period)</li> <li>○ a Public Notice to be published in one or more newspapers in general circulation in the area impacted by the proposed operation</li> </ul> </li> </ul> |

## Process for New or Renewal Oil Discharge Prevention and Contingency Plan (C-plan) Application Review and Approval

| Applicant Actions   | Department Actions   |
|---|--|
| <b>Public Review</b>  |  |
| <ul style="list-style-type: none"> <li>• <u>Public Notice</u> - Applicant arranges and pays for publication of the department's Public Notice as directed. Notice is published on or before Day 1 of the Public Review.</li> <li>• Distribute application and C-plan to Department of Natural Resources, Department of Fish and Game, affected coastal districts, regional citizens' advisory councils, and other persons designated by the department. Documents must be distributed on or before Day 1 of the Public Review</li> </ul> <p>It may take 2 to 3 weeks to for the Public Notice to be published and all copies of the application and C-plan to be distributed.</p> | <p><u>Public Notice</u> – Department places Public Notice on State of Alaska Public Notice web page on or before Day 1 of the Public Review.</p>   |
| Day 1 to the established RFAI deadline  | Review application and C-plan to determine if any additional information is needed for the plan to be complete.  |
| <p>RFAI deadline (Day 18 – 25 as established in Public Notice)</p> <ul style="list-style-type: none"> <li>• Upon receipt of RFAI, gather information and respond to department's requests in the timeframe required.</li> </ul>   | <p><u>If additional information is required –</u></p> <ul style="list-style-type: none"> <li>• Request for Additional Information (RFAI)               <ul style="list-style-type: none"> <li>○ Notify applicant and review participants (Day 18 – 25)</li> <li>○ Include requests for additional information from the public that are within department statutory and regulatory authority to request.</li> </ul> </li> </ul> <p>FOR MORE COMPLEX C-PLAN APPLICATIONS, IT MAY TAKE WEEKS TO DEVELOP THE FULL RFAI.</p> <ul style="list-style-type: none"> <li>• Instruct applicant to send additional information to all review parties (DNR, ADF&amp;G, affected coastal districts, regional citizens' advisory councils, and designated review participants)</li> <li>• Extend the public comment period (to 10 days after all additional information is received and distributed to review participants) – notify all parties when information is received and of the extended comment deadline.</li> </ul> <p>IF NECESSARY A 2<sup>ND</sup> OR 3<sup>RD</sup> RFAI MAY BE ISSUED.</p> <ul style="list-style-type: none"> <li>• Continue to review C-plan and all public comments that are submitted.</li> </ul> |

## Process for New or Renewal Oil Discharge Prevention and Contingency Plan (C-plan) Application Review and Approval

| <b>Applicant Actions</b>  | <b>Department Actions</b>  |
|---|--|
| Day 18 - 25   | <p><u>If no additional information is required –</u></p> <ul style="list-style-type: none"> <li>• Public comment period continues without extension.</li> <li>• Review and consider all public comments received.</li> <li>• Continue to review C-Plan.</li> </ul>   |
| Day 30 or Comment Deadline as Extended  | <ul style="list-style-type: none"> <li>• A public hearing may be held during the public comment period if the department determines good cause</li> <li>• Receive public comments until the deadline</li> <li>• Review and consider all public comments as they arrive</li> </ul>  |
|   | <p><u>Department Determination of Completeness</u></p> <ul style="list-style-type: none"> <li>• Within 7 days after receipt of additional information OR 2 days after close of public comment period without RFAI: Department determines whether C-plan application is complete</li> </ul>   |
| <b>Approval Process</b>   |  |
| ≤ 65 days after C-plan is determined to be complete   | <p>Department makes a decision to:</p> <ol style="list-style-type: none"> <li>1. Approve,</li> <li>2. Approve with Conditions, or</li> <li>3. Disapprove</li> </ol>  |
| Applicant may request a Pre-Issuance Conference any time before the department issues its decision. | <ul style="list-style-type: none"> <li>• If requested by the applicant, hold a Pre-Issuance Conference – if it will materially aid the department in reaching its decision.</li> <li>• Follows regulatory procedure</li> <li>• Will not delay decision timeframe</li> </ul>  |
|   | <p>Department issues a letter with its decision:</p> <ul style="list-style-type: none"> <li>• Adverse comments from public? <ul style="list-style-type: none"> <li>○ Summary of the basis for decision, may be included in the letter or provided in a separate attachment called a Findings Document.</li> </ul> </li> <li>• Conditions of Approval <ul style="list-style-type: none"> <li>○ Include the conditions in the decision letter</li> <li>○ Provide a summary of basis for decision and conditions of approval in the letter or Findings Document</li> </ul> </li> <li>• Disapprove? <ul style="list-style-type: none"> <li>○ Provide a summary of basis for</li> </ul> </li> </ul> |

## Process for New or Renewal Oil Discharge Prevention and Contingency Plan (C-plan) Application Review and Approval

|  |   |
|--|---|
|  | <p style="text-align: center;">decision to disapprove in the letter or in a Findings Document</p> <p>The decision to write a separate Findings Document is based on the complexity of the approval decision, the amount and diversity of public comments received, and the number of conditions of approval. Findings documents can range in size from one page to 30 pages.</p> <ul style="list-style-type: none"> <li>• The decision letter includes a statement about the avenues for requesting a Director's review of the approval decision or for requesting an adjudicatory hearing to appeal the decision.</li> </ul> <p>A decision letter may be issued at the same time the C-plan application is determined to be complete (if the public comment period is closed) or it may take up to 65 days from that date. The timeframe is based on the complexity of the decision based on the department's review, agency and public comments received.</p> |
| <b>Cumulative time for entire process</b>        | 115 days – two years  |
| <b>Cumulative time from initial application</b>  | 54 days – 1.5 years   |
| <b>Cumulative time from complete application</b> | 1 – 68 days   |

# Process for New or Renewal Oil Discharge Prevention and Contingency Plan (C-plan) Application Review and Approval

## Process for Alaska Pollutant Discharge Elimination System (APDES) Wastewater Permit

| Applicant Actions   | Department Actions  |
|---|---|
| <b>Pre-application</b>  |   |
| Pre-application assistance (typical 30 – 90 days) <ul style="list-style-type: none"> <li>• Prepare ambient monitoring protocols if necessary</li> <li>• Consider site-specific water quality standards (natural conditions; use attainability analyses; other)</li> <li>• Consider exceptions to water quality standards (mixing zones; short term variances; zones of deposit)</li> <li>• Prepare computer modeling inputs for mixing zones</li> <li>• Begin analysis of wastewater treatment options</li> </ul> | Pre-application assistance (typical 30 – 90 days) <ul style="list-style-type: none"> <li>• Review ambient monitoring protocols</li> <li>• Review computer modeling protocol</li> <li>• Advise on water quality standards</li> </ul>   |
| Collect Data, if necessary ( 1 year) <ul style="list-style-type: none"> <li>• Establish monitoring station</li> <li>• Collect ambient water quality data</li> <li>• Review data and prepare data report</li> <li>• Select wastewater treatment system(s)</li> </ul>   | Answer questions/technical assistance   |
| Prepare application (30-60 days) <ul style="list-style-type: none"> <li>• Include ambient data</li> <li>• Conduct computer modeling of mixing zones</li> </ul>  | Review data submittal (typical 60-120 days) <ul style="list-style-type: none"> <li>• Answer questions from applicant</li> <li>• Some applicants do not request data review prior to application submittal</li> </ul>  |
| <b>Submit application</b>   |   |
| Answer questions  | Completeness review (typical 30 days) <ul style="list-style-type: none"> <li>• Administrative review to insure it includes all required information</li> <li>• Technical review</li> <li>• Request missing information from applicant</li> </ul>  |
| Supplement application (typical 10 to 90 days) <ul style="list-style-type: none"> <li>• Provide missing information</li> <li>• Provide new information/ project changes</li> <li>• Time highly dependent on deficiencies and applicant effort and willingness to correct.</li> </ul>  | Answer questions and review submittals <ul style="list-style-type: none"> <li>• Iterative until application is complete</li> </ul>  |
| <b>Application determined to be complete – draft permit</b>   |   |
| Answer questions and provide additional information <ul style="list-style-type: none"> <li>• May need to revise project, wastewater treatment systems, or application</li> <li>• May need to collect more ambient data if monitoring does not meet quality requirements</li> <li>• May need to re-do modeling if original modeling has errors</li> </ul>  | Review Application and draft permit (60 to 180 days) <ul style="list-style-type: none"> <li>• Ensure modeling and monitoring done according to protocols</li> <li>• Ensure compliance with water quality standards</li> <li>• Resolve deficiencies with applicant</li> <li>• Conduct analysis – “reasonable potential to exceed water quality standards”</li> <li>• Develop effluent limits</li> <li>• Prepare draft permit and technical basis (fact sheet) for public review</li> </ul> |

## Process for Alaska Pollutant Discharge Elimination System (APDES) Wastewater Permit

| <b>Applicant Actions</b>                          | <b>Department Actions</b>  |
|---|--|
| Draft Permit advertised for public comment        |  |
| Review preliminary draft permit and draft permit. | Conduct 10-day applicant review of preliminary draft permit<br>Collect Public comment (30 to 90 days) <ul style="list-style-type: none"> <li>• Minimum 30 day public comment period</li> <li>• Hearing, if any, must be advertized 30 days in advance</li> <li>• Comment period may be longer or extended for good cause               <ul style="list-style-type: none"> <li>○ Permittee request</li> <li>○ Public request</li> </ul> </li> </ul> |
| Review proposed final permit.                     | Prepare proposed final permit for 5-day applicant review.<br>Prepare final permit (10 to 30 days) <ul style="list-style-type: none"> <li>• Highly dependent on type and number of comments</li> <li>• Prepare response to comment</li> <li>• Prepare final permit and technical analysis</li> </ul>  |
| Issue Permit                                      |  |
| Begin permit compliance.                          | Issue permit <ul style="list-style-type: none"> <li>• Issue final permit</li> </ul>  |
| <b>Cumulative time entire process</b>             | 1½ - 4 years   |
| <b>Cumulative time from initial application</b>   | 180 – 570 days   |
| <b>Cumulative time from complete application</b>  | 180 – 570 days   |

## Process for Air Quality Title V Operating Permits

| Applicant Actions   | Department Actions   |
|---|--|
| Pre-application   |  |
| <b>Pre-application assistance</b>   | <b>Pre-application assistance:</b> Typical 30 – 90 days  |
| Submit application  |  |
| <b>Submit timely and complete application.</b>  | <b>Application Completeness Review.</b> An application must be determined to be complete within 60-days or it defaults to a complete status. 40 CFR 71.5(a)(2). Affects the ability to grant an application shield. Typical: 60 days   |
| <b>Application Information Requests and Supplements:</b> needed if application contains missing or incomplete items. Information requests may delay final permit application completeness determination beyond 60 days. | 21 additional days for each Information request  |
| Application determined to be complete   |  |
| Applicant may request preview or review of preliminary draft permit prior to the public process.  | <b>Draft Permit Processing</b> (depends on complexity of stationary source. Use of contractor resources may extend draft permit processing. Typical 30 -60 days. <b>Dialog with Applicant:</b> additional information requests (there may be multiple information requests). A complete application does not curtail the Department's ability to seek additional information necessary to process the application.)(Draft permit development may be extended by new Federal regulations or stationary source changes). |
| Preliminary Decision advertised for public comment  |  |
| <b>Provide review and public comment:</b> changes or revisions requests to draft permit, or updates based on changes.   | <b>Permit Public Process:</b> Draft permit must be made available for public comment for at least 30 days. Typical: 30 days.<br><b>Public Notice Advertisement.</b> Associated documents or processes: public hearing (if needed, min: 30 days to advertise). A Public Hearing may be scheduled for contentious or complex permit actions.   |
|   | May extend Public Comment period to 45 days or 60 days based on permit complexity.   |
| Response to Public Comment  |  |
| Permittee may seek ex-parte' discussion based on Department acceptance or rejection of changes based on public comment.   | <b>Response to Public Comment</b> (Public Comment processing into Proposed Permit depends on volume and complexity of public comment and contentiousness of issues). Typical: 30 days.   |
|   | <b>Proposed Permit Development.</b> Associated documents: Response to Comments, EPA transmittal  |
| EPA Administrator 45-Day Review   |  |
|   | <b>Variable response timeline.</b> EPA has 45 days to review a proposed permit, but may respond in as little as several hours or just a few days, depending on permit complexity and contentious issues. Typical 1 to 45 days (max).   |

## Process for Air Quality Title V Operating Permits

|   |   |
|---|---|
|   | <b>EPA Comment.</b> (may involve significant changes and restarting the public process)                           |
| Permittee may ask for a review of final permit resulting from public comment. Typical: 10 days additional | Significant changes will necessitate re-advertising the permit for public comment based on scope of changes.      |
| <b>Final Permit Development and Issuance</b>  |   |
|   | May delay to coincide with new month/new quarter. Typical: 1 to 21 days after receipt of EPA no-comment decision. |
| <b>Total Timeline:</b>  |   |
| Typical Stationary Source Permit  | 180 days  |
| Large or Complex Stationary Source Permit   | 2 years   |

27-GH1965\B  
Bullock/Bullard  
3/16/11

**CS FOR HOUSE BILL NO. 106( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to the Alaska coastal management program; establishing the Alaska**  
2 **Coastal Policy and Appeals Board; providing for an effective date by changing the**  
3 **effective date of secs. 1 - 13 and 18, ch. 31, SLA 2005; and providing for an effective**  
4 **date."**

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

6 **\* Section 1. AS 44.66.020(a) is amended to read:**

7 (a) Agency programs and activities listed in this subsection that are  
8 specifically designated as provided in AS 44.66.030 are subject to termination during  
9 the regular legislative session convening in the month and year set out after each:

10 (1) programs in the budget categories of general government, public  
11 protection, and administration of justice - January, 1980;

12 (2) programs in the budget categories of education and the University  
13 of Alaska - January, 1981;

14 (3) programs in the budget categories of health and social services -

1 January, 1982;

2 (4) programs in the budget categories of natural resources  
3 management, development, and transportation - January, 1983;

4 (5) the Alaska coastal management program (AS 46.40) - January,  
5 2017 [2011].

6 \* Sec. 2. AS 46.39 is amended by adding new sections to article 1 to read:

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

10 (1) five public members appointed by the governor, including one at-  
11 large member from any coastal resource district and four members from a list  
12 composed of at least three names from each region, nominated and submitted by the  
13 coastal resource districts of each region; one public member shall be appointed from  
14 each of the following regions:

15 (A) northwest Alaska, including, generally, the area of the  
16 North Slope Borough and the Northwest Arctic Borough; and the Bering Strait  
17 area, including, generally, the area of the Bering Strait regional educational  
18 attendance area;

19 (B) southwest Alaska, including, generally, the area within the  
20 Lower Yukon, Lower Kuskokwim, and Southwest regional educational  
21 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and  
22 the Kodiak-Aleutians area, including the Kodiak Island and area of the  
23 Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof  
24 regional educational attendance areas;

25 (C) Upper Cook Inlet area, including the Municipality of  
26 Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area,  
27 including, generally, the Kenai Peninsula Borough; and the Prince William  
28 Sound area, including, generally, the area east of the Kenai Peninsula Borough  
29 to 141 West longitude; and

30 (D) Southeast Alaska, generally the area east of 141 West  
31 longitude;

1 (2) each of the following designated members:

2 (A) the commissioner of environmental conservation;

3 (B) the commissioner of fish and game;

4 (C) the commissioner of natural resources; and

5 (D) the commissioner of commerce, community, and economic  
6 development.

7 (b) Each public member appointed by the governor under (a)(1) of this section  
8 serves a term of three years and until a successor is appointed and qualified. A public  
9 member may be reappointed.

10 (c) The board shall designate cochairs, one of whom shall be selected from  
11 among the public members appointed under (a)(1) of this section and one from among  
12 the members designated in (a)(2) of this section.

13 (d) Each member of the board shall select one person to serve as a permanent  
14 alternate at meetings of the board. If a member of the board is unable to attend, the  
15 member shall advise the alternate, who may attend and act in the place of the member.  
16 The alternate for each public member appointed under (a)(1) of this section shall be  
17 approved by the coastal resource districts in the region from which the public member  
18 was appointed. The alternate for a commissioner serving under (a)(2) of this section  
19 shall be a deputy commissioner or the director of a division in the commissioner's  
20 department. The names of alternates shall be filed with the board.

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

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

27 (g) Administrative support for the board shall be provided by the division in  
28 the department responsible for coastal and ocean management. The director of the  
29 division in the department responsible for coastal and ocean management, under  
30 direction of the cochair designated by the board from the individuals listed in (a)(2) of  
31 this section, may contract with or employ persons as necessary to assist the board in

1 carrying out the board's duties and responsibilities.

2 **Sec. 46.39.008. Duties of the Alaska Coastal Policy and Appeals Board.**

3 The board shall

4 (1) resolve differences between the department and a coastal resource  
5 district relating to a district coastal management plan under AS 46.40.060;

6 (2) review proposed consistency determinations under  
7 AS 46.40.096(d);

8 (3) with the department, jointly adopt regulations under this chapter  
9 and AS 46.40.

10 \* **Sec. 3.** AS 46.39.010(a) is amended to read:

11 (a) Except as provided under AS 46.40.096(d), the department [THE  
12 DEPARTMENT OF NATURAL RESOURCES] shall render, on behalf of the state,  
13 all federal consistency determinations and certifications authorized by 16 U.S.C. 1456  
14 (Sec. 307, Coastal Zone Management Act of 1972), and each conclusive state  
15 consistency determination when a project requires a permit, lease, or authorization  
16 from two or more state resource agencies.

17 \* **Sec. 4.** AS 46.39.030 is amended to read:

18 **Sec. 46.39.030. Powers of the department.** The department may

19 (1) apply for and accept grants, contributions, and appropriations,  
20 including application for and acceptance of federal funds that may become available  
21 for coastal planning and management;

22 (2) contract for necessary services;

23 (3) consult and cooperate with

24 (A) persons, organizations, and groups, public or private,  
25 interested in, affected by, or concerned with coastal area planning and  
26 management;

27 (B) agents and officials of the coastal resource districts of the  
28 state, the Alaska Coastal Policy and Appeals Board established in  
29 AS 46.39.005, and federal and state agencies concerned with or having  
30 jurisdiction over coastal planning and management;

31 (4) take any reasonable action necessary to carry out the provisions of

1 this chapter or AS 46.40.

2 \* Sec. 5. AS 46.39.040 is amended to read:

3 **Sec. 46.39.040. Duties of the department.** In conformity with 16 U.S.C. 1451  
4 - 1464 (Coastal Zone Management Act of 1972), as amended, the department shall

5 (1) develop statewide standards for the Alaska coastal management  
6 program, and criteria for the preparation and approval of district coastal management  
7 plans in accordance with AS 46.40;

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

13 (3) assure continued provision of data and information to coastal  
14 resource districts to carry out their planning and management functions under the  
15 program; in providing data and information to a coastal resource district under  
16 this section, the department shall provide the data and information to the person  
17 or persons designated by the district.

18 \* Sec. 6. AS 46.39.040 is amended by adding a new subsection to read:

19 (b) If the department provides funds to a coastal resource district to implement  
20 or amend a coastal resource district's district coastal management plan, the department  
21 shall permit the coastal resource district to use the funds to employ or retain  
22 consultants that, in the judgment of the coastal resource district, are necessary.

23 \* Sec. 7. AS 46.39.900 is amended to read:

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

26 (1) "board" means the Alaska Coastal Policy and Appeals Board  
27 established in AS 46.39.005;

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

29 \* Sec. 8. AS 46.40.030 is amended to read:

30 **Sec. 46.40.030. Development of district coastal management plans.** (a)  
31 Coastal resource districts shall develop and adopt district coastal management plans in

1 accordance with the provisions of this chapter. The plan adopted by a coastal resource  
2 district shall be based upon a municipality's existing comprehensive plan or a new  
3 comprehensive resource use plan or comprehensive statement of needs, policies,  
4 objectives, and standards governing the use of resources within the coastal area of the  
5 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan  
6 criteria adopted under AS 46.40.040 and must include

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

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

11 (3) a statement of policies to be applied to all [THE] land and water  
12 uses subject to the district coastal management plan as well as policies that apply  
13 only to special management areas; and

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

18 (5)] a designation of any special management [, AND THE  
19 POLICIES THAT WILL BE APPLIED TO THE USE OF,] areas under [WITHIN]  
20 the district coastal management plan and enforceable policies that will be  
21 applicable within those special management areas [RESOURCE DISTRICT THAT  
22 MERIT SPECIAL ATTENTION].

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

26 (1) clear and concise as to the activities and persons affected by the  
27 policies and the requirements of the policies, whether the policies are prescriptive  
28 or performance-based;

29 (2) necessary given local conditions; and

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

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

5 \* **Sec. 9.** AS 46.40.040(a) is amended to read:

6 (a) Except as provided in [(b) OF THIS SECTION AND] AS 41.17, the  
7 department shall

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

12 (A) identifying the boundaries of the coastal area subject to the  
13 Alaska coastal management program;

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

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

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

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

23 (F) designating and developing policies for special  
24 management areas [THE USE OF AREAS OF THE COAST THAT MERIT  
25 SPECIAL ATTENTION]; and

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

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

31 (3) undertake review and approval of district coastal management

1 plans in accordance with this chapter;

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

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

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

9 \* Sec. 10. AS 46.40.060(c) is amended to read:

10 (c) If, after mediation, the differences have not been resolved, the department  
11 shall **submit the district coastal management plan, or those portions of the plan**  
12 **over which the coastal resource district and the department differ, to the board.**

13 **The board shall** enter findings and, by order, may require

14 (1) that the district coastal management plan be amended to satisfy the  
15 provisions of this chapter or meet the statewide standards and district plan criteria  
16 adopted by the department;

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

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

21 \* Sec. 11. AS 46.40.060(d) is amended to read:

22 (d) **An order of the board shall be given within 45 days after the plan, or a**  
23 **portion of the plan, is submitted to the board for decision by the department**  
24 **under (c) of this section.** The superior courts of the state have jurisdiction to enforce  
25 orders of the **board** [DEPARTMENT] entered under (c) of this section.

26 \* Sec. 12. AS 46.40.070 is repealed and reenacted to read:

27 **Sec. 46.40.070. Requirements for department review and approval.** (a) The  
28 department

29 (1) shall approve a district coastal management plan submitted for  
30 review and approval if the

31 (A) district coastal management plan meets the requirements of

1 this chapter and the district plan criteria adopted by the department; and

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

3 (i) do not duplicate, restate, or incorporate by reference  
4 state or federal statutes or regulations;

5 (ii) are not preempted by federal or state law; and

6 (iii) do not arbitrarily or unreasonably restrict a use of  
7 state concern;

8 (2) may not require a district to designate areas for the purpose of  
9 developing an enforceable policy.

10 (b) In (a)(1)(B)(ii) of this section, an enforceable policy of the district coastal  
11 management plan is preempted

12 (1) by federal statutes or regulations if the United States Congress  
13 expressly declares that local law or regulation is preempted, if the United States  
14 Congress demonstrates the intent to occupy the field exclusively, or if there is an  
15 actual conflict between federal and local law or regulation;

16 (2) by state law if it is prohibited, either by express legislative  
17 direction or direct conflict with a state statute or regulation, or where the management  
18 plan substantially interferes with the effective functioning of a state statute or  
19 regulation or the underlying purposes of a state statute or regulation.

20 \* Sec. 13. AS 46.40.096(c) is amended to read:

21 (c) The regulations adopted by the department under this section must permit  
22 a coastal resource district that has requested to participate in a consistency  
23 review to designate the person or persons who will represent the district and to  
24 whom the department or reviewing entity shall provide materials relating to the  
25 consistency review. The regulations must also include provisions for public notice  
26 and provide the opportunity for public comment. Regulations relating to public  
27 notice and public comment [THE REGULATIONS] adopted under this subsection  
28 may make distinctions relating to notice based upon differences in project type,  
29 anticipated effect of the project on coastal resources and uses, other state or federal  
30 notice requirements, and time constraints. However, a notice given under this  
31 subsection must contain sufficient information, expressed in commonly understood

1 terms, to inform the public of the nature of the proposed project for which a  
2 consistency determination is sought, and must explain how the public may comment  
3 on the proposed project. **Notices described in this subsection shall be published on**  
4 **the department's Internet website.**

5 \* Sec. 14. AS 46.40.096(d) is amended to read:

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

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

11 (2) prepare proposed consistency determinations;

12 (3) coordinate **elevations** [SUBSEQUENT REVIEWS] of proposed  
13 consistency determinations prepared under (2) of this subsection; a subsequent review  
14 of a proposed consistency determination under this paragraph

15 (A) is limited to a review by the **board** [DEPARTMENT];

16 (B) may occur only if requested by

17 (i) the project applicant;

18 (ii) a state resource agency; or

19 (iii) an affected coastal resource district; and

20 (C) shall be completed by the **board** [DEPARTMENT] within  
21 45 days after the initial request for subsequent review under this paragraph;

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

23 \* Sec. 15. AS 46.40.096(g) is amended to read:

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

26 (1) **an aspect of** an activity that

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

30 (B) IS SUBJECT TO AUTHORIZATION BY THE  
31 DEPARTMENT OF ENVIRONMENTAL CONSERVATION UNDER THE

1 REQUIREMENTS DESCRIBED IN AS 46.40.040(b);]

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

3 [AND]

4 (3) the issuance of an authorization or permit issued by the Alaska Oil  
5 and Gas Conservation Commission; and

6 (4) the necessity of a completed prevention of significant  
7 deterioration of air quality permit application.

8 \* Sec. 16. AS 46.40.096(k) is amended to read:

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

17 \* Sec. 17. AS 46.40.096(o) is amended to read:

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

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

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

21 (B) activity requiring an environmental impact statement;

22 (2) are suspended

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

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

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



1 for the purpose. [A CITY THAT ELECTS TO BE EXCLUDED FROM AN  
2 ADJACENT COASTAL RESOURCE SERVICE AREA UNDER (a) OF THIS  
3 SECTION SHALL ENTER INTO A MUTUAL AGREEMENT FOR  
4 COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS WITH THE  
5 COASTAL RESOURCE SERVICE AREA BOARD FROM THE ADJACENT  
6 COASTAL RESOURCE SERVICE AREA.]

7 \* **Sec. 22.** AS 46.40.210(9) is repealed and reenacted to read:

8 (9) "project" means all activities described in AS 46.40.096(l) and all  
9 activities in the list of permits, certifications, leases, approvals, and authorizations that  
10 trigger a consistency review developed under AS 46.40.096(m), including a federal  
11 agency activity as defined in 15 C.F.R. 930.31;

12 \* **Sec. 23.** AS 46.40.210 is amended by adding new paragraphs to read:

13 (13) "approved plan" means a plan approved under AS 46.40.060(a) by  
14 the department or a plan approved under AS 46.40.060(c) by the board;

15 (14) "board" has the meaning given in AS 46.39.900;

16 (15) "special management area" means a delineated geographic area  
17 within the coastal area that is sensitive to change or alteration and that, because of  
18 plans or commitments or because a claim on the resources within the area delineated  
19 would preclude subsequent use of the resources to a conflicting or incompatible use,  
20 warrants special management attention, or that, because of its value to the general  
21 public, should be identified for current or future planning, protection, or acquisition;  
22 these areas, subject to the board's definition of criteria for their identification, include:

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

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

27 (C) areas of substantial recreational value or opportunity;

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

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

1 (F) areas of significant hazard due to storms, slides, flooding,  
2 earthquakes, active faults, tsunamis, volcanoes, liquefaction, ice movement or  
3 snow avalanches, or erosion; and

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

7 \* **Sec. 24.** AS 46.40.040(b), 46.40.040(c), 46.40.096(i), and 46.40.210(1) are repealed.

8 \* **Sec. 25.** AS 46.39.005 and 46.39.008 are repealed.

9 \* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 **TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY AND**  
12 **APPEALS BOARD; STAGGERED TERMS.** (a) Notwithstanding AS 44.39.005(a), added by  
13 sec. 2 of this Act, within 30 days after the effective date of this section, the municipalities of  
14 each region identified in AS 44.39.005(a)(1) shall submit to the governor the names of three  
15 persons from the region qualified under AS 44.39.005(a), added by sec. 2 of this Act.  
16 Notwithstanding AS 44.39.005, added by sec. 2 of this Act, within 60 days after the effective  
17 date of this section, the governor shall appoint one member from each region to serve on the  
18 Alaska Coastal Policy and Appeals Board established by AS 46.39.005, added by sec. 2 of  
19 this Act. The governor shall appoint five public members to three-year staggered terms and  
20 four administration members to a one-year term. The governor shall specify the term of each  
21 member appointed subject to this section.

22 (b) Notwithstanding the requirements of AS 46.40.060(d), as amended by sec. 11 of  
23 this Act, or AS 46.40.096(d), as amended by sec. 14 of this Act, a review or decision required  
24 of the Alaska Coastal Policy and Appeals Board relating to a district coastal management  
25 plan, or a portion of a district coastal management plan, submitted to the Alaska Coastal  
26 Policy and Appeals Board under AS 46.40.060(c), or to a proposed consistency determination  
27 submitted to the board for review under AS 46.40.096(d), shall be delayed until all the public  
28 members of the board are appointed under (a) of this section.

29 \* **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 **RETROACTIVITY AND REVIVAL.** (a) The amendment to AS 44.66.020(a)(5)

1 made by sec. 1 of this Act is retroactive to January 1, 2011.

2 (b) If, under AS 01.10.070(c), sec. 29 of this Act takes effect on or after July 1, 2011,  
3 sec. 29 of this Act is retroactive to July 1, 2011, and sections repealed by sec. 18, ch. 31, SLA  
4 2005, are revived. If the revived sections are amended by this Act, they are revived as  
5 amended by this Act. The revived sections are subject to repeal under sec. 22, ch. 31, SLA  
6 2005, as amended by sec. 29 of this Act.

7 (c) If, under AS 01.10.070(c), this Act takes effect on or after July 1, 2011,  
8 AS 46.39.005 and 46.39.008, added by sec. 2 of this Act, and repealed by sec. 25 of this Act,  
9 are revived. AS 46.39.005 and 46.39.008, as revived, are subject to repeal under secs. 25 and  
10 28 of this Act and sec. 22, ch. 31, SLA 2005, as amended by sec. 29 of this Act.

11 \* **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 **CONDITIONAL EFFECT.** Section 25 of this Act takes effect only if secs. 1 - 13 and  
14 18, ch. 31, SLA 2005, take effect.

15 \* **Sec. 29.** Section 22, ch. 31, SLA 2005, is amended to read:

16 **Sec. 22.** Sections 1 - 13 and 18 of this Act take effect July 1, 2017 [2011,  
17 **UNLESS THE STATE'S REVISED COASTAL MANAGEMENT PROGRAM HAS**  
18 **NOT BEEN APPROVED BY THE NATIONAL OCEANIC AND ATMOSPHERIC**  
19 **ADMINISTRATION, OFFICE OF OCEAN AND COASTAL RESOURCE**  
20 **MANAGEMENT, UNITED STATES DEPARTMENT OF COMMERCE, UNDER**  
21 **16 U.S.C. 1455 AND 1457 (COASTAL ZONE MANAGEMENT ACT OF 1972)**  
22 **BEFORE JANUARY 1, 2006. IF THE STATE'S REVISED COASTAL**  
23 **MANAGEMENT PROGRAM IS NOT APPROVED BEFORE JANUARY 1, 2006,**  
24 **BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,**  
25 **OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, UNITED**  
26 **STATES DEPARTMENT OF COMMERCE, THEN SECS. 1 - 13 AND 18 OF THIS**  
27 **ACT TAKE EFFECT MAY 10, 2006. THE COMMISSIONER OF NATURAL**  
28 **RESOURCES SHALL NOTIFY THE REVISOR OF STATUTES ON FEBRUARY**  
29 **1, 2006, WHETHER THE REVISED COASTAL MANAGEMENT PROGRAM**  
30 **HAS BEEN APPROVED AS DESCRIBED IN THIS SECTION].**

31 \* **Sec. 30.** If sec. 25 of this Act takes effect, it takes effect on the date that secs. 1 - 13 and

1 18, ch. 31, SLA 2005, take effect.

2 \* **Sec. 31.** Except as provided in sec. 30 of this Act, this Act takes effect immediately under

3 AS 01.10.070(c).

AMENDMENT #6 Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: Amendment A.2 to HB 106

1 Page 2, line 11, of the amendment:

2 Delete "are"

3

4 Page 2, lines 12 - 17, of the amendment:

5 Delete all material and insert:

6 "(1) are clear and concise as to the activities and persons affected  
7 by the policies;

8 (2) use prescriptive or performance-based standards that are  
9 written in precise and enforceable language; and

10 (3) address a coastal use or resource of concern to the residents of  
11 the coastal resource district as demonstrated by local knowledge or supported by  
12 scientific evidence"

13

14 Page 4, line 6, of the amendment:

15 Delete "board's"

16 Insert "department's"

17

18 Page 4, line 21, of the amendment:

19 Delete the quotation mark.

20

21 Page 4, following line 21, of the amendment:

22 Insert new material to read:

23 **"\* Sec. 6. AS 46.40.210(1) is repealed."**

| Aleutians East Borough   | Consultant – Glenn Gray and Associates   |
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| <p>Policy A-1: Fisheries Habitat</p> <p>a. Activities that reduce the net productivity fish habitat are not allowed including disruption to banks and stream beds. Projects that disrupt fish habitat are allowed if the project description includes provisions to restore the productivity of the disturbed area or rehabilitate a nearby area of the waterbody so that the net productivity of the watershed is not diminished.</p> <p>b. Eelgrass Beds: Development activities with a potential to cause significant adverse impacts to eelgrass beds are not allowed.</p> <p>c. This policy is established pursuant to 11 AAC 114.250(h). Subsection a applies to uses and activities in designated important habitat areas for fish and subsection b applies to eelgrass beds designated as important habitat as described in Section 4.4.2.</p> | <p>OPMP recommends that the enforceable policy not be approved. The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.</p> <p>In addition, the enforceable policy is not approvable because it contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be manage to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.</p> |
| <p>Policy B-1: Bank Stabilization</p> <p>a. All stream or lake bank cuts, fills or exposed earthwork in or adjacent to fish habitat, wetlands or marine waters shall be stabilized to prevent erosion during construction, operation and following cessation of development activities.</p> <p>b. This policy is established pursuant to 11 AAC 114.250(b), and it applies to areas designated as subject to erosion hazards as described in Section 4.4.3.</p>  | <p>OPMP recommends that the enforceable policy not be approved.</p> <p>Stabilizing erosion prone areas is considered an appropriate measure for the known natural hazard of erosion and therefore already addressed by 11 AAC 112.210. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing erosion is not adequately addressed.</p> <p>In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the impacts to water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.</p>  |
| <p>Policy C-1: Coastal Facilities</p> <p>a. For a development facility in coastal waters, project applicants shall include measures in the project description demonstrating that the facility is for a water-dependent use and that the facility is sited, designed, constructed and operated to</p>  | <p>OPMP recommends this policy not be approved. This enforceable policy does not meet the requirements of 11 AAC 114.270(e)(2) in that requiring optimization of use is not enforceable language.</p>  |

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| <p>minimize the need for duplicative coastal facilities and to optimize the use of coastal land and water. These facilities include waterfront facilities, docks, piers, cargo handling and storage areas, commercial and subsistence fishing support facilities, and marinas.</p> <p>b. This policy is established under the Coastal Development standard subject use (11 AAC 112.200), and it applies to developments in or adjacent to coastal waters.</p>  |   |
| <p>Policy D-2: Siting of Seafood Processing Facilities</p> <p>a. Land-based and floating fish processors shall site facilities to avoid or minimize impacts to coastal resources and uses.</p> <p>b. To the extent practicable, applicants for seafood processing facilities shall include measures in the project description for maximizing the recovery and efficient utilization of processing waste through production of byproducts such as fish meal or fish oil.</p> <p>c. This policy is established for areas designated as suitable for commercial fishing and seafood processing facilities under 11 AAC 114.250(f) as described in Section 4.4.5. Policy D-2: Siting of Seafood Processing Facilities</p> | <p>OPMP recommends that the enforceable policy not be approved for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The proposed sites suitable for commercial fishing and seafood processing facilities designated area was not recommended for approval (see designated area analysis table for justification). Without an approved designated area, this policy will not be applicable, nor permissible.</li> <li>2. The subject of this enforceable policy is broader than the designation allowed under 11 AAC 114.250(f), which is limited to designating areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. The designation was never meant to address commercial fishing or seafood processing, which is already regulated by other state laws.</li> <li>3. The policy is not clear and concise as required by 11 AAC 114.270(e)(1) because the district proposes to designate all coastal waters and the policy contradicts this designation in attempting to limit the impacts to coastal resources and uses.</li> <li>4. The policy applies outside the designated area, in that the designated area is all coastal waters and the policy discusses land based activities.</li> </ol> |
| <p><b>Aleutians West CRSA</b></p>  | <p><b>Consultant – LaRoche + Associates</b></p>   |
| <p>K-2 Sand and Gravel Extraction Operation<br/>         Sand and gravel extraction operations in coastal floodplains shall be located and designed to minimize adverse changes to channel hydraulics and the potential for channel diversion through the extraction site, unless specifically designed to reduce erosion</p>  | <p>Due to recent comments from the Office of Habitat Management and Permitting based on the preliminary recommendations OPMP does not recommend this policy for approval. The issues of channel hydraulics and channel diversions are adequately addressed by AS 41.14.840 and AS 41.14.870.</p>  |

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| or flooding threats.  |   |
| <b>Municipality of Anchorage</b>  | <b>Consultant – Bristol Environmental and Engineering Services Corporation, LaRoche + Associates</b>  |
| <p>RECREATIONAL USE AREAS EP-1<br/>         The following uses are allowed and considered appropriate in the Recreation Use Area and Important Habitat Designations: primary and secondary structures, utilities and transportation features, direct access to stream or waterbodies or to accommodate water-dependent or related uses, habitat enhancement or restoration projects, land clearing, impervious surfaces, clearing of native or other vegetation, removal of dead or decaying trees that threaten public or private property or health and safety. These uses are permitted provided they meet the following required conditions [and relevant regulations in the Anchorage Land Use Code]:</p> <p>(a) A 50-foot setback from the Ordinary High Water (OHW) of streams and/or waterbodies, as depicted on Maps 1, 2 &amp; 3 or on other published and available Municipality of Anchorage maps or GIS coverages, unless there is no practicable alternative location for the use or activity.</p> <p>(b) For streams or waterbodies with contiguous wetlands, setback distances shall follow those defined in Table 2 of the Anchorage Wetlands Management Plan (see Appendix), which vary from 25' to 200'.</p> | <p>OPMP recommends this policy be approved provided the following changes are made.</p> <p><i>The following uses are allowed and considered appropriate in the Recreation Use Area: primary and secondary structures, utilities and transportation features, direct access to stream or waterbodies or to accommodate water-dependent or related uses, habitat enhancement or restoration projects, land clearing, impervious surfaces, clearing of native or other vegetation, removal of dead or decaying trees that threaten public or private property or health and safety. These uses are permitted provided they meet the following required conditions:</i></p> <p><i>(a) A 50-foot setback from the Ordinary High Water (OHW) of streams and/or waterbodies, as depicted on Maps 1, 2 &amp; 3 unless there is no practicable alternative location for the use or activity.</i></p> <p><i>(b) For streams or waterbodies with contiguous wetlands, setback distances shall follow those defined in Table 2 of the Anchorage Wetlands Management Plan (see Appendix), which vary from 25' to 200'.</i></p> <p>This enforceable policy is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> <p>The policy addresses a matter regulated by state law, namely 11 AAC 114.250 (c). The district documents that the matter is of local concern as shown in the above table and in the Resource Inventory and Analysis.</p> |

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| <p>COASTAL ACCESS EP-4<br/>         (A) Development shall not interfere with existing legal public access to, or use of, the waterfront where such access or use has been established through acquisition, donation, dedication, or prescriptive easement.<br/>         (B) New subdivisions shall be designed to maintain or enhance public access to, from, and along the lands and waters within the coastal zone where practicable.</p>     | <p>OPMP recommends this policy be approved provided the following changes are made.</p> <p><i>(A) Development shall not interfere with existing legal public access to, or use of, the waterfront where such access or use has been established through acquisition, donation, dedication, or prescriptive easement.</i><br/> <i>(B) New subdivisions shall be designed to maintain or enhance public access to, from, and along coastal waters within the coastal zone where practicable.</i></p> <p>This enforceable policy flows from the coastal access standard; is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> <p>The policy addresses a matter regulated by state law, namely 11 AAC 112.220. The district documents that the matter is of local concern as shown in the above table and in the Resource Inventory and Analysis.</p> |
| <p>IMPORTANT HABITAT IH-1<br/>         The following post-construction, project site restoration Best Management Practice shall apply to all development activities located within the waterbody setbacks delineated in EP-1:</p> <ul style="list-style-type: none"> <li>• Revegetation of disturbed and/or fill areas shall be required and shall include non-invasive species at a density similar to pre-construction conditions.</li> </ul> | <p>The Important habitat designated area was not approved (See OPMP's Designated Area Analysis Table), thus the policy cannot be approved.</p> <p>After several lengthy reviews of the Important Habitat designation OPMP has determined that, while the ASIDSS model is a highly useful planning tool, its current application as the basis of the habitat designation does not meet the requirements of the regulations as outlined at 11 AAC 114.250 (h).</p> <p>The model shows "A" wetlands, songbird assemblages, and anadromous fish. While these factors are clearly important in determining biologically and significantly productive, the model also takes into account several other factors such</p>  |

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|  | <p>as geophysical hazards and the 100-year floodplain which are not included in the requirements at 11 AAC 114.250 (h).</p> <p>The model is a "Sensitivity model" showing areas most at risk for human impacts. While this is important information to have for planning purposes this does not meet the requirements of the regulations for designating important habitat. This model is an important planning tool, it appears that it could be manipulated to reflect the requirements for designating the areas, but since we were only introduced it in February 2006, there was not enough time and too many unanswered questions to approve the model at this time.</p>  |
| <p><b>Bering Straits CRSA</b></p>  | <p><b>Consultant – Glenn Gray and Associates</b></p>  |
| <p>Policy A-1: Subsistence Use Priority</p> <p>a. Activities in areas designated as important for subsistence use that do not give subsistence use the highest priority use are not allowed.</p> <p>b. An applicant shall address the following matters in the analysis required by 11 AAC 112.270:</p> <ol style="list-style-type: none"> <li>1) Activities that would reduce opportunities for subsistence use,</li> <li>2) Measures that will be implemented to insure the subsistence use priority is met., and</li> <li>3) Measures that will ensure the customary and traditional uses of subsistence resources are not diminished.</li> </ol> <p>c. Project activities that deplete subsistence resources below the level sufficient to support customary and traditional harvests of subsistence resources are not allowed. Customary and traditional use is documented in studies cited in the resource inventory and analysis.</p> <p>d. This policy relates to uses and activities for subsistence use areas designated under the authority of 11 AAC 114.250(g). The subsistence use area designations are described in Section 4.5.1.</p> | <p>OPMP recommends this policy not be approved. The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, or permissible.</p> <p>Parts a and c are not approvable because the policy contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that projects within subsistence use areas must avoid or minimize impacts to subsistence uses of coastal resources. The avoid or minimize sequence is defined at 11 AAC 112.900. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore, not permissible.</p> <p>Part b is not approvable because the State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the avoid or minimize sequence. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p> |
| <p>Policy B-1: Fisheries Habitat</p> <p>a. Project activities that would result in a net</p>   | <p>OPMP recommends this policy not be approved. The proposed Important Habitat designated</p>   |

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| <p>decrease to productivity of fish habitat are not allowed. Productivity of fish habitat includes fish spawning, migration, and rearing functions including those occurring in over-wintering areas.</p> <p>b. Facilities are not allowed within 100 feet landward of the ordinary high water mark from each stream bank. This requirement does not apply to projects that require an over-water or water edge location, nor does it preclude necessary stream, river, or lake crossings.</p> <p>c. This policy is established for areas designated as important habitat under 11 AAC 114.250(h) as described in Section 4.5.3, and it applies to uses and activities that affect functions related to the special productivity of fish habitat.</p>  | <p>area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.</p> <p>Part a is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or mitigate sequence, and is therefore, not permissible.</p> <p>In addition, the proposed enforceable policy duplicates the authority of AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Additionally, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p> |
| <p>Policy C-1: Cultural, Historic and Archeological Sites</p> <p>a. For project within the areas designated for historic and prehistoric resources, the applicant shall submit with the consistency review an assessment of potential impacts to historic and prehistoric resources and a plan for protection of those resources. As part of the assessment, the applicant shall consult with the Bering Straits CRSA and tribal entities to determine if a resource survey shall be completed.</p> <p>b. The CRSA shall require a resource survey if one or more of the following circumstances exist:<br/>       1) The proposed activity is with one-mile of a known historic or prehistoric site catalogued by the State Historic Preservation Office or by the CRSA, or<br/>       2) The project is a large project.</p> | <p>OPMP recommends that Part a. of this policy be approved excluding the last phrase reading "to determine if a resource survey shall be completed". OPMP recommends that Part c. of this policy be approved.</p> <p>Parts a. and c. flow from 11 AAC 114.250 (i); are not a matter regulated by DEC; do not adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; are clear and concise as to the activities and persons affected by the policies and requirements of the policies; use precise, prescriptive, and enforceable language; and do not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> <p>Parts a. and c. address a matter regulated by state law, namely 11 AAC 112.320. The district</p>  |

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|  | <p>has documented that the matter is of local concern.</p> <p>OPMP recommends that the last phrase of Part a. reading "to determine if a resource survey shall be completed" and Part b. not be approved.</p> <p>The last part of Part a. and Part b. are neither clear nor concise as to the activities and persons affected by the policy and the requirements of the policy.</p>  |
| <p>Policy D-1: Bank Stabilization</p> <p>a. All stream or lake bank cuts, fills or exposed earthwork adjacent to waterbodies, including streams, wetlands or marine waters, shall be stabilized to prevent erosion into adjoining waters during construction, operation and following cessation of development activities.</p> <p>b. This policy relates to uses and activities for areas designated as flooding and erosion hazard areas under 11 AAC 114.250(b). These area designations are described in Section 4.5.4.</p> | <p>OPMP recommends this policy not be approved. Stabilizing erosion prone areas is considered an appropriate measure for the known natural hazard of erosion and therefore already addressed by 11 AAC 112.210. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing erosion is not adequately addressed.</p> <p>In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the impacts to water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.</p> |
| <b>City of Bethel</b>  | <b>Consultant – Bechtol Planning and Development</b>   |
| No enforceable policies were disapproved.  |  |
| <b>Bristol Bay Borough</b>   | <b>Consultant - none</b>   |
| No enforceable policies were disapproved.  |  |
| <b>Bristol Bay CRSA</b>  | <b>Consultant – Glenn Gray and Associates</b>  |
| <p>Policy A-1: Subsistence Use Priority</p> <p>a. Subsistence use will be given the highest priority for designated subsistence use areas. Activities that would have significant adverse effects to subsistence will not be allowed in these areas.</p> <p>b. Before a potentially conflicting activity may be authorized, the coordinating agency must determine, in cooperation with the district, that the analysis required by 11 AAC 112.270 adequately assesses potential impacts of the</p>                            | <p>The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, or permissible.</p> <p>In addition, the State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the "avoid or minimize" sequence.</p>  |

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| <p>project on subsistence uses and that appropriate safeguards are in place to ensure the subsistence use priority is met and that subsistence resources are not depleted below the level needed to sustain customary and traditional use.</p> <p>c. This policy is established pursuant to 11 AAC 114.250(g), and it applies to uses and activities affecting designated subsistence use areas described in Section 4.5.2.</p>  | <p>The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p>   |
| <p>Policy B-1: Anadromous Fish Habitat</p> <p>a. For projects that may affect fish habitat, applicants shall demonstrate that the activities will not have a significant adverse effect to habitat functions including the ability to support fish spawning, migration, rearing, and overwintering. The habitat characteristics of shorelines that have banks, beaches, and beds important to fish populations shall not be diminished.</p> <p>b. When practicable, projects adjacent to fish habitat will maintain a setback of at least 300 feet landward of the ordinary high water measured from each stream bank. When such a setback is not practicable, activities may occur within this area if there is no loss to fish habitat. This subsection does not apply to projects that require an over-water or water edge location, nor does it preclude or restrict necessary stream, river, or lake crossings. Compliance with the setbacks identified in the Alaska Department of Natural Resource's Bristol Bay Area Plan (2005) will also achieve compliance with this policy (pp. 61 and 66-67).</p> <p>c. Sand and gravel extraction in or adjacent to fish habitat shall use measures to prevent adverse impacts to fish and fish habitat including, but not limited to, berms, settling ponds, and measures to prevent fish entrapment. Reclamation or rehabilitation measures will be required in order to minimize stream bank erosion and to maintain fish habitat. Sand and gravel extraction operations will be consolidated and not allowed when another reasonable source is feasible.</p> <p>d. This policy is established under authority of 11 AAC 114.250(h), and it applies to uses and activities affecting areas designated as important habitat as described in Section 4.5.1.</p> | <p>The proposed Important Habitat designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.</p> <p>In addition, the proposed enforceable policy duplicates the authority of AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Additionally, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p> |

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| <p>Policy B-7: Sand and Gravel Extraction</p> <p>a. Review and approval of sand and gravel extraction from barrier islands, spits and coastal waters, including intertidal areas, shall use the following criteria.</p> <ol style="list-style-type: none"> <li>1. Upland areas shall be used before other areas to the maximum extent practical.</li> <li>2. For the portions of rivers and streams considered coastal waters:           <ol style="list-style-type: none"> <li>i) Larger rivers and streams shall be used before siting operations in smaller rivers and streams,</li> <li>ii) Braided river systems shall be used before siting operations in other river systems,</li> <li>iii) The quantity of gravel removed shall be limited to ensure gravel recruitment and accumulation rates are sufficient to avoid extended impacts on channel morphology and anadromous fish habitat,</li> <li>iv) Skimming of gravel bars in streambeds shall be allowed only when other alternatives are not practical; use of gravel bars shall occur during periods of low flow and from areas above the low-flow water level,</li> <li>v) When practical, operations shall avoid removal of large, woody debris from streambeds; When it is not practical to leave such material in the streambed, comparable materials shall be replaced by an applicant,</li> </ol> </li> <li>3. Applicants shall include in the project description measures to monitor the adverse impacts of gravel operations on anadromous fish habitat to determine if actual impacts exceed those predicted.</li> </ol> <p>b. This policy relates to uses and activities covered by the statewide sand and gravel extraction policy (11 AAC 112.260) and applies throughout the coastal area to the types of areas mentioned in the policy.</p> | <p>Subsections (a)(2)(iii)-(v) and (a)(3) duplicate the State's authority at AS 41.14.870. In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to habitat.</p> <p>It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of May 1, 2006 that would have allowed this policy to be approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.</p> |
| <p>Policy D-2: Mining and Recreation</p> <p>a. Mining activities, including surface mining, transportation, and tailings disposal, shall be approved in designated recreation areas only when they have no significant adverse impacts to recreation activities. The following criteria shall be considered by the coordinating agency when determining compatibility:</p> <ol style="list-style-type: none"> <li>1. The degree of disturbance to recreational</li> </ol>  | <p>The proposed Recreation designated area was not recommended for approval (see designated area analysis table for justification.</p> <p>Without an approved recreation designated area, this policy will not be applicable, or permissible.</p> <p>In addition, mining is considered a "use of state concern" as defined at AS 46.40.210. Under AS 46.40.060, the district has not demonstrated that</p>  |

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| <p>values, including scenic views and an absence of continuous mechanical noise,<br/>         2. Unimpeded access to recreation areas, and<br/>         3. Continued availability of recreation-related resources identified in the resource inventory and analysis, including sufficient quantities of fish and wildlife.<br/>         b. This policy is established under authority of 11 AAC 114.250(c), and it applies to uses and activities affecting designated recreation areas as described in Section 4.5.4.</p>  | <p>this policy does not arbitrarily or unreasonably restrict a use of state concern.</p>  |
| <p><b>Ceñaliurrit CRSA</b></p>  | <p><b>Consultant – Glenn Gray and Associates</b></p>  |
| <p>A-1. Subsistence Use<br/>         a. Subsistence use has a priority over all other uses.<br/>         b. For projects that involve activities that compete with subsistence uses, the applicant shall include in the project description measures that will ensure the subsistence priority is met.<br/>         c. Project activities shall not deplete subsistence use opportunities, including the availability of subsistence resources, below the level sufficient to support customary and traditional uses as demonstrated in studies cited in the resource inventory and analysis or studies completed by the Alaska Department of Fish and Game, Division of Subsistence.<br/>         d. This policy relates to uses and activities for subsistence use areas designated under the authority of 11 AAC 112.250(g). The area designations are described in Section 4.5.1.</p> | <p>DCOM recommends this policy not be approved for the following reasons:<br/>         The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.<br/><br/>         Also, the policy is not approvable because the State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the avoid or minimize sequence. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.<br/>         In addition, the policy is not approvable because it contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that projects within subsistence use areas must avoid or minimize impacts to subsistence uses of coastal resources. The avoid or minimize sequence is defined at 11 AAC 112.900. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore, not permissible.</p> |
| <p>B-1. Buffer Zone for Anadromous Fish Waters<br/>         a. Uses and activities with a potential to affect use of subsistence resources shall be prohibited within 100 feet of the ordinary high water mark of</p>   | <p>DCOM recommends this policy not be approved for the following reasons:<br/>         The proposed Important Habitat designated area was not recommended for approval (see the</p>   |

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| <p>anadromous fish streams unless:</p> <ol style="list-style-type: none"> <li>1) The use is a transportation or utility crossing,</li> <li>2) The use is a subsistence camp,</li> <li>3) The purpose of the use is research, protection, or enhancement of anadromous fish or their habitat, including erosion control when there will be no net habitat loss,</li> <li>4) There is a public need for the use, and the use will avoid significant adverse impacts to the anadromous fish waters,</li> <li>5) The use is a gravel mining operation that meets the criteria for Policy G-2, or</li> <li>6) The applicant demonstrates in the project description that measures will prevent the loss of anadromous fish habitat including the loss of habitat functions related to spawning or rearing.</li> </ol> <p>When developing measures, the applicant shall consider the following factors:</p> <ol style="list-style-type: none"> <li>i. The sensitivity of anadromous fish using the site,</li> <li>ii. The nature of the use and the anticipated disturbance, including construction and operation, and the size and configuration of the development with respect to the habitat functions, and</li> <li>iii. The characteristics and function of existing instream and riparian vegetation; and</li> <li>iv. The slope, soil type, and soil stability at the proposed activity site as it affects the potential for erosion problems.</li> </ol> <p>b. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 4.5.3</p> <p>b. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 4.5.3.</p> | <p>designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.</p> <p>Part a is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be manage to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or mitigate sequence, and is therefore, not permissible.</p> <p>In addition, the proposed enforceable policy duplicates the authority of AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Additionally, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p> |
| <p>C-3. Floating Facilities</p> <ol style="list-style-type: none"> <li>a. Floating facilities in coastal waters, including barges and dredges, shall:       <ol style="list-style-type: none"> <li>1) Use methods that are sufficient to anchor the facility during high winds and extreme tides,</li> <li>2) Be removed or disposed of when the lease or permit has expired or if the facilities are no longer being properly maintained.</li> </ol> </li> <li>b. This policy applies to uses and activities relating to floating facilities, and it is established for the</li> </ol>  | <p>DCOM recommends this policy not be approved for the following reason:</p> <p>In accordance with 11 AAC 114.240(c) a “district must document by local usage or scientific evidence a use or resource of unique concern that is subject to an enforceable policy”. Ceñaliulriit CRSA does not discuss within the resource analysis the impacts to floating facilities due to high winds and extreme tides.</p> <p>Also, the policy duplicates the authority granted to</p>   |

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| <p>Coastal Development standard (11 AAC 112.200).</p>   | <p>the Army Corps of Engineers under §10 of the Rivers and Harbors Act (specifically general permit 89-4) and AS 38.05.075(c). The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p>  |
| <p>D-2. Storm Surges and Flooding<br/> a. Project facilities shall not be sited in areas subject to storm surge and flooding, including areas in and adjacent to coastal waters and areas subject to flooding from freshwater bodies, unless there is a public need and no practical alternative exists.<br/> b. The applicant shall include measures in the project description that demonstrate how project activities, including facility siting, design, construction and operations, will minimize damage to subsistence uses and the resources and habitats on which they depend. The measures shall address the potential for damage from the interaction of project facilities with storm surges and flooding.<br/> c. The CRSA, local governments and tribal agencies shall be consulted under the provisions of 11 AAC 112.210(d). Local residents have expertise about flooding and storm surges from longstanding, direct observations.<br/> d. This policy applies to all areas designated for flooding and erosion under 11 AAC 114.250(b) as described in Section 4.5.2.</p> | <p>DCOM recommends this policy not be approved for the following reasons:<br/> The proposed natural hazard flooding and erosion designated area was not recommended for approval (see designated area analysis table for justification). Without an approved natural hazard designated area, this policy will not be applicable, nor permissible.<br/> DCOM recommends part b not be approved because it addresses subsistence and habitat and therefore does not flow from the natural hazard state standard at 11 AAC 112.210. DCOM recommends part c not be approved because the state standard at 11 AAC 112.210(d) requires the consultation part c addresses. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p> |
| <p><b>City of Cordova</b></p>   | <p><b>Consultant – Bristol Environmental and Engineering Services Corporation, LaRoche + Associates</b></p>  |
| <p>CA-2 – Increased Public Access<br/> Subdivision of State, University, Mental Health Trust, City, Eyak, and Chugach Corporation lands shall include public access to, from, and along coastal water and shorelines within designated recreational use areas.</p>  | <p>DCOM recommends the following part of this policy be approved:<br/> Subdivision of State, City, Eyak, and Chugach Corporation lands shall include public access to, from, and along coastal water and shorelines within designated recreational use areas.</p> <p>This part of the enforceable policy flows from the coastal access standard; is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses</p>  |

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|   | <p>precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> <p>This part of the policy addresses a matter regulated by state law, namely 11 AAC 112.220. The district documents that the matter is of local concern.</p> <p>The following parts of the policy are not recommended for approval:<br/>       "...University, Mental Health Trust..."</p> <p>Mental Health Trust lands are held by the Trust Land Office (TLO), which is a quasi-state agency which is addressed differently from other state agencies. As per 11 AAC 99.020, trust land is not general state land and is managed separately with strict fiduciary responsibilities. The TLO has an obligation to its Trust beneficiaries to maximize its return on the limited lands owned by the Mental Health Trust. As such, the TLO will not agree to a policy that requires the dedication of an easement or access without compensation to the Trust. Similarly, University of Alaska lands are not general state land and is managed separately for the purpose of raising revenues for the benefit of the University.</p> |
| <p>SG-2 – Sand and Gravel Extraction<br/>       Sand and gravel extraction operations in floodplains shall be located and designed to minimize adverse changes to channel hydraulics and the potential for channel diversion through the extraction site, unless specifically designed to reduce erosion or flooding threats.</p> | <p>OPMP recommends the enforceable policy not be approved. The issues of channel diversion of a channel of any navigable water is adequately addressed by Section 10 of the Rivers and Harbors Act and channel hydraulics is adequately addressed by Section 404 of the Clean Water Act.</p>  |
| <p>TU-1 Visual Access<br/>       Where practicable, overhead lines shall be located in a manner that does not interfere with scenic coastal vistas.</p>   | <p>OPMP recommends that the enforceable policy not be approved. The policy is adequately addressed by the state transportation routes and facilities standard at 11 AAC 112.280.</p>  |
| <p>EL-1 Only water-dependent uses are allowed beyond the ordinary high water mark within the Eyak Lake AMSA.</p>  | <p>DCOM recommends that this policy not be approved. The policy does not flow from a state standard. The Coastal Development standard at 11 AAC 112.200 applies only to "coastal waters" as defined in 11 AAC 112.990.</p>  |
| <p><b>City of Craig</b></p>   | <p><b>Consultant - none</b></p>   |
| <p>No enforceable policies were disapproved.</p>  |   |
| <p><b>Haines Borough</b></p>  | <p><b>Consultant – Sheinberg Associates</b></p>   |
| <p>No enforceable policies were disapproved.</p>  |   |
| <p><b>City of Hoonah</b></p>  | <p><b>Consultant – Sheinberg Associates</b></p>   |

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| No enforceable policies were disapproved.   |  |
| <b>City and Borough of Juneau</b>   | <b>Consultant – LaRoche + Associates</b>   |
| <p><b>WATERFRONT DEVELOPMENT (5.1)</b><br/>         Developments shall, wherever practicable, preserve or enhance visual access including scenic views and vistas to from and along coastal water.</p>  | <p>The policy is not enforceable as written since scenic views and vistas have not been delineated in the Resource Inventory and Analysis section of the plan.</p> |
| <p><b>WETLANDS MANAGEMENT WM(15)</b><br/>         A Mitigation Bank will be established to provide bank credit to satisfy compensation requirements for certain developments in Category C wetlands. The Mitigation Bank will operate under the following conditions:</p> <p>A. Credits are not available to a permit applicant until the bank completes the wetlands protection, enhancement or creation project and the Wetlands Review Board, in consultation with the agency working group, certifies that the wetlands functions and values have been or will be established.</p> <p>B. Mitigation Bank credits cannot be used for any permit action where the wetlands area to be adversely affected by a dredge or fill activity exceeds five acres. This requirement prevents bank credits from being exhausted by a single large development.</p> <p>C. A permit applicant will be required to perform mitigation through individual actions rather than through the bank for fill activities that exceed five acres. The bank is designed to facilitate mitigation for small-scale developments that might otherwise cause cumulative incremental damage to overall wetlands values.</p> <p>D. To the extent feasible and prudent, projects using least damaging technologies will be given priority in using Mitigation Bank credits.</p> <p>E. The calculation of cost charged to a project applicant for each Mitigation Bank credit will be based on all costs and expenses incurred or expected to be incurred by the bank in establishing and maintaining the bank. This includes, but is not limited to, applicable land costs and project monitoring.</p> <p>F. The Mitigation Bank should focus on proven mitigation techniques. Restoration and enhancement is preferred over wetlands creation. Protection of existing wetlands (such as through</p> | <p>The Designated Important Habitat Area has not been approved, and therefore this enforceable policy cannot be approved.</p>                                      |

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| <p>public purchase) is the lowest priority for the bank and should only be considered when development and the loss of wetlands functions and their values are imminent.</p> <p>G. To the extent feasible and prudent, mitigation shall occur in the same watershed as the development for which it is compensation.</p>   |   |
| <p><b>Kenai Peninsula Borough</b></p>  | <p><b>Consultant – LaRoche + Associates</b></p>   |
| <p>No enforceable policies were disapproved.</p>   |   |
| <p><b>Ketchikan Gateway Borough</b></p>  | <p><b>Consultant – LaRoche + Associates</b></p>   |
| <p>COASTAL DEVELOPMENT CD-2:<br/>       Structures Placed in Navigable Waters<br/>       Placement of piling-supported or floating structures in coastal waters shall be subject to the following standards:</p> <p>A. Use of structures shall be consistent with the allowable uses on the adjacent uplands.<br/>       B. Structures shall not be treated with exteriorly applied creosote preservative coatings.</p>  | <p>OPMP recommends the enforceable policy be approved if the district makes the following change:</p> <p>Rewrite the policy to read:</p> <p>Placement of piling-supported or floating structures in coastal waters shall be subject to the following standards:<br/>       A. Use of structures shall be consistent with the allowable uses on the adjacent uplands to the maximum extend practicable.<br/>       B. Structures shall not be treated with exteriorly applied creosote preservative coatings.</p> <p>This enforceable policy is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> |
| <p>RECREATIONAL USE AREAS RCA-2:<br/>       Visually Important Backdrops and Visual Points of Interest within the Clover Pass Area<br/>       Designated Visually Important Backdrops and Points of Interest are depicted on Map Figures 3.2, 3.7-3.13, 3.27 and 3.33 for the Clover Pass area.<br/>       Scenic impacts to important backdrops and points of interest within the Clover Pass Area shall be avoided or minimized through use of coastal development best management practices included in Appendix C. Site clearing and re-grading of important backdrops and points of interest within</p> | <p>OPMP recommends the enforceable policy be approved if the district makes the following changes:</p> <ol style="list-style-type: none"> <li>1. Make changes to map figure 3.2 to show visually important backdrops &amp; points of interest or delete the reference to 3.2.</li> <li>2. Include a reference to the specific best management practices that deal with coastal development (BMP 1-11).</li> </ol>   |

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| <p>the Clover Pass Area shall be minimized to the extent practicable.</p>  | <p>If the district makes the above changes OPMP recommends the policy be approved in whole. The resulting enforceable policy is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> |
| <p><b>Kodiak Island Borough</b></p>  | <p><b>Consultant – Glenn Gray and Associates</b></p>   |
| <p>No enforceable policies were disapproved.</p>   |  |
| <p><b>Lake and Peninsula Borough</b></p>   | <p><b>Consultant – LaRoche + Associates</b></p>  |
| <p>B-1: Geophysical surveys shall, to the extent practicable, be located, designed, and conducted to avoid disturbances to fish and wildlife populations, important habitats, recreational and tourism use areas and subsistence harvest areas as designated in this and other sections of this plan. Seasonal restrictions, restrictions on the use of explosives, or restrictions relating to the type of transportation utilized in such operations may be required as necessary to mitigate potential adverse impacts to aquatic and marine resources. Geophysical surveys in fresh and marine waters supporting fish or wildlife shall use energy sources such as air-guns, gas exploders, or other sources that have been demonstrated to be harmless to fish and wildlife. The in-water use of explosives for purposes other than geophysical surveys shall be considered on a case by case basis after all steps have been taken to minimize impacts and when no practicable alternatives exist to meet the public need.</p> | <p>OPMP recommends this policy not be approved.</p> <ol style="list-style-type: none"> <li>1. This policy does not flow from use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i).</li> <li>2. This policy is adequately addressed by AS 41.14.870.</li> <li>3. This policy is adequately addressed by 11 AAC 112.270.</li> <li>4. This policy is adequately addressed by 11 AAC 112.300.</li> </ol>  |
| <p>D-1: Traditional and customary access to subsistence or personal use areas, as designated in this plan, shall be accommodated unless reasonable alternative access is provided. See also B-1 Seismic Surveys and In-Water Use of Explosives</p>   | <p>OPMP recommends the policy not be approved.</p> <ol style="list-style-type: none"> <li>1. The state subsistence standard does not address access; the policy does not flow from 11 AAC 112.270.</li> <li>2. Policy would apply outside of the designated area.</li> </ol>   |
| <p>E-1: Elements of coastal access include roads, waterways, trails, campsites, picnic sites, and marine anchorages. Prior to disposal of municipal,</p>   | <p>OPMP recommends this policy not be approved.</p> <ol style="list-style-type: none"> <li>1. Enforceable policies cannot apply to federal lands</li> </ol>  |

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| <p>state, or federal lands, public coastal access routes shall be identified and dedicated. See policy H-7 Lakeshore Access Requirements</p>   | <p>2. There are no MHT lands in the Lake and Peninsula Borough<br/>         3. The district has not sufficiently demonstrated in the Resource inventory and Analysis that University and Mental health Trust lands are a matter of local concern.<br/>         4. This policy is adequately addressed by 11 AAC 112.240 and 11 AAC 112.280.</p> |
| <p>H-2: Uses and activities in recreational waters shall meet the following requirements:<br/>         a) Structures and buoys placed in navigable waters shall be visibly marked and placed in a manner to minimize navigation hazards or obstructions to other uses; and<br/>         b) To the extent practicable, all developments, structures, and facilities in recreational waters shall be sited, constructed, operated, and maintained in a manner that does not create a hazard or obstruction to other uses.</p>  | <p>OPMP recommends this policy not be approved.<br/>         1. This policy is adequately addressed by AS 38.05.128</p>   |
| <p><b>Matanuska-Susitna Borough</b></p>  | <p><b>Consultant – Bristol Environmental and Engineering Services Corporation, LaRoche + Associates</b></p>   |
| <p>RECREATIONAL USE AREA RDA-1<br/>         Within the designated recreational use area, as described in section 6.3, uses and activities that are economically or physically dependent on a shoreline location are given higher priority when compared to uses and activities that do not economically or physically require a shoreline location. Priority shall be given in the following order:<br/>         (1) water-dependent uses and activities;<br/>         (2) water-related uses and activities; and<br/>         (3) uses and activities that are neither water-dependent nor water-related, for which there is no practicable inland alternative to meet the public need for the use or activity.<br/>         a. Water-dependent uses include: fish hatcheries; floatplane ramps, boat launches, docks; water-based tourism facilities and accessory attached housing; and remote recreational cabins dependent on water access.<br/>         b. Water-related activities include: retail stores and commercial activities such as lodges, hotels, restaurants, and other similar uses that provide views and access to the shoreline.</p> | <p>Though the policy applies within the designated recreational use area, the policy as written does not address recreational uses.</p>   |

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| <p>Exceptions: Non-water-dependent and non-water-related uses and activities shall be permitted when it is not practicable to develop a site with a water-dependent or water-related use or activity, due to shallow bathymetry or unusual lot characteristics, such as substandard size, frontage, or steep topography, or such uses would be inconsistent with zoning.</p>  |   |
| <p><b>City of Nome</b></p>  | <p><b>Consultant – Bechtol Planning and Development</b></p>   |
| <p>CD-2. Piers, Docks, and Related Coastal Development Construction<br/>         The placement of piers, docks, ports, harbors, marinas, wharfs, causeways, seawalls, any permanent floating structures in coastal waters shall not preclude navigation. Such shoreline improvements and activities shall conform to the following standards:<br/>         a. Docks placed in coastal waters shall be the minimum length necessary to achieve the desired purpose.<br/>         b. Where a single purpose dock is proposed, the applicant shall state reasons why a cooperative use facility is impractical. Where practicable, the cooperative use of docking, parking, cargo handling and storage facilities should be undertaken.<br/>         c. Docks shall be designed to withstand ice movement or be designed for removal during winter months.</p> | <p>OPMP recommends that the enforceable policy be approved if the district makes the following changes: 1. Rewrite to read:</p> <p><i>CD-2. Piers, Docks, and Related Coastal Development Construction<br/>         The placement of piers, docks, ports, harbors, marinas, wharfs, causeways, seawalls, any permanent floating structures in coastal waters shall conform to the following standards:</i></p> <p><i>a. Docks placed in coastal waters shall be the minimum length necessary to achieve the desired purpose.</i></p> <p><i>b. Where a single purpose dock is proposed, the applicant shall state reasons why a cooperative use facility is impractical. Where practicable, the cooperative use of docking, parking, cargo handling and storage facilities should be undertaken.</i></p> <p><i>c. Docks shall be designed to withstand ice movement or be designed for removal during winter months.</i></p> <p>This enforceable policy flows from the coastal development standard; is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> |

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|  | <p>The policy addresses a matter regulated by state law, namely 11 AAC 112.200. The district documents that the matter is of local concern [as shown in the above table].</p>  |
| <p><b>North Slope Borough</b></p>  | <p><b>Consultant – Glenn Gray and Associates</b></p>   |
| <p>Policy A-1: Subsistence Use Priority<br/> a. When there are potentially conflicting uses, subsistence use of plants, fish and wildlife, including marine mammals, shall be the highest priority use of the lands and waters in the coastal area.<br/> b. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence in Section 3.5.1.</p>  | <p>OPMP recommends this policy not be approved. This policy is not clear and concise and is not enforceable.<br/> The justification in Appendix D of the NSB plan refers to language that does not exist in the policy: "Subsection a) requires that subsistence use be given a priority by state agencies during the consistency review process. Subsection b) specifies that projects shall not deplete subsistence use activities below the level of customary and traditional use as indicated in studies. The policy uses precise, prescriptive and enforceable language."<br/> The State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the avoid or minimize sequence. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p>  |
| <p>Policy C-1: Bowhead Whale Habitat<br/> a. The following project activities that would adversely affect bowhead whale migration, feeding, mating, and calving areas are not allowed:<br/> 1) Noise-producing activities that result in levels of industrial sound above 120 decibels where bowhead whales are located during times of subsistence whaling,<br/> 2) Shipping activities within 10 miles of bowhead whales without a conflict avoidance agreement with the Alaska Eskimo Whaling Commission,<br/> 3) Activities that would disturb migrating bowhead whale mothers with calves (May 10 – July 1 and August 1 – October 15),<br/> 4) Seismic survey activities occurring within 12 miles of migrating bowhead whales, and<br/> 5) Multiple seismic surveys occurring less than 50 miles apart.<br/> b. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat for bowhead whales</p> | <p>OPMP recommends this policy not be approved. The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.<br/> This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be manage to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.<br/> The protection of the bowhead whale is addressed under the Marine Mammal Protection Act and the</p> |

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| <p>as described in Section 3.5.2.</p>   | <p>Endangered Species Act. In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by bowhead whales. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p>   |
| <p>Policy D-1: Project Applications for Hazard Areas<br/> a. Applicants for projects located in areas subject to ice hazards during times when such hazards are reasonably foreseeable shall:<br/> 1) Prepare an ice management plan, reviewed and approved by an engineer experienced in ice hazards and consistent with local knowledge, that describes systems that will be used for surveillance and detection of ice hazard events and for reporting such hazards to the NSB, and<br/> 2) Incorporate measures into the project description that demonstrate facilities will be adequately protected from ice hazards. Applicants shall demonstrate in their project description that local knowledge about ice hazards has been considered when developing these measures.<br/> b. Applicants shall provide an analysis in their project application packet about potential hazards and measures to avoid or minimize adverse effects to habitat and subsistence uses from project activities that could be affected by natural hazards. The analysis shall include conservative estimates of hazard potentials.<br/> c. Subsection "a" of this policy applies to uses and activities in areas designated for ice hazards under 11 AAC 114.250(b) as described in Section 3.5.4. Subsection "b" applies to uses and activities in all areas designated as natural hazard areas under 11 AAC 114.250(b) as described in Section 3.5.4.</p> | <p>OPMP recommends this policy not be approved. The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards and the involvement of approved engineers. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed. In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat that could be affected by natural hazards. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p> |
| <p>Policy E-1: Oil and Gas Activities and Facilities<br/> a. Applicants shall demonstrate in the project description how they have worked with local communities and the NSB to site oil and gas activities in a manner that avoids or minimizes adverse environmental and social impacts.<br/> b. When project activities have a potential to result in cumulative impacts, applicants shall include an analysis of cumulative impacts in the consistency evaluation required by 11 AAC</p>  | <p>OPMP recommends this policy not be approved. The State Energy Facilities Standard at 11 AAC 112.230 already addresses appropriate measures in the siting of energy facilities with consideration of social and environmental impacts. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed. In addition, AS 46.40.040(b), AS 46.03, AS 46.04, AS 46.09, and AS 46.14 and the regulations</p>   |

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| <p>110.215(a)(1)(C) or 11 AAC 110.410(c)(1)(B).<br/>         c. The State of Alaska shall provide an opportunity for the NSB to comment on the siting of energy facilities with respect to the effects to air and water quality for projects not regulated by Alaska Department of Environmental Conservation (DEC) under AS 46.03, AS 46.04, AS 46.14 and the regulations adopted under those statutes.<br/>         d. Subsection "a" applies to uses and activities in areas designated as suitable for energy facilities under 11 AAC 114.250(e) as described in Section 3.5.5. Subsections "b" and "c" apply to the energy facilities subject use under 11 AAC 112.230 including offshore uses and activities not regulated by DEC.</p>            | <p>adopted under those statutes are the exclusive enforceable policies of the ACMP. Therefore, a district enforceable policy can not address a matter covered by these statutes and regulations. Furthermore, uses or permits for mineral or petroleum resource extraction are uses of state concern under 11 AAC 112.230 (b).</p>  |
| <p><b>Northwest Arctic Borough</b></p>  | <p><b>Consultant – Glenn Gray and Associates</b></p>  |
| <p>Policy A-1: Subsistence Use Priority<br/>         a. Projects that do not give subsistence use the highest priority use of coastal lands and waters are not allowed.<br/>         b. Projects that would deplete subsistence use opportunities, including the availability of subsistence resources, below the level sufficient to support customary and traditional uses as demonstrated in studies cited in the resource inventory and analysis or studies completed by the Alaska Department of Fish and Game, Division of Subsistence are not allowed.<br/>         c. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.</p> | <p>The State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the "avoid or minimize" sequence. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.</p>   |
| <p>Policy B-1: Fish Habitat<br/>         a. Project activities that would result in a net decrease to the productivity of fish habitat are not allowed. Productivity is directly related to losses to the following functions: Spawning, migration, rearing, and over-wintering.<br/>         b. Projects within 100 feet landward of the ordinary high water mark from fish habitat are not allowed. This requirement does not apply to projects that require an over-water or water edge location, nor does it preclude necessary stream, river, or lake crossings.<br/>         c. Sand and gravel operations that do not consolidate operations to the maximum extent</p>   | <p>The proposed Important Habitat designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, or permissible.<br/>         In addition, the proposed enforceable policy duplicates AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Also, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the</p> |

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| <p>practicable are not allowed.</p> <p>d. Applicants for sand and gravel extraction in or adjacent to fish habitat shall include in the project description measures that will prevent or reduce adverse impacts to fish habitat including berms, settling ponds and measures to prevent fish entrapment.</p> <p>e. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.</p>   | <p>matter is not adequately addressed.</p>  |
| <p>Policy C-1: Cultural, Historic and Archeological Surveys</p> <p>a. Applicants proposing to conduct activities that would disturb historic or prehistoric resources including activities in historic areas such as fish camps culture camps or Native allotments shall consult with the NAB prior to submission of a consistency certification to determine if a resource survey is necessary. The resource survey will be used by the NAB and appropriate state and federal agencies to determine what alternative measures will be necessary to protect historic or prehistoric resource. The NAB shall require a resource survey if one or more of the following circumstances exist:</p> <p>1) The proposed activity is with one mile of a known historic or prehistoric site catalogued by the State Historic Preservation Office or by the NANA regional Native corporation, or</p> <p>2) The project is a large project.</p> <p>b. This policy relates to uses and activities for areas designated as important for the study, understanding or illustration of history and prehistory under 11 AAC 114.250(i) as described in Section 4.4.2.</p> | <p>The policy is neither clear nor concise as to the activities and persons affected by the policy and the requirements of the policy. It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. Further language suggestions were made by OPMP on September 19, 2006 which would have made this policy approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.</p> |
| <p>Policy D-1: Bank Stabilization</p> <p>a. All stream or lake bank cuts, fills or exposed earthwork adjacent to water bodies, including streams, wetlands and marine waters, shall be stabilized to prevent erosion into adjoining waters, during operation and following cessation of development activities.</p> <p>b. This policy relates to uses and activities for areas designated as flooding and erosion hazard areas under 11 AAC 114.250(b) as described in</p>   | <p>Stabilizing erosion prone areas is considered an appropriate measure for the known natural hazard of erosion and therefore already addressed by 11 AAC 112.210. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing erosion is not adequately addressed.</p> <p>In addition, various State and federal agency laws,</p>   |

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| Section 4.4.5.  | including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the impacts to water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.   |
| <b>City of Pelican</b>  | <b>Consultant – Sheinberg Associates</b>  |
| No enforceable policies were disapproved.   |   |
| <b>City and Borough of Sitka</b>  | <b>Consultant – LaRoche + Associates</b>  |
| No enforceable policies were disapproved.   |   |
| <b>City of Skagway</b>  | <b>Consultant – Sheinberg Associates</b>  |
| Policy TU-1 Roads and trails crossings of anadromous streams shall be consolidated to the extent practicable.   | OPMP recommends this policy not be approved. Due to the avoid, minimize, mitigate sequence used in 11 AAC 112.280 the matter addressed in this policy is adequately addressed.  |
| <b>City of Thorne Bay</b>   | <b>Consultant - none</b>  |
| No enforceable policies were disapproved.   |   |
| <b>City of Valdez</b>   | <b>Consultant – Bechtol Planning and Development</b>  |
| RECREATIONAL USE AREAS RT-2.<br>Management of Designated Recreational Beaches<br>Proposed uses or activities in the designated areas as shown on Maps 6, 7, 8, 9, 10, 11, 12 and 15 shall avoid or minimize direct and significant impacts upon the biological or cultural features listed in the Resource Inventory in Chapter 4 upon which recreation on the designated beach depends.  | Beaches are already addressed in district enforceable policy RT-1.  |
| COASTAL DEVELOPMENT SG-1.<br>Siting of Material Sources<br>To the extent practicable, sources of sand, gravel, rock and other construction materials shall be approved in the following sequence:<br>a) existing approved gravel pits or quarries operated in compliance with state and federal authorizations;<br>b) reuse of material from abandoned development area, unless reuse could cause more damage to resources (excluding air, land and water quality regulated by DEC) than non-use;<br>c) new upland sites, except for those designated under important habitat;<br>d) beaches of low habitat values; and<br>e) streams, which do not provide fish habitat. | OPMP recommends this policy be approved provided the following changes are made. Rewrite policy to read:<br>SG-1. Siting of Material Sources<br>To the extent practicable, sources of sand and gravel shall be approved in the following sequence:<br>a) existing approved gravel pits or quarries operated in compliance with state and federal authorizations;<br>b) reuse of material from abandoned development area, unless reuse could cause more damage to resources (excluding air, land and water quality regulated by DEC) than non-use;<br>c) new upland sites, except for those designated under important habitat; |

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|  | <p>d) beaches of low habitat values; and<br/>         e) streams, which do not provide fish habitat.<br/>         This enforceable policy flows from the coastal development standard by defining sand and gravel extraction location requirements; is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.<br/>         The policy addresses a matter regulated by state law, namely 11 AAC 112.260. The district documents that the matter is of local concern as shown in the above table and in the Resource Inventory and Analysis.</p>   |
| <p>HIST-2. Valdez Historical Cemeteries<br/>         No development is allowed within the Valdez Historical Cemetery is allowed within the Valdez Historical Cemetery Designated area Important for the study, understanding and illustration for history, pre history and archeology shown on Map 13.</p> | <p>OPMP recommends this policy be approved provided the following changes are made. Rewrite policy to read: "No development is allowed within the Valdez Historical Cemetery Designated area Important for the study, understanding and illustration for history, pre history and archeology shown on Map 13."<br/> <br/>         This enforceable policy is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.<br/> <br/>         The policy addresses a matter regulated by state law, namely 11 AAC 114.250 (i). The district documents that the matter is of local concern as shown in the above table and in the Resource Inventory and Analysis.</p> |
| <p><b>City of Whittier</b></p>   | <p><b>Consultant – Bechtol Planning and Development</b></p>  |
| <p>No enforceable policies were disapproved.</p>   |  |
| <p><b>City and Borough of Yakutat</b></p>  | <p><b>Consultant – Sheinberg Associates</b></p>  |
| <p>Policy CD5 Conditions To Allow Fill Rather Than</p>   | <p>OPMP recommends this policy not be approved.</p>  |

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| <p>Pilings Below Mean High Water.<br/>         Piling-supported or floating structures shall be used for construction below mean high water unless clear and convincing evidence shows that all of the following conditions exist:</p> <ol style="list-style-type: none"> <li>1. Development of the property would be for a water dependent use; and</li> <li>2. The fill is placed in a manner that minimizes impacts on adjacent uses, public access along the shoreline and water views.</li> </ol>  | <p>This enforceable policy flows from the coastal development standard; is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.</p> <p>The policy addresses a matter regulated by state law, namely 11 AAC 112.200. The district documents that the matter is of local concern as shown in the above table and in the Resource Inventory and Analysis.</p> |
| <p>Policy S1 Development in Subsistence Use Areas.<br/>         Coastal development is prohibited that negatively impacts subsistence use.</p>  | <p>OPMP recommends this policy not be approved. This policy is adequately addressed by the avoid or minimize sequence at 11 AAC 112.270.</p>   |
| <p>Policy T1 Consolidate Anadromous Waterbody Crossings.<br/>         Road, off-road routes, pipelines, and utility crossings (above or below ground) of anadromous fish waterbodies shall be consolidated at a single crossing, unless the applicant can demonstrate to the satisfaction of the responsible State or federal agency and Borough that the project purposes cannot be met with a single crossing and is not practicable. In that case, crossings shall be minimized to the smallest number needed to accomplish the project.</p>   | <p>OPMP recommends this policy not be approved. This policy is adequately addressed by the avoid minimize or mitigate sequence at 11 AAC 112.280 and 11 AAC 112.300.</p>   |
| <p>Policy SGE1 Sand and Gravel Extraction Operations.</p> <ol style="list-style-type: none"> <li>1. To the extent practicable, extraction activities shall avoid significant adverse impacts on wave-energy, anadromous fish spawning and rearing habitat, waterbird habitat, and minimize increases in shoreline erosion. References to sediment transport and sedimentation are removed because these are matters regulated by DEC.</li> <li>2. In addition to compliance with State ACMP habitat and other standards, siting, design, and operation of sand and gravel extraction activities shall:             <ol style="list-style-type: none"> <li>a. To the extent practicable, be designed to blend with surroundings and to enhance riparian and aquatic habitats;</li> </ol> </li> </ol> | <p>OPMP recommends this policy not be approved. This policy is adequately addressed by the avoid minimize or mitigate sequence at 11 AAC112.300.</p>   |

DCOM response to House Resources

Enclosure 1

March 30, 2011

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| <p>b. Extraction from locations used for spawning and overwintering habitat for anadromous fish is prohibited unless the project or its reclamation enhances fish or wildlife habitat; and Settling ponds shall be protected from flooding.</p> |  |
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# STATE OF ALASKA

SEAN PARNELL  
GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF COASTAL AND OCEAN MANAGEMENT  
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March 28, 2011

The Honorable Eric Feige  
Alaska House of Representatives  
Co-Chair House Resources  
State Capitol Room 126  
Juneau, AK 99801

The Honorable Paul Seaton  
Alaska House of Representatives  
Co-Chair House Resources  
State Capitol Room 102  
Juneau, AK 99801

RE: Alaska Coastal Management Program (ACMP)

Dear Representative Feige and Representative Seaton:

In the March 25, 2011 House Resources hearing on HB 106, you requested that the Division of Coastal and Ocean Management (DCOM) provide the committee with a copy of four district enforceable policies per district and the reasons DCOM disapproved those policies. Enclosed is the requested information. At the request of the co-chair, I have also identified the responsible consultant that provided planning services for the coastal district on the district plan amendment.

It is important to note that the DCOM position and rationale within the plan document for disapproving a district policy may not be comprehensive. As described in the hearing on March 25, as DCOM moved through the "decision tree" for reviewing and approving a district policy, as it came to a reason for disapproval, further analysis of the enforceable policy generally ended and the policy was recommended for disapproval based on the single reason. It is very possible that there are other reasons for disapproval of any given enforceable policy.

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

Sincerely,



Randy Bates  
Director

Representative Feige and Representative Seaton  
March 28, 2011  
Page 2

cc: Dan Sullivan, Commissioner, DNR  
Joe Balash, Deputy Commissioner, DNR  
Trevor Fulton, Legislative Liaison, DNR

## HB 106 WorkDraft Version B Bullet Points

- Extends ACMP sunset date to 2017
- Establishes the Alaska Coastal Policy and Appeals Board to resolve differences between DNR and a Coastal District, review elevations of proposed consistency determinations, and jointly adopt ACMP regulations with DNR
- Repeals Designated Area Requirement
- Clarifies that district enforceable policies apply to all land and water issues subject to the plan. Requires Coastal district plans to be clear and concise, prescriptive or performance-based, necessary given local conditions, and supported by evidence including scientific or local knowledge if more specific than state or federal statutes or regulations.
- Repeals the “Adequately Addressed” standard. Establishes that DNR shall approve a Coastal District Plan if the plan’s enforceable policies do not duplicate, restate, or incorporate by reference state or federal statutes or regulations; are not preempted by federal or state law; and do not arbitrarily or unreasonably restrict a use of state concern. Clarifies how an enforceable policy is preempted.
- Deletes the “DEC Carve-out”. States that the necessity of a completed application for a “prevention of significant deterioration” DEC Air Quality Permit is not necessary to initiate a consistency review.
- Exempts projects requiring an Environmental Impact Statement from 90-day consistency review time limit