



*id. v. Schultz*, 443 F.2d 680 (9th Cir. 1971). The distinction that is drawn is one between actual injury.

Injury is not enough. It must be shown that the plaintiff "has sustained actual injury" as a result of the statute or official conduct. *Id.*, 414 U.S. 488, 494 (1973); *Id. v. Morton*, 527 F.2d 786, 797 (9th Cir. 1975).

In this case plaintiffs, whose activities are regulated by the CZMP, are engaged in exploring for and developing oil and gas resources. Plaintiffs must be consistent therewith, and no injury in fact. For the federal defendants under §306 of the CZMA, the provisions of §307 are triggered, before federal agencies permit activities of plaintiffs. Plaintiffs must certify that their activity is consistent with the CZMP. Although the state is not required to certify to the federal government whether or not a proposed activity is consistent with the CZMP, the initial burden of determining whether the activity is consistent falls to the applicant. The burden of the complaint is that the CZMP as approved by the federal agencies lacks the requisite specificity and consequently may be inconsistent with §306. If approved, the immediate and substantial expenditure to expend large sums of money to determine if their proposed activity is consistent. Moreover, plaintiffs lack of specificity increases the burden and makes it impossible, since they cannot with any assurance certify that their activity is consistent with §307. The undeniable injury in the areas subject to the CZMP is that once §306 approval is given, their activities are subject to the CZMP, and the fact that an injunction is issued to compel plaintiffs to expend financial resources in an effort to meet the requirements of §307, increases their claim that this burden is increased by virtue of the CZMP which they assert make ap-

California approach, and one which the Acting Administrator and this Court find acceptable under the CZMA, is that the standards require that "findings" be made upon which specific siting decisions ensue. For instance, in dealing with the siting of oil tanker facilities, §30261(a) requires that

... [t]anker facilities shall be designed to (1) minimize the total volume of oil spilled, (2) minimize the risk of collision from movement of other vessels, (3) have ready access to the most effective feasible containment and recovery equipment for oil spills, and (4) have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.

As can readily be seen from these provisions, whether a particular tanker facility siting proposal will be deemed "consistent" with these requirements of the California Program will turn on specific findings of a factual nature. The California Program sensibly does not attempt to map out in advance precisely what type or size tanker facilities will be found to meet these requirements in particular areas of its almost 1,000-mile coastline. Rather, by its very nature, the Coastal Act encourages plaintiffs with a particular facility in mind to address themselves to the standards set forth in the Coastal Act and to plan such a facility in cooperation and communication with the Coastal Commission from the inception. This approach seems consonant with the overall approach of the CZMA itself. In this regard it is noteworthy that the Senate Committee on Commerce, in summarizing the "key findings" of a number of reports made under the aegis of the committee-created National Ocean Policy Study, stated that "coastal states often have been criticized unfairly for delaying the siting of energy facilities when such action often is the result of lack of information and planning." S. Rep. No. 94-277 at 3 (Legislative History at 729). The CZMP takes an approach which has received the congressional blessing. To the extent plaintiffs seek not guidance with respect to the way in which coastal resources will be managed but instead a "zoning map" which would implicitly avoid the need to consult with the state regarding planned activities in or affecting its coastal zone, the Court rejects their position. While wholly sympathetic to the legitimate concerns of corporate officers and planners who must conform their activities to the standards of the CZMP, the Court nevertheless concludes that the Acting Adminis-

trator's finding that the Program satisfies §306(c) (8) is supportable and hence not arbitrary or capricious. It proceeds from a correct interpretation of the CZMA.

Finally, the Court notes that both the California Program and the CZMA contain safeguards to protect plaintiffs from arbitrary exercise by the Coastal Commission of its §307 consistency powers. First, plaintiffs under the Coastal Act may seek judicial review of a decision of the Coastal Commission finding a specific proposed activity of plaintiffs to be inconsistent with the CZMP. Such review certainly may encompass a challenge to the Commission's interpretation of the California Program as well as a challenge to specific findings upon which the determination presumably would be based. Second, with respect to an adverse consistency determination regarding any proposed activity for which a federal license or permit is required or which involves an OCS plan, the party against whose activity such a determination has been made may seek review by the Secretary of Commerce (who could also undertake review on her own initiative) on the grounds that "the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security." §307(c)(3)(A) and (B).<sup>22</sup> Third, under §312(a) the Secretary is obliged to conduct "a continuing review of (1) the

<sup>22</sup> In promulgating regulations under §307, NOAA has rejected the invitation of some reviewers to broaden the grounds of secretarial review. Some reviewers of the proposed regulations (41 Fed. Reg. 42879, September 28, 1976) urged that appellants should be able to argue on appeal that the State agency's consistency objection was not in accordance with the requirements of the management program. Other parties urged that the appeal process should be open to third party challenges to State agency concurrences which violate the requirements of the management program. No changes were made in response to these comments, and the regulations now clearly indicate that the Secretary will only consider appeals which are based on grounds that the activity either (i) is consistent with the purposes or objectives of the Act, or (ii) is necessary in the interest of national security.

<sup>23</sup> 42 Fed. Reg. 43586, 43595 (August 29, 1977) (Proposed Rules). The agency noted that general review of the manner in which a state implemented its approved program, "including the manner in which consistency concurrences and objections are issued," shall be reviewed by OCSM under its continuing review obligation of §312. *Id.* The final rules were published March 13, 1978 (43 Fed. Reg. 10510). See 15 C.F.R. §§930.120, 122.

invested millions of dollars in the development of energy resources in the OCS and continue to

management programs of the coastal states and the performance of such states with respect to coastal zone management; and (2) the coastal energy impact program provided for under section 308." Subsection (b) provides:

The Secretary shall have the authority to terminate any financial assistance extended under section 306 . . . if (1) [s]he determines that the state is failing to adhere to an [p]lan which is not justified in deviating from the program approved by the Secretary . . . .

In short, both as regards specific determinations of inconsistency and as regards general trends in and manner of issuance of such determinations, plaintiffs are amply protected by and have various forms of recourse under the California Program itself and §§307 and 312 of the CZMA.

#### APPROVAL BY THE FEDERAL DEFENDANTS

Plaintiffs have charged that the procedures followed by the state in developing and adopting, and by the federal defendants in approving, the California Program violated both the CZMA and NEPA.

Section 306(c)(1) requires the Secretary to find that [t]he state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(Emphasis supplied.) The Acting Administrator has so found. Findings at 13-14 (and references to the FEIS contained therein). Section 306(c)(3) amplifies the requirement of §306(c)(1) by demanding a finding be made that "[t]he state has held public hearings in the development of the management program." This too has been found. Findings at 16 (and references to the FEIS contained therein).

Plaintiffs' claims of invalid adoption by the state having been discussed previously, the Court merely adds that the process of developing a coastal zone management program for the state of California has been ongoing since the enactment of Proposition 20 (the California Coastal Zone Conservation Act of 1972) and that

the Acting Administrator's finding that that process has been open within the meaning of §306(c)(1) and (3) is supported by the record. Under the arbitrary and capricious standard applicable to such findings, they must be sustained.

Plaintiffs mount an assault on the review process undertaken by the federal defendants in approving the CZMP under §306, focusing on the purported inadequacies of the environmental review process culminating in the FEIS. As noted earlier, a challenge under NEPA invites broader-ranging evidentiary review (not limited to the administrative record) and requires application of the observance of procedure standard of review. 5 U.S.C. §706(2)(1); *Cady v. Morton*, supra, 527 F.2d at 793, citing *Trout Unlimited v. Morton*, supra, 509 F.2d at 1282, and *Lathan v. Brinegar*, supra, 506 F.2d 677; *Ethyl Corp. v. EPA*, supra, 541 F.2d at 34 n. 71. Having done so, the Court concludes that the environmental review process here followed and the FEIS produced thereby are adequate under §102(2)(C) of NEPA (42 U.S.C. §4332(2)(C)).

Section 102(2)(C) mandates that an EIS address:

- (i) the environmental impact of the proposed action;
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) alternatives to the proposed action;
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Plaintiffs contend first, that the federal defendants utilized the environmental review process not to conduct a *bona fide* environmental review but to advocate a prior decision to grant final approval to the CZMP; second, that the FEIS is deficient because the Program discussed therein differs substantially from that disclosed in the RDEIS; third, that it fails to adequately discuss possible alternatives to §306 approval; fourth, that it fails to consider all available relevant information; and fifth, that it fails to discuss potential and unavoidable adverse impacts of approving and implementing the CZMP.

The Court discusses these claims in order.

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Juanita Kreps, sued here-  
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the CZMA approval line-

First, the Court finds nothing improper  
in the federal defendants' informing the  
public and other organs of government of  
its tentative conclusion that the California  
Program meets the requirements of §306  
so as to qualify for final approval. The na-  
ture of the cooperative interaction be-  
tween the state and federal governments  
envisioned by the CZMA in the develop-  
ment of a management program makes it  
wholly unrealistic to assume that the feder-  
al agency charged with reviewing that pro-  
gram will entertain no preliminary conclu-  
sions as to its adequacy under the Act.

With respect to plaintiffs' second claim  
— that the RDEIS and FEIS differ substan-  
tially in their description of the elements of  
the California Program — the Court con-  
cludes that such claim lacks merit. First,  
the two statutory elements of the Program  
other than the Coastal Act both were  
noted in the RDEIS (at 8, 12, and 77). Nei-  
ther establishes standards in the sense that  
the Coastal Act does; rather, these com-  
panion statutes provide a portion of the  
implementation authority required by  
§306(c)(6), (7), and (d) of the CZMA. Sec-  
ond, the RDEIS contains the original ver-  
sion of the Program Description found in  
the FEIS. As discussed at length in another  
section of this memorandum, Chapter 11  
of the Program Description has been for-  
mally adopted by the Coastal Commission;  
and the remaining chapters, being of an  
essentially descriptive nature, were not re-  
quired to be. The procedures followed  
may have been sloppy, but the Court can-  
not say that the failure expressly to desig-  
nate Part II of the RDEIS an "element" of  
the CZMP was fatal — particularly in light  
of the Court's conclusions regarding the  
legal status of the Program Description.  
Finally, the Court notes that the revisions  
made in the Program Description were large-  
ly prompted by comments received on  
the original Program Description, includ-  
ing those received from plaintiffs.

Plaintiffs' third argument — that the  
FEIS fails adequately to discuss alterna-  
tives to §306 approval — is premised on  
plaintiffs' insistence that the federal de-  
fendants should have denied final approval  
and instead granted the CZMP prelimi-  
nary approval under §305(d), particularly  
in light of the fact that the local coastal pro-  
grams required by the Coastal Act (not due  
until 1980) will add the requisite degree of  
specificity to enable the Program to qualify  
for §306 approval. While there is support  
for plaintiffs' position in the legislative his-  
tory surrounding the addition of "prelimi-  
nary approval" to §305 effected by the

1976 Amendments (H. Rep. No. 94-878,  
94th Cong., 2d Sess. 48 (1976) (Legislative  
History at 934)), nevertheless the FEIS  
discusses this alternative to §306 approval  
and rejects it on the basis of a reasonable  
construction of §§306(e)(1) (dealing with  
permissible implementation techniques  
for control of land and water uses) and  
305(d), the NOAA regulations relevant  
thereto (15 C.F.R. §923.26), the pertinent  
legislative history, and the application of  
the above to the provisions of the CZMP,  
FEIS at 184-85. The federal defendants'  
conclusion — that "if a state has the neces-  
sary authorities in place and will employ  
acceptable implementation techniques,  
the 'preliminary approval' option is inap-  
propriate" (FEIS at 184) — is reasonable  
in order to give harmonious and full effect  
to §§305(d) and 306(e)(1). Again, while  
the Court, if faced with the choice, might  
have opted for preliminary approval, we  
may not substitute our judgment for that  
of the Acting Administrator. It is sufficient  
for present purposes to note that, contrary  
to plaintiffs' contention, the FEIS does ad-  
equately discuss this alternative.

Plaintiffs' final two claims are premised  
on the alleged failure of the FEIS to dis-  
cuss the adverse impact nationwide should  
California utilize its §307 consistency pow-  
ers to retard or preclude OCS and related  
energy development. Plaintiffs also assert  
that the FEIS fails adequately to discuss  
the impact of the CZMP on the "socio-econ-  
omic" environment (e.g., impact on  
"urban sprawl"). The Court rejects this ar-  
gument.

As this Circuit has stated:

... [A]n EIS is in compliance with  
NEPA when its form, content, and prep-  
aration substantially (1) provide deci-  
sion-makers with an environmental dis-  
closure sufficiently detailed to aid in the  
substantive decision whether to proceed  
with the project in the light of its envi-  
ronmental consequences, and (2) make  
available to the public, information of  
the proposed project's environmental  
impact and encourage public participa-  
tion in the development of that informa-  
tion.

*Trout Unlimited v. Morton, supra*, 509 F.2d at  
1283. "An EIS need not discuss remote or  
highly speculative consequences . . . .  
[The] adequacy of the content of the EIS  
should be determined through use of a  
rule of reason." *Id.* In elaborating on this  
"rule of reason" the Second Circuit has  
observed that

an EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives. [Citations omitted.]

*County of Suffolk v. Secretary of the Interior*, supra, 562 F.2d at 1375.

In this instance, the inadequacies raised by plaintiffs rest on the highly speculative assumption that in implementing its management program California will abuse its §307 consistency powers, the California courts will acquiesce therein, and, further, the Secretary of Commerce will fail to discharge her duties under §§307(c)(3) and 312. As stated during our discussion of the ripeness issue, the Court declines to make such an assumption — nor must the federal defendants in preparing the FEIS engage in such speculation.

The Court views the situation with which it is here presented as not unlike that presented in *Life of the Land v. Brinegar*, 485 F.2d 460 (9th Cir. 1973). In that case an action was brought by environmental groups to enjoin construction of a new seaward runway at Honolulu International Airport. The defendants in preparing the EIS determined that it was unnecessary to undertake air pollution studies because of the very nature and location of the proposed project. In rejecting plaintiff-appellants' claim that such omission was fatal to the adequacy of the EIS, this Circuit remarked:

The Reef Runway will relocate aircraft takeoffs, the major source of aircraft air pollution, 6,700 feet seaward, and away from the populated areas of Honolulu. The essence of this project, therefore, involves moving the sources of the air pollution away from people. The federal and state officials concluded that detailed air pollution studies were unnecessary, on the premise that at the very least, the project was extremely unlikely to worsen the air quality in any relevant sense.

*Id.* at 470.

Similarly, the "essence" of the CZMP, in accordance with §§302 and 303 of the CZMA, is sensitivity to environmental concerns in establishing standards for utiliza-

tion of the coastal zone; consequently, fewer and less detailed environmental studies would be expected because the Program emphasizes environmental preservation.<sup>23</sup>

Finally, the Court notes that the act of approving the California Program in itself does not result in the undertaking of any specific project by the state or federal governments or any private user(s) of the coastal zone. The concerns raised by plaintiffs — in particular, the alleged omission in the FEIS of an adequate discussion of the significance of permitting OCS development to go forward and the impact of precluding such development — will be addressed in connection with the preparation and dissemination of environmental impact statements for specific proposed activities. The environmental review here undertaken resembles that frequently utilized where a "multistage" project is involved; consequently, the failure of the FEIS to discuss such possibilities is justified on this alternative ground. The Second Circuit addressed this issue in *County of Suffolk*, supra. That case involved preparation of an EIS in connection with the proposed lease sale by the Department of the Interior of federal lands on the OCS to petroleum companies. There, in reversing the district court's finding that that EIS was inadequate in its failure to explore the possibility that state and local governments affected by such lease sale might bar the landing of pipelines on their shores and thereby in necessitating the use of tankers increase the hazards of oil pollution, the Court reasoned:

... [T]he extent to which treatment of a subject in an EIS for a multistage project may be deferred, depends on two factors: (1) whether obtaining more detailed useful information on the topic of transportation is "meaningfully possible" at the time when the EIS for an earlier stage is prepared, see *National Resources Defense Council v. Morton*, 458 F.2d

<sup>23</sup> The Court is not unmindful of the substantial question raised by NRDC concerning plaintiffs' standing under NEPA to assert claims founded principally in and directed primarily to economic rather than environmental well-being. See, e.g., *Churchill Truck Lines, Inc. v. U.S.*, 533 F.2d 730 (D.C. Cir. 1975); *Clinton Community Hospital Corp. v. Southern Maryland Medical Center*, 510 F.2d 1037 (4th Cir.), cert. denied, 422 U.S. 1048 (1975). While cognizant of the irony of plaintiffs' pressing claims based on NEPA's structures, the Court, construing "environmental impact" more broadly, nevertheless has chosen to address the merits of those claims.

at 837, and (2) how important it is to have the additional information at an earlier stage in determining whether or not to proceed with the project, see *National Resources Defense Council v. Callaway*, 524 F.2d at 88.

*If the additional information would at best amount to speculation as to future event or events, it obviously would not be of much use as input in deciding whether to proceed. As we said in Callaway, supra, referring to Morton, supra:*

"NEPA does not require a 'crystal ball' inquiry. . . . An EIS is required to furnish only such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible. *Indian Lookout Alliance v. Volpe*, 484 F.2d 11 (8th Cir. 1973). A government agency cannot be expected to wait until a perfect solution of environmental consequences of proposed action is devised before preparing and circulating an EIS." 524 F.2d at 88.

Where the major federal action under consideration, once authorized, cannot be modified or changed, it may be essential to obtain such information as is available, speculative or not, for whatever it may be worth in deciding whether to make the crystallized commitment (e.g., the construction of a bridge of a specified type between two precise points). But where a multi-stage project can be modified or changed in the future to minimize or eliminate environmental hazards disclosed as the result of information that will not become available until the future, and the Government reserves the power to make such a modification or change after the information is available and incorporated in a further EIS, it cannot be said that deferment violates the "rule of reason." Indeed, in considering a project of such flexibility, it might be both unwise and unfair not to postpone the decision regarding the next stage until more accurate data is at hand.

562 F.2d at 1378 (emphasis supplied). The court concluded that "projection of specific pipeline routes was neither 'meaningfully possible,' nor 'reasonably necessary under the circumstances.'" *Id.* at 1382. This factor of multistage projects whose various stages are "substantially independent" of one another similarly has been considered by this Circuit in assessing the adequacy of an EIS. See, e.g., *Cady v. Morton, supra*, 527 F.2d at 794 n.7;

*Trout Unlimited v. Morton, supra*, 509 F.2d at 1285.

The Court concludes that this action presents an analogous situation to which this reasoning applies. Approval and implementation of the CZMP no more indicates which of potentially dozens of projects will be certified as consistent (and undertaken subject to what conditions) than the decision of the Department of the Interior to proceed with the lease-sale of a large tract of federal OCS lands indicated which of potentially dozens of exploration and development projects would be permitted (and under what conditions).

The Court concludes, as did the court in *Cady v. Morton supra*, that "although the EIS could be 'improved by hindsight,' it has satisfied the intent of the statute. *National Forest Preservation Group v. Butz*, 485 F.2d 108, 412 (9th Cir. 1973)." 527 F.2d at 797.

The length, complexity and convolutions of this memorandum and of the findings and conclusions set forth herein speak louder and much more eloquently than the words themselves. The message is as clear as it is repetitive: under our so-called federal system, the Congress is constitutionally empowered to launch programs the scope, impact, consequences and workability of which are largely unknown, at least to the Congress, at the time of enactment; the federal bureaucracy is legally permitted to execute the congressional mandate with a high degree of befuddlement as long as it acts no more befuddled than the Congress must reasonably have anticipated; if ultimate execution of the congressional mandate requires interaction between federal and state bureaucracy, the resultant maze is one of the prices required under the system.

The foregoing shall constitute the Court's findings of fact and conclusions of law.

The administrative action is affirmed; the petition is denied, each side to bear its costs.

The Clerk of the Court shall send, by United States mail, a copy of this Memorandum of Decision and Order to counsel for all parties. DATED: August 30th, 1978.



# LAWS OF ALASKA

1977

Source

CCS SCS CSHB 342

Chapter No.

84

## AN ACT

Relating to the management of the coastal resources of the state; and providing for an effective date.

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

\* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) the coastal area of the state is a distinct and valuable natural resource of concern to all the people of the state;

(2) the demands upon the resources of the coastal area are significant, and will increase in the future;

(3) the protection of the natural and scenic resources and the fostering of wise development of the coastal area are of concern to present and future citizens of the state;

(4) the capacity of the coastal area to withstand the demands upon it is limited;

(5) the degree of planning and resource allocation which has occurred in the coastal area has often been motivated by short-term considerations, unrelated to sound planning principles, and

(6) in order to promote the public health and welfare, there is a critical need to engage in comprehensive land and water use planning in coastal areas and to establish the means by which a planning process and management program involving the several governments and areas of the unorganized borough having an interest in the coastal area may be effectively implemented.

\* Sec. 2. LEGISLATIVE POLICY. It is the policy of the state to

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(1) preserve, protect, develop, use, and, where necessary, restore or enhance the coastal resources of the state for this and succeeding generations;

(2) encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the coastal resources of the state;

(3) develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have a direct and significant impact upon the coastal land and water of the state;

(4) assure the participation of the public, local governments, and agencies of the state and federal governments in the development and implementation of a coastal management program;

(5) utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and

(6) authorize and require state agencies to carry out their planning duties, powers and responsibilities and take actions authorized by law with respect to programs affecting the use of the resources of the coastal area in accordance with the policies set out in this section and the guidelines and standards adopted by the Alaska Coastal Policy Council under AS 46.35.

\* Sec. 3. AS 44.19 is amended by adding new sections to read:

### ARTICLE 11A. ALASKA COASTAL POLICY COUNCIL.

Sec. 44.19.891. ALASKA COASTAL POLICY COUNCIL. (a) There is created in the Office of the Governor the Alaska Coastal Policy Council. The council consists of the following:

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality; one public member shall be appointed from each of the following general regions:

(A) northwest Alaska, including, generally, the area of the North Slope Borough and the Northwest Arctic regional educational attendance area;

(B) Bering Straits, including, generally, the area of the Bering Straits regional educational attendance area;

(C) southwest Alaska, including, generally, the area within the Lower Yukon, Lower Kuskokwim, Southwest, and La's-Peninsula regional educational attendance areas and the Bristol Bay Borough;

(D) Kodiak-Aleutians, including the area of the Kodiak Island Borough and the Aleutian, Adak and Pribilof regional educational attendance areas;

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(E) Upper Cook Inlet, including the Municipality of Anchorage and the Matanuska-Susitna Borough;

(F) Lower Cook Inlet, including, generally, the area within the Kenai Peninsula Borough;

(G) Prince William Sound, including, generally, the area east of the Kenai Peninsula Borough to 141° W. longitude;

(H) northern Southeast Alaska, including the area southeast of 141° W. longitude and north of 57° N. latitude, including the entirety of the City and Borough of Sitka; and

(I) southern Southeast Alaska, including that portion of southeastern Alaska not contained within the area described in (H) of this paragraph;

(2) each of the following:

(A) the director of the division of policy development and planning;

(B) the commissioner of the Department of Commerce and Economic Development;

(C) the commissioner of the Department of Community and Regional Affairs;

(D) the commissioner of the Department of Environmental Conservation;

(E) the commissioner of the Department of Fish and Game;

(F) the commissioner of the Department of Natural Resources; and

(G) the commissioner of the Department of Public Works.

(b) Each public member appointed by the governor under (a)(1) of this section serves a term of two years and until his successor is appointed and qualified, except that the term of office of a public member first appointed under (a)(1)(A), (a)(1)(C), (a)(1)(E) and (a)(1)(G) of this section shall be one year. A public member may be reappointed.

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

(d) Members appointed under (a) of this section may select one person to serve as a permanent alternate at meetings of the council. If the member appointed is unable to attend, the alternate may act in his place.

(e) Four public members and three designated members of the council constitute a quorum, but one or more of the members designated by the council may hold hearings. All decisions of the council shall be by a majority vote of the

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Members present and voting.

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

(g) If there is a vacancy among the public members appointed under (a)(1) of this section, the governor shall make an appointment to become immediately effective for the unexpired portion of the term.

Sec. 44.19.892. POWERS OF THE COUNCIL. The council may

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

(2) contract for necessary services;

(3) consult and cooperate with

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

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

(4) take any reasonable action necessary to carry out the provisions of secs. 891 - 894 of this chapter.

Sec. 44.19.893. DUTIES OF THE COUNCIL. In conformity with the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), the council shall

(1) through the public hearing process and the recording of the minutes of the hearings, develop guidelines and standards for the preparation of, and approve, in accordance with AS 46.35, the Alaska coastal management program;

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; in carrying out its duties under this paragraph, the council shall initiate an interagency program of comprehensive coastal resource planning for each geographic region described in sec. 891-(a)(1) of this chapter;

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

(4) submit annually to the legislature, not later than the 10th day of each regular session, the portion of the coastal management program approved or amended by the council during the preceding year.

Sec. 44.19.894. COUNCIL STAFF. The council shall

utilize the staff of the office of coastal management within the division of policy development and planning in discharging its powers and duties. The coordinator of the office, with the concurrence of the council, may contract with or employ personnel or consultants he considers necessary to carry out the powers and duties of the council.

\* Sec. 4. AS 46 is amended by adding a new chapter to read:

CHAPTER 35. THE ALASKA COASTAL MANAGEMENT PROGRAM.

ARTICLE 1 DEVELOPMENT OF ALASKA  
COASTAL MANAGEMENT PROGRAM.

Sec. 46.35.010. DEVELOPMENT OF ALASKA COASTAL MANAGEMENT PROGRAM. (a) The Alaska Coastal Policy Council established in AS 44.19.891 shall approve, in accordance with secs. 10 - 210 of this chapter, the Alaska coastal management program.

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

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

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

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

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

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

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

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under sec. 40 of this chapter.

Sec. 46.35.020. OBJECTIVES. The Alaska coastal management program shall be consistent with the following objectives:

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

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

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

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

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

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

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

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

Sec. 46.35.030. DEVELOPMENT OF DISTRICT COASTAL MANAGEMENT PROGRAMS. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under sec. 40 of this chapter and shall include:

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

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

(3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;

(4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;

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

(6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses

or activities shall be allowed; and

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

Sec. 46.35.040. DUTIES OF THE ALASKA COASTAL POLICY COUNCIL Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

(1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62), within six months of the effective date of this Act, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, guidelines and standards for

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

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

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

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

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

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

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

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

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

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

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

Sec. 46.35.050. ACTION AND SUBMISSION BY COASTAL RESOURCE DISTRICTS. Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of the effective date of this Act or within 30 months of certification of the results of the district's organization, whichever is later.

Sec. 46.35.060. REVIEW AND APPROVAL BY COUNCIL. (a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent.

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

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

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

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

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

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section.

Sec. 46.35.070. STANDARDS FOR COUNCIL REVIEW AND APPROVAL. (a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

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

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

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

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

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

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

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

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

(d) A decision by the council under this section shall be given within 90 days.

Sec. 46.35.080. EFFECTIVE DATE OF ALASKA COASTAL MANAGEMENT PROGRAM. The Alaska coastal management program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon adoption of a concurrent resolution by a majority of the members of each house of the legislature or by a vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor.

Sec. 46.35.090. IMPLEMENTATION OF DISTRICT COASTAL MANAGEMENT PROGRAMS. (a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district

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

Sec. 46.35.100. COMPLIANCE AND ENFORCEMENT. (a) Municipalities and state agencies shall administer land and

water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

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

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

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

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

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

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

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

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

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council.

## ARTICLE 2. COASTAL MANAGEMENT PROGRAMS IN THE UNORGANIZED BOROUGH.

Sec. 46.35.110. AUTHORITY IN THE UNORGANIZED BOROUGH. Under AS 29.03.020 and secs. 110 - 180 of this chapter, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants

authority to the service areas which may be organized to perform the duties required under this chapter.

Sec. 46.35.120. COASTAL RESOURCE SERVICE AREAS. (a) Except as provided in (b) of this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

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

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

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

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area and no later than six months from the effective date of this Act.

Sec. 46.35.130. ORGANIZATION OF COASTAL RESOURCE SERVICE AREA. (a) Organization of a coastal resource service area may be initiated by

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

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

(3) at the direction of a majority of the members of the council in the manner set out in sec. 160 of this chapter.

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

Sec. 46.35.140. COASTAL RESOURCE SERVICE AREA BOARDS. (a) Each coastal resource service area, upon organization, shall have an elected board representing the population of

the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

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

(c) The commissioner of the Department of Community and Regional Affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under sec. 130(a)(1) of this chapter, in the resolution submitted under sec. 130(a)(2) of this chapter, at the direction of the council under sec. 130(a)(3) of this chapter, or may be proposed at any time by the members of the coastal resource service area board. If proposed by the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal resource service area board.

(d) The term of office of a member of a coastal resource service area board is three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. Nothing in this section prohibits the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal resource service area boards. The first election of board members shall occur not less than 60 nor more than 90 days after certification of the results of an organization election under sec. 130(b) of this chapter in which a majority of votes cast favors organization of the coastal resource service area.

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

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

(h) Members of coastal resource service area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.28.130 - 29.28.250. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of

recall elections.

Sec. 46.35.150. ELECTIONS IN COASTAL RESOURCE SERVICE AREAS. Organization elections under sec. 130 of this chapter and other elections, including recall elections conducted under sec. 140 of this chapter, shall be administered by the lieutenant governor in the general manner provided in the Alaska Election Code (AS 15.05 - 15.60). In addition, the lieutenant governor may adopt regulations necessary to the conduct of coastal resource service area board elections. The state shall pay all election costs.

Sec. 46.35.160. ORGANIZATION AT THE DIRECTION OF THE COUNCIL. (a) Whenever it appears that major economic development activity will occur in a coastal resource service area or in waters adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

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

Sec. 46.35.170. PREPARATION OF DISTRICT COASTAL MANAGEMENT PROGRAM BY THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS. (a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the Department of Community and Regional Affairs to prepare and recommend for consideration by the council and for submission to the legislature a district coastal management program for the service area.

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

(c) Before requesting the department to complete the district coastal management program under (b) of this

section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established in this section.

Sec. 46.35.180. APPROVAL OF PROGRAMS IN COASTAL RESOURCE SERVICE AREAS. (a) Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under sec. 170 of this chapter, a district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or traditional village council shall consider the program submitted for review. Within 60 days of submission, the council of a city or traditional village council shall either approve the program or enter objections to all or any portion of the program.

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

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

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

#### ARTICLE 3. GENERAL PROVISIONS.

Sec. 46.35.190. COOPERATIVE ADMINISTRATION. (a) A city within the coastal area which is not part of an adjacent coastal resource service area may include itself for purposes of this chapter within an adjacent coastal resource service area if its governing body, by resolution adopted by a majority of its membership, consents to the inclusion of the city and a copy of the resolution is filed with the commissioner of the Department of Community and Regional Affairs.

(b) Nothing in this chapter restricts or prohibits cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose.

Sec. 46.35.200. STATE AGENCIES. Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation.

Sec. 46.35.210. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to council definition of criteria for their identification, include:

- (A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;
- (B) areas of high natural productivity or essential habitat for living resources;
- (C) areas of substantial recreational value or opportunity;
- (D) areas where development of facilities is dependent upon the utilization of, or access to, coastal waters;
- (E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;
- (F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and
- (G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits;

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

the state:

(A) unified municipalities established under AS 29.68.240 - 29.68.440;

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

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

(D) second class cities of the unorganized borough, or within boroughs which do not exercise planning and zoning authority, which have established a planning commission, and which, in the opinion of the commissioner of the Department of Community and Regional Affairs, have the capability of preparing and implementing a comprehensive district coastal management program under sec. 30 of this chapter;

(E) coastal resource service areas established and organized under AS 29.03.020 and secs. 110 - 180 of this chapter;

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

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

(5) "use of direct and significant impact" means a use, or an activity associated with the use, which proximately contributes to a material change or alteration in the natural or social characteristics of a part of the state's coastal area and in which

(A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;

(B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or

(C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect;

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

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

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

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

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

(E) uses in areas established as state parks or recreational areas under AS 41.20 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20.

\* Sec. 5. AS 44.47 is amended by adding a new section to read:

Sec. 44.47.095. PLANNING ASSISTANCE FOR DEVELOPMENT AND MAINTENANCE OF DISTRICT COASTAL MANAGEMENT PROGRAMS. The department shall conduct a program of research, training, and technical assistance to coastal resource districts necessary for the development and implementation of district coastal management programs under AS 46.35. The technical assistance shall include the direct granting to the coastal resource districts of a portion of any funds received by the state from the federal coastal zone management program, in amounts to be individually determined for each coastal resource district by the commissioner. State agencies shall assist the department in carrying out the purposes of this section.

\* Sec. 6. The Administrative Regulation Review Committee established in AS 24.20.400 - 24.20.460 shall review the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall, not later than January 20, 1979, make formal recommendation with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement, interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee shall be transmitted to the first regular session of the Eleventh Alaska Legislature.

\* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

## POLICY COUNCIL MEMBERS &amp; THEIR ALTERNATES

June, 1978

## POLICY COUNCIL MEMBERS &amp; THEIR ALTERNATES

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Support Building  
Juneau, Alaska 99811  
Phone: 465-4100 (office)

The Honorable Robert F. LeResche  
Commissioner, Department of  
Natural Resources  
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Juneau, Alaska 99811  
Phone: 465-2400 (office)

The Honorable Donald Harris  
Commissioner, Department of  
Transportation and Public Facilities  
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Alternates

Mr. Jon Halterman  
Deputy Director, Policy Development  
and Planning, Office of the Governor  
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Mr. Jim Wiedeman  
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Mr. Carl Gonder, Deputy Commissioner  
Department of Community and Regional  
Affairs  
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Mr. Jerry Reinwald  
Deputy Commissioner, Department of  
Environmental Conservation  
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Mr. Dick Logan  
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Mr. Ted Smith  
Department of Natural Resources  
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Anchorage, Alaska 99501  
Phone: 279-5577

Mr. Ray Meketa  
Department of Transportation and  
Public Facilities  
Pouch Z  
Juneau, Alaska 99811  
Phone: 586-2195 (office)

SCR

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(7)

# COMMITTEE REPORT

## HOUSE

3/18/80

FURTHER:

Date: 26 MAR 80

Mr. Speaker:

The Committee on COMMUNITY AND REGIONAL AFFAIRS has had SCR 51

"Approving the district coastal management program of the Municipality of Anchorage and the findings, conclusions, and stipulations of the Alaska Coastal Policy Council."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
CHAIRMAN

Box 461  
Haines, Alaska 99827  
February 14, 1980

Representative Bill Parker, Chairman  
Committee on Community & Regional Affairs  
House of Representatives  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Honorable Bill Parker:

Please accept this as written testimony for your public hearing on the Haines District Coastal Management Program, scheduled for February 27th and March 3, 1980.

The Haines plan covers a very small geographical area. For this reason future coastal plans of the area covering more territory are imminent. They will be conducted as municipal boundaries are adjusted through annexation or establishment of a Borough Government with planning powers.

Therefore little time should be spent on this plan and it should be adopted as submitted.

Although the Haines Plan went through extensive public hearing and reflects the local attitude, it's preparation was truly only to comply with state and federal regulations.

Yours truly,

  
Marvin P. Hartshorn

The Senate Committee will appreciate comments from interested parties on the following concerns:

1. Coastal districts have divided their districts into "study" areas and "planning" areas. Do approved local policies apply to study areas and, if so, who is responsible for their implementation outside the planning area? How does level of local government (class of borough) effect this situation?
2. Can the legislature approve a plan if there are no implementing ordinances?
3. Districts have developed their plans at considerable time, expense and local involvement. What assurances are there that state and federal agencies will consistently and fully implement these plans? Are relationships between implementors systematized?
4. Apparently, state agencies have not been full participants in the district program planning process. What solutions are needed to this problem?
5. Other related issues which the public wishes to bring to the attention of the Committee.



# KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET  
KETCHIKAN, ALASKA 99901

TO: Legislative Committee of  
Alaska Municipal League

THRU: Judith A. Slajer  
Borough Manager

FROM: Marvin Yoder *MY*  
Economic Development Specialist

SUBJECT: Extraterritorial jurisdiction in Coastal  
Management district

*Policy Statement  
p. 8 IV (2)*

Working with our municipal attorney, Mr. Walker, we decided that the basic need of organized districts was to be able to have input into plans being compiled in adjacent resource service areas.

The two options available are for the organized municipalities to use its resources to physically inventory and plan for those areas that have direct influence on the municipality or to simply state that the impact exists and then request an opportunity to determine the extent of the impact when the resource service area begins to formulate its plan. After discussing these concepts with individuals involved in Coastal Management programs, we chose the latter option.

The second decision was whether the proposed new language should be added to the State statutes or to the regulations. In the statutes AS 46.40.180 describes the requirements necessary for a resource district to have its plan approved. The proposed addition stipulated that concerns expressed by adjacent districts must be addressed by public hearings and records of these hearings are to be documented in the permanent record of the district.

The second approach would be to amend the regulations. This would be done by the Alaska Coastal Policy Council with the legislative concurrence. Section 6 AAC 85.140 provides opportunities for other government agencies to coordinate and review coastal plans and specifically mentions adjacent districts.

Our recommendation is to attempt to change the statutes and assume that the regulations will be changed to conform to the intent of the act.

December 10, 1979

Page two

On November 30, 1979 the proposed amendment was placed before the Policy Council and received favorable comments; however no formal action was taken. It is my opinion as a member of the Council that if there is a statute change, the Policy Council will change the regulations to reflect that change.

MLY:jw

attachment

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to filing of notice of interest by adjoining boroughs <sup>or cities.</sup> regarding proposed district coastal management plan in unorganized boroughs and providing opportunity to be heard prior to approval of district coastal management plan by Alaska Coastal Policy Council; and providing for an effective date.

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

\* Section 1: AS 46.40.180 is amended by adding new subsections thereto to read:

(e) Any organized borough or city which claims to have an interest in the manner in which resources, or the use of resources, in any unorganized borough adjacent to its boundaries are developed shall notify the Department of Community and Regional Affairs of the nature and extent of such interest. Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under Section 170 of this chapter, a district coastal management program shall be submitted to each organized borough or city which has filed a notice of interest with the Department of Community and Regional Affairs.

(f) The council shall not approve a district coastal management program unless it finds that each organized borough or city that has filed a notice of interest under (e) above has received notice and an opportunity to present its concerns regarding such plan at a public hearing before the coastal service area board or Department of Community and Regional Affairs which concerns shall become part of the record regarding such plan.

\* Section 2: This Act takes effect immediately in accordance with AS 01.10.070(c).

# Alaska MUNICIPAL League

TELEPHONES  
(907) 586-1325  
586-6526

204 N. FRANKLIN ST.  
JUNEAU, ALASKA 99801

February 27, 1980

To: House CRA Committee  
From: Ginny Chitwood, Executive Director  
Re: Amendment to Coastal Policy Act

At the annual meeting of the Alaska Municipal League, held last fall in Sitka, the members adopted the following paragraph as part of the 1980 policy statement:

The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt said "extra-territorial" planning as part of the Alaska Coastal Management Program until such time as a resource district plan is adopted.

The enclosed bill, which is a starting point for implementing this section, and the memo from the Ketchikan Gateway Borough were endorsed by the AML Legislative Committee in December.

We believe it is very important that the concerns of adjacent areas be addressed in each coastal management plan that is approved. An amendment to the act, along the lines of this proposal, will help to achieve that goal.

The enclosed material has been submitted to the Alaska Coastal Policy Council and will be considered at its next meeting scheduled for mid-March.

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IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

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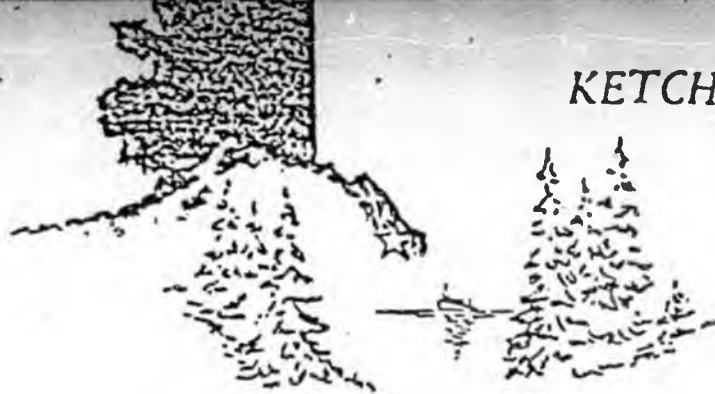
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344 FRONT STREET  
KETCHIKAN, ALASKA 99901

TO: Legislative Committee of  
Alaska Municipal League

THRU: Judith A. Slajer  
Borough Manager

FROM: Marvin Yoder *MY*  
Economic Development Specialist

SUBJECT: Extraterritorial jurisdiction in Coastal  
Management district

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Alaska Municipal League

December 10, 1979

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MLY:jw

attachment

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