

ALASKA LEGISLATURE

2530

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

HB

191

HFIN

FILE

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STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CENTRAL REGION - LEASING AND PROPERTY MANAGEMENT

TONY KNOWLES, GOVERNOR

4111 AVIATION AVENUE
P.O. BOX 196900
ANCHORAGE, ALASKA 99519-6900
(907) 269-0740 (FAX 269-0489)
(TDY 269-0473)

July 10, 2002

RE: Kodiak Airport



Duane Dvorak, Director
Kodiak Island Borough
710 Mill Bay Road
Kodiak, Alaska 99615

Dear Mr. Dvorak:

Thank you for your letter of June 10, 2002, where you discussed the Borough's zoning and platting codes as they pertain to the airport in general and a tenant on the Kodiak Airport in particular. You expressed concern with a particular tenant on the airport and that their use of airport land does not meet Borough codes.

→ The State appreciates the Borough's concern. It is the intent of the Department that while State airports are not subject to local governments jurisdiction for platting or zoning, we do require our tenants to uphold the State fire and building codes and regulations and reasonable business practices.

With respect to Lot 5A Block 1400, we have required the tenant to remove the trailer and clean up their site. We also require, before watchman's quarters are allowed on site, to obtain the Kodiak Fire Chief's approval. The State Fire Marshall's office informs us that they have relegated this responsibility to the local Fire Chief. Until this approval is given, no living quarters are allowed.

On June 18th-20th, I met with representatives of the USCG, Captain Lachowsky, Base Commander, Dan Gunthner, Chief of the Environmental Branch, and Lt. Commander Raney, and Chief Russ Toms, Base Fire Commander to perform a joint inspection of the airport. This inspection was perform to determine each tenants compliance with environmental requirements, fire safety, and lease obligations. The results of the inspection will be made available in the near future.

While the department appreciates the Borough's efforts to obtain a higher level of zoning and building code compliance for developers of Borough lands it is the responsibility of the department to oversee development of and compliance with applicable State and federal regulations. We appreciate the offer of the Borough to

Duane Dvorak

2

July 10, 2002

oversee compliance by airport users with Borough codes but we must respectfully decline the offer. The State will continue to oversee development and operations on State airport lands and insure compliance with applicable State and Federal laws, rules, and regulations.

If you have any questions please call me at (907) 269-0742. Thank you.

Sincerely,



Ron Stroman
Senior Leasing Officer

RAS/wlc

cc: Rob Greene, Kodiak Airport Manager
Patrick Carlson, Borough Manager

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 2, 2003

FURTHER REFERRALS:

Date of Committee Action: 5-3-03

The FINANCE Committee considered:

HB 191

HOUSE BILL NO. 191

COASTAL MANAGEMENT PROGRAMS

"An Act relating to the Alaska coastal management program and to policies and procedures for consistency reviews and the rendering of consistency determinations under that program; relating to the functions of coastal resource service areas; creating an Alaska Coastal Program Evaluation Council; eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the Alaska coastal management program; relating to actions based on private nuisance; relating to zoning within a third class borough covered by the Alaska coastal management program; and providing for effective dates."

Recommends it be replaced with [] HCS or [] CS for HB 191 (FIN)
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____ [] Same Title [] New Title

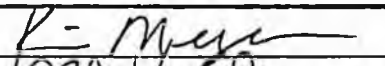
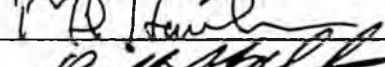
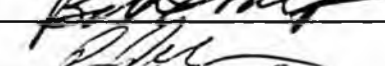
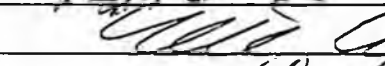





- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DNR				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DFG	#1			✓
DEC.	#2			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Mares	✓			
	Hawkey			✓	
	Spitzer			✓	
	Soul-L		✓		
	CRIST		✓		
	MOSES			✓	
	Whitaker	✓			
	FOSTER	X			
Chair: 	HARRIS			✓	
Chair:					

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 191 (RES)
() Publish Date: _____

Revision Date/Time (Note if correction): 4/17/2003
Title Coastal Management Programs

Dept. Affected: Natural Resources
BRU Management and Administration
Component Office of Alaska Coastal Zone Mgmt

Sponsor Rules
Requester (H) RES

Component No. 2680

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
100 , GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	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
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See page 2.

Prepared by: Nico Bus
Division Administrative Services
Approved by: Tom Irwin, Commissioner
Agency Natural Resources

Phone 465-2406
Date/Time 4/18/2003
Date 4/18/2003

FISCAL NOTE

HB191

□ Currently, the federal grant award is distributed to districts (\$1,166,600) for coastal community improvements, and the remaining funds support the efforts of Alaska Coastal Management Program (ACMP) (\$909,700) and state agencies (\$833,700) in the management and development of Alaska's coastal resources. State agencies currently receiving funding through the Coastal Management Program include:

- Department of Community and Economic Development
- Department of Environmental Conservation
- Department of Fish and Game
- Department of Law
- Department of Natural Resources
- Department of Transportation and Public Facilities

Immediate savings based on Executive Order 106 (EO) transferring the function of DGC to the Department of Natural Resources (effective April 15, 2003) were realized in the Alaska Coastal Management Program's FY 04 Operating Budget as a reduction of \$342,400 in state general fund match and a loss of 5 full time positions and 1 temporary position.

In concert with the EO, this legislation addresses the function and intent of the Coastal Management Program and state permit review process. With the restructure of the permitting system and the major revisions of the Coastal Management Program, the climate for resource based development activities and investment will improve.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 191
 (H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Alaska Coastal Management BRU Habitat and Restoration
 Component Habitat
 Sponsor Rules Committee
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Under this legislation, the coastal program will change. In addition, Executive Order 107 moves most Title 16 coastal related permitting to DNR. With these two changes, the Title 16 authorities, both those that go to DNR (.840 and .870) and those that will remain at DFG (special areas), will constitute compliance with the ACMP. As such, Habitat Biologists will still have a role in the program, and their work could be funded by ACMP dollars that would no longer be needed for district plan development.

Also, while this legislation eliminates the Coastal Policy Council, it also creates an Evaluation Council, of which the DFG Commissioner is a member. As such, staff support that is currently provided to the Commissioner will still be needed to support his or her work on the Council. At the time the Evaluation

Prepared by: Kerry Howard, Acting Director Phone 465-4105
 Division Habitat and Restoration Date/Time 3/5/03 9:22 AM
 Approved by: Kevin Duffy, Acting Commissioner Date 3/5/2003
 Agency Department of Fish and Game

FISCAL NOTE #1

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 191

ANALYSIS CONTINUATION

Council disbands, DFG may be able to show a cost savings.

It is assumed that under the implementation of EO 107 the DFG will have General Funds to help match federal dollars.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 191
 (H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DEC
 Title Alaska Coastal Management BRU Statewide Public Services
 Component Statewide Public Services
 Sponsor Rules Committee
 Requester Governor Component No. 2058

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

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POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The services provided by the Department will change, however the fiscal responsibilities will not.

Prepared by: Mary Siroky - Legislative Liaison
 Division: Statewide Public Services
 Approved by: Kurt Fredriksson - Deputy Commissioner
 Agency: Department of Environmental Conservation

Phone 465-5355
 Date/Time 3/3/03 2:34 PM
 Date 3/3/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 191
 (H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Alaska Coastal Management BRU Habitat and Restoration
 Component Habitat
 Sponsor Rules Committee
 Requester Governor Component No. _____

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Travel						
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Supplies						
Equipment						
Land & Structures						
Grants & Claims						
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CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Prepared by: Kerry Howard, Acting Director Phone 465-4105
 Division Habitat and Restoration Date/Time 3/5/03 9:22 AM
 Approved by: Kevin Duffy, Acting Commissioner Date 3/5/2003
 Agency Department of Fish and Game

FISCAL NOTE #1

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 191

ANALYSIS CONTINUATION

Council disbands, DFG may be able to show a cost savings.

It is assumed that under the implementation of EO 107 the DFG will have General Funds to help match federal dollars.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 191
 (H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DEC
 Title Alaska Coastal Management BRU Statewide Public Services
 Component Statewide Public Services
 Sponsor Rules Committee
 Requester Governor Component No. 2058

Expenditures/Revenues (Thousands of Dollars)

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OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The services provided by the Department will change, however the fiscal responsibilities will not.

Prepared by: Mary Siroky - Legislative Liaison Phone 465-5355
 Division Statewide Public Services Date/Time 3/3/03 2:34 PM
 Approved by: Kurt Fredriksson - Deputy Commissioner Date 3/3/2003
 Agency Department of Environmental Conservation

Marty Rutherford

Key Components of the Bill

CS FOR HB 191/SB 143

House Finance

Reasons for Coastal Management in Alaska:

- (1) State and local control on projects requiring a federal authorization
- (2) State and local influence on direct federal activities
- (3) Federal financial assistance ~ \$2,835,000

Problems Identified With the Current Coastal Management Program

- The consistency review process is unpredictable, it is overly broad in scope, can take too much time, and delays the issuance of permits.
- The statewide standards and local enforceable policies are vague, subject to multiple interpretations, and often duplicate or restate other state or federal requirements.
- Because of the unpredictable timelines and standards, developers lack the certainty needed to make capital commitments on future projects.

Key Components of the Committee Substitute

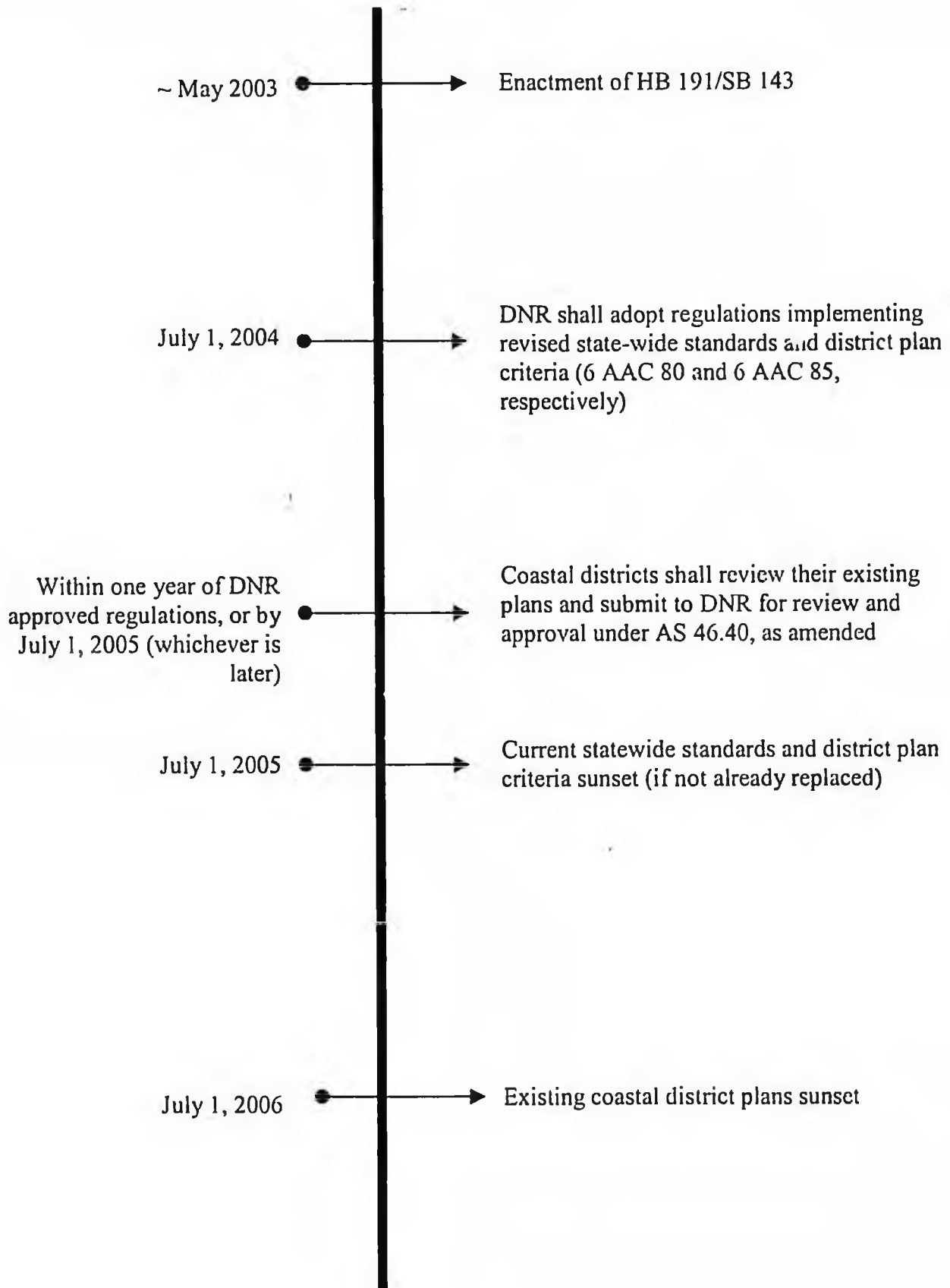
- Eliminates the Coastal Policy Council and transfers its duties to the Alaska Department of Natural Resources.
- Places a sunset on the current statewide standards and coastal district plans.
- Mandates the replacement of all current statewide standards and coastal district plans to ensure that all standards and local enforceable policies are clear, concise, not susceptible to subjective interpretation, and not duplicative of otherwise existing requirements.
- Clarifies that local enforceable policies may not address a matter regulated or authorized by state or federal law, unless the policy relates specifically to a matter of local concern.
- Provides important clarifications on the consistency review process to provide more predictable timelines and standards, including scope of the project that is subject to review, when a project can proceed in phases, and encourages expanding the use of general permits.
- Clarifies that the Alaska Department of Environmental Conservation permits and authorizations constitute the consistency determination for Air, Land, and Water quality and insulates the ACMP consistency review from delays associated with these permits and authorizations.
- Coastal Resource Service Areas remain intact.
- All coastal districts retain the same authorities and responsibilities as under the current program, including the same seat at the table for consistency reviews.
- District enforceable policies remain applicable to all projects subject to a consistency review, not just OCS and federal activities.

Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 / SB 143
ACMP Administration	<ul style="list-style-type: none"> • Department of Natural Resources, as staff to the Alaska Coastal Policy Council (as of April 15, 2003) 	<ul style="list-style-type: none"> • DNR
Funding	<ul style="list-style-type: none"> • ~ \$5,130,000 (federal funds with state/local match) • Distributed to/for: <ol style="list-style-type: none"> 1. State agencies – consistency reviews, coastal program plan review 2. Coastal districts – consistency review/plan development 3. Special projects (i.e . ACMP information system, regulatory revisions) 4. Coastal Non-Point Source program (6217) 	<ul style="list-style-type: none"> • Same
Coastal Districts	<ul style="list-style-type: none"> • 35 approved districts <ol style="list-style-type: none"> 1. 33 approved district plans 2. includes 4 coastal resource service areas (CRSA's) serving the unorganized areas • Have a seat at the table during consistency review • Receive funding to participate in consistency reviews, develop & implement district plans 	<ul style="list-style-type: none"> • Same
Coastal Zone Boundaries	<ul style="list-style-type: none"> • Established in <i>Biophysical Boundaries for Alaska's Coastal Zone</i> (1978) • Modified by coastal resource districts during plan development and approved by the Alaska Coastal Policy Council 	<ul style="list-style-type: none"> • Same

Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 / SB 143
Application of ACMP and Consistency	<ul style="list-style-type: none"> • Consistency review for <ol style="list-style-type: none"> 1. Federal activities 2. Activities in the outer continental shelf 3. Activities that require a listed federal authorization 4. Activities that require a listed state authorization • Consistency is determined by reviewing activities against the enforceable policies (see above) 	<ul style="list-style-type: none"> • Same
Enforceable Policies	<ul style="list-style-type: none"> • Statewide standards – 6 AAC 80 • Coastal district program enforceable policies <ol style="list-style-type: none"> 1) Do not duplicate state law 	<ul style="list-style-type: none"> • Statewide standards at 6 AAC 80 to be rewritten by July 1, 2004 • Coastal district plan policies to be rewritten and submitted to DNR for review and approval within one year after the effective date of the DNR regulations or July 1, 2005, whichever is later • Coastal district plan policies <ol style="list-style-type: none"> 1. Are clear and concise as to the activities and persons affected by the policies and the requirements of the policies 2. Use precise, prescriptive, and enforceable language 3. Do not address a matter regulated or authorized by state or federal law, unless a matter of local concern 4. Do not arbitrarily, unreasonably or unduly restrict or exclude a use of state concern

Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 / SB 143
Review Process Specifics	<ul style="list-style-type: none"> • New regulations effective January 21, 2003, to address consistency review issues 	<ul style="list-style-type: none"> • Regulations to remain in effect, with amendments to address requirements in CS legislation • Specific consistency issues addressed: <ol style="list-style-type: none"> 1. Trigger point for consistency review 2. Scope of review 3. Phasing 4. Elevation 5. Exclusion of ADEC permits and authorizations 6. Time limitations and certainty for consistency reviews 7. ABC List, general permits 8. Definition of project

CS for HB 191/SB 143



**Sectional Analysis of May 1, 2003
Finance Committee CS
For HB 191 (23-GH1069\H)**

This legislation is premised upon the statutory changes contained in Executive Order 106 introduced by the Governor on February 12, 2003. Executive Order 106 transfers responsibility for the Alaska Coastal Management Program (ACMP) from the Division of Governmental Coordination to the Department of Natural Resources. The EO does not make substantive changes in the law. Rather it repeals existing statutes in AS 46.19 and readopts them in a new title AS 46.39.

Overview: The bill:

- clarifies the scope, applicability and requirements of the existing Coastal Management Program in AS 46.40;
- retains coastal resource districts and the current structure of how they operate under the ACMP.
- retains existing Coastal Resource Services Areas (CRSAs) in the unorganized borough but eliminate the creation of any new CRSAs.
- eliminates the Alaska Coastal Policy Council (CPC) and transfers its authority for the development of statewide standards of the ACMP and the approval of district coastal management plans to the Department of Natural Resources (DNR).
- requires DNR to adopt regulations within one year establishing clear and enforceable statewide standards of the ACMP and criteria for the approval of new district coastal management plans.
- requires coastal resource districts to submit new coastal management plans to DNR for approval. The plans must have enforceable policies that are clear, concise, provide greater uniformity throughout the state and do not duplicate state and federal requirements. The districts are required to submit these new plans within one-year of the effective date of DNR's new regulations, or July 1, 2005, whichever is later.
- streamlines the ACMP by relying on the Department of Environmental Conservation's requirements at AS 46.03, AS 46.04, AS 46.09, AS 14 and their implementing regulations as the enforceable policies of the ACMP for those purposes and relying on DEC's implementation of those requirements in order to determine consistency for those parts of a development project.

Section 1 contains legislative findings on the need for reform of the ACMP.

Sections 2, 4-6 make conforming amendments to existing statutes reflecting the elimination

of the Alaska Coastal Policy Council and the transfer of the CPC's functions to the Department of Natural Resources.

Section 3 reflects a change in terminology when referring to district coastal management programs. The CS refers to new district plans to distinguish them from the existing district programs and the statewide ACMP Program.

Sections 7 and 8 transfer from the CPC to DNR the authority to develop statewide standards and the criteria for adoption of district coastal management plans.

Section 9 directs coastal resource districts to develop and adopt coastal management plans and set forth the required contents of the plans. AS 46.40.030(b) states that enforceable policies of those plans must meet the requirements of AS 46.40.070 and may not duplicate, restate, or incorporate by reference statutes or administrative regulations adopted by state or federal agencies. The term "enforceable policy" is defined in section 43 of the bill.

Section 10 directs DNR to establish statewide standards for the ACMP and district coastal management plan criteria.

Section 11 establishes the Department of Environmental Conservation's statutes at AS 46.03, AS 46.04, AS 46.09, AS 46.14 and the regulations adopted thereunder as the exclusive policies of the ACMP of those purposes. This provision provides that the issuance of permits, certifications, approvals and authorizations by DEC constitute a determination of consistency with the ACMP for those purposes for those activities of a proposed project subject to those permits and other authorizations. Coastal Resource Districts could have enforceable policies for activities of a project that are not addressed by the DEC standards. This language ensures that the ACMP consistency review process does not duplicate DEC's permitting process. This provision conforms with the provisions of the existing program at 6 AAC 80.140 and the federal Coastal Zone Management Act's requirement that these environmental standards be included in the state's coastal program.

Section 12 repeals and readopts AS 46.40.050 concerning submission of district plans by coastal resource districts. The section removes obsolete language from the initial creation of the program in 1977 and adds a new requirement that a coastal resource district must review and resubmit its plan for approval every ten years. This is to ensure that the district plans are regularly updated.

Section 13 amends the district plan review and approval provision at AS 46.40.060. It provides that the department may approve a district coastal management plan provided it meets the requirements of AS 46.40, the statewide standards adopted by DNR, and the district plan criteria adopted by the department. A district plan may not arbitrarily or unreasonably restrict or exclude uses of state concern. Uses of state concern are defined in AS 46.40.210(8) at section 42 of the bill.

Section 14 establishes specific requirements for department review and approval of district

coastal management plans in AS 46.40.070. The department may approve a district plan under AS 46.40.060, if it meets the requirements of AS 46.40, AS 46.40.060 and the enforceable policies of the plan meet the requirements of .070(a)(2). 070(a)(2) requires that the enforceable policies be clear and concise, and use precise, prescriptive, and enforceable language. In addition, the enforceable policy may not address a matter regulated or authorized by state or federal law unless the enforceable policies relate specifically to a matter of local concern. "Matter of local concern" is specifically defined in the bill.

Section 15 makes conforming changes to AS 46.40.090 concerning how local district plans are implemented in the unorganized borough.

Section 16 amends existing AS 46.40.094 that describes how a project may be reviewed for consistency with the ACMP in "phases." This amendment would broaden the phasing statute to allow projects other than traditional oil and gas leasing projects to be reviewed in phases. The phasing test is changed from whether future information is "obtained in the course of a phase" to whether the information "was not available to the project applicant at the time of the previous phase." This change makes the language consistent with the federal coastal management regulations allowing for phasing of federal activities subject to a consistency review in 15 C.F.R. 930.36(d).

Sections 17-22 amend the existing statute providing for consistency reviews of development projects in the coastal zone.

Section 17 provides that DNR is to establish by regulation a consistency review process conforming to AS 46.40.096.

Section 18 clarifies that state consistency reviews are triggered by state resource agency authorizations.

Section 19 provides that DNR's consistency review regulations must provide for public notice, which is a requirement of the federal coastal zone management act.

Section 20 provides that "subsequent reviews" also known as "elevations" during the consistency review project are decided by DNR and that they are to be completed within 45 days after the initial request for review.

Section 21 amends AS 46.40.096(g) to exclude certain activities and permits from the consistency review process in AS 46.40.096. Consistent with federal law, an activity that is authorized under a general or nationwide permits previously determined to be consistent with the ACMP is not required to be reviewed a second time. As provided in section 11, DEC's review of an activity under AS 46.03, AS 46.04, AS 46.09, AS 46.14 and its implementing regulations is not included in the consistency review process in AS 46.40.096. Activities excluded from a consistency review under the existing provisions of the Forest Practices Act in AS 41.17 are excluded from a consistency review under AS 46.40.096.

Section 22 adds eight new subsections to AS 46.40.096 to clarify what permits or activities trigger a consistency review, the scope of the review once triggered and the geographic scope of the activities subject to a review.

New subsection (i) references DEC's separate consistency determination under AS 46.40.040(b).

New subsection (j) clarifies that, except as provided in the Forest Practices Act, the exclusions in (g) of .096, and for federal consistency reviews and certifications subject to federal law, a consistency review is triggered by an activity that is subject to a state resource agency permit, lease, authorization, approval or certification.

New subsection (k) provides that except as provided in the phasing statute (AS 46.40.096) and the exceptions above, the scope of a consistency review is limited to activities subject to the permit or authorization and a coastal resource district policy approved by the department under the State Coastal Management Act.

New subsection (l) defines the geographic area where an activity triggers a consistency review and the geographic scope of the review once triggered. The consistency review process is to apply to activities within the coastal zone of the state (defined in AS 46.40.210), activities on the federal outer continental shelf or on federal lands that are within the geographical boundaries of the state's coastal zone.

New subsection (m) adds the requirement that DNR establish in regulation the state resource agency permits and federal permits that trigger a consistency review. The subsection also directs DNR to establish by regulation categories and descriptions of uses and activities that are determined to be consistent with the ACMP or that would be made consistent with the inclusion of standard alternative measures. The existing list of such activities is known as the "A, B, C" list. The new legislation directs that these categories and descriptions of uses and activities be reviewed by DNR and made as broad as possible so as to minimize the number of projects that must undergo an individualized consistency review.

New subsections (n) and (o) establish a 90 day deadline for completing consistency reviews.

New subsection (p) expressly states that a consistency review under AS 46.40.096 need not be held up by a DEC or other permit excluded under AS 46.40.096(g).

Section 23 includes cross-references to existing requirements in the enforcement section of the Act.

Sections 24-28 are conforming amendments transferring authority from the CPC to DNR.

Sections 29-37 are amendments to the statutory provisions governing the creation and operation of coastal resource service areas (CRSAs) in the unorganized borough. These sections are

amended to retain existing CRSAs but to preclude the creation of new CRSAs.

Section 38 is a new savings clause clarifying that nothing in AS 46.40 diminishes state jurisdiction or affects state requirements as they apply to the federal government under a federal authorization or federal waiver of sovereign immunity. The savings clause also makes clear that the coastal zone act does not diminish the zoning or planning authority of municipalities under AS 29.

Section 39 is a conforming amendment concerning the use of the term district coastal management plan.

Section 40 amends the existing definition of consistency review to track the scope and applicability clarifications in the other sections of AS 46.40.

Section 41 defines department as the department of natural resources.

Section 42 amends the existing definition of "uses of state concern."

Section 43 adds new definitions of the terms "coastal use or resource," "coastal zone," "district management plan," "enforceable policy," and "project."

Section 44 repeals statutory references to the CPC and obsolete provisions of AS 46.40.

Section 45 annuls the existing statewide standards and district program guidelines in 6 AAC 80 and 6 AAC 85. This annulment takes effect on July 1, 2005 (see section 49).

Section 46 is a transition provision. First it directs DNR to adopt regulations implementing this Act no later than July 1, 2004.

Second, until the statewide standards and district program guidelines are annulled under section 45 or DNR adopts new regulations, the existing regulations remain in effect and DNR can implement and enforce the statewide standards and guidelines to the extent not inconsistent with this Act.

Third, district coastal management programs approved by the CPC stay in effect until July 1, 2006, unless DNR disapproves or modifies all or part of the program before July 1, 2006.

Fourth, consistency reviews pending on the day before the effective date of this Act may continue and be completed under the prior rules, at the applicants option exercised no later than 60 days after the effective date of the act.

Section 47 is a transition provision directing the submission of new district plans by coastal resource districts for initial implementation of this Act. All coastal resource district must submit revised district plans to DNR within one year after DNR adopts new regulations, or until July 1, 2005, whichever is later. Subsection (b) provides that upon request, the Department of Natural

Resources will consult with coastal districts to identify plan amendments that will meet the standards and guidelines established under this Act. Subsection (c) provides that the 90-day review time in AS 46.40.070 does not apply to the submissions under (a) of the transition provision.

Section 48 contains revisor's instructions making changes in article headings and Alaska Administrative Code changes reflecting the transfer of the coastal management program from the CPC to DNR. Subsection (c) provides that if DNR's regulations are adopted before old CPC regulations are annulled, the old CPC regulations at 6 AAC 80 and 6 AAC 85 will be removed by the regulations attorney as obsolete.

Section 49 is the delayed effect date of section 45's annulment of 6 AAC 80 and 6 AAC 85 on July 1, 2005.

Section 50 provides that with the exception of section 49, the Act takes effect immediately under AS 01.10.070(c).

**Sectional Analysis of Resource Committee
CS For HB 191/SB 143**

This legislation is premised upon the statutory changes contained in Executive Order 106 introduced by the Governor on February 12, 2003. Executive Order 106 transfers responsibility for the Alaska Coastal Management Program (ACMP) from the Division of Governmental Coordination to the Department of Natural Resources. The EO does not make substantive changes in the law. Rather it repeals existing statutes in AS 44.19 and readopts them in a new title AS 46.39.

Overview: The Committee Substitute for HB 191/SB 143:

- clarifies the scope, applicability and requirements of the existing Coastal Management Program in AS 46.40;
- retains coastal resource districts and the current structure of how they operate under the ACMP.
- retains existing Coastal Resource Services Areas (CSRAs) in the unorganized borough but eliminates the creation of any new CSRAs.
- eliminates the Alaska Coastal Policy Council (CPC) and transfers its authority for the development of statewide standards of the ACMP and the approval of district coastal management plans to the Department of Natural Resources (DNR).
- requires DNR to adopt regulations within one year establishing clear and enforceable statewide standards of the ACMP and criteria for the approval of new district coastal management plans.
- requires coastal resource districts to submit new coastal management plans to DNR for approval. The plans must have enforceable policies that are clear, concise, provide greater uniformity throughout the state and do not duplicate state and federal requirements. The districts are required to submit these new plans to DNR for approval within six months or one year of the effective date of DNR's new regulations.
- streamlines the ACMP by relying on the Department of Environmental Conservation's air, land and water quality requirements as the enforceable policies of the ACMP for those purposes and relying on DEC's implementation of those requirements in order to determine consistency for those parts of a development project.

Section 1 contains legislative findings on the need for reform of the ACMP.

Sections 2-3, 5-6 make conforming amendments to existing statutes reflecting the elimination of the Alaska Coastal Policy Council and the transfer of the CPC's functions to the Department of Natural Resources.

Sections 7 and 8 transfer from the CPC to DNR the authority to develop statewide standards and the criteria for adoption of district coastal management plans.

Section 9 directs coastal resource districts to develop and adopt coastal management plans and set forth the required contents of the plans. AS 46.40.030(b) states that enforceable policies of those plans must meet the requirements of AS 46.40.070 and may not duplicate, restate, or incorporate by reference statutes or administrative regulations adopted by state or federal agencies. The term "enforceable policy" is defined in sec. 43 of the bill.

Section 10 directs DNR to establish statewide standards for the ACMP and district coastal management plan criteria.

Section 11 establishes the Department of Environmental Conservation's air, land and water quality requirements as the exclusive policies of the ACMP of those purposes. This provision provides that the issuance of permits, certifications, approvals and authorizations by DEC constitute a determination of consistency with the ACMP for those purposes and for those components of a proposed development project subject to those permits and other authorizations. This language ensures that the ACMP consistency review process does not duplicate DEC's permitting process. This provision conforms with the provisions of the existing program at 6 AAC 80.140 and the federal Coastal Zone Management Act's requirement that these environmental standards be included in the state's coastal program.

Section 12 repeals and readopts AS 46.40.050 concerning submission of district plans by coastal resource districts. The section removes obsolete language from the initial creation of the program in 1977 and adds a new requirement that a coastal resource district must review and resubmit its plan for approval every five years. This is to ensure that the district plans are regularly updated.

Section 13 amends the district plan review and approval provision at AS 46.40.060. It provides that the department may approve a district coastal management plan provided it meets the requirements of AS 46.40, the statewide standards adopted by DNR, and the district plan criteria adopted by the department. A district plan may not arbitrarily, unreasonably, or unduly restrict or exclude uses of state concern. Uses of state concern are defined in AS 46.40.210(8) at sec. 42 of the bill.

Section 14 establishes specific requirements for department review and approval of district coastal management plans in AS 46.40.070. The department may approve a district plan under AS 46.40.060, if it meets the requirements of AS 46.40, AS 46.40.060 and the enforceable policies of the plan meet the requirements of .070(a)(2). 070(a)(2) requires that the enforceable policies be clear and concise, are not susceptible to inconsistent application, and use precise, prescriptive, and enforceable language. In addition, the enforceable policy may not address a matter regulated or authorized by state or federal law unless the enforceable policies relate specifically to a matter of local concern. "Matter of local concern" is specifically defined in the bill.

Section 15 makes conforming changes to AS 46.40.090 concerning how local district plans are implemented in the unorganized borough.

Section 16 amends existing AS 46.40.094 that describes how a project may be reviewed for consistency with the ACMP in "phases." This amendment would broaden the phasing statute to allow projects other than traditional oil and gas leasing projects to be reviewed in phases. The phasing test is changed from whether future information is "obtained in the course of a phase" to whether the information "was not available to the project applicant at the time of the previous phase." This change makes the language consistent with the federal coastal management regulations allowing for phasing of federal activities subject to a consistency review in 15 C.F.R. 930.36(d).

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Section 21 amends AS 46.40.096(g) to exclude certain activities and permits from the consistency review process. Consistent with federal law, an activity that is authorized under a general or nationwide permits previously determined to be consistent with the ACMP is not required to be reviewed a second time. As provided in section 11, an activity that is authorized by DEC under its air, land and water quality requirements are exempted under AS 46.40.040(b). Activities excluded from a consistency review under the existing provisions of the Forest Practices Act in AS 41.17 are excluded from a consistency review under AS 46.40.096.

Section 22 adds three new sections to AS 46.40.096 to clarify what permits or activities trigger a consistency review, the scope of the review once triggered and the geographic scope of the activities subject to a review.

New subsection (i) clarifies that, except as provided in the Forest Practices Act, the exclusions in (g) of .096, and for federal consistency reviews and certifications subject to federal law, a consistency review is triggered by an activity that is subject to a state resource agency permit, lease, authorization, approval or certification.

New subsection (j) provides that except as provided in the phasing statute (AS 46.40.096) and the exceptions above, the scope of a consistency review is limited to activities subject to the permit or authorization and a coastal resource district policy approved by the department under the State Coastal Management Act.

New subsection (k) defines the geographic area where an activity triggers a consistency review and the geographic scope of the review once triggered. The consistency review process is to apply to activities within the coastal zone of the state (defined in AS 46.40.210), activities on the federal outer continental shelf or on federal lands that are the within the geographical boundaries of the state's coastal zone.

New subsection (l) directs DNR to establish by regulation categories and descriptions of uses and activities that are determined to be consistent with the ACMP or that would be made consistent with the inclusion of standard alternative measures. The existing list of such activities is known as the "A" & "B" list. The new legislation directs that these categories and descriptions of uses and activities be reviewed by DNR and made as broad as possible so as to minimize the number of projects that must undergo an individualized consistency review.

Section 23 includes cross-references to existing requirements in the enforcement section of the State Coastal Zone Act.

Sections 24-28 are conforming amendments transferring authority from the CPC to DNR.

Sections 29-37 are amendments to the statutory provisions governing the creation and operation of coastal resource service areas (CSRAs) in the unorganized borough. These sections are amended to retain existing CSRAs but to preclude the creation of new CSRAs.

Section 38 is a new savings clause clarifying that nothing in AS 46.40 diminishes state jurisdiction or affects state requirements as they apply to the federal government under a federal authorization or federal waiver of sovereign immunity. The savings clause also makes clear that the coastal zone act does not diminish the zoning or planning authority of municipalities under AS 29.

Section 39 is a conforming amendment concerning the use of the term district coastal management plan.

Section 40 amends the existing definition of consistency review to track the scope and applicability clarifications in the other sections of AS 46.40.

Section 41 defines department as the department of natural resources.

Section 42 amends the existing definition of "uses of state concern."

Section 43 adds new definitions of the terms "coastal use or resource," "coastal zone,"

“district management plan,” and “enforceable policy.”

Section 44 repeals statutory references to the CPC and obsolete provisions of AS 46.40.

Section 45 annuls the existing statewide standards and district program guidelines in 6 AAC 80 and 6 AAC 85. This annulment takes effect on July 1, 2005 (see section 49).

Section 46 is a transition provision. First it directs DNR to adopt regulations implementing this Act no later than July 1, 2004.

Second, until the statewide standards and district program guidelines are annulled under section 45 or DNR adopts new regulations, DNR can implement and enforce the statewide standards and guidelines to the extent not inconsistent with this Act.

Third, district coastal management programs approved by the CPC stay in effect until July 1, 2006, unless DNR disapproves or modifies all or part of the program before July 1, 2006.

Fourth, consistency reviews pending on the day before the effective date of this Act may continue and be completed under the prior rules, at the applicants option exercised no later than 60 days after the effective date of the act.

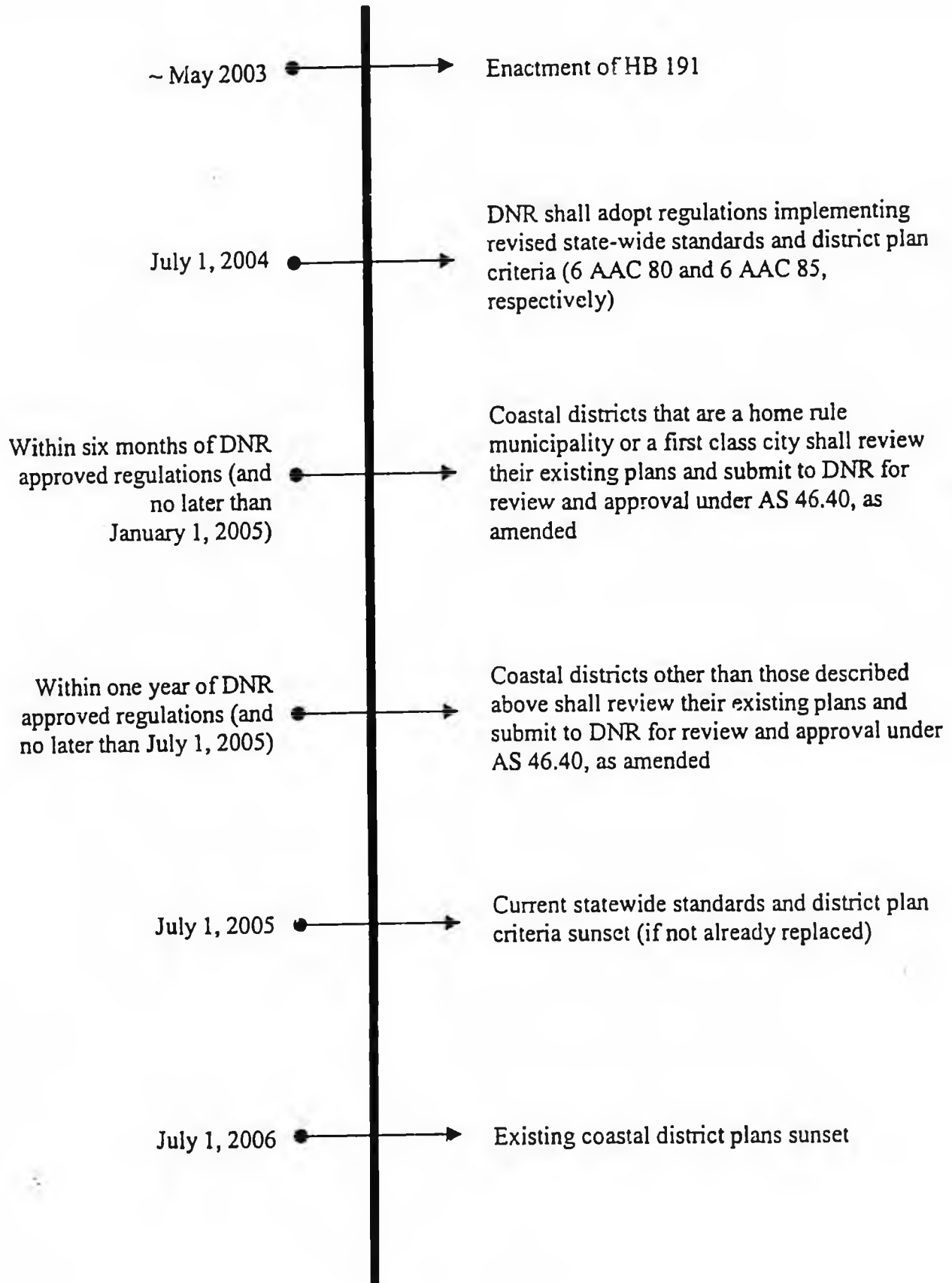
Section 47 is a transition provision directing the submission of new district plans by coastal resource districts for initial implementation of this Act. The Act staggers the submission of the new plans based on whether the coastal resource district is a home rule municipality or first-class city. Those coastal resources districts must submit new plans within six months of the effective date of regulations adopted by DNR. Other coastal resource district must submit new plans within one-year of the effective date of the regulations. Subsection (c) provides that the 90 day review time in AS 46.40.070 does not apply to the submissions under (a) and (b) of the transition provision.

Section 48 contains revisor’s instructions making changes in article headings and Alaska Administrative Code changes reflecting the transfer of the coastal management program from the CPC to DNR. Subsection (c) provides that if DNR’s regulations are adopted before old CPC regulations are annulled, the old CPC regulations at 6 AAC 80 and 6 AAC 85 will be removed by the regulations attorney as obsolete.

Section 49 is the delayed effect date of section 45’s annulment of 6 AAC 80 and 6 AAC 85 on July 1, 2005.

Section 50 provides that with the exception of section 49, the Act takes effect immediately under AS 01.10.070(c).

CS for House Bill No. 191 (Res)



ALASKA STATE LEGISLATURE

50 Front St. Suite #203
Ketchikan, Alaska 99901



Phone: 225-9675
Fax: 225-8546

LEGISLATIVE INFORMATION OFFICE

WRITTEN TESTIMONY

NAME: Karen Polley
ADDRESS: 246 Cranberry Road

PHONE: 907 225 4360
EMAIL: kpolley@ptialaska.net

BILL# or SUBJECT: Operating Budget – U of A
COMMITTEE: House Finance – Senate Finance

The importance of supporting the Senate version of funding for the University of Alaska cannot be overstated. The contributions to the state made by the University of Alaska since the legislature has agreed to fund it have been significant. Student population has increased; programs supporting state employment needs have been implemented and the quality of instruction has improved.

Please support the Senate version of the budget for the University of Alaska.

23-GH1069AH
Kurtz
5/1/03

passed N/D

CS FOR HOUSE BILL NO. 191(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**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 and to policies and
2 procedures for consistency reviews and the rendering of consistency determinations
3 under that program; eliminating the Alaska Coastal Policy Council; annulling certain
4 regulations relating to the Alaska coastal management program; and providing for an
5 effective date."

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

7 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 FINDINGS. The legislature finds that

10 (1) the Alaska coastal management program (ACMP) is intended to function
11 with a minimum of delay and avoid regulatory confusion, costly litigation, and uncertainty
12 regarding the feasibility of new investment;

13 (2) there is a need to update and reform the existing statewide standards of the

1 ACMP so that they are clear and concise and provide needed predictability as to the
2 applicability, scope, and timing of the consistency review process under the program;

3 (3) there is a need to update and reform the district coastal management plans
4 under the ACMP so that the local enforceable policies within those plans are clear and
5 concise, provide greater uniformity in coastal management throughout the state, relate to
6 matters of local concern, and do not duplicate state and federal requirements;

7 (4) the state has chosen not to enact legislation similar to 42 U.S.C. 4321 -
8 4370f (National Environmental Policy Act of 1969, as amended) and, in furtherance of the
9 legislative findings expressed in sec. 1(7), ch. 38, SLA 1994, the ACMP is not intended to
10 take the place of such a program;

11 (5) to achieve these goals, statutory reform is needed; and

12 (6) to implement these needed reforms at the administrative level, it is in the
13 best interest of the state for the development and implementation of the ACMP to be
14 transferred from the Alaska Coastal Policy Council to the Department of Natural Resources.

15 * Sec. 2. AS 38.05.825(a) is amended to read:

16 (a) Unless the commissioner finds that the public interest in retaining state
17 ownership of the land clearly outweighs the municipality's interest in obtaining the
18 land, the commissioner shall convey to a municipality tide or submerged land
19 requested by the municipality that is occupied or suitable for occupation and
20 development: if the

21 (1) land is within or contiguous to the boundaries of the municipality;

22 (2) use of the land would not unreasonably interfere with navigation or
23 public access;

24 (3) municipality has applied to the commissioner for conveyance of the
25 land under this section;

26 (4) land is not subject to a shore fisheries lease under AS 38.05.082,
27 or, if the land is subject to a shore fisheries lease, the commissioner determines it is in
28 the best interests of the state to convey the land;

29 (5) land is classified for waterfront development or for another use that
30 is consistent or compatible with the use proposed by the municipality, or the proposed
31 use of the land is consistent or compatible with a land use plan adopted by the

1 municipality or [,] the department [, OR THE ALASKA COASTAL POLICY
2 COUNCIL]; and

3 (6) land

4 (A) is required for the accomplishment of a public or private
5 development approved by the municipality;

6 (B) is the subject of a lease from the state to the municipality;

7 or

8 (C) has been approved for lease to the municipality.

9 * Sec. 3. AS 44.33.781 is amended to read:

10 Sec. 44.33.781. Planning assistance for development and maintenance of
11 district coastal management plans [PROGRAMS]. The department shall conduct a
12 program of research, training, and technical assistance to coastal resource districts
13 necessary for the development, [AND] implementation, and maintenance of district
14 coastal management plans [PROGRAMS] under AS 46.40. The technical assistance
15 shall include the direct granting to the coastal resource districts of a portion of any
16 funds received by the state from the federal coastal zone management program, in
17 amounts to be individually determined for each coastal resource district by the
18 commissioner of community and economic development. State agencies shall assist
19 the department in carrying out the purposes of this section.

20 * Sec. 4. AS 44.62.800(1) is amended to read:

21 (1) "agency" means a department, an institution, or a division or other
22 administrative unit of the executive branch of state government authorized or required
23 by law to make regulations, except that "agency" does not include

24 (A) a board, [;] a commission, [;] a council, [EXCEPT THE
25 ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN
26 AS 46.39.020;] an authority, [;] or a public corporation of the executive branch
27 of state government authorized or required by law to make regulations; or

28 (B) the Department of Corrections;

29 * Sec. 5. AS 46.39.010 is amended by adding a new subsection to read:

30 (c) The department may adopt regulations necessary to implement this
31 chapter.

1 * Sec. 6. AS 46.39.030 is amended to read:

2 Sec. 46.39.030. Powers of the department [COUNCIL]. The department
3 [COUNCIL] may

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

7 (2) contract for necessary services;

8 (3) consult and cooperate with

9 (A) persons, organizations, and groups, public or private,
10 interested in, affected by, or concerned with coastal area planning and
11 management;

12 (B) agents and officials of the coastal resource districts of the
13 state, and federal and state agencies concerned with or having jurisdiction over
14 coastal planning and management;

15 (4) take any reasonable action necessary to carry out the provisions of
16 this chapter or AS 46.40 [AS 46.39.020 - 46.39.050].

17 * Sec. 7. AS 46.39.040 is amended to read:

18 Sec. 46.39.040. Duties of the department [COUNCIL]. In conformity with
19 16 U.S.C. 1451-1464 (Coastal Zone Management Act of 1972), as amended, the
20 department [COUNCIL] shall

21 (1) [THROUGH THE PUBLIC HEARING PROCESS AND THE
22 RECORDING OF THE MINUTES OF THE HEARINGS,] develop statewide
23 [GUIDELINES AND] standards for the Alaska coastal management program, and
24 criteria for the preparation [OF,] and approval of district coastal management
25 plans [APPROVE,] in accordance with AS 46.40 [, THE ALASKA COASTAL
26 MANAGEMENT PROGRAM];

27 (2) establish continuing coordination among state agencies to facilitate
28 the development and implementation of the Alaska coastal management program; in
29 carrying out its duties under this paragraph, the department [COUNCIL] shall initiate
30 an interagency program of comprehensive coastal resource planning for each
31 geographic region of the state [DESCRIBED IN AS 46.39.020(a)(1)];

1 (3) assure continued provision of data and information to coastal
2 resource districts to carry out their planning and management functions under the
3 program.

4 * Sec. 8. AS 46.40.010 is amended to read:

5 Sec. 46.40.010. Development of Alaska coastal management program. (a)
6 The department [ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN
7 AS 46.39.020] shall approve, in accordance with this chapter, the Alaska coastal
8 management program.

9 (b) The department [COUNCIL] may approve the Alaska coastal
10 management program for a portion or portions of the coastal area before approving the
11 complete program under (a) of this section. Portions of the program approved under
12 this subsection shall be incorporated into the Alaska coastal management program.

13 (c) The Alaska coastal management program shall be reviewed by the
14 department [COUNCIL] and, when appropriate, revised to

15 (1) add newly approved district coastal management plans
16 [PROGRAMS], or revisions and amendments to the Alaska coastal management
17 program;

18 (2) integrate newly approved district coastal management plans
19 [PROGRAMS], or revisions and amendments of district coastal management plans
20 [PROGRAMS], with existing approved plans [PROGRAMS] and with plans
21 developed by state agencies;

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

24 (4) review the effectiveness of implementation of district coastal
25 management plans [PROGRAMS]; and

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

28 (d) All reviews and revisions shall be in accordance with the statewide
29 [GUIDELINES AND] standards and district plan criteria adopted [BY THE
30 COUNCIL] under AS 46.40.040.

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

1 Sec. 46.40.030. Development of district coastal management plans
2 [PROGRAMS]. (a) Coastal resource districts shall develop and adopt district coastal
3 management plans [PROGRAMS] in accordance with the provisions of this chapter.
4 The plan [PROGRAM] adopted by a coastal resource district shall be based upon a
5 municipality's existing comprehensive plan or a new comprehensive resource use plan
6 or comprehensive statement of needs, policies, objectives, and standards governing the
7 use of resources within the coastal area of the district. The plan [PROGRAM] must
8 meet [BE CONSISTENT WITH] the statewide [GUIDELINES AND] standards and
9 district plan criteria adopted [BY THE COUNCIL] under AS 46.40.040 and must
10 include

11 (1) a delineation within the district of the boundaries of the coastal area
12 subject to the district coastal management plan [PROGRAM];

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

15 (3) a statement of policies to be applied to the land and water uses
16 subject to the district coastal management plan [PROGRAM];

17 (4) [REGULATIONS, AS APPROPRIATE, TO BE APPLIED TO
18 THE LAND AND WATER USES SUBJECT TO THE DISTRICT COASTAL
19 MANAGEMENT PROGRAM;

20 (5)] a description of the uses and activities which will be considered
21 proper and the uses and activities which will be considered improper with respect to
22 the land and water within the coastal area;

23 [(6) A SUMMARY OR STATEMENT OF THE POLICIES WHICH
24 WILL BE APPLIED AND THE PROCEDURES WHICH WILL BE USED TO
25 DETERMINE WHETHER SPECIFIC PROPOSALS FOR LAND OR WATER USES
26 OR ACTIVITIES SHALL BE ALLOWED:] and

27 (5) [(7)] a designation of, and the policies which will be applied to the
28 use of, areas within the coastal resource district which merit special attention.

29 (b) In developing enforceable policies in its coastal management plan
30 [STATEMENTS OF POLICIES AND REGULATIONS] under (a) of this section, a
31 coastal resource district shall meet the requirements of AS 46.40.070, and may not

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duplicate, restate, or incorporate by reference statutes and administrative regulations adopted by state or federal agencies.

* Sec. 10. AS 46.40.040 is amended to read:

Sec. 46.40.040. Statewide standards and district plan criteria [DUTIES OF THE ALASKA COASTAL POLICY COUNCIL]. Except as provided in (b) of this section and AS 41.17, the department [THROUGH THE PUBLIC HEARING PROCESS AND THE RECORDING OF THE MINUTES OF THE HEARINGS, THE ALASKA COASTAL POLICY COUNCIL] shall

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

(A) identifying the boundaries of the coastal area subject to the Alaska [DISTRICT] coastal management program;

(B) determining the land and water uses and activities subject to the Alaska [DISTRICT] coastal management program;

(C) developing policies applicable to the land and water uses subject to the Alaska [DISTRICT] coastal management program;

(D) developing regulations applicable to the land and water uses subject to the Alaska [DISTRICT] coastal management program;

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

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

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

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

1 (3) undertake review and approval of district coastal management
2 plans [PROGRAMS] in accordance with this chapter;

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

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

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

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

11 (b) AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted
12 under those statutes constitute the exclusive enforceable policies of the Alaska coastal
13 management program for those purposes. For those purposes only,

14 (1) the issuance of permits, certifications, approvals, and
15 authorizations by the Department of Environmental Conservation establishes
16 consistency with the Alaska coastal management program for those activities of a
17 proposed project subject to those permits, certifications, approvals, and authorizations;

18 (2) for a consistency review of an activity that does not require a
19 Department of Environmental Conservation permit, certification, approval, or
20 authorization because the activity is a federal activity or the activity is located on
21 federal lands or the federal outer continental shelf, consistency with AS 46.03,
22 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes
23 shall be established on the basis of whether the Department of Environmental
24 Conservation finds that the activity satisfies the requirements of those statutes and
25 regulations.

26 (c) For a consistency review described in (b)(2) of this section, the
27 department, in addition to its review under AS 46.40.096 of all other enforceable
28 policies applicable to the project, shall coordinate with the Department of
29 Environmental Conservation and issue the Department of Environmental
30 Conservation's finding of whether the activity satisfies the requirements of the statutes
31 and regulations described in (b)(2) of this section.

1 * Sec. 12. AS 46.40.050 is repealed and reenacted to read:

2 **Sec. 46.40.050. Submission of district plans by coastal resource districts.**

3 (a) A coastal resource district must review and resubmit its coastal management plan
4 for reapproval every 10 years after its approval by the department under
5 AS 46.40.060.

6 (b) Within 30 months after certification of the organization of a new coastal
7 resource district, the coastal resource district shall complete and submit to the
8 department a proposed district coastal management plan. If, after receipt of a written
9 request for extension from the coastal resource district, the department considers an
10 extension proper, the department may grant an extension to a date that is within 54
11 months after certification of the results of the coastal resource district's organization.
12 A request under this subsection must include the reasons for the extension.

13 * Sec. 13. AS 46.40.060 is amended to read:

14 **Sec. 46.40.060. Review and approval by the department [COUNCIL].** (a)

15 If, upon submission of a district coastal management plan [PROGRAM] for approval,
16 the department [COUNCIL] finds that the plan meets [PROGRAM IS
17 SUBSTANTIALLY CONSISTENT WITH] the provisions of this chapter, and the
18 statewide [GUIDELINES AND] standards and district plan criteria adopted by the
19 department [COUNCIL] and does not arbitrarily or unreasonably restrict or exclude
20 uses of state concern, the department [COUNCIL] may approve [GRANT
21 SUMMARY APPROVAL OF] the district coastal management plan [PROGRAM], or
22 may approve portions of the district plan that meet those requirements [PROGRAM
23 WHICH ARE CONSISTENT].

24 (b) If the department [COUNCIL] finds that a district coastal management
25 plan [PROGRAM] is not approvable or is approvable only in part under (a) of this
26 section, it shall direct that deficiencies in the plan [PROGRAM] submitted by the
27 coastal resource district be mediated. In mediating the deficiencies, the department
28 [COUNCIL] may call for one or more public hearings in the district. The department
29 [COUNCIL] shall meet with officials of the coastal resource district in order to resolve
30 differences.

31 (c) If, after mediation, the differences have not been resolved [TO THE

1 MUTUAL AGREEMENT OF THE COASTAL RESOURCE DISTRICT AND THE
2 COUNCIL, THE COUNCIL SHALL CALL FOR A PUBLIC HEARING AND
3 SHALL RESOLVE THE DIFFERENCES IN ACCORDANCE WITH AS 44.62
4 (ADMINISTRATIVE PROCEDURE ACT). AFTER A PUBLIC HEARING HELD
5 UNDER THIS SUBSECTION], the department [COUNCIL] shall enter findings
6 and, by order, may require

7 (1) that the district coastal management plan [PROGRAM] be
8 amended to satisfy [MAKE IT CONSISTENT WITH] the provisions of this chapter
9 or meet the statewide [GUIDELINES AND] standards and district plan criteria
10 adopted by the department [COUNCIL];

11 (2) that the district coastal management plan [PROGRAM] be revised
12 to accommodate a use of state concern; or

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

15 (d) The superior courts of the state have jurisdiction to enforce orders of the
16 department [COUNCIL] entered under (c) of this section.

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

18 **Sec. 46.40.070. Requirements for department review and approval.** (a)
19 The department shall approve a district coastal management plan submitted for review
20 and approval if

21 (1) the district coastal management plan meets the requirements of this
22 chapter and the statewide standards and district plan criteria adopted by the
23 department; and

24 (2) the enforceable policies of the district coastal management plan
25 (A) are clear and concise as to the activities and persons
26 affected by the policies, and the requirements of the policies;

27 (B) use precise, prescriptive, and enforceable language; and

28 (C) do not address a matter regulated or authorized by state or
29 federal law unless the enforceable policies relate specifically to a matter of
30 local concern: for purposes of this subparagraph, "matter of local concern"
31 means a specific coastal use or resource within a defined portion of the

1 district's coastal zone, that is

2 (i) demonstrated as sensitive to development;

3 (ii) not adequately addressed by state or federal law;

4 and

5 (iii) of unique concern to the coastal resource district as

6 demonstrated by local usage or scientific evidence.

7 (b) A decision by the department under this section shall be given within 90
8 days after submission of the district coastal management plan to the department.

9 * Sec. 15. AS 46.40.090 is amended to read:

10 Sec. 46.40.090. **Implementation of district coastal management plans**
11 **[PROGRAMS].** (a) A district coastal management plan [PROGRAM] approved
12 under this chapter [BY THE COUNCIL AND THE LEGISLATURE] for a coastal
13 resource district that [WHICH] does not have and exercise zoning or other controls on
14 the use of resources within the coastal area shall be implemented by appropriate state
15 agencies as provided in AS 46.40.096. Implementation shall be in accordance with
16 the comprehensive use plan or the statement of needs, policies, objectives, and
17 standards adopted by the district.

18 (b) A coastal resource district that [WHICH] has and exercises zoning or
19 other controls on the use of resources within the coastal area shall implement its
20 district coastal management plan [PROGRAM]. Implementation shall be in
21 accordance with the comprehensive use plan or the statement of needs, policies,
22 objectives, and standards adopted by the district.

23 * Sec. 16. AS 46.40.094(a) is amended to read:

24 (a) The provisions of this section apply to a use or activity for which a
25 consistency determination is required if

26 (1) at the time the proposed use or activity is initiated, there is
27 insufficient information to evaluate and render a consistency determination for the
28 entirety of the proposed use or activity;

29 (2) the proposed use or activity is capable of proceeding in discrete
30 phases based upon developing information that was not available to the project
31 applicant at the time of the previous [OBTAINED IN THE COURSE OF A] phase:

1 and

2 (3) each subsequent phase of the proposed use or activity is subject to
3 discretion to implement alternative decisions based upon the developing information.

4 * Sec. 17. AS 46.40.096(a) is amended to read:

5 (a) The department [COUNCIL] shall, by regulation, establish a consistency
6 review and determination process that conforms to the requirements of this section.

7 * Sec. 18. AS 46.40.096(b) is amended to read:

8 (b) If a consistency review is not subject to AS 46.39.010 because the project
9 for which a consistency review is made requires a permit, lease, or authorization from
10 only one state resource agency, that state resource agency shall coordinate the
11 consistency review of the project. The state resource agency shall coordinate the
12 consistency review according to the requirements of the regulations adopted by the
13 department [COUNCIL] under this section.

14 * Sec. 19. AS 46.40.096(c) is amended to read:

15 (c) The regulations adopted by the department [COUNCIL] under this
16 section must include provisions for public notice and provide the opportunity for
17 public comment. The regulations adopted under this subsection may make
18 distinctions relating to notice based upon differences in project type, anticipated effect
19 of the project on coastal resources and uses, other state or federal notice requirements,
20 and time constraints. However, a notice given under this subsection must contain
21 sufficient information, expressed in commonly understood terms, to inform the public
22 of the nature of the proposed project for which a consistency determination is sought,
23 and must explain how the public may comment on the proposed project.

24 * Sec. 20. AS 46.40.096(d) is amended to read:

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

27 (1) request consistency review comments for the proposed project
28 from state resource agencies, affected coastal resource districts, and other affected
29 [INTERESTED] parties as determined by regulation adopted by the department
30 [COUNCIL];

31 (2) prepare proposed consistency determinations;

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

4 (A) is limited to a review by the department [STATE
5 RESOURCE AGENCIES]; [AND]

6 (B) may occur only if requested by

7 (i) the project applicant;

8 (ii) a state resource agency; or

9 (iii) an affected coastal resource district; and

10 (C) shall be completed by the department within 45 days
11 after the initial request for subsequent review under this paragraph:

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

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

14 (g) The reviewing entity shall [MAY] exclude from the consistency review
15 and determination process for a project

16 (1) an activity that

17 (A) is authorized under a general or nationwide permit that has
18 previously been determined to be consistent with the Alaska [APPLICABLE]
19 coastal management program [PROGRAMS]; or

20 (B) is subject to authorization by the Department of
21 Environmental Conservation under the requirements described in
22 AS 46.40.040(b):

23 (2) activities excluded from a consistency review under AS 41.17:

24 and

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

27 * Sec. 22. AS 46.40.096 is amended by adding new subsections to read:

28 (i) For purposes of those activities of a proposed project that are subject to
29 (g)(1)(B) of this section, the consistency of those activities is determined by the
30 issuance of the applicable permits, certifications, approvals, and authorizations by the
31 Department of Environmental Conservation.

1 (j) Except as provided in (g) of this section, AS 41.17, AS 46.40.040(b), 16
2 U.S.C. 1456, and 15 C.F.R. Part 930, a consistency review of a project under this
3 section is triggered by an activity within the areas described in (l) of this section that is
4 subject to a state resource agency permit, lease, authorization, approval, or
5 certification.

6 (k) Except as provided in (g) of this section, AS 41.17, AS 46.40.040(b), and
7 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)
8 of this section, is limited to activities that are located within the areas described in (l)
9 of this section and that either are subject to a state resource agency permit, lease,
10 authorization, approval, or certification or are the subject of a coastal resource district
11 enforceable policy approved by the department under this chapter. The scope of a
12 consistency review subject to 16 U.S.C. 1456 is determined under 16 U.S.C. 1456 and
13 15 C.F.R. Part 930.

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

16 (1) activities within the coastal zone; and

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

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

1 consistency review under this section.

2 (n) Except as provided in (o) of this section, a consistency review under this
3 section shall be completed within 90 days after the receipt of a complete application
4 by the state. If a consistency review is not completed by the time specified in this
5 subsection, the activity subject to review is conclusively presumed consistent.

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

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

9 (2) are suspended

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

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

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

18 (p) A consistency review and determination for those activities of a project not
19 excluded under (g) of this section may not be delayed or withheld pending issuance of
20 the permits, certifications, approvals, and authorizations referred to in (g) of this
21 section but shall proceed regardless of the status of those permits, certifications,
22 approvals, and authorizations.

23 * Sec. 23. AS 46.40.100(a) is amended to read:

24 (a) As provided in AS 46.40.090 and 46.40.096, municipalities
25 [MUNICIPALITIES] and state resource agencies shall administer land and water use
26 regulations or controls in conformity with district coastal management plans
27 [PROGRAMS] approved under this chapter [BY THE COUNCIL] and in effect.

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

29 (b) A party that is authorized under (g) of this section may file a petition
30 showing that a district coastal management plan [PROGRAM] is not being
31 implemented. A petition filed under this subsection may not seek review of a

1 proposed or final consistency determination regarding a specific project. On receipt of
2 a petition, the department [COUNCIL], after giving public notice in the manner
3 required by (f) of this section, shall convene a hearing to consider the matter. A
4 hearing called under this subsection shall be held in accordance with regulations
5 adopted under this chapter [BY THE COUNCIL]. After hearing, the department
6 [COUNCIL] may order that the coastal resource district or a state resource agency
7 take any action with respect to future implementation of the district coastal
8 management plan [PROGRAM] that the department [COUNCIL] considers
9 necessary, except that the department [COUNCIL] may not order that the coastal
10 resource district or a state agency take any action with respect to a proposed or final
11 consistency determination that has been issued.

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

13 (c) In determining whether an approved district coastal management plan
14 [PROGRAM] is being implemented by a coastal resource district that exercises zoning
15 authority or controls on the use of resources within the coastal area or by a state
16 resource agency, the department [COUNCIL] shall find in favor of the district or the
17 state resource agency, unless the department [COUNCIL] finds a pattern of
18 nonimplementation.

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

20 (e) The superior courts of the state have jurisdiction to enforce lawful orders
21 of the department under this chapter [COUNCIL].

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

23 (f) Upon receipt of a petition under (b) of this section, the department
24 [COUNCIL] shall give notice of the hearing at least 10 days before the scheduled date
25 of the hearing. The notice must

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

28 (2) indicate the manner in which the public may comment on the
29 petition.

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

31 (h) If the department [COUNCIL] finds a pattern of nonimplementation

1 under (c) of this section, the department [COUNCIL] may order a coastal resource
2 district or a state resource agency to take action with respect to future implementation
3 of the district coastal management plan [PROGRAM] that the department
4 [COUNCIL] considers necessary to implement the district coastal management plan
5 [PROGRAM]. The department's [COUNCIL'S] determination under (c) of this
6 section and any order issued under this subsection shall be considered a final
7 administrative order for purposes of judicial review under AS 44.62.560.

8 * **Sec. 29.** AS 46.40.110 is repealed and reenacted to read:

9 **Sec. 46.40.110. Authority in the unorganized borough.** A coastal resource
10 service area in the unorganized borough organized under AS 29.03.020 and
11 AS 46.40.110 - 46.40.180 before the effective date of this bill section shall exercise
12 those authorities and perform those duties required under this chapter.

13 * **Sec. 30.** AS 46.40.140(a) is amended to read:

14 (a) Each coastal resource service area [, UPON ORGANIZATION,] shall have
15 an elected board representing the population of the service area. The board shall have
16 the powers and duties and perform the functions prescribed for or required of coastal
17 resource districts.

18 * **Sec. 31.** AS 46.40.140(d) is amended to read:

19 (d) The term of office of a member of a coastal resource service area board is
20 three years [, EXCEPT THAT THE TERMS OF THE MEMBERS OF THE FIRST
21 BOARD ELECTED AFTER ORGANIZATION OF A COASTAL RESOURCE
22 SERVICE AREA SHALL BE DETERMINED BY LOT, WITH TWO MEMBERS
23 SERVING ONE-YEAR TERMS, TWO MEMBERS SERVING TWO-YEAR
24 TERMS, AND THREE MEMBERS SERVING THREE-YEAR TERMS.] Members
25 serve until their successors are elected and have qualified. This section does not
26 prohibit the reelection of a board member.

27 * **Sec. 32.** AS 46.40.140(e) is amended to read:

28 (e) The lieutenant governor shall provide for the election of the members of
29 coastal resource service area boards. [THE FIRST ELECTION OF BOARD
30 MEMBERS SHALL OCCUR AT THE SAME TIME AS THE ORGANIZATION
31 ELECTION UNDER AS 46.40.130(b)].

1 * **Sec. 33.** AS 46.40.140(f) is amended to read:

2 (f) Election [EXCEPT FOR THE FIRST ELECTION] of members of coastal
3 resource service area boards [, ELECTIONS] shall be held annually on the date of
4 election of members of regional educational attendance area boards under
5 AS 14.08.071(b). [FOR AN ELECTION UNDER THIS SUBSECTION OR UNDER
6 (e) OF THIS SECTION, A NEWLY ELECTED BOARD MEMBER TAKES
7 OFFICE AT THE FIRST COASTAL RESOURCE SERVICE AREA BOARD
8 MEETING AFTER CERTIFICATION OF THE ELECTION.] If no candidate files for
9 election to a seat on the coastal resource service area board, the seat is considered
10 vacant at the time a newly elected member would have taken office.

11 * **Sec. 34.** AS 46.40.150 is amended to read:

12 **Sec. 46.40.150. Elections in coastal resource service areas.** Elections
13 [ORGANIZATION ELECTIONS] under AS 46.40.110 - 46.40.180 [AS 46.40.130
14 AND OTHER ELECTIONS, INCLUDING RECALL ELECTIONS CONDUCTED
15 UNDER AS 46.40.140,] shall be administered by the lieutenant governor in the
16 general manner provided in AS 15 (Election Code). In addition, the lieutenant
17 governor may adopt regulations necessary to the conduct of coastal resource service
18 area board elections. The state shall pay all election costs.

19 * **Sec. 35.** AS 46.40.180(a) is amended to read:

20 (a) Before adoption by a coastal resource service area board, [OR BY THE
21 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT UNDER
22 AS 46.40.170,] a district coastal management plan [PROGRAM] shall be submitted
23 for review to each city or village within the coastal resource service area. The council
24 of a city or traditional village council shall consider the plan [PROGRAM] submitted
25 for review. Within 60 days of submission, the council of a city or traditional village
26 council shall either approve the plan [PROGRAM] or enter objections to all or any
27 portion of the plan [PROGRAM].

28 * **Sec. 36.** AS 46.40.180(b) is amended to read:

29 (b) If a city or village within a coastal resource service area fails to approve a
30 portion of the district coastal management plan [PROGRAM] prepared and submitted
31 for approval under (a) of this section, the governing body shall advise the coastal

1 resource service area board [OR THE DEPARTMENT, AS APPLICABLE,] of its
2 objections to the proposed plan [PROGRAM] and suggest alternative elements or
3 components for inclusion in the district coastal management plan [PROGRAM]. New
4 matter submitted by a city or village which meets [IS SUBSTANTIALLY
5 CONSISTENT WITH] the statewide [GUIDELINES AND] standards and district
6 plan criteria adopted under this chapter [BY THE COUNCIL] shall be accepted
7 and the district coastal management plan [PROGRAM] modified accordingly. If a
8 city or village fails to provide objections and suggested alternatives within the time
9 limits established in this section, the coastal resource service area board [OR THE
10 DEPARTMENT, AS APPLICABLE,] may adopt the district coastal management
11 plan [PROGRAM] as initially offered.

12 * Sec. 37. AS 46.40.180(c) is amended to read:

13 (c) Objection by a city council under (b) of this section is limited to objection
14 to elements of the plan [PROGRAM] affecting resources or the use of resources
15 within the corporate limits of the city. Objection by a traditional village council under
16 (b) of this section is limited to objection to elements of the plan [PROGRAM]
17 affecting resources or the use of resources within the village or within two miles of the
18 village.

19 * Sec. 38. AS 46.40 is amended by adding a new section to read:

20 **Sec. 46.40.195. Construction with other laws.** Nothing in this chapter shall
21 be construed to

22 (1) diminish state jurisdiction, responsibility, or rights in the field of
23 planning, development, or control of land or water resources, submerged lands, or
24 navigable waters;

25 (2) affect in any way any state requirement imposed under a federal
26 authorization or federal waiver of sovereign immunity; or

27 (3) diminish the zoning or planning authority of municipalities under
28 AS 29.

29 * Sec. 39. AS 46.40.210(2) is amended to read:

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

- 1 (A) unified municipalities;
- 2 (B) organized boroughs of any class that exercise planning and
- 3 zoning authority;
- 4 (C) home rule and first class cities of the unorganized borough
- 5 or within boroughs that do not exercise planning and zoning authority;
- 6 (D) second class cities of the unorganized borough, or within
- 7 boroughs that do not exercise planning and zoning authority, that have
- 8 established a planning commission, and that, in the opinion of the
- 9 commissioner of community and economic development, have the capability
- 10 of preparing and implementing a comprehensive district coastal management
- 11 plan [PROGRAM] under AS 46.40.030;
- 12 (E) coastal resource service areas established and organized
- 13 under AS 29.03.020 and AS 46.40.110 - 46.40.180;

14 * Sec. 40. AS 46.40.210(3) is amended to read:

- 15 (3) "consistency review" means the evaluation of a proposed project,
- 16 the scope of which is determined under AS 46.40.094 and 46.40.096, against the
- 17 statewide standards adopted [BY THE COUNCIL] under AS 46.40.040 for those
- 18 evaluations and the enforceable policies in an applicable [A] district coastal
- 19 management plan [PROGRAM] approved [BY THE COUNCIL] under
- 20 AS 46.40.060;

21 * Sec. 41. AS 46.40.210(5) is amended to read:

- 22 (5) "department" means the Department of Natural Resources
- 23 [COMMUNITY AND ECONOMIC DEVELOPMENT];

24 * Sec. 42. AS 46.40.210(8) is amended to read:

- 25 (8) "uses of state concern" means those land and water uses that
- 26 [WHICH] would significantly affect the long-term public interest; "uses of state
- 27 concern" [THESE USES, SUBJECT TO COUNCIL DEFINITION OF THEIR
- 28 EXTENT,] include

- 29 (A) uses of national interest, including the use of resources for
- 30 the siting of ports and major facilities that [WHICH] contribute to meeting
- 31 national energy needs, construction and maintenance of navigational facilities

1 and systems, resource development of federal land, and national defense and
2 related security facilities that are dependent upon coastal locations;

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

6 (C) the siting of major energy facilities, activities pursuant to a
7 state or federal oil and gas lease, or large-scale industrial or commercial
8 development activities that [WHICH] are dependent on a coastal location and
9 that [WHICH], because of their magnitude or the magnitude of their effect on
10 the economy of the state or the surrounding area, are reasonably likely to
11 present issues of more than local significance;

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

14 (E) uses in areas established as state parks or recreational areas
15 under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat
16 areas under AS 16.20;

17 * Sec. 43. AS 46.40.210 is amended by adding new paragraphs to read:

18 (10) "coastal use or resource" means a land or water use or natural
19 resource of the coastal zone; "coastal use or resource" includes subsistence, recreation,
20 public access, fishing, historic or archaeological resources, geophysical resources, and
21 biological or physical resources found in the coastal zone on a regular or cyclical
22 basis;

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

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

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

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

8 (13) "enforceable policy" means a policy established by this chapter or
9 approved by the department as a legally binding policy of the Alaska coastal
10 management program applicable to public and private activities;

11 (14) "project" means all activities that will be part of a proposed
12 development.

13 * Sec. 44. AS 38.05.037(b)(2); AS 39.50.200(b)(38); AS 44.62.800(2)(B); AS 46.39.020,
14 46.39.050; AS 46.40.080, 46.40.120, 46.40.130, 46.40.140(c), 46.40.160, 46.40.170,
15 46.40.200, and 46.40.210(4) are repealed.

16 * Sec. 45. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 ANNULMENT OF CERTAIN REGULATIONS. The following regulations are
19 annulled:

20 (1) 6 AAC 80.010 - 6 AAC 80.900;

21 (2) 6 AAC 85.020 - 6 AAC 85.900.

22 * Sec. 46. The uncodified law of the State of Alaska is amended by adding new sections to
23 read:

24 TRANSITION: GENERAL PROVISIONS. (a) The Department of Natural
25 Resources shall adopt regulations under AS 44.62 (Administrative Procedure Act)
26 implementing this Act in order that the regulations are effective no later than July 1, 2004.

27 (b) Until sec. 45 of this Act takes effect or the regulations attorney removes the
28 regulations under sec. 48(c) of this Act, whichever occurs first, regulations adopted to
29 implement the Alaska Coastal Management Program at 6 AAC 80 and 6 AAC 85 remain in
30 effect and, to the extent the regulations are not inconsistent with this Act, the Department of
31 Natural Resources may implement and enforce the regulations.

1 (c) Notwithstanding the repeal of the Alaska Coastal Policy Council enacted by sec.
2 44 of this Act, and the repeal of the Alaska Coastal Policy Council's duties in AS 46.40.040,
3 enacted in sec. 10 of this Act, a district coastal management program, including its
4 enforceable policies, approved by the former Alaska Coastal Policy Council that is not
5 otherwise inconsistent with this Act or AS 46.40 as amended by this Act, remains in effect for
6 purposes of AS 46.39 and AS 46.40 until July 1, 2006, unless the Department of Natural
7 Resources disapproves or modifies all or part of the program before July 1, 2006.

8 (d) Consistency reviews pending on the day before the effective date of secs. 17 - 22
9 of this Act and initiated under the provisions of AS 46.40.096, as that section existed before
10 the changes made by secs. 17 - 22 of this Act, may, at the applicant's option exercised no
11 more than 60 days after the effective date of secs. 17 - 22 of this Act, be continued and
12 completed under the procedures and enforceable policies under the provisions of AS 46.39
13 and AS 46.40 as they existed before the changes made by this Act.

14 (e) Except as provided in (d) of this section, contracts, rights, liabilities, and
15 obligations created by or under a law repealed by this Act remain in effect notwithstanding
16 this Act's taking effect.

17 * Sec. 47. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 TRANSITION AND APPLICABILITY OF CERTAIN PROVISIONS:
20 SUBMISSION OF DISTRICT PLANS BY COASTAL RESOURCE DISTRICTS FOR
21 INITIAL IMPLEMENTATION OF THIS ACT. (a) Within one year after the effective date
22 of regulations adopted by the Department of Natural Resources implementing changes to
23 AS 46.40.010 - 46.40.090, enacted by secs. 8 - 15 of this Act, or by July 1, 2005, whichever is
24 later, coastal resource districts shall review their existing district coastal management program
25 and submit to the Department of Natural Resources for review and approval a revised district
26 coastal management plan meeting the requirements of AS 46.40, as amended by this Act, and
27 the implementing regulations.

28 (b) Upon request, the Department of Natural Resources shall consult with coastal
29 resource districts to identify plan amendments that will meet the standards and guidelines
30 established under this Act.

31 (c) AS 46.40.070(b), enacted by sec. 14 of this Act, does not apply to a revised

1 district coastal management plan submitted under (a) of this section.

2 * Sec. 48. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes is instructed to

5 (1) change the heading of

6 (A) AS 46.39 from "Coastal Management Administration; Alaska
7 Coastal Policy Council" to "Coastal Management Administration";

8 (B) article 2 of AS 46.40 from "Coastal Management Programs in the
9 Unorganized Borough" to "Coastal Management Plans in the Unorganized Borough";

10 (C) AS 46.40.180 from "Approval of programs in coastal resource
11 service areas" to "Approval of plans in coastal resource service areas";

12 (2) delete the heading of article 2 of AS 46.39 and renumber article 3 of
13 AS 46.39 as article 2.

14 (b) Wherever in the Alaska Administrative Code the terms "Alaska Coastal Policy
15 Council" or "Coastal Policy Council" are used, or the term "council" is used to refer to the
16 Alaska Coastal Policy Council, the regulations attorney is instructed to change those terms to
17 read as "Department of Natural Resources," "DNR," "department" or "commissioner of
18 natural resources" when to do so would be consistent with AS 44.62.125(b)(6) and the
19 changes made by this Act.

20 (c) If regulations adopted by the Department of Natural Resources under sec. 46 of
21 this Act take effect before the effective date of sec. 45 of this Act, the regulations attorney is
22 instructed to remove from the Alaska Administrative Code the regulations listed in sec. 45 of
23 this Act, as being obsolete. The lieutenant governor shall notify the regulations attorney of
24 the effective date of the regulations adopted by the Department of Natural Resources under
25 sec. 46 of this Act.

26 * Sec. 49. Section 45 of this Act takes effect July 1, 2005.

27 * Sec. 50. Except as provided in sec. 49 of this Act, this Act takes effect immediately under
28 AS 01.10.070(c).

Examples of District Enforceable Policies that meet the requirements of CS FOR HB 191 / SB 143, AS 46.40.070 (a)(2)(A)-(B) (section 14)

The following are examples of district enforceable policies meeting the requirements of proposed AS 46.40.070(a)(2)(A)-(B) (section 14). Where applicable, the district enforceable policy would be supported by an analysis and justification within the plan itself of how the policy meets the "matter of local concern" test under AS 46.40.070(a)(2)(C).

These example policies are based upon existing district enforceable policies. Some of the language has been changed to meet the test of CS for HB 191/SB 143 (RES) (section 14). These enforceable policies have been selected based upon the current State and Federal regulatory regime and are recognized as filling areas that are not otherwise adequately addressed. However, if the State or Federal law is subsequently expanded to adequately address these areas, then these district enforceable policies would have to be repealed.

Specific Location Policies

1. Activities within the Sisoalik Spit Use Area, as designated on map A-1, shall avoid impacts to marine mammals and to the subsistence harvest of marine mammals.
2. The area within 1 mile of the Narrow Lake shoreline is designated as the "Narrow Lake Recreational Use Area" as described in the Resource Inventory. Activities located within the Narrow Lake Recreational Use Area shall maintain or enhance the recreational value of the area.
3. Floathomes shall be recognized as an approved use of private and state tidelands in all residential zones identified on Map 3-B where:
 - 1) Adequate sewage treatment (marine sanitation devices) and/or tidal flushing exists;
 - 2) The floathome is moored in at least 15 feet of water at mean low water;
 - 3) The presence of a floathome will not jeopardize access to another's upland property; and
 - 4) The floathome is not an obstruction to use of navigable waters.
4. All structures and foundations located adjacent to the important streams or lakes listed in Table 2 and identified as sensitive to development shall have a fifty-foot setback from each side of the stream or lake measured from the ordinary high

water mark. Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake are not subject to this policy. Uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes, and similar uses, are exempt from the setback requirement.

5. Development on barrier islands and in the marine and estuarine waters within 3 miles of the passes of Kasegaluk Lagoon intensively used by beluga whales, identified below, shall not interfere with subsistence use of beluga whales; shall not cause the whales to be displaced from these passes; and shall not jeopardize the continued use of these passes and lagoon system by beluga whales. The passes intensively utilized by beluga whales are Kukpowruk Pass, Akunik Pass, Utukok Pass, Icy Cape Pass, and Alokiakatat Pass (see Map 11 of the NSB Resource Atlas).

6. Offshore drilling and other development within the area of bowhead whale migration, identified on Map 2, during the migration seasons, described in Section 3 of the Resource Inventory, shall not interfere with subsistence activities nor prevent the continued availability of whales for subsistence purposes.

Generally Defined Portion of the Coastal Zone

7. Debris from offshore construction activities shall be removed to an approved onshore disposal site before completion of construction.

8. Oil produced in offshore areas shall be transported to shore for storage, unless it is determined that transport of the oil will have a greater potential for adverse environmental impact than offshore storage.

9. Dredged materials disposed onshore will be contained and stabilized in order to prevent erosion or leaching of dredged materials into fish bearing waters or the high value wetlands identified on map 2.

NOT offered

AMENDMENT # ____
to CSHB(FIN)

by Representative Croft

Page 13, Sec. 22 is amended to read:

(i) For purposes of those activities of a proposed project that are subject to (g)(1)(B) of this section, the consistency of those activities is determined by the issuance of the applicable permits, certifications, approvals, and authorizations by the Department of Environmental Conservation and a finding of consistency with applicable district coastal management plan enforceable policies.

REVISED

NOT offered

AMENDMENT # _____
to CSHB 191(FIN)

by Representative Croft

Page 8, Sec. 11 is amended as follows:

(b) Except as provided in (d) of this section, AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the exclusive enforceable policies of the Alaska coastal management program for those purposes.

(d) A coastal resource district plan may include enforceable policies for activities of a project that are not addressed by Department of Environmental Conservation statutes and regulations.

AMENDMENT # ____
to CSHB(FIN)

by Representative Croft

Page 8, Sec. 11 is amended as follows:

(b) Except as provided in (d) of this section. AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the exclusive enforceable policies of the Alaska coastal management program for those purposes.

(d) A coastal resource district plan may include enforceable policies that are not addressed by Department of Environmental Conservation statutes and regulations.

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 191
P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

March 11, 2003

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

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to reform and streamline the Alaska Coastal Management Program (ACMP). This legislation is premised upon the statutory changes contained in Executive Order 106, which I presented to you on February 12, 2003. Executive Order 106 would transfer responsibility for the ACMP program from the division of governmental coordination in the office of management and budget to the Department of Natural Resources.

The Alaska Coastal Management Program was first enacted in 1977 in order to participate in the federal Coastal Zone Management Act of 1972. The federal program is voluntary, and encourages states to adopt coastal programs by providing federal funds and the opportunity for federal consistency review. Federal consistency review enables the state to apply its authorities to projects located on federal land and the federal outer continental shelf where otherwise it would be preempted by federal law.

The goal of this legislation is to create a new coastal management program that retains the benefits of the federal act but eliminates the duplication and complexity built into the present ACMP. This bill would achieve this goal by choosing the simplest of the three management techniques allowed by the federal act. The bill provides certainty and predictability to the ACMP process by clarifying the standards and responsibilities for program implementation.

The central streamlining concept of the bill is the reliance on existing state statutes and regulations as the enforceable policies of the ACMP. The current duplicative consistency review process in AS 46.40.096 and

The Honorable George Therriault
March 11, 2003
Page 2

6 AAC 50 is eliminated by simply relying on the issuance of current state permits by the resource agencies as the means of determining whether an activity is consistent with the ACMP.

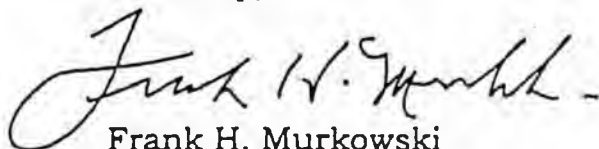
The bill would eliminate district coastal management enforceable policies but retains a local role in three ways. First, AS 29 municipalities would retain their existing land use authorities to regulate private activity within their jurisdiction. Second, the bill authorizes the Department of Natural Resources (DNR), as the implementing agency, to adopt local ordinances as enforceable policies to be applied in consistency reviews of federal projects and Outer Continental Shelf (OCS) development. The DNR would consult with the local government when interpreting and applying the local ordinance as part of a consistency review. Third, the bill would specifically adopt certain existing coastal district policies for federal OCS development as state enforceable policies.

Coastal resource service areas in the unorganized borough would no longer exist. However, municipalities within the unorganized borough could participate in both the funding and regulatory aspects of the program. Because the bill would affect the way coastal communities participate in the program, I have consulted with communities across the state and incorporated their suggestions into the legislation.

The bill would also eliminate the Coastal Policy Council, but would create a Coastal Program Evaluation Council to submit a report to the Governor on the implementation of these reforms. The council would sunset July 1, 2005.

I urge your prompt and favorable action on this measure.

Sincerely,



Frank H. Murkowski
Governor

Reasons for Coastal Management in Alaska:

- (1) State and local control on projects requiring a federal authorization
- (2) State and local influence on direct federal activities
- (3) Federal financial assistance ~ \$2,835,000

Problems Identified With the Current Coastal Management Program

- o The consistency review process is unpredictable, it is overly broad in scope, can take too much time, and delays the issuance of permits.
- o The statewide standards and local enforceable policies are vague, subject to multiple interpretations, and often duplicate or restate other state or federal requirements.
- o Because of the unpredictable timelines and standards, developers lack the certainty needed to make capital commitments on future projects.

Key Components of the Committee Substitute

- o Eliminates the Coastal Policy Council and transfers its duties to the Alaska Department of Natural Resources.
- o Places a sunset on the current statewide standards and coastal district plans.
- o Mandates the replacement of all current statewide standards and coastal district plans to ensure that all standards and local enforceable policies are clear, concise, not susceptible to subjective interpretation, and not duplicative of otherwise existing requirements.
- o Clarifies that local enforceable policies may not address a matter regulated or authorized by state or federal law, unless the policy relates specifically to a matter of local concern.
- o Provides important clarifications on the consistency review process to provide more predictable timelines and standards, including scope of the project that is subject to review, when a project can proceed in phases, and encourages expanding the use of general permits.
- o Clarifies that the Alaska Department of Environmental Conservation permits and authorizations constitute the consistency determination for Air, Land, and Water quality and insulates the ACMP consistency review from delays associated with these permits and authorizations.
- o Coastal Resource Service Areas remain intact.
- o All coastal districts retain the same authorities and responsibilities as under the current program, including the same seat at the table for consistency reviews.
- o District enforceable policies remain applicable to all projects subject to a consistency review, not just OCS and federal activities.

Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 (RES)
ACMP Administration	<ul style="list-style-type: none"> • Department of Natural Resources, as staff to the Alaska Coastal Policy Council (as of April 15, 2003) 	<ul style="list-style-type: none"> • DNR
Funding	<ul style="list-style-type: none"> • ~ \$5,130,000 (federal funds with state/local match) • Distributed to/for: <ol style="list-style-type: none"> 1. State agencies – consistency reviews, coastal program plan review 2. Coastal districts – consistency review/plan development 3. Special projects (i.e . ACMP information system, regulatory revisions) 4. Coastal Non-Point Source program (6217) 	<ul style="list-style-type: none"> • Same
Coastal Districts	<ul style="list-style-type: none"> • 35 approved districts <ol style="list-style-type: none"> 1. 33 approved district programs 2. including 4 coastal resource service areas (CRSA's) serving the unorganized areas • Have a seat at the table during consistency review • Receive funding to participate in consistency reviews, develop & implement district plans 	<ul style="list-style-type: none"> • Same
Coastal Zone Boundaries	<ul style="list-style-type: none"> • Established in <i>Biophysical Boundaries for Alaska's Coastal Zone</i> (1978) • Modified by coastal resource districts during plan development and approved by the Alaska Coastal Policy Council 	<ul style="list-style-type: none"> • Same

Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 (RES)
Application of ACMP and Consistency	<ul style="list-style-type: none"> • Consistency review for <ol style="list-style-type: none"> 1. Federal activities 2. Activities in the outer continental shelf 3. Activities that require a listed federal authorization 4. Activities that require a listed state authorization • Consistency is determined by reviewing activities against the enforceable policies (see above) 	<ul style="list-style-type: none"> • Same
Enforceable Policies	<ul style="list-style-type: none"> • Statewide standards – 6 AAC 80 • Coastal district program enforceable policies <ol style="list-style-type: none"> 1) Do not duplicate state law 	<ul style="list-style-type: none"> • Statewide standards at 6 AAC 80 to be rewritten by July 1, 2004 • Coastal district plan policies to be rewritten and submitted to DNR for review and approval within 6 months/one year after approval of 6 AAC 80 • Coastal district plan policies <ol style="list-style-type: none"> 1. Clear and concise as to the activities and persons affected by the policies and the requirements of the policies 2. Not susceptible to inconsistent application to different projects or regulated persons 3. Precise, prescriptive, and enforceable language 4. Do not address a matter regulated or authorized by state or federal law, unless a matter of local concern 5. Do not arbitrarily, unreasonably or unduly restrict or exclude a use of state concern

Review Process Specifics	<ul style="list-style-type: none">• New regulations effective January 21, 2003, to address consistency review issues	<ul style="list-style-type: none">• Regulations to remain in effect, with amendments to address requirements in CS legislation• Specific consistency issues addressed:<ol style="list-style-type: none">1. Trigger point for consistency review2. Scope of review3. Phasing4. Elevation5. Exclusion of ADEC permits and authorizations6. ABC List, general permits
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Changes Incorporated in Resource Committee Substitute Offered 4/23/03

- Sec. 3 adds "maintenance" of an approved district plan as eligible for funding assistance. Requested by AMA and Coastal Districts.
- Sec. 11 includes specific statutory references to what was intended as DEC's air, land, and water quality requirements. Requested by Prince William Sound RCAC.
- Sec. 12 extends the required renewal period of district plans from five to ten years. Requested by AMA and Coastal Districts.
- Sec. 13 removes addition of term "unduly" in the type of restrictions a district plan can impose on a use of state concern. Requested by Chairman Fate.
- Sec. 14 amends AS 46.40.070 which sets out the requirement for department review and approval of district plans. Changes the introduction from "the department may approve" a district plan meeting the requirements of (a)(1) & (2) to "the department shall approve" a district plan if the commissioner finds it meets the requirements. Removes (a)(2)(B) as duplicative. Changes "geographic area within the coastal zone" in (a)(2)(D) to "a defined portion of a district's coastal zone." Changes "identified" to "demonstrated" in (a)(2)(D)(i). Deletes the phrase "or contemplated" from (a)(2)(D)(ii) as redundant. Requested by AMA, Coastal Districts, and AOGA.
- Sec. 14. Adds "local" after usage to clarify that a matter of local concern must, among other requirements, involve "local usage or scientific evidence." Requested by Chairman Fate.
- Sec. 19. Changes "interested parties" to "affected parties" in list of persons from whom DNR requests consistency review comments. Requested by Chairman Fate.
- Sec. 21. Revises lead-ins to (1)(A) and (B) and revised (B) to reflect the listings of statutes instead of the term "air, land, and water quality" in AS 46.40.040(b).
- Sec. 22. Amends new subsection (k) governing the scope of a consistency reviews to add "that are located". New subsection (m) adds the requirement that DNR establish in regulation the state resource agency permits and federal permits that trigger a consistency review. Adds new subsections (n) and (o) which establishes a 90 day deadline for completing consistency reviews. Adds new subsection (p), which expressly states that a final consistency determination need not be held up by a DEC or other permit excluded under AS 46.40.096(g).
- Sec. 43 adds a definition of project from 6 AAC 50.
- Sec. 46(b) adds clarifying language that the former CPC's regulations implementing the ACMP remain in effect until DNR adopts new regulations or they are annulled under section 45 whichever occurs first.

- Sec. 47, the transition provision requiring revised district coastal management plans, now gives all coastal resource district one year after DNR adopts new regulations, or until July 1, 2005, whichever is later, to submit revised district plans. Requested by AMA and Coastal Districts.

April 25, 2003

Examples of District Enforceable Policies that meet the requirements of CS FOR HB 191 / SB 143 (RESOURCES). AS 46.40.070 (a)(2)(A)-(B) (section 14)

The following are examples of district enforceable policies meeting the requirements of proposed AS 46.40.070(a)(2)(A)-(B) (section 14). Where applicable, the district enforceable policy would be supported by an analysis and justification within the plan itself of how the policy meets the "matter of local concern" test under AS 46.40.070(a)(2)(C).

These example policies are based upon existing district enforceable policies. Some of the language has been changed to meet the test of CS for HB 191/SE 143 (RES) (section 14). These enforceable policies have been selected based upon the current State and Federal regulatory regime and are recognized as filling areas that are not otherwise adequately addressed. However, if the State or Federal law is subsequently expanded to adequately address these areas, then these district enforceable policies would have to be repealed.

Specific Location Policies

1. Activities within the Sisoalik Spit Use Area, as designated on map A-1, shall avoid impacts to marine mammals and to the subsistence harvest of marine mammals.
2. The area within 1 mile of the Narrow Lake shoreline is designated as the "Narrow Lake Recreational Use Area" as described in the Resource Inventory. Activities located within the Narrow Lake Recreational Use Area shall maintain or enhance the recreational value of the area.
3. Floathomes shall be recognized as an approved use of private and state tidelands in all residential zones identified on Map 3-B where:
 - 1) Adequate sewage treatment (marine sanitation devices) and/or tidal flushing exists;
 - 2) The floathome is moored in at least 15 feet of water at mean low water;
 - 3) The presence of a floathome will not jeopardize access to another's upland property; and
 - 4) The floathome is not an obstruction to use of navigable waters.

4. All structures and foundations located adjacent to the important streams or lakes listed in Table 2 and identified as sensitive to development shall have a fifty-foot setback from each side of the stream or lake measured from the ordinary high water mark. Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake are not subject to this policy. Uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes, and similar uses, are exempt from the setback requirement.

5. Development on barrier islands and in the marine and estuarine waters within 3 miles of the passes of Kasegaluk Lagoon intensively used by beluga whales, identified below, shall not interfere with subsistence use of beluga whales; shall not cause the whales to be displaced from these passes; and shall not jeopardize the continued use of these passes and lagoon system by beluga whales. The passes intensively utilized by beluga whales are Kukpowruk Pass, Akunik Pass, Utukok Pass, Icy Cape Pass, and Alokiakatat Pass (see Map 11 of the NSB Resource Atlas).

6. Offshore drilling and other development within the area of bowhead whale migration, identified on Map 2, during the migration seasons, described in Section 3 of the Resource Inventory, shall not interfere with subsistence activities nor prevent the continued availability of whales for subsistence purposes.

Generally Defined Portion of the Coastal Zone

7. Debris from offshore construction activities shall be removed to an approved onshore disposal site before completion of construction.

8. Oil produced in offshore areas shall be transported to shore for storage, unless it is determined that transport of the oil will have a greater potential for adverse environmental impact than offshore storage.

9. Dredged materials disposed onshore will be contained and stabilized in order to prevent erosion or leaching of dredged materials into fish bearing waters or the high value wetlands identified on map 2.

JUNEAU WETLANDS MGMT PLAN

CHAPTER I

INTRODUCTION

SUMMARY

The Wetlands Management Plan of the City and Borough of Juneau (CBJ) is designed to:

- **classify wetlands** based on information regarding environmental functions, public preference for management, and practicable alternatives to wetlands development;
- provide the basis for reasoned decisions regarding **protection and development** of wetlands.
- require **mitigation for development impacts** that is appropriate for high value and lower value wetlands;
- **increase permit predictability** for wetland property owners; and
- **reduce wetlands permit processing time and controversy** for wetlands that are more suitable for development.

Wetlands management is important in Juneau because a significant portion of the community's remaining undeveloped land is wetlands and development pressures on these wetlands can be great. Wetlands are carefully regulated by the U.S. Army Corps of Engineers and the Environmental Protection Agency (EPA) under authority of the federal Clean Water Act because wetlands perform many important environmental functions. These functions include providing important habitat for fish, birds, and animals; nurturing commercial and sport fisheries; reducing flood damage; and abating water pollution. Wetlands can also be important sites for public recreation and scenic enjoyment. At the same time, many wetlands are in private ownership and are often proposed as development sites. The challenge of wetlands management is balancing wetlands' values as a productive part of the natural environment with the public interest in using certain wetland sites for development.

To achieve the plan's goals, the CBJ established a study area, evaluated the environmental functions of the wetlands within it, assessed the availability of upland alternatives to wetlands development for all of Juneau, and surveyed public preferences for wetlands management. These three factors were combined to produce a balanced wetlands management plan that classifies wetlands from higher value (called Category A and B) to lower value (Category C and D), and manages development and uses of those wetlands accordingly. The plan also identifies wetlands that have potential for enhancement of wetlands functions (Category EP). The quantitative methodology developed and used by the CBJ to classify wetlands is described in "Chapter II, Classification Methodology."

The plan adopts enforceable policies that must be complied with before any development in wetlands can occur. Most importantly, the plan includes a wetlands mitigation policy patterned after the federal mitigation regulation implemented by the Corps of Engineers and other federal agencies. The plan also requires use of "best management practices" to prevent impacts to wetland functions and values. The policies of the plan are listed in "Chapter III, Wetland Management Policies."

The plan has been approved by the CBJ, the State of Alaska, and the U.S. Department of Commerce as part of the Alaska Coastal Management Program. The plan is the basis for General Permit 92-1, issued under Section 404 of the federal Clean Water Act by the U.S. Department of the Army, Corps of Engineers, on June 30, 1995. The General Permit streamlines the permitting process for the lower value wetlands covered by this plan by allowing the CBJ Wetlands Review Board to make permit decisions at the local level for development projects in those wetlands. The CBJ proposes to establish a Wetlands Mitigation Bank to assist project developers in meeting the mitigation requirements of the plan. These implementation features are described in "Chapter IV, Implementation."

The City and Borough of Juneau has seated a nine-member citizens Wetlands Review Board to oversee Juneau's implementation of the Juneau wetlands plan. Board members are required to have expertise in fisheries biology, hydrology, soils, engineering or land use planning. The Board has the responsibility for implementing the wetlands management plan and issuing permits for projects in Category C, D and EP wetlands under the terms of the General Permit.

In addition to its management functions, the plan is an educational document that provides information about individual wetlands in Juneau. It indicates which wetlands contribute the most to the natural environment and what they contribute. The inventory of natural functional values gives very specific information for each wetlands area, including: water flow, salmon stream fish counts, and bird counts. The plan provides one of the most complete comparative wetlands inventories for an area of this size.

This *Revised Juneau Wetlands Management Plan* incorporates all aspects of the plan that were approved by the CBJ and the State and federal governments, including changes that were made to the *Juneau Wetlands Management Plan, Concept Approved Draft* (dated February 1991) during these approval processes. This plan revision does not update the data that was used to prepare the original plan, nor alter the assumptions or methodology that led to the original wetland classifications that are the basis of the management scheme.

WETLANDS DEFINED

To most Juneau residents, the word "wetlands" evokes images of the extensive tidally flooded grasslands along Egan Drive. However, the laws that regulate development in wetlands apply to many areas that do not fit the conventional image of what a wetland looks like. Laws that address wetlands cover estuaries, streams, some forested areas, inland meadows, ponds, and artificial wetlands.

In 1986, the Corps of Engineers located and mapped many of Juneau's wetlands, as they have done in other areas of the United States. The definition used by the Corps of Engineers to identify wetlands subject to their jurisdiction under the Clean Water Act requires the presence of the following three features (Corps of Engineers Wetlands Delineation Manual, 1987):

1. Prevalence of plant species typically adapted for life in saturated soils;
2. Water sufficient to flood or saturate most of the soil surface for at least part of the growing season; and,
3. Soil conditions that indicate saturation (hydric soils).

This *Revised Juneau Wetlands Management Plan* and the *Juneau Wetlands Management Plan Map Atlas* (published in May 1994) classified only those wetlands located by the Corps of Engineers in the study area as of 1986. Many additional wetlands have been delineated by the Corps in these intervening years, and new wetlands subject to Corps jurisdiction are continually identified. Users of this plan should contact the CBJ Community Development Department or the Corps of Engineers staff in Juneau for information regarding whether a specific piece of property is wetlands, and what permitting rules apply.

CONTEXT AND HISTORY

A large proportion of the land area within the City and Borough of Juneau is classified as wetlands and is subject to the regulatory requirements of the federal Clean Water Act. Wetlands occupy 54 percent of the management plan study area. In the past 20 years, there have been many conflicts between those who want to develop wetland areas, many of which are privately owned, and those who are concerned that wetland functions and values are being impacted by development that could be located on non-wetland properties.

The developing areas of Juneau have been supplied with public water within the last 10 to 15 years as a result of a \$45 million expansion of the water distribution system, the largest capital project ever constructed by the CBJ. The water system encourages development in central corridors and prevents sprawl into environmentally sensitive rural areas. Public interest in developing along existing roads and infrastructure can be expected to continue and increase as Juneau's population grows. Many of the areas that will receive development pressure are wetlands.

Man-made development in Juneau's Mendenhall Valley area has progressed in roughly the following sequence.

1. Pre-World War II development consisted of several dairy farms near the mouth of Duck Creek and Jordan Creek, some fur farms on Duck Creek that utilized the

salmon runs for animal food, and a few commercial vegetable gardens. The A-J Mine had constructed the Mendenhall Loop Road, which followed the same route as it does today. A few residences were scattered along its length. The airport was built in the 1930's. Airport construction altered the mouths of Jordan and Duck Creeks.

2. World War II brought an army camp into the Jordan Creek drainage and expanded construction at the Juneau Airport.
3. During the post-war years and into the early 1960's several significant events occurred:
 - a. Parts of the middle Jordan Creek drainage were logged or high-graded for timber, with little control over logging slash disposal in or near the stream;
 - b. Portions of the Mendenhall Loop Road were widened, using alluvial material from dredged ponds near the road; and,
 - c. The Duck Creek drainage, particularly near its headwaters, began to be urbanized, with the first tract home construction occurring in 1961.
4. During the past two decades urban development in the Mendenhall Valley has proceeded at an increased rate, particularly as a result of improved transportation and increased state employment. The present population of the Valley is estimated to exceed 10,000 people, an increase of 7,000 since 1967.

If future community growth is to remain an option, locations for industrial and residential development must be found. The natural values of wetlands must be taken into account in the planning process to satisfy existing laws and to assure that growth can progress in the most environmentally responsible manner without degrading our quality of life.

PLANNING PROCESS

To achieve the plan's goals, Juneau established a 15 square mile wetlands study area. The study area encompasses most of the developing areas of Juneau, including: Mendenhall Valley, Auke Bay, Lemon Creek, and North Douglas. The study area excludes the Mendenhall State Game Refuge and all estuaries.

Through the planning process, the CBJ evaluated all wetlands within the study area that had been delineated by the Corps of Engineers (primarily by aerial photograph interpretation) as of 1986.¹ The

¹ Additional wetlands have been delineated by the Corps of Engineers within the study area since 1986. These wetlands are not mapped, evaluated or categorized by the Juneau Wetlands Management Plan. Permitting for

plan: (1) evaluated the environmental functions of each wetland unit, (2) assessed the availability of practicable upland alternatives to wetlands development for all of Juneau, and (3) surveyed public preferences for the management of the wetland units in the study area.

These three factors were then combined to produce a wetlands management plan that designates wetlands that are more suitable for development, and those that are less suitable, in advance of any specific development proposal. The four wetlands management categories used for this wetlands plan are Category A, B, C and D -- ranging from the highest value wetlands that are least suitable for development, to the lower value wetlands that are most suitable for development. The plan also identified some possible enhancement potential (Category EP) wetlands, where wetland values can be restored and enhanced. The classifications of the wetland units within the study area are listed in Appendix D of this plan, and in the *Juneau Wetlands Management Plan Map Atlas* (May 1994).

Ninety percent of the wetlands within the study area (a total of approximately 2,600 acres) are classified as Category A or B. Ten percent, or a total of 300 acres, are classified as Category C or D. Six freshwater ponds were classified as Category EP, due to their enhancement potential.

A more stringent "Shoreline Corridor Rule" classifies all wetlands within 50 feet of anadromous fish streams and lakes as the highest value, Category A, wetland type. This rule affects 22 wetland units. A special "Residential Road Corridor" classifies many wetlands within 100 feet of existing roads served by public water as lower value, Category C, wetlands.² This less stringent designation ensures that single family homes will be permitted to locate along existing roads and make use of existing public utilities. This rule affects 124 residential lots within 15 wetland units.

By classifying each wetland area into one of the four primary management categories (Category A, B, C or D), the plan balances people's development needs with the public and environmental benefits that wetlands provide. These land management categories have been agreed to by the City and Borough of Juneau and the State and Federal government regulatory agencies. This agreement on the management approach for each wetland will decrease permit processing time, make permit decisions more predictable, and ensure that potential impacts from wetlands development will be fully evaluated and appropriately mitigated.

The *Revised Juneau Wetlands Management Plan* includes enforceable policies that will guide the issuance of permits for discharge of dredged or fill material in wetlands. Most importantly, the plan adopts a mitigation policy patterned after the federal "mitigation sequence," including requirements for avoidance, minimization, restoration and compensation. The plan requires appropriate mitigation for each wetland category.

development in these wetlands is administered by the Corps of Engineers under the requirements of Section 404 of the Clean Water Act and its implementing regulations.

² Not all wetlands within 100 feet of existing roads and utilities are classified as Category C. In some cases, the higher value Category A or B classification was retained due to the presence of higher environmental functions and values at the site.

PLAN IMPLEMENTATION

On June 30, 1995, the Corps of Engineers issued General Permit 92-1 for wetlands that are classified as Category C, D, and EP in the *Revised Juneau Wetlands Management Plan*. The General Permit addresses the discharge of dredged or fill material, and excavation and mechanized clearing in these wetlands for residential, commercial, industrial, transportation and public use development projects. A copy of the General Permit is included in Appendix F.

The Corps of Engineers has authorized the CBJ Wetlands Review Board to administer the General Permit through the permitting process outlined in this plan. The Board has the authority to issue wetland permits locally for the discharge of dredged or fill material in these lower value and enhancement wetlands (Category C, D and EP) for the purposes listed in the General Permit. The Board will issue permits in compliance with the enforceable policies of this plan and the specific and general conditions included in the General Permit.

For the Category C, D and EP wetlands, the CBJ has become a 'one-stop' wetlands permitting agency, greatly reducing permit processing time. No individual permit from the Corps of Engineers, consistency determination from the Alaska Division of Governmental Coordination, nor individual water quality certification ("401 certification") from the Alaska Department of Environmental Conservation, is required for development in these wetlands. However, other local, State and federal permits may be needed for the project and it is the responsibility of the applicant to obtain all required permits.

For development proposals in Category A and B wetlands, and for any wetlands that are not within the Juneau Wetlands Management Plan study area or are not classified under the plan, a permit must still be obtained from the Corps of Engineers. The enforceable policies of the wetlands plan will be applied when those permit applications are reviewed by the Corps of Engineers.

The CBJ has committed to establish a Wetlands Mitigation Bank. The Bank will, in certain cases, allow permit applicants to compensate for damage to wetlands that will result from their development. The Mitigation Bank will allow development of certain wetlands that are generally suitable for development with no net loss of wetland functions and values in Juneau.

Section 13. Special Waterfront Designations

A. Notes:

The enforceable policies in this chapter apply uniformly throughout the CBJ coast. There are, however, a number of areas where special additional requirements are needed and where more specific guidance is appropriate. This is because there are human needs that can only be met with waterfront locations. These are the eight Special Waterfront Area Designations shown on Map 3 Series which is found in Appendix B.

Specifically, the need for special waterfront designations is based on:

- The need to locate certain types of development in proximity to existing facilities;

- The desire to locate certain types of development in the downtown area of Juneau or in areas that have already been impacted by development; and

- The determination of the Department of Fish and Game based on available information that habitat values within the subject areas are such that these areas are more suitable for marine, commercial, and industrial development than areas outside the special waterfront designation.

Four types of special use districts are defined below. They are: Marine Commercial, Industrial Commercial, Retail Commercial, and Office Commercial. Each of the eight areas is classified as one of these use districts except the downtown waterfront where all four districts apply. The photomaps (Map 3 Series) show where each of the eight designated areas are, the extent of the designation, the special use districts which apply, and a seaward limit for fill, bulkhead or piling supported structures. In some cases, fill may be allowed while in others any over-water development must be floating or on pile supported structures.

The filling or development of tidelands usually results in some loss or degradation of natural habitat. The JCMP habitat policies, which include the ACMP habitat regulations generally oppose such loss or degradation. The CBJ worked with the Alaska Department of Fish and Game to define areas that, based on available information, appeared to have lower habitat value and where development involving tideland fill could occur in a manner consistent with Section 49.55.120 policies. An analysis of public needs versus habitat values is not required when the development conforms to the habitat policies. The CBJ believes that the

habitat values within the special use areas are low and that the tidelands are relatively unproductive and are more suitable for coastal development than other areas. These designations include a mechanism for analyzing new information not available at the time of program approval. This is in JCMP enforceable policy 49.55.140(a)(5). The intent of the CBJ is to provide some predictability to coastal developers while allowing an analysis of new resource information which would require an analysis under Section 49.55.120(d).

Policy 49.55.030(S) of the JCMP incorporates the ACMP water-relevancy standard. This also applies to all of the special waterfront designations. To be clear: this blanket interpretation of the habitat standard for the Special Waterfront Designations is not intended to benefit non-water-related or non-water-dependent uses. Such uses can, if they meet the test of Policy 49.55.030(S), obtain waterfront locations. This test must, however, be administered on a case-by-case basis.

The CBJ has 202.7 miles of lineal coastline in the roaded area and perhaps 2,500 miles throughout the borough. Most of the intertidal and subtidal portions of this coastline may not be filled for most purposes because of Section 49.55.030(m). (The majority of the shoreline is designated in CBJ ordinances for residential or public open space uses.) This section applies to approximately five miles of the CJB's total shoreline, where less stringent limitations on in-water or over-water development are appropriate and necessary for commerce, industry, transportation and recreation.

These eight areas were selected through the planning process used to develop the JCMP. The criteria for selection were as follows:

1. The area must be physically suitable for the uses intended. In some cases, this is demonstrated by the presence of existing uses and activities which are consistent with the use district.
2. The area must not possess unusually important habitat or other natural values which would be threatened by development.
3. There must be reasonable proximity to upland services that would be needed to support the intended uses. Road access is the most important, but public water and sewer are significant for some areas, as are electrical power and communications.

The needs of the maritime transportation, recreation and visitor industries were all considered in making these designations. The result is a balanced array of use designations that will provide space for all current and foreseeable users. An exception to this should be noted. There is reason to believe that Juneau's existing port facilities, mostly located on the downtown waterfront, are or may soon be inadequate due to limited space for expansion and traffic. A separate AMSA study for the downtown waterfront accompanies this coastal program. It sets forth two possible scenarios. One is that a new industrial port will be located elsewhere in the CBJ. If this occurs, the downtown waterfront will be re-oriented to land uses which support the visitor industry and a use mix that will result in a healthy and diverse downtown area.

The second scenario is that the downtown will continue to serve both the port users and the visitor industry as well as provide the mix of uses needed for a healthy downtown. The designations and use districts herein are generally oriented toward the second scenario. If the CBJ determines that a new port site is needed - North Douglas Island has this potential then this program will be amended to show the new site. None of the other seven Special Waterfront Designations is a likely candidate.

North Douglas Island has potential as a new industrial port site. This conclusion already has wide support in the community. North Douglas, however, is not shown at this time as a port site in this coastal management program, nor is a proposed site of a second crossing of Gastineau Channel shown. Exact sites for a port and second crossing have not been established on a technical or policy basis.

This coastal program is not meant to preclude the port development or the second channel crossing. The CBJ will continue study of these issues and may at some point propose an amendment to this program, probably via the AMSA process, to enable a new port and second crossing to occur.

B. Findings:

(1) Juneau's distance from national markets, the size and characteristics of the labor force, and lack of land access are serious limits to the growth of manufacturing and distributive industrial activities.

(2) Adequate marine transportation facilities (e.g., docks) are critical to Juneau's future economic health. Existing facilities are of limited size and in a poor location.

(3) Growth is likely to occur among resource-based industries such as mineral extraction and processing, fisheries, and timber. Land with good access to maritime shipping channels is required to support this development.

(4) Juneau is a lineal-coastal community. The amount of easily developed land is very limited and is usually located near tidewater.

(5) Downtown Juneau's historic value and role as an employment center present opportunities for increased commercial development.

(6) Commercial/industrial uses in Juneau range from neighborhood scale retail to general industry. A considerable proportion consists of public institutions, most notably office facilities of state government and the University of Alaska/Juneau. Water-dependent commercial/ industrial uses are another important activity in the City and Borough. Downtown Juneau and the airport area are the major centers of retail activity; additional commercial areas are located in Douglas, Lemon Creek, and Auke Bay.

(7) Special Waterfront Area Designations:

(a) The Downtown Waterfront reaching from the "Rock Dump" to the south, through the downtown area, to the north end of Aurora Basin, is an area of great importance to the CBJ. A separate AMSA plan for the area has been completed in tandem with the main coastal management program. The mouth of Gold Creek and the jetties of Aurora Basin are planned for additional development by means of landfill. Uses which are usually not thought of as water related are planned for portions of the downtown area for the following reasons:

(1) Such uses, if carefully controlled and planned as part of a larger development, can act as economic stimuli and anchor points to enable other forms of development, particularly public access improvements;

(2) Such uses are vital to a diverse and healthy downtown core and there is no upland alternative; and,

(3) Other uses which depend on a shoreline location have been provided for either elsewhere downtown or in other marine waterfront designations.

Policy 49.55.030(S) of the JCMP duplicates the ACMP water-relevancy standard. It provides that uses which are not water-related or water-dependent may be located on the waterfront if there is no feasible and prudent inland alternative. The conclusion of the Downtown Waterfront Plan is that there are no inland alternatives for the "Retail Commercial" and "Office Commercial" districts contemplated for a portion of the Downtown waterfront.

The water-relevancy standard is usually applied on a case-by-case basis. The CBJ is making this judgement on a broader basis for the portions of the Downtown waterfront marked as Retail Commercial or Office Commercial on Map 3 Series. These uses are necessary for a healthy and economically viable downtown. Many of the existing and anticipated retail uses are oriented to the visitor industry. The Retail section is intended to provide a shoreline amenity for shoreside uses. Any retail or office use proposal will have the concomitant results of (1) increased visual and physical access; (2) Design appropriate to the waterfront; and, (3) economic support of the downtown area which will in turn help maintain the waterfront amenity.

In short, there are no inland alternative sites for these uses because they are needed downtown.

This area has minimal habitat values. Herring, salmon, other fish, shorebirds, waterfowl and marine mammals are found occasionally in the area. None of the areas that will be impacted by fill have any unique or rare habitat qualities. The mouth of Gold Creek is considered of marginal importance for shorebirds and waterfowl. The partial displacement, expected as part of the Gold Creek development, will be mitigated by off-site habitat improvements elsewhere. Habitat displaced by the Aurora Basin expansion will be offset by new habitat which is created by removal of the existing rubble-mound breakwater.

The area is rather large compared to the other special waterfront designations discussed below. There are shelter values for birds in the pilings and in the intermittent structures along the waterfront. There is sport fishing in the area. The fucus seaweed flats provide juvenile chum salmon habitat.

(b) The Thane Road site contains an existing tourist facility and a gold mine tailings re-refining operation. There are no unusual habitat values. The site is adjacent to Sheep Creek which is a cataloged anadromous stream. There is a hatchery on Sheep Creek and escapements have recently reached 100,000+ pinks. Southwest of the Thane site is a heavily used and important sport fishing area, and bird use at the mouth of the creek is high. There is a state operated personal-use gravel extraction site at the creek mouth as well.

(c) The Douglas Island Harbor site is an existing harbor with expansion and redevelopment potential. The basin of the harbor is a potential material source but some blasting may be required to obtain material. There are no unusual habitat values associated with the harbor, although fish school and migrate through the area.

(d) The Douglas Bridge site is north of the Douglas Island approach of the bridge. This area is now used for barge unloading and storage of unloaded containers and materials awaiting distribution throughout the city. Kowee Creek, an anadromous stream, flows between the bridge and the site. There is a small fish hatchery at the mouth of this stream. No fill or piling will be allowed in the mouth of the stream, which is important for fish, waterfowl and shorebirds. However, piling to support a public fishing pier should be allowed. This is a harvest area for fish returning to the hatchery. Additional fill north of the existing fill could be allowed. Apart from the stream to the south, there are no unusual habitat values.

(e) The 3.5 Mile Egan Drive Site provides no unusual, rare, or unique habitat. The site lies just south of the Mendenhall Wetlands State Game Refuge. The Refuge is specifically not a part of this site. A public spur road provides access to the waterfront although fill or piling will be needed for the unimproved waterfront spaces to be usable. The area is important for shorebirds and waterfowl because of the freshwater input from Salmon Creek. Also, the area is believed to be an important migration route for salmon migrating to and from Salmon Creek. The site adjoins the refuge so that circulation patterns and physical disturbance could change with development. There is sport fishing activity along the shoreline as well as bird hunting, photography and general public access. The upland side is in office and commercial use. Along its shoreline are a small boat sales, storage and repair shop, an air taxi service, a barge load/unload facility and space for other water-related uses.

(f) The Head of the Bay, in Auke Bay, is now the marine and commercial center of the area. Additional moorage, fill and piling structures are planned. The additions to the head of the bay should result in more dispersed impacts and cleaner urban runoff than is the case now. Four anadromous streams flow into Auke Bay, which is an important early rearing area for pink and chum salmon and a migration route for coho, Dolly Varden and cutthroat trout entering/departing the Auke Lake system. The area is important for king crab rearing and herring feeding, and eagles often feed at the west end of the bay.

(g) The Ferry Terminal Site, also in Auke Bay, is probably the only site available for water-related industrial expansion. A nine acre fill is planned to be added to the east of the existing ferry terminal. To the west is Auke Nu Cove which has an extensive intertidal area that is thought to be important for herring reproduction.

(h) The Tee Harbor site is included to enable protection and expansion of marine service facilities and public access. The area is adjacent to a heavily used and important spring king salmon sport fishing area. Fill will be limited to public trailer boat ramp improvements only.

C. Administrative Policies:

IT IS THE POLICY OF THE CBJ TO:

(1) Identify and facilitate the development of sufficient vacant land appropriately located to accommodate future commercial and industrial uses. (C.P. #45)

(2) Designate and reserve waterfront land with adequate services and in appropriate locations for water-dependent or related commercial/industrial activities while protecting important wildlife and other coastal resources. (C.P. #49)

(3) Ensure that decisions regarding administration and disposal of state lands in the CBJ are coordinated with local plans and policies.

(4) Ensure that proposed uses and activities will meet the established criteria and phase out non-conforming uses either by conversion or replacement. Non-conforming uses will not be allowed to expand.

D. Recommendations:

None.

E. Enforceable Policies:

49.55.140 SPECIAL WATERFRONT
DESIGNATIONS. (a) General Standards:
(1) The JCMP Map 3 Series, Maps 3A-3N, shows the boundaries of each special waterfront designation, and the maximum seaward limits for permanent development in each special waterfront designation. The land or water inside the boundaries shown on said maps is subject to the policies set forth in this section. The boundaries of the special waterfront designations are the limits for the

uses in this section unless such uses are allowable outside the special waterfront designations under the terms of subsection 49.55.030(m) or 49.55.030(r) and other applicable JCMP standards.

(2) Each fill proposal shall be individually reviewed to ensure that configuration, timing, composition and construction practices will minimize impacts on habitats and meet the water quality standards and other JCMP policies. The size of any fill shall not exceed that necessary for an allowable use, conditional use or accessory use unless a larger fill is needed to maintain integrity of the fill, maintain or enhance habitat values, or to fulfill other enforceable policies of the JCMP.

(3) Existing uses or activities in the subject areas may continue, provided, if conversion to another use or other modification is to be made, it shall conform to the requirements for the particular use district in which the site is located.

(4) (A) Uses identified as allowable in this section may be conditioned to be consistent with or conform to the standards contained in Section 49.55.120(b) and (c).

(B) However, should new site-specific information become available after May 22, 1986 which clearly indicates that crucial habitats exist within the subject areas and if Alaska Division of Governmental Coordination, after consultation with the city and borough and state resource agencies concurs, an evaluation pursuant to Section 49.55.120(d) will be immediately required for projects within the crucial habitat areas.

(5) (A) A change to the special waterfront designations may be initiated by the submittal of new information regarding habitats to both the Division of Governmental Coordination, Governor's Office and the city and borough, by the Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, Alaska Department of Natural Resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, the National Marine Fisheries Service, or other interested parties. The Division of Governmental Coordination shall expeditiously process new information as a routine program change in accordance with 6 AAC 85.120(c).