

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9380 HOUSE RESOURCES

1 subject to the district coastal management program: the delineation required by this
2 paragraph

3 (A) may include only a zone of direct interaction in which
4 physical and biological processes are a function of direct contact between
5 land and sea, and a zone of direct influence that is landward of the zone
6 of direct interaction and that is closely affected and influenced by the
7 proximity between land and sea;

8 (B) may not include areas landward of the areas described
9 in (A) of this paragraph;

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

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

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

16 (5) a description of the uses and activities that [WHICH] will be
17 considered proper and the uses and activities that [WHICH] will be considered
18 improper with respect to the land and water within the coastal area;

19 (6) a summary or statement of the policies that [WHICH] will be
20 applied and the procedures that [WHICH] will be used to determine whether specific
21 proposals for land or water uses or activities shall be allowed; and

22 (7) a designation of, and the policies that [WHICH] will be applied to
23 the use of, areas within the coastal resource district that [WHICH] merit special
24 attention.

25 * Sec. 3. AS 46.40.030 is amended by adding a new subsection to read:

26 (b) In developing statements of policies and regulations under (a) of this
27 section, a coastal resource district may not incorporate by reference statutes and
28 administrative regulations adopted by state agencies.

29 * Sec. 4. AS 46.40.094 is amended by adding a new subsection to read:

30 (d) A consistency determination made under this section is subject to
31 AS 46.40.096(h).

1 * Sec. 5. AS 46.40.096 is amended by adding a new subsection to read:

2 (h) In a consistency review or determination process authorized by this section
3 or set out in a regulation adopted under authority of AS 46.40.010 - 46.40.210.

4 (1) a state agency or coastal resource district may only stipulate to a
5 matter or subject for which the agency or district has authority under a statute outside
6 of this chapter; and

7 (2) the agency responsible for a consistency review or determination
8 may not accept a stipulation as a part of the consistency determination if the stipulation
9 violates (1) of this subsection.

10 * Sec. 6. AS 46.40.096(d)(4), 46.40.096(e), 46.40.096(f), 46.40.100(b), 46.40.100(c),
11 46.40.100(d), 46.40.100(e), 46.40.100(f), and 46.40.100(g) are repealed.

12 * Sec. 7. MODIFICATION OF APPROVED COASTAL MANAGEMENT PROGRAM
13 PLANS. (a) In a municipality or coastal resource service area for which the Alaska Coastal
14 Policy Council has approved a district coastal management program as to which the
15 boundaries of the coastal area subject to the district coastal management program are not, on
16 the effective date of this Act, consistent with AS 46.40.030(1), as amended by sec. 2 of this
17 Act, or are not consistent with the prohibition of AS 46.40.030(b), added by sec. 3 of this Act,
18 the municipality or coastal resource service area shall submit to the Alaska Coastal Policy
19 Council, within 180 days of the effective date of this Act, program modifications to conform
20 the boundaries of the coastal area subject to the district coastal management program to
21 AS 46.40.030(1), as amended by sec. 2 of this Act or to conform the program to the
22 requirements of AS 46.40.030(b), added by sec. 3 of this Act.

23 (b) If a municipality or coastal resource service area does not comply with (a) of this
24 section, the Alaska Coastal Policy Council may enter an order modifying the boundaries of
25 the coastal area subject to the district coastal management program to conform to
26 AS 46.40.030(1), as amended by sec. 2 of this Act, or deleting the incorporation by reference
27 of statutes and administrative regulations in violation of AS 46.40.030(b), added by sec. 3 of
28 this Act.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE THERRIALT

TO: CSHB 28(RES), Draft Version "B"

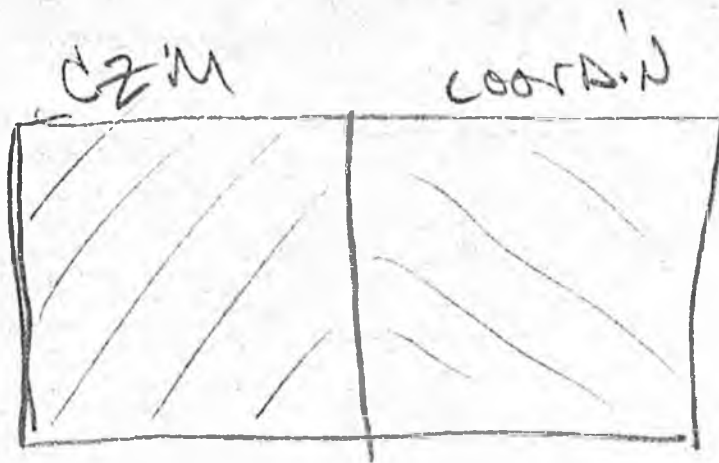
- 1 Page 4, line 19:
- 2 Delete "180 days"
- 3 Insert "one year"

HB

28

File 2

~~Jeanette Thayer~~



Hidden Costs

Cost to Applicant ————— Legal time



Agency \$ for
product — science?

enforcement? —

#(→) 2.7 mill

(call John Pugh)

Coordinating Agency -

1977 - Coastal Policy Council -

Plans - Council -

1984 Amendment - scaled back the power
of the CPC!

BI petition -

Coastal Reserve

DGC -

→

arranging for 38 problems
subset - 7

1 Permit - coordinate

Dolan - litigation -

Corporate Management Policy Council -

Centrene Agency -

Agency criteria -

NDES
NonPoint Pollution

Fed. # How to locate courts

How do you designate final approval
to the regional courts.

98% regional at levels;

? Apply to state land + water?
constituting.

DIANE

AcMP or DGS

DNR-FED \$

concentrate on the additional requirements w/ the Coastal Zone

- Chart with all permits - etc. - required
- white paper →

Dollars.

- Coastal Project Questionnaire -

DAVID CROSBY - 15 yrs working -
"ROGUE STAFFER"

[Does - DGS - HAVE STATUTORY POWER TO OVERCOME A
"ROGUE STAFFER"

delete AcMP - DGC - increase power of Agencies?
- increase costs problem with Federal Agencies??

should we add power - Authority to DGC?? - change its' boss -

Doug Mertz - AcMP assures local voice



Effects of CS/HB 28: An Overview
provided by the
Division of Governmental Coordination

COST TO REDUCE COASTAL ZONE OUTWEIGHS BENEFIT.

Section 2 of House Bill 28 eliminates the "zone of indirect influence" from the coastal zone.

- ❖ **The State is forced to invest in obsolete maps from 1977:** The original maps showing the zone of indirect influence were created with technology and information that is now 20 years old. They were intended to be modified by local plans.
- ❖ **Eleven districts must rewrite their plans, costing local governments time and money:** Eleven coastal districts will have to rewrite their coastal management plans, revising maps to show the reduced coastal zone boundary at a level of detail adequate for use by project applicants.
- ❖ **Plan revisions are rushed to meet a six-month deadline:** Six months is not enough time to achieve plan approval at the local or federal level.
- ❖ **The cost to shrink the coastal zone boundary exceeds any benefits:** The effect of the boundary change on State and local coastal management programs does not justify its cost or the redirection of personnel resources.
- ❖ **The number of consistency reviews may not decrease:** Districts will use the same arguments to originally justify their coastal zone boundary to request case-by-case review of projects proposed for now excluded areas.

- ❖ **To shrink the boundary, Alaska must now argue against the importance of salmon habitat.** Many districts that included the zone of indirect influence in their coastal zones did so to protect important salmon habitat. We must reverse our argument to win approval of this change. The Upper Kenai River is one of many important salmon rivers that will be excluded from the coastal zone.

COASTAL COMMUNITIES LOSE AN EFFECTIVE TOOL

Section 6 of House Bill 28 eliminates petitions to the Coastal Policy Council showing that a district plan is not being implemented, enforced, or complied with.

- ❖ **Petitions are extremely rare. Eliminating a rare process won't save money but will alienate coastal communities and the public:** Less than 0.5% of projects have been petitioned in the past five years. Despite the fact that they rarely use it, coastal communities and the public support the continued existence of this avenue of appeal.
- ❖ **Petitions assure communities that local programs are used.** Petitions provide communities with the opportunity to gain Coastal Policy Council support when their concerns are not being "fairly considered." The public gain access to the CPC when local programs are not being implemented, enforced, or complied with.
- ❖ **CPC oversight of district programs is eliminated:** The Coastal Policy Council is charged with overseeing the development and implementation of the ACMP. Petitions focus the CPC's awareness of defensible, useful coastal plans.
- ❖ **For controversial projects, the State's position in court is weakened by the loss of this chance to build upon the administrative record:** The petition process allows the State to review and, where necessary, strengthen its legal position before a controversial project ends up in court.
- ❖ **Federal approval of the State's program is jeopardized:** The federal OCRM, which approves Alaska's coastal program, requires the State to provide a process for appeals.

ALASKANS LOSE POWER.

Sections 1 and 5 of House Bill 28 prevent coastal districts or State agencies from writing stipulations based on Title 46.

- ❖ **The State's right to influence federal actions such as offshore oil and gas lease sales is threatened:** The federal Coastal Zone Management Act gives States the right to influence federal actions, such as offshore oil and gas lease sales and other federal

land management. The bill creates uncertainty as to whether, and how, Alaska could influence federal actions.

- ❖ **Federal Funding is jeopardized:** OCRM is unlikely to invest \$2.6 million annually in a program that makes no unique contribution to coastal management. Loss of federal dollars means a loss of income for coastal communities. At the very least, Alaska would need to write a new Environmental Impact Statement (a multi-year project) to justify these fundamental program changes to the federal government.
- ❖ **Loss of federal funds means the State loses its current project review process:** Federal funds contribute to the existing project review process provided by the Division of Governmental Coordination. General funds would be needed to support a replacement project management system.
- ❖ **Legal Costs Increased:** A new wave of litigation over whether a particular "coastal" stipulation is within an agency's or district's authority is likely.
- ❖ **Communities without Title 29 authority lose the ability to shape development projects that affect them:** Communities in the unorganized borough (known as Coastal Resource Service Areas, or CRSAs) lose the ability to shape development projects that affect them, since they do not have Title 29 authority.

The Alaska Coastal Management Program benefits a variety of groups

Alaskan Residents

- The opportunity to shape the present and future of our coastal communities.

Coastal Communities

- A voice in federal and state coast-related decision-making.
- Funding for coastal management and projects.
- Public notice of and formal standing in the state's review of proposed development projects.
- The community's need for a project becomes a factor in the state's review.

Coastal Developers

- Only one application package needs to be submitted to the Division of Governmental Coordination (DGC) for projects requiring more than one permit.
- DGC offers pre-application assistance which can in some cases speed up permit approvals.
- DGC coordinates processing of multi-permit applications in a predictable and timely way.
- DGC's review process clearly documents resolution of conflicts which can reduce litigation over the long term.
- Pre-approval for routine activities.

State Agencies

- One point of entry for multi-permit coastal development applications.
- Coordinated review process and categorical approval for routine projects.
- Better prepared proposals due to pre-application assistance provided by the Division of Governmental Coordination (DGC) to coastal developers.
- Strengthened role in federal decision-making in the coastal zone.
- Joint public notices coordinated by DGC.

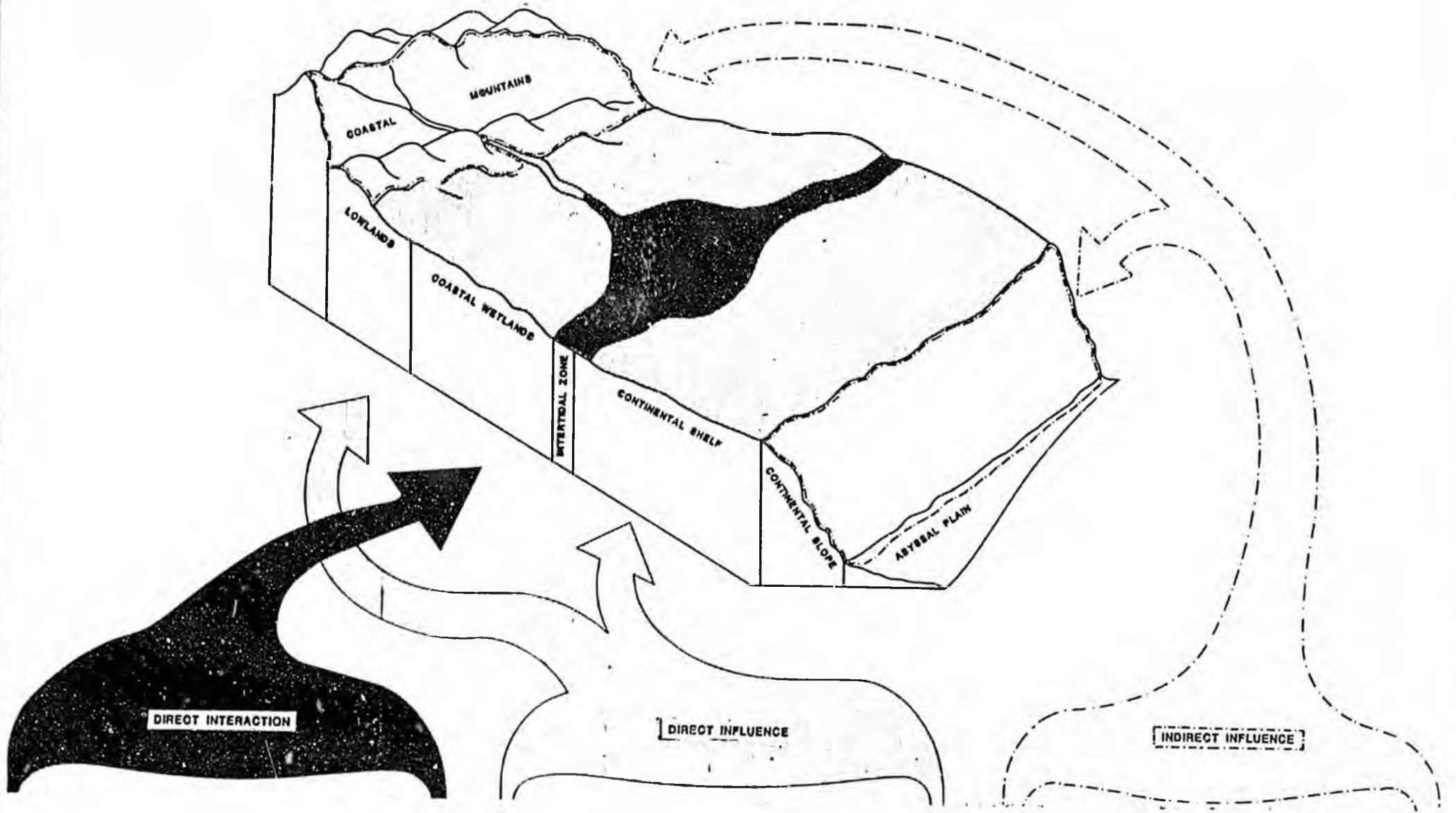
State of Alaska

- The right to require that federal actions proposed in the coastal zone must be consistent with approved state and local coastal management plans.
- Receipt of federal funding that supports coastal zone management and coordinated, streamlined review of coastal projects.

Federal Government

- A state coastal management program consistent with the federal Coastal Zone Management Act.

HB 225



DEFINING ALASKA'S COASTAL ZONE

With 30 of 32 coastal district management plans having received state and federal approval (and the remaining two districts expected to adopt the initial boundary), Alaska's final coastal zone boundary is almost complete.

This paper describes the biophysical, initial, and final inland boundaries, and how they were developed. Extensions of the coastal zone boundary for long distances inland by some districts were controversial. The state's approach to resolving boundary disputes is also described.

Biophysical Boundaries of Alaska's Coastal Zone

Alaska was charged with delineating the coastal zone for over 33,000 miles or over one third of the nation's coastline. The CZMA and implementing regulations allow states to base their coastal boundaries on biophysical considerations (OCZM 1975). The ACMP Final Environmental Impact Statement (OCZM and Office of Coastal Management 1979) summarizes how the federal boundary criteria were applied in Alaska:

"The federal boundary requirements call for definable geographic boundaries, but the main criterion for determining the boundary is non-geographic, that is, one must forecast likely uses, survey the nature of the coastal zone, and determine a boundary on the basis of a mix of the findings from these efforts. To have done this in detail for the entire 33,000 miles of Alaskan coastal waterfront would have been a massive and very expensive, undertaking.

The method which was used for determining the ACMP boundaries was to survey the general relationships between the marine environment and the terrestrial environment. These include geophysical relationships such as water flow, salt water intrusion, tidal actions, erosion, wave fetch, salt spray, flooding, storm and tsunami surges and run-up, ice movements, glacial activity and the like. The relationships also include biological links between the marine and terrestrial environments. These include habits and habitats of anadromous fish,⁴ polar bears, sea birds, marine mammals such as walrus and seals, and other animals and plants that have a unique relationship to the land/water area.

With all these relationships established, the method simply declares that an impact on these relationships could result in an 'impact on the coastal waters,' but [the] ACMP went further, and declared that an impact on

⁴ Anadromous fish, by definition, spend part of their life cycle in fresh and estuarine or marine waters. Examples of anadromous fish in Alaska include five species of Pacific salmon, steelhead trout, char, smelt, and some whitefish.

animals using the coastal waters, including anadromous fish, is part of the definition of impact on coastal waters."

In 1975, the ADF&G initiated a study to identify the biophysical boundaries of Alaska's coastal zone. Over a two and a half year period the department conducted an extensive information search of the biological and physical relationships of the marine and terrestrial environments (ADF&G 1979). Based on this evaluation, three zones of interaction were defined and mapped (ADF&G 1978). Those zones are generally described below.

Zone of Direct Interaction - The portion of the coastal area where physical and biological processes are a function of direct contact between land and sea. This zone extends landward to the limit of: waves, tides, storm surges, tsunami energy dissipation, coastal erosion, active calving of glaciers, critical shoreline habitats (seabird rookeries, marine mammal hauling out and pupping areas), and man-made structures along the shore that are directly impacted by the dynamics of oceanic processes.

Zone of Direct Influence - The portion of the coastal zone landward of the zone of direct interaction which is closely affected and influenced by the proximity between land and sea. The zone includes, for example: areas where coastal plant communities are directly affected by the saltness, high precipitation, or moderate temperatures of the ocean (e.g., wet tundra, marshes, Sitka spruce-hemlock forest), areas used by shorebirds nesting and feeding in coastal wetlands, reaches of streams and rivers used by beluga whales or harbor seals for feeding, and rivers and streams used for migration and spawning by anadromous fish.

Zone of Indirect Influence - This zone extends landward to the limit of influence of land/sea biological and physical processes. In some situations this zone includes entire coastal watersheds which support stream habitats for spawning, overwintering, and rearing anadromous fish, and watersheds which control the physical and chemical nature of estuaries.

These zones were presented to the ACPC for their consideration during establishment of Alaska's initial coastal zone boundary for the state.

Initial Coastal Zone Boundary and District Boundary Review Guidelines

Duties of the ACPC under Section 46.40.040 include the identification of an initial or interim coastal zone boundary for the state. Section 304(1) of the federal act requires, in part, that the coastal zone "extend inland from the shorelines only to the extent necessary to control shorelands, the use of which have a direct and significant impact on the coastal waters." Based on this requirement, the council adopted the biophysical zones of direct interaction and


MEMORANDUM

STATE OF ALASKA
Office of the Governor
Division of Governmental Coordination

TO: Representative Bill Hudson
Co-Chair, House Resources Committee

DATE: May 9, 1997

THRU: Pat Pourchot
Legislative Director
Office of the Governor

FROM: Diane Mayer 
Director
Governmental Coordination

TELEPHONE: 907-465-8800

FAX: 907-465-3075

E-MAIL: diane_mayer@gov.state.ak.us

SUBJECT: Support of the Alaska Coastal Management Program

Cities and boroughs throughout Alaska have submitted formal letters and resolutions in response to HB28 which called for repeal of the Alaska Coastal Management Program. Their collective response is a powerful statement of support for this important program.

I am forwarding these community statements to be sure that you have the complete set of responses.

Attachments

**NORTH SLOPE BOROUGH PLANNING COMMISSION
RESOLUTION 97-02
A RESOLUTION OF THE NORTH SLOPE PLANNING COMMISSION
OPPOSING ALASKA STATE HOUSE BILL 28, AN ACT TO REPEAL THE
ALASKA COASTAL MANAGEMENT PROGRAM**

WHEREAS, the Alaska Coastal Management Program (ACMP) provides the North Slope Borough with an opportunity to have an equal footing with State and Federal agencies in development issues on the North Slope of Alaska; and

WHEREAS, the ACMP, through the North Slope Borough's Coastal Management Program, has been a practical tool to protect the subsistence resources available to North Slope Borough residents; and

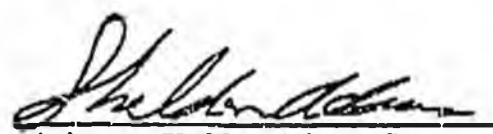
WHEREAS, the ACMP is the only tool available to the North Slope Borough to effectively petition the Federal government for deferral and deletion of areas proposed for offshore oil and gas leasing that would interfere with Bowhead Whale migration East of Barrow and Kaktovik; and

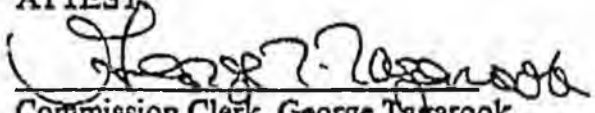
WHEREAS, the loss of the ACMP by the adoption of Alaska State House Bill 28 would significantly impact the North Slope Borough's ability to protect subsistence resources within its coastal areas.

NOW THEREFORE BE IT RESOLVED THAT: The North Slope Borough Planning Commission, by this resolution, hereby opposes the passage of Alaska State House Bill 28.

Pass and approved by a duly constituted quorum of the North Slope Borough Planning Commission this 27th day of March, 1997.

INTRODUCED: March 27, 1997
ADOPTED: March 27, 1997


Chairman, Sheldon Adams, Sr.
3/27/97
Date

ATTEST:

Commission Clerk, George Tagarook
3/27/97
Date



**NORTH SLOPE BOROUGH
RESOLUTION NO. 21-97**

**A RESOLUTION OF THE NORTH SLOPE BOROUGH ASSEMBLY
OPPOSING ALASKA STATE HOUSE BILL 28, AN ACT TO
REPEAL THE ALASKA COASTAL MANAGEMENT PROGRAM**

WHEREAS, the Alaska Coastal Management Program (ACMP) provides the North Slope Borough with an opportunity to have an equal footing with State and Federal agencies in development issues on the North Slope of Alaska; and

WHEREAS, the ACMP, through the North Slope Borough's Coastal Management Program, has been a practical tool to protect the subsistence resources available to North Slope Borough residents; and

WHEREAS, the ACMP is the only tool available to the North Slope Borough to effectively petition the Federal government for deferral and deletion of areas proposed for offshore oil and gas leasing that would interfere with Bowhead Whale migration East of Barrow and Kaktovik; and

WHEREAS, the loss of the ACMP by the adoption of the Alaska State House Bill 28 would significantly impact the North Slope Borough's ability to protect subsistence resources within its coastal areas.

NOW THEREFORE BE IT RESOLVED THAT: The North Slope Borough Assembly, by this resolution, hereby opposes the passage of Alaska State House Bill 28.

Pass and approved by a duly constituted quorum of the North Slope Borough Assembly this 1st day of April, 1997.

INTRODUCED: April 1, 1997

ADOPTED: April 1, 1997

Molly Pederson
Molly Pederson, President

ATTEST:
Alice K. Ekowana
Alice K. Ekowana, Borough Clerk

4-7-97
Date

Date
Benjamin P. Nageak
Benjamin P. Nageak, Mayor
4/4/97
Date

Submitted by: Assemblymembers WCHLFORTH, Abney,
Begich, Carson, Clementson, Meyer, Murdy, Von
Gemmingen
Prepared by: Assembly Office
For reading: April 8, 1997

ANCHORAGE, ALASKA
AR NO. 97- 75

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY OPPOSING HOUSE
BILL 28 WHICH WOULD REPEAL THE ALASKA COASTAL MANAGEMENT
PROGRAM

WHEREAS, the Anchorage Assembly has reviewed the contents of House Bill 28 sponsored by State Representative Therriault, which would repeal the Alaska Coastal Management program (ACMP); and

WHEREAS, the ACMP has been in existence since 1979 and has been widely viewed as a valuable service and effective voice for coastal communities; and

WHEREAS, the ACMP provides an opportunity and voice for coastal communities to participate in decisions affecting their areas; helps to facilitate and streamline the review and approval of proposed development projects in coastal areas; requires cooperation among those involved in the development of coastal resources; brings regulators and applicants together to resolve project issues; and encourages early consultation among communities, industry, Native and private interests, agencies and the public; and

WHEREAS, the ACMP operates according to strict agency action regulations assuring timely responses to developers while at the same time providing resolution of issues among State agencies and local governments in a rapid manner.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That the Assembly opposes House Bill 28.

Section 2: That, at a minimum, the bill should be referred additionally to the House Community and Regional Affairs Committee for consideration.

PASSED AND APPROVED by the Anchorage Municipal Assembly this ____ day
of _____, 1997.

ATTEST:

Municipal Clerk

Post-it® Fax Note	7671	Date	# of pages ①
To	S. Brook	From	Made T
Co/Dept	This is what	Co.	Mof
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RESOLUTION 97-22

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA OPPOSING HOUSE BILL 28, WHICH WOULD REPEAL THE ALASKA COASTAL MANAGEMENT PROGRAM AND DISESTABLISH THE ALASKA COASTAL POLICY COUNCIL.

WHEREAS, the Council has reviewed the contents of House Bill 28 sponsored by Representative Therriault, which will would repeal the Alaska Coastal Manager Program (ACMP); and

WHEREAS, the ACMP provides an opportunity and voice for coastal communities to participate in decisions affecting their areas; and

WHEREAS, the ACMP provides local governments and citizens with a more equitable share of government authority when dealing with state and federal agencies; and

WHEREAS, the ACMP helps facilitate and streamline the review and approval of proposed development projects in coastal areas; and

WHEREAS, the ACMP has been in existence since 1979 and has been widely viewed as a valuable service and effective voice for coastal communities; and

WHEREAS, the Kenai Peninsula Borough receives annual funding to support local coastal planning efforts through federal pass-through funds and state grants and during the FY 93-97, the Kenai Peninsula Borough Coastal District has received approximately \$521,500 for plan implementation and special projects; and

WHEREAS, these projects include the Kenai River 309 Study and the A.M.S.A. Plan for Pt. Graham/Nanwalek and 323 projects coordinated by State of Alaska, Division of Governmental coordination within the Kenai Peninsula Borough Coastal District, most of which assist the private sector in resolving project conflict (see attachment); and

WHEREAS, as the area continues to grow and the economy continues to diversify, coastal zone management will become more important in directing that growth and diversification.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska opposes House Bill 28, which would repeal the Alaska Coastal Management Program and disestablish the Alaska Coastal Policy Council; and

OFFICE OF GOVERNMENTAL
DIVISION OF
GOVERNMENTAL COUNCIL

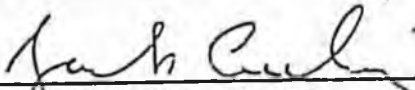
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Page 2
Resolution 97-15
City of Homer
ACMP

BE IT FURTHER RESOLVED that copies of this Resolution be sent to the Governor Knowles, Speaker of the House Phillips, Senator Torgerson, Representative Therriault, and the Coastal Policy Council.

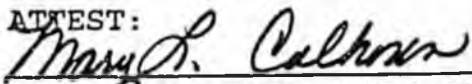
PASSED AND ADOPTED by the City Council of Homer, Alaska this 10th day of March, 1997.

CITY OF HOMER



JACK CUSHING, MAYOR

ATTEST:



MARY J. CALHOUN, CITY CLERK

Fiscal impact relates to pass through funds.

Sponsor: Administrator

CITY AND BOROUGH OF SITKA

RESOLUTION NO. 97-870

A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF SITKA, ALASKA SUPPORTING THE ALASKA COASTAL MANAGEMENT PROGRAM AND OPPOSING HB 28 TO REPEAL THE PROGRAM

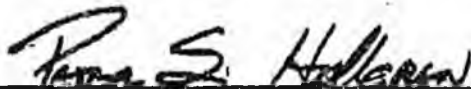
- WHEREAS,** the Sitka District Coastal Management Program has been an extremely effective opportunity for both citizens and the Municipality of the City and Borough of Sitka to have a strong local voice in decision-making affecting our coastal zone since its adoption in 1981; and
- WHEREAS,** developing the Sitka Coastal Program was a major citizen-based effort that encompassed long-range planning for the entire community and a site-specific determination of the major recreation and subsistence use areas in the entire Sitka Coastal District; and
- WHEREAS,** having gained state and federal approval of the Plan means state and federal agencies must recognize and be consistent with the local coastal Management policies, which has been of immense benefit to Sitka; and
- WHEREAS,** the Sitka Coastal Program has provided often the only opportunity for direct citizen involvement in setting policies which will permit appropriate development while at the same time protecting the resources our citizens most value; and
- WHEREAS,** the primarily federal dollars which fund the Alaska Coastal Management Program have provided hundreds of thousands of dollars over time to Sitka to fund staff and projects to permit Sitka to actively participate in the Coastal Management Program, to provide daily assistance to the public and agencies, and to comment on and facilitate permit reviews; and
- WHEREAS,** Sitka does not have automatic zoning and regulatory presence throughout its entire 4,710 square miles, and the Coastal Program provides the only involvement available to the Municipality for much development outside the zoned Sitka road system; and
- WHEREAS,** the Alaska Division of Governmental Coordination has been of great

assistance to the City and Borough of Sitka recently to resolve agency conflicts with the permitting of two of its own large development projects, the Sitka Lightering Facility and the Sitka Water Export Project, and generally has provided a valuable project planning and coordination tool through the ACMP process,

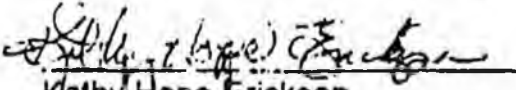
NOW, THEREFORE, BE IT RESOLVED by the Assembly of the City and Borough of Sitka, Alaska opposes HB 28 to repeal the Alaska Coastal Management Program.

BE IT FURTHER RESOLVED that the Assembly of the City and Borough of Sitka, Alaska supports the Alaska Coastal Management Program and wishes to continue to be an active participant in the program.

PASSED AND APPROVED by the Assembly of the City and Borough of Sitka, Alaska on this 11th day of March, 1997.


Peter S. Hallgren, Mayor

ATTEST:


Kathy Hope Erickson
Municipal Clerk

**NORTHWEST ARCTIC BOROUGH
RESOLUTION 97-07**

A RESOLUTION OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY OPPOSING HOUSE BILL 28, WHICH WOULD REPEAL THE ALASKA COASTAL MANAGEMENT PROGRAM AND DISESTABLISH THE ALASKA COASTAL POLICY COUNCIL

WHEREAS: the Assembly has reviewed the contents of House Bill 28 sponsored by Representative Therriault, which bill would repeal the Alaska Coastal Management Program(ACMP); and

WHEREAS: the ACMP provides an opportunity and voice for coastal communities to participate in decisions affecting their areas; and

WHEREAS: the ACMP provides local governments and citizens with a more equitable share of government authority when state and federal agencies; and

WHEREAS: the ACMP helps to facilitate and streamline the review and approval of proposed development projects in coastal areas; and

WHEREAS: ACMP has been in existence since 1979 and has been widely viewed as a valuable service and effective voice for coastal communities; and

WHEREAS: the borough receives annual federal ACMP pass-through funds to support local coastal planning efforts and has also received \$20,000 year to facilitate permitting for projects in the Northwest Arctic Borough.

NOW THEREFORE BE IT RESOLVED, by the Northwest Arctic Borough:

Section 1. The Northwest Arctic Borough opposes House Bill No. 28 and any other effort to diminish the effectiveness of the ACMP .

Section 2. The Borough respectfully urges the sponsor of House Bill No. 28 to withdraw the bill.

Section 3. If the bill is not withdrawn, the Borough respectfully urges that it be referred to a subcommittee of the House Resources Committee for further analysis and recommendation.

RESOLUTION 97-07
PAGE 2

Section 4. The Clerk shall distribute copies of this resolution to the Northwest Arctic Legislative Delegation.

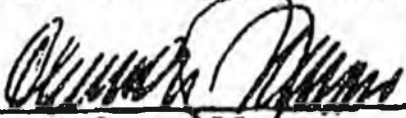
Section 5. Effective Date. This resolution shall be effective immediately upon adoption.

Passed and adopted this 25th day of February 1997.



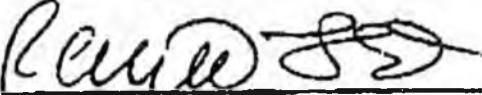
Andy Baker, President

Passed and approved this 25th day of February 1997.



Chuck Greene, Mayor

Signed and attested this 25th day of February 1997.



Paulette Lambert, CMC
Borough Clerk

ATTESTED:

Presented by: Mayor & Assembly
Introduced: 02/10/97
Drafted by: G.L./J.R.C.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1852

A Resolution Opposing House Bill 28, Which Would Repeal the Alaska Coastal Management Program and Disestablish the Alaska Coastal Policy Council.

WHEREAS, the Assembly has reviewed the contents of House Bill 28 sponsored by Representative Therriault, which bill would repeal the Alaska Coastal Management Program (ACMP), and

WHEREAS, the ACMP provides an opportunity and voice for coastal communities to participate in decisions affecting their areas, and

WHEREAS, the ACMP provides local governments and citizens with a more equitable share of government authority when dealing with state and federal agencies, and

WHEREAS, the ACMP helps to facilitate and streamline the review and approval of proposed development projects in coastal areas, and

WHEREAS, the ACMP has been in existence since 1979 and has been widely viewed as a valuable service and effective voice for coastal communities, and

WHEREAS, the city and borough receives annual federal ACMP pass-through funds to support local coastal planning efforts and has also received over \$70,000 in recent years to facilitate permitting for large mining projects and to enable off-site wetlands mitigation as an implementation component of the Juneau Wetlands Management Plan;

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

Section 1. The City and Borough of Juneau opposes House Bill No. 28 and any other effort to diminish the effectiveness of the ACMP.

Section 2. The Assembly respectfully urges the sponsor of House Bill No. 28 to withdraw the bill.

Section 3. If the bill is not withdrawn, the Assembly respectfully urges that it be referred to a subcommittee of the House Resources Committee for further analysis and recommendation.

Section 4. The Clerk shall distribute copies of this resolution to the Juneau Legislative Delegation.

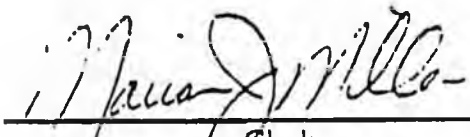
Section 5. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 10th day of February, 1997.



Mayor

Attest:



Clerk

Post-It [®] Fax Note	7671	Date	2/18/97	# of pages	2
To	Gabrielle HaKerke	From	Free Co		
Co /Dept		Co	CBT		
Phone #		Phone #	586-5278		
Fax #	445-3075	Fax #			

445-3075



CITY OF PETERSBURG

P.O. BOX 329 • PETERSBURG, ALASKA 99833

TELEPHONE (907) 772-4511

TELECOPIER (907) 772-3759

February 6, 1997

Lorraine Marshall, Project Review Coordinator
 Division of Governmental Coordination
 P.O. Box 110030
 Juneau, AK 99811-0030

OFFICE OF GOVERNMENTAL COORDINATION
 DIVISION OF GOVERNMENTAL COORDINATION
 97 FEB - 6 PM 3:39

Dear Ms. Marshall:

I am writing at your request to express my strong support for legislative continuance of the DGC review process to determine consistency with the Alaska Coastal Management Program.

Our experience with the Cabin Creek Water Project, which underwent two reviews and will soon require another, has convinced me that both municipal and state administrations gain tremendous efficiencies through the coordinated review process. In terms of time and money, notwithstanding the frustration which would surely result, I can only imagine how cumbersome it would be to deal with each required departmental review separate and apart from one another.

As happened with our project, it is entirely probable that a stipulation from one department may directly contradict that of another. If we had not been dealing with a coordinated process, a situation of that sort would have created further time delays and other expenses which might have actually prevented the project from moving forward. Fortunately, the DGC was there to offer timely and effective intervention. The Division's ability to get all the parties together quickly and to facilitate tension filled discussion towards a positive solution is an absolutely necessary to insure effective coastal management reviews.

If I can be of further assistance, please do not hesitate to let me know.

Sincerely,

Linda Snow
 City Manager



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

Diane Mayer
Director
Division of Governmental Coordination
P.O. Box 110030
Juneau, AK 99811-0165

FEB 17 1998

Dear Ms. Mayer:

I understand that there are going to be hearings this week regarding House Bill 28, which modifies the Alaska Coastal Management Program (ACMP). The Office of Ocean and Coastal Resource Management (OCRM) is the lead federal agency for implementing the state/federal partnership established under the Coastal Zone Management Act (CZMA). Under the CZMA, OCRM reviews and approves changes to state coastal management programs in accordance with the criteria of the CZMA and its implementing regulations. Thus, OCRM has a direct interest in proposed changes to the ACMP.

We are constantly working with states to improve and refine their coastal management programs, and Alaska has a solid record of assessing and revising the ACMP. There are, however, a few issues of concern raised by the proposed legislation. Of most immediate concern is the proposal to modify the coastal zone boundary. The existing boundary was set as part of district program development, and represents extensive issue and resource analyses, public involvement, and negotiation between this office and the State and coastal districts. In many cases, the boundary was the most difficult issue to resolve during district program development. Nonetheless, working together, we were successful in establishing a boundary that met State and local needs as well as CZMA requirements. Any changes to the agreed upon district boundaries should be accomplished through a similar process of analysis, public involvement, and negotiation. In any case, at a minimum, a state's coastal zone boundary must encompass all areas necessary to control uses which have direct and significant impacts on coastal waters.

We also have concerns regarding the proposed elimination of the petition process. Petitions provide an administrative appeal opportunity for citizens of coastal districts. This administrative process provides a non-judicial and relatively efficient mechanism for resolving local concerns. The State and coastal districts have recognized the need to improve the petitions aspect of the ACMP, and OCRM would support appropriate changes. In fact, simplifying governmental procedures is one of the objectives of the CZMA. We believe that the focus should remain on simplifying and improving the process, not eliminating it.



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All changes to federally-approved coastal management programs must be submitted to OCRM for review and approval. This provides an opportunity to insure that a state's program continues to meet the requirements established under the CZMA. The process for reviewing program changes is described at 15 CFR 923 Subpart H. Substantial changes to boundaries and authorities are specifically identified as two of the more significant types of program changes that would be subject to the amendment process described at 15 CFR 923.81 - 83. As part of the process, we must make a determination as to whether the state program, as amended, would still constitute an approvable program as defined under section 306(d) of the CZMA.

Please contact me at 301/713-3121 if you have any questions regarding these comments. We look forward to continuing to work with you to improve the ACMP.

Sincerely,



William C. Millhouser
Pacific Regional Manager
Coastal Programs Division

OPTIONAL FORM 98 (7-80)

FAX TRANSMITTAL	
# of pages 2	
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Phone #	301 713 3121 x188
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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION

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February 18, 1998

The Honorable Gene Therriault
State Capitol
Juneau, AK 99801

Re: Proposed CS for House Bill 28, Work Draft "E"

Dear Representative Therriault:

In response to your request, and on behalf of the Division of Governmental Coordination and the State resource agencies, we submit this response to the committee substitute for House Bill 28, Work Draft "E."

Several modifications proposed in Work Draft "E" would harm Alaska's thirty-five coastal districts, from the North Slope Borough to the Ketchikan Gateway Borough. We strongly support local involvement in State and federal land management decisions through the Alaska Coastal Management Program (ACMP), and oppose changes to the ACMP that would reduce this involvement.

The ACMP is governed by the Coastal Policy Council (CPC), which consists of nine elected officials from coastal communities and seven members of the Governor's Cabinet. The CPC recently completed an assessment of the ACMP, providing the Division of Governmental Coordination (DGC) with many recommendations for improvement. The DGC is implementing these recommendations. However, Work Draft "E" differs substantially from assessment directives, reducing local influence in State and federal land management decisions in Alaska's coastal zone. The Administration cannot support changes that are not acceptable to Alaska's coastal communities.

The specific effects of the provisions in Work Draft "E" are anticipated to be as follows.

Reducing the Coastal Zone Boundary to Exclude the Zone of Indirect Influence

The Alaska Coastal Management Program gives local governments the power to affect State and federal land management decisions in the coastal zone. This power is important to coastal districts and their citizens, because so much of Alaska is under State and federal control. We oppose the provision of Work Draft "E" that would force districts to reduce their coastal zones. This provision would cut coastal districts out of the process of managing important areas that support the livelihoods of local citizens. The State must support the efforts of local governments in selecting their own coastal zone boundaries.

In developing their district plans, eleven districts included the zone of indirect influence within their coastal zone boundaries. They won this right against considerable federal resistance over several years. Each district that exercised this right did so for a different reason (specific information for each district is given in Attachment 1). The most common reason was concern over salmon, a resource vital to subsistence, sport, and commercial fisheries statewide.

Protecting habitat that supports Alaska's fisheries has always been a central goal of coastal management. Salmon are a coastal resource -- this fact is obvious when mature salmon are gathered up from the sea. It is less obvious when salmon deposit eggs in their home rivers, well inland from the sea. But Alaska's fishermen know that what happens to salmon eggs in an anadromous stream directly affects commercial fisheries. Important anadromous streams in the zone of indirect influence, such as the Upper Kenai River, were chosen for inclusion in the coastal zone because district resource inventories proved that these habitats either directly support fish and wildlife or perform important functions which enable fish and wildlife to thrive in the Kenai River system. Districts that rely on fishing should be able to influence the management of anadromous rivers, even if the headwaters are on federally managed land.

Section 7 of CS/HB28E would force districts that included the zone of indirect influence within their coastal zone boundaries to pursue expensive amendments to their coastal management plans within six months. Maps would need to be researched and redrawn to the level of detail necessary to accurately delineate each new boundary. Boundary descriptions would have to be substantially revised. A plan revision involving the coastal zone boundary typically requires significant staff time from districts, the DGC, State agencies, the CPC, and the federal government. And the result of this change -- weakened

local governments with reduced power to affect federal land management decisions that directly affect the State's fisheries – surely would not justify the cost of this effort.

Prohibiting Coastal Districts from Incorporating by Reference Statutes and Regulations Adopted by State Agencies

We support the change proposed in Section 3 of CS/HB28E, prohibiting coastal districts from adopting State statutes and regulations by reference. The CPC has made the same recommendation, directing districts not to incorporate State agency regulations by reference in district enforceable policies. This guidance was given to districts in a recent publication, "Drafting Principles for Enforceable Policies." The publication lists eleven "drafting principles" that teach districts how to write useful policies. Drafting Principle 9 instructs districts to "supplement existing State and federal laws, not repeat them."

In 1997, "Drafting Principles for Enforceable Policies" was given to every coastal district. Subsequent district plan revisions now incorporate the drafting principles. The CPC has also told districts that "due deference" will not be presumed where existing district programs incorporate State law. Section 3 of CS/HB28E is welcome because it would provide a strong statutory foundation for the CPC's policy directives.

Preventing a District or State Agency from Stipulating to a Matter for Which the Agency or District Does Not Otherwise Exercise Authority

We believe that, as currently drafted, Section 5 of Work Draft "E" would have no effect other than to cause confusion. During consistency review, districts and State agencies may stipulate to matters related to coastal uses, activities, and habitats. The authority to make such stipulations is granted to districts and State agencies by ACMP regulations at 6 AAC 80. This authority is based in part on AS 46.40.040, which says that the Coastal Policy Council must write regulations "for the use of and application by coastal resource districts and State agencies in carrying out their responsibilities under this chapter." Additional authorities are granted at AS 46.40.100 and AS 46.40.200. The authorities granted by the Legislature to districts and State agencies through the ACMP would not be changed by Section 5, which says "a state agency or coastal resource district may not stipulate to a matter or subject for which the agency or district may not by law exercise authority...". Districts and State agencies do exercise authority and responsibility related to coastal uses, activities and habitats by law – that law is the ACMP.

To construe Section 5 as limiting local governments and State agencies to their own enabling authorities – for example, confining districts to the scope of their Title 29 powers – is to read beyond the current version of CS/HB28. However, if Section 5 is intended to achieve this end, then rather than modifying the ACMP, such a change would effectively dismantle the program. In essence, it would mean that the ACMP does not, of itself, authorize districts or State agencies to write stipulations. A program that grants no authority has no purpose. It is highly unlikely that the federal government would look favorably on program amendments or continue granting \$2.6 million per year to the Alaska Coastal Management Program, if stipulations governing coastal uses, activities, and habitats could no longer be written. We oppose the current version of Section 5, since it has no purpose or effect. We strongly oppose any further amendments that would undermine the authority of the ACMP.

Eliminating the Petition Process

In 1994, the Legislature revised AS 46.40.100(b) to improve the petition process. The revision instituted a standard of “fair consideration” of comments during a consistency review. As part of the subsequent program assessment, the CPC also recommended other ways to improve the petition process. This includes combining procedures to eliminate redundant avenues of appeal, and empowering a subcommittee of the CPC to hear and decide petitions. The petition process offers a limited but useful avenue for involvement by local citizens and coastal districts, and should remain available to those who believe that a district program “is not being implemented, enforced or complied with” (AS 46.40.100(b)). The petition process can be improved, but should not be eliminated.

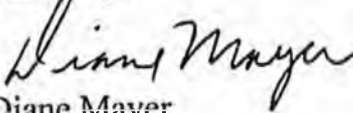
Section 6 of CS/HB28E would eliminate the process of petitioning a district program or proposed consistency determination. The following characteristics of the petition process should be noted. First, petitions are rare. To put this in perspective: the State made approximately 700 consistency determinations in Fiscal Year 1997. Only twelve determinations have been petitioned since inception of the ACMP in 1979. Since the Legislature revised the petition standard in 1994, just six consistency determinations have been petitioned. Second, the CPC approves district coastal management plans as one of its duties. Having to respond to petitions focuses the CPC’s attention on approving defensible, useful plans. Finally, the petition process allows CPC members to review the record on a given consistency review, and to direct a coordinating agency to strengthen it (where necessary). This improves the State’s position if a decision is taken to court.

Representative Gene Therriault
February 18, 1998
Page 5

Summary

The Division of Governmental Coordination and the State resource agencies appreciate the opportunity to work with your office on issues of importance to the Alaska Coastal Management Program. If you have any questions about this response, please do not hesitate to call.

Sincerely,



Diane Mayer
Director

Enclosure

cc: Coastal Districts
Coastal Legislators
Commissioner John Shively, DNR
Commissioner Frank Rue, DFG
Commissioner Michele Brown, DEC
Mike Abbott, Office of the Governor
Pat Pourchot, Office of the Governor

ATTACHMENT 1

ANALYSIS OF THE POTENTIAL EFFECTS OF THE PROPOSED COMMITTEE SUBSTITUTE FOR HB 28, WORK DRAFT "E" ON DISTRICT COASTAL ZONE BOUNDARIES

If Alaska's coastal zone is amended to change coastal zone boundaries, such that no district could encompass the zone of indirect influence, what would the effects be?¹

Coastal districts presently may extend their coastal zone boundaries landward "to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water" (6 AAC 85.040). This includes the zones of direct interaction (e.g., beaches), direct influence (e.g., coastal wetlands), and indirect influence (e.g., salmon streams to their headwaters). A proposed change to AS 46.40.030 would limit the coastal zone boundary to include only the zones of direct interaction and direct influence.

When the Alaska Coastal Management Program first began, the coastal zone was set at the outer boundary of the zone of direct influence, excluding the zone of indirect influence. As each district wrote its own coastal management plan, it chose whether to accept the original coastal zone boundaries or to extend them to include the zone of indirect influence. In order to include the zone of indirect influence, each district had to show that activities within this zone could have a direct and significant impact on coastal waters. It showed this fact by gathering information about the zone of indirect influence in its resource inventory and analysis. The State of Alaska and the federal government decided, based on evidence presented in the resource inventory and analysis, whether the zone of indirect influence was properly included within the district's coastal zone. Those districts that prevailed did so because they had provided enough information to show that the final boundary encompassed uses and activities that could have a direct and significant impact on coastal waters.

Relevant federal regulations at 15 CFR 923.82 provide that a State's program is not approvable if it excludes areas "the management of which is necessary to control uses with direct and significant impacts on coastal waters." Federal law provides that an unapprovable program is "subject to withdrawal of program approval and withdrawal of administrative funding." (15 CFR 923.82(b)(3)). The State of Alaska will have a difficult time explaining why areas that were so important to districts that the districts and the

¹ Sources for information about coastal zone boundaries include: AS 46.40.030, 6 AAC 85.040, FEIS for the ACMP page 109 and following, "Biophysical Boundaries of Alaska's Coastal Zone," "Coastal Zone Boundaries of Alaska," and the 1995 public hearing draft of Alaska's Coastal Clean Water Plan. This document is based heavily on "Biophysical Boundaries of Alaska's Coastal Zone," 1991, as amended by current information.

State were willing to spend several years fighting for their inclusion in the ACMP, are no longer important to include in the coastal zone.

If the change goes forward, what are the likely effects to coastal districts? Of the thirty-five coastal districts in the Alaska Coastal Management Program, eleven districts include the zone of indirect influence in their coastal zone boundaries. Their reasons are as varied as the coastal districts themselves. Some districts include the zone of indirect influence to encompass a resource important to local residents, such as salmon that support subsistence, commercial, or recreational fisheries. Other districts include this zone to extend local influence over a use or activity that might affect coastal resources: a mining operation such as the Red Dog Mine would be a good example of this.

In every case, the district chose to include the zone of indirect influence as a result of local decisions and determinations regarding the delicate balance between responsible development of resources and maintenance of local coastal uses and activities.

Expanding the coastal zone boundary extended local influence over State and federal activities; for this reason, it is central to district interests. Reducing the coastal zone of eleven of Alaska's coastal districts will reduce local involvement in State and federal land management decisions in local areas.

The following table describes in brief the decisions made by those districts that included the zone of indirect influence in their coastal zone boundaries. This information is presented in more detail following the table.

District and Date of Plan Adoption	Description of Zone of Indirect Influence	Rationale for Including Zone of Indirect Influence
Aleutians East Borough (1992)	The zone of indirect influence extends inland from the 200-foot elevation contour along the northern Alaska Peninsula coast and inland from the 1,000-foot elevation contour along the southern Alaska Peninsula shoreline.	Desire to effectively manage uses and activities that have or are likely to have direct impacts on marine coastal waters and the populations of anadromous fish dependent on those waters.
Bering Straits (1989)	The zone of indirect influence encompasses watersheds in highly mineralized areas above the 200-foot contour, uniform setbacks from marine coastal shoreline in bluff areas, and uniform setbacks along anadromous fish streams.	Desire to manage uses and activities that could affect anadromous fish habitat.

Bristol Bay Borough (1987)	The zone of indirect influence encompasses important upland habitat forming the upper drainage of King Salmon Creek and Paul's Creek; the ridge between Naknek Lake and the Naknek River, which drains into prime salmon spawning areas; and uplands that drain into Kvichak Bay, an important anadromous fish migration route.	Desire to include areas that directly influence salmon and salmon habitat, and to conform to the Borough's political jurisdiction boundary.
Bristol Bay CRSA (1987)	The zone of indirect influence encompasses the upper reaches of all water bodies designated in the <i>Catalog of Waters Important for Spawning, Rearing, and Migration of Anadromous Fish</i> , plus a one-mile corridor from the ordinary high water (OHW) mark on each bank. It also includes all tributaries of these water bodies, plus a 200-foot corridor from OHW.	Desire to protect salmon, vital to the commercial and subsistence economy of the region.
Kenai Peninsula Borough (1990)	The zone of indirect influence is between the 400-foot and the 1000-foot elevation contours. It also includes all islands in the district. It captures habitat along the upper Kenai River, Kenai Lake, portions of the watersheds of Fox River Flats State Critical Habitat Area and Tustamena Lake, and areas around Beluga Lake. Places where timberline extends above the 1000-foot contour in the area of Kenai Fjords are not included.	Desire to manage uses and activities that could affect anadromous fish habitat.
Ketchikan Gateway Borough (1984)	The zone of indirect influence consists of alpine plant communities and watershed areas above the coastal forest treeline.	The increased boundary is based on watersheds and political jurisdiction. The zone of indirect influence contains critical watershed areas for the borough's supply of drinking water.
Kodiak Island Borough (1990)	The zone of indirect influence includes lands and waters above the 1000-foot contour.	The district is an island with steep topography, and all areas are influenced by proximity to marine coastal waters. Boundaries were based on watersheds and political jurisdiction.

<p>Lake and Peninsula Borough (1996)</p>	<p>The zone of indirect influence includes lands and waters above the 1000-foot elevation, not including perennially snow-capped peaks and glaciers.</p>	<p>Desire to manage lands located near marine coastal waters or that may affect anadromous fish streams.</p>
<p>Matanuska-Susitna Borough (1984)</p>	<p>The zone of indirect influence includes: all lands and waters above the 400-foot elevation near Beluga Lake; all lands and waters above the 200-foot elevation east of the Parks Highway (not including major drainages and their primary tributaries to the 1000-foot elevation); all lands and waters north of approximately 62° 10' north latitude (except major drainages and their primary tributaries to the 1000-foot elevation); and all lands and waters west of approximately 152° west longitude (except major drainages and their primary tributaries to the 1000-foot elevation).</p>	<p>Potential for and need to manage effects of mineral development, petroleum development, and residential development on waterfowl and anadromous fish habitat.</p>
<p>North Slope Borough (1988)</p>	<p>The zone of indirect influence encompasses a uniform setback of one mile from the ordinary high water mark of each bank of the upper reaches of all known anadromous fish waters.</p>	<p>Potential for and need to manage effects of gravel mining, hardrock mining, oil and gas exploration and development, and associated activities on anadromous fish habitat.</p>
<p>Northwest Arctic Borough (1998)</p>	<p>The zone of indirect influence extends inland from the 200-foot contour and encompasses watersheds of major rivers; drainage area of major lakes, bays, and marine water bodies; and villages.</p>	<p>Desire to manage uses and activities that could affect anadromous fish habitat.</p>

DETAILED ANALYSIS BY DISTRICT

Aleutians East Borough

Zone of Indirect Influence: The zone of indirect influence extends inland from the 200-foot elevation contour along the northern Alaska Peninsula coast and inland from the 1,000-foot elevation contour along the southern Alaska Peninsula shoreline. This area is small and has not been intensively developed in the past. It was included in the coastal zone to streamline administration of the district's coastal program, as well as to effectively manage uses and activities that have or are likely to have direct impacts on marine coastal waters and the populations of anadromous fish dependant on coastal waters.

The district's highly productive coastal waters provide important biological use areas and a world class commercial fishery. Subsistence hunting and fishing are significant components of the local economy. Balanced against these significant values is the fact that most of the southern half of the Alaska Peninsula, including the Herendeen Bay/Port Moller vicinity, is highly mineralized. The area east from Cold Bay along the northern half of the Alaska Peninsula are rated moderate to high in potential for discovery of oil and gas deposits.

Conclusion: The proposed exclusion of the zone of indirect influence would make coastal zone management in the Aleutians East Borough more cumbersome, and would reduce the borough's ability to effectively manage uses and activities that could have direct impacts on marine coastal waters and anadromous fish.

Bering Straits CRSA

Zone of Indirect Influence: If the coastal zone boundary is reduced to exclude the zone of indirect influence, the following areas will be removed from the district's coastal zone: "watersheds and drainages where mineral potential is rated as high or very high by ADNR," "highly mineralized terranes," and "rivers and streams that support anadromous fish in areas where the likelihood of mineral or other development is low." In the latter case, the district expanded the coastal area to include "a corridor extending one mile from the ordinary high water mark on both sides of the stream.... and extending upstream to one mile above the limits of known distribution of anadromous fish." The exclusion would also remove the "inland setback of two miles from the marine coastal shoreline where bluffs are adjacent to or in close proximity to the coast."

Certain streams, identified as Important Use Areas in the district plan, will be excluded from the coastal zone above the 200-foot contour: Serpentine River, Arctic River, rivers that drain into Ikpek Lagoon, Agiapuk River, Kuzitrin River, Nome River, Solomon River, Niukluk River, Fish River, Kwiniuk River, Tubutulik River, Kwik River, Koyuk

River, and Unalakleet River. These streams provide spawning habitat for anadromous fish, which are important subsistence resources and also support commercial harvest. Some of these rivers include highly mineralized areas where the likelihood of development is significant.

Conclusion: Given the extent of valuable mineralization in the district, and the likelihood that these areas will be mined as market conditions warrant, one impact of the boundary change would be the loss of one avenue for local involvement in state and federal mining permit processes. Local concerns about the effects of mining on water quality in anadromous streams would lose a forum for expression.

Bristol Bay Borough

Zone of Indirect Influence: The zone of indirect influence includes:

- The foothills of the Aleutian Range in the northeast corner of the Borough. These hills provide important uplands habitat and form the upper drainage of King Salmon and Paul's Creeks.
- The ridge separating the Naknek Lake and Naknek river systems which drain into primary salmon spawning areas.
- The hills in the southwest corner of the Borough which drain into the Naknek River and Kvichak Bay, both important anadromous fish migration routes.

The zone of indirect influence includes areas that directly affect anadromous fish and their habitat. It also conforms to the borough's political boundaries, streamlining coastal management in the borough.

Conclusion: The salmon fishery in Bristol Bay is a major segment of the borough's economy. The total run of salmon in the Naknek-Kvichak estuary has been the largest in the world. Potential development in the zone of indirect influence that could affect anadromous fish streams include State upland land sales, federal oil and gas lease sales, recreational development, and sport hunting and fishing. Local involvement in decisions affecting salmon runs would be reduced by the proposed deletion of the zone of indirect influence from the borough's coastal zone. The efficiency of the borough's coastal management program would also be reduced.

Bristol Bay CRSA

Zone of Indirect Influence: The zone of indirect influence includes:

- All water bodies designated in the Catalog of Waters Important for Spawning, Rearing, and Migration of Anadromous Fish, plus a one (1) mile corridor from ordinary high water (OHW) on each bank; and
- All tributaries to these aforementioned designated water bodies, plus a 200-foot corridor from ordinary high water (OHW) on each bank.

The boundaries of the zone of indirect influence reflect the importance of salmon to both the region and the State. During a ten-year period from 1981-1990, the ex-vessel value of the Bristol Bay fishery averaged approximately \$141 million per year, with a record \$200 million in 1990. Salmon are also an important resource to the subsistence economy. The continued health of this renewable resource is of paramount importance to both the commercial and subsistence sectors of the regional economy.

The zone of indirect influence supports a number of uses, primarily fish and wildlife habitat, subsistence harvests, commercial lodges and camps, sport hunting and fishing, and river float trips. Mining claims are concentrated in the Sleitat Mountain, Shotgun Hills area, and the hills south of the upper King Salmon River. Another potential use is hydroelectric development on the Newhalen River. Mineral exploration and development is likely to increase in the Tikchik Lakes area, Taylor Mountains, Marsh Mountain, Kemuk Mountain, and in the upper Mulchatna and Chilikodrotna drainages. The most significant mineral prospect discovered to date is a large copper-gold porphyry deposit between the headwaters of the Kuktuli River and the Upper Talarik Creek.

In the "Togiak Subregion," lands within the zone of indirect influence are used for fish and wildlife habitat, subsistence harvests, trapping, and recreation, especially sport fishing and river floating. There are several mining claims north and west of Upper Togiak Lake. Sport fishing and wilderness recreation opportunities will attract more visitors, placing more pressure on fish and wildlife. Mineral development may occur on Native corporate lands, since known mineral terranes favorable for deposits of copper and zinc with by-products of gold and silver exist.

Conclusion: Given the value of salmon and the potential for many types of development, particularly mining, reducing coastal zone boundaries to exclude the zone of indirect influence in the Bristol Bay CRSA will reduce local involvement in matters affecting the salmon fishery that is so vital to the area's economic survival.

Kenai Peninsula Borough

Zone of Indirect Influence: If the coastal zone boundary is reduced to exclude the zone of indirect influence, the following areas between the 400-foot and 1000-foot elevation will be excluded: Upper Kenai River and Kenai Lake; the Fox River drainage; and, lowlands in the Beluga Lake area.

The zone of indirect influence around Upper Kenai River and Kenai Lake provides important habitat for anadromous fish. Upper Kenai River and Kenai Lake have been recognized as important recreation areas. "These habitats either directly support fish and wildlife or perform important functions which enable fish and wildlife to thrive in the Kenai River system.... [L]ands and waters in this area... are important for public use and enjoyment of the river, including recreational areas and open space areas of high scenic value."

The zone of indirect influence includes portions of the watersheds of the Fox River Flats State Critical Habitat Area and Tustamena Lake. "Tustamena Lake is the headwater of the Kasilof River, the second most productive freshwater fishery on the Kenai Peninsula." This area provides important habitat to anadromous fish and many species of animals, and is used for a variety of recreational activities. The Fox River provides spawning and rearing habitat for salmon. The zone of direct influence was not drawn to include the upper half of the Fox River. In order to more fully protect anadromous fish habitat, the district expanded its coastal zone boundary to include the zone of indirect influence.

The district chose to set the coastal zone boundary in the Beluga Lake Area at the 1000-foot contour. This was done to correct an uneven interim coastal zone boundary line, which varied between the 400- and 1000-foot contour lines in this part of the district. The district chose the new coastal zone boundary to allow more effective management of this area, which consists of marshes and wetlands, lakes, ponds, creeks and rivers. These provide habitat for anadromous and freshwater fish and waterfowl. Existing uses and activities in the vicinity of the zone of indirect influence include the villages of Tyonek and Beluga, the Chugach Electric power plant, developable coal resources, and oil and gas exploration and producing wells.

Conclusion: Reduction of the boundary as proposed is likely to cause inefficient management in the Beluga Lake area of the district. Local involvement in permitting decisions involving activities in the zone of indirect influence such as grazing, hydropower development, subsistence, and recreation, will also be reduced.

Ketchikan Gateway Borough

Zone of Indirect Influence: If the boundary is reduced to exclude the zone of indirect influence, "alpine plant communities and watershed areas above the coastal forest treeline" will be removed from the coastal zone. The alpine areas of Diana Mountain, John Mountain, Deer Mountain, and Twin Peaks, all on Revillagigedo Island above the City of Ketchikan, would be excluded from the coastal zone. These alpine areas influence water quality in Upper and Lower Ketchikan Lakes, Granite Basin, Lake Perseverance, and Mahoney Lake, and in their associated rivers. These are the major

water sources that supply potable water to Ketchikan residents. The watershed areas “have an important influence on the sediment regime, salinity, and temperature of the nearshore marine waters.”

Conclusion: Reduction of the boundary as proposed is likely to reduce local involvement in the management of key watersheds that supply the City of Ketchikan with potable water.

Kodiak Island Borough

Zone of Indirect Influence: The zone of indirect influence includes all lands and waters above the 1000-foot elevation. The district’s topography includes steep terrain that both influences, and is influenced by, proximity to marine coastal waters.

Conclusion: Lands and waters above the 1000-foot elevation are not presently receiving much development pressure, but they do influence the quality of habitat in anadromous fish streams. Reducing the coastal zone boundary to exclude these areas would reduce local involvement in the management of lands and waters within the district.

Lake and Peninsula Borough

Zone of Indirect Influence: The zone of indirect influence includes all lands and waters above the 1000-foot elevation, except perennially snow-capped peaks and glaciers. The coastal zone boundaries were selected after consideration of the extent of documented anadromous fish habitat, limitations to comprehensive surveys for anadromous fish habitat, the drainage mosaic pattern created by the neighboring Bristol Bay CRSA in the use of coastal boundary corridors along anadromous fish streams and their tributaries, spillover impacts, and the sphere of potential disturbances associated with development activities. The boundaries reflect the resource values and sensitivities of anadromous fish habitats, and concerns related to development impacts and resource uses.

Conclusion: Reduction of the coastal zone boundaries would present major difficulties for managing present and potential uses and activities that could impact coastal waters and the living resources dependent on these.

Matanuska-Susitna Valley Borough

Zone of Indirect Influence: The zone of indirect influence includes:

- all lands and waters above (1) the 400-foot elevation near Beluga Lake; and (2) the 200-foot elevation east of the Parks Highway, not including major drainages and their primary tributaries to the 1000-foot elevation;

- All lands and waters north of approximately 62° 10' north latitude, except major drainages and their primary tributaries to the 1000-foot elevation; and
- All lands and waters west of approximately 152° west longitude, except major drainages and their primary tributaries to the 1000-foot elevation.

The entire district has been identified as a medium to very high density coastal lowland waterfowl nesting, molting, and staging area, with the exception of the Beluga and Mount Susitna highlands (ADF&G Atlas, 1973). For this reason, the areas between anadromous fish streams and rivers (zones of indirect influence) were included within the coastal zone boundary. Uses and activities that occur within the zone of indirect influence include: (1) recreation; (2) subsistence; (3) mining; (4) roads; and (5) agriculture.

Conclusion: Excluding the zone of indirect influence from the coastal zone would reduce the borough's ability to manage active uses and activities that have the potential to harm prime waterfowl habitat and salmon streams.

North Slope Borough

Zone of Indirect Influence: If the boundary is reduced to exclude the zone of indirect influence, "anadromous fish spawning and overwintering habitat" along the upper reaches of certain rivers will be removed from the coastal zone. These rivers are: the Kukpuk, Chandler, Anaktuvuk, Kanayut, Nanushuk, Itkillik, Sagavanirktok, Ridbon, Lupine, Echooka, Ivishak, Saviukviayak, Shaviovik, Kavik, Canning and Marsh Fork River drainages. The zone of indirect influence extends along each stream in a one-mile corridor from the mean high water mark.

Some of these rivers are experiencing development pressure from gravel removal, placer mining, seismic blasting, placement of structures within the active floodplain, effluent discharge, construction adjacent to the floodplain, water withdrawal, and oil resource exploration and development activities. These rivers are considered important sources of anadromous fish. The rivers also provide habitat for nesting and molting birds; and feeding, escape cover, denning, and travel corridors for mammals such as polar bears, grizzly bears, caribou, and smaller mammals such as otter, fox, voles, and lemmings.

Conclusion: Reduction of the boundary as proposed is likely to reduce local involvement in state and federal land management activities in some areas where resource development activities (particularly the development of oil and gas resources) and subsistence activities both take place.

Northwest Arctic Borough

Zone of Indirect Influence: If the coastal zone boundary is reduced to exclude the zone of indirect influence, the following areas will be excluded above the 200-foot contour level: the entire watershed area of major rivers in the district, including the main stem and tributary waters of the Kivalina, Wulik, Noatak, Kobuk, Selawik, Buckland, Kiwalik, Kugruk, Inmachuk, and Goodhope Rivers; the drainage areas of Selawik, Kobuk and Hotham Lakes, and the lakes themselves; the drainage areas of Spafarief, Eschscholtz and Goodhope Bays, and the bays themselves; the drainage area of the estuarine and marine waters of the Kotzebue Sound and Chukchi Sea; and, all villages, including Kotzebue.

These areas provide important habitat for seabirds, ducks, and mammals. The rivers provide spawning, rearing, and overwintering habitat to anadromous fish. All of these resources are important to subsistence activities in the district. Since "subsistence use of coastal resources has traditionally been the primary and highest priority use of all lands and waters" within the district, the district has a high level of interest in maintaining these resources through proper management of uses that could impair them.

Current and anticipated uses that could affect these areas include various types of mining activities; pipelines; refuse disposal sites; bulk fuel storage; transportation and utility corridors; oil and gas exploration and development activities; sewage disposal; and tourism activities. These activities have the following potentially significant adverse impacts: alteration of surface flows, increased turbidity and sedimentation, alteration of aquatic habitats, hydraulic and thermal erosion, and discharge of effluents, pollutants, and toxic substances.

The Red Dog Mine would be excluded from the reduced coastal zone, although the mine could still be considered to affect resources in the coastal zone (the Wulik River, below the 200-foot contour) and so could remain subject to consistency review under certain conditions.

Conclusion: Reduction of the boundary as proposed is likely to reduce local involvement in state and federal land management activities in some areas where resource development activities (particularly mining) and subsistence activities both take place.

HOUSE BILL 28 - REPEAL OF THE ALASKA COASTAL MANAGEMENT PROGRAM

TESTIMONY - Diane Mayer, Director, Division of Governmental Coordination

Mr. Chairman, members of the committee, my name is Diane Mayer. I am the Director of the Division of Governmental Coordination which is located within the Governor's Office of Management and Budget. Administration of Alaska's Coastal Program is the primary responsibility of the Division. I am here to voice the Knowles Administration's opposition to HB 28 - An Act repealing the Alaska's Coastal Management Program. Though opposed to repealing the program, I consider the proposal to do so an opportunity to highlight the benefits of this program and to answer some of the questions about it.

The Alaska Coastal Program benefits all Alaskans who live, work, and recreate in the State's coastal areas. Its most important feature is its provision for coastal communities to set local standards that help guide development in their coastal areas. Other benefits of the coastal program include:

- (1) Three million dollars annually in Federal funding to support coastal program development and implementation.
- (2) The Alaska coastal program gives the state and local communities a strong role in shaping proposed federal activities.
- (3) Coastal program regulations provide one-stop permitting services to developers, including a coordinated State review of their proposed projects.

If the coastal program is repealed, the State would lose the federal funding, would lose State and local influence over federal actions, and would lose the coordinated review of project permits. Though project reviews may be addressed through new legislation, the State forfeits the federal funding and loses the experienced staff needed to manage the recreated process.

Alaska's coastal program takes advantage of the federal Coastal Zone Management Act. Congress believes states and local communities are best positioned to responsibly direct development in their coastal areas. In fact, just last year Congress passed the bill reauthorizing the federal Coastal Zone Management by a unanimous vote in both the House and the Senate. Every coastal state now has a state coastal program and is benefiting from the state's rights and federal funding granted by the federal Coastal Zone Management Act. The Alaska coastal program is the state's tool for using the power granted by the federal CZMA. Given the extensive ownership and regulatory authority of the federal government in Alaska, eliminating the coastal program will further a federal agenda in coastal Alaska.

The Alaska legislature has also reviewed the State's coastal program several times since its inception. Most recently, in 1994, the Legislative Budget and Audit Committee requested its Legislative Audit Division to conduct a full review of the administration and costs of the Alaska Coastal Program. The auditor's report finds: that Alaska's coastal program offers unique benefits not provided by other federal

programs; that DGC appears to be the most appropriate agency for administering the State's coastal program; and that DGC has been successful in the role of facilitator and consensus builder. I recently distributed copies of this report for each member of the committee to be sure the you had not only testimony from those involved with the day-to-day operations, but could also benefit by the rigorous, 6-month review conducted by your own audit division.

From recent conversations I've had about Alaska's coastal program, it is clear that people have important questions about the program. I hope to provide immediate answers to many of them today.

Some say the project review system stops development and is plagued by continuous appeals to higher levels. A quick look at our project statistics demonstrates the effectiveness of the coastal project review. As illustrated by the first chart, over the last 5 years, 99.4% of all projects needing multiple permits were found consistent with the coastal program. This record is based on our review of approximately 400 projects each year and demonstrates that DGC is working across federal, state and local lines to solve development problems, not make them. Of these projects, the record shows on chart 2 that 98.3% are permitted by regional staff with no subsequent review needed by higher agency officials. Project solutions and permit decisions are being made where they should be, at the ground-level.

Even though these numbers are impressive, it is true that project appeals have sometimes resulted in the same issue being reconsidered several times by agency decision-makers. This repetition, though rare, has been frustrating to everyone when it occurred. There is already a Cabinet-level effort to streamline the appeal process so that there is only one formal appeal per project. Furthermore, other Cabinet level initiated efforts are underway to streamline resource development activities, such as drafting of general permits for routine projects, expanding the use of joint public notices, consolidating permit application forms to reduce unnecessary paperwork, and simplifying project permitting procedures. DGC staff is leading several of these streamlining initiatives.

Another assertion is that other federal resource laws diminish the need for the coastal program. While other state and federal laws provide for specific environmental protection, Alaska's coastal program uniquely addresses local interests in development activities. In addition, it provides federal funding to support coastal programs, it strengthens the voice of state and local communities in federal activities, and it provides efficient coordinated project permitting services.

There is the perception that the coastal program is duplicative of other state authorities. Alaska intentionally developed its coastal program by using existing state authorities, and local approvals, rather than opting for creating a separate coastal permit. Instead of there being a new agency that adjudicates a coastal

permit system, like the California coastal permit issued by their Coastal Commission, under Alaska's system the resource agencies and affected local districts work together to ensure that existing state and federal permits satisfy the established coastal standards. Rather than duplicating existing processes, the coastal program offers one-stop shopping that brings all the participants to the table to resolve disagreements. With resource agency permits and coastal program reviews occurring on the same schedule, the process benefits all parties by saving time and money.

Another concern I have heard is that the Coastal program allows state agencies to require stipulations on permitted activities beyond the agency's statutory authority. An agency can only propose stipulations based on state coastal standards and local district programs. Except for their own permits, they cannot independently require these stipulations. The statutes do provide permitting agencies full authority, indeed the responsibility, to administer their permit approvals consistent with the State and local coastal standards. Existing local, State and federal approvals are the legal tools for implementing project agreements.

A common concern is that Coastal program standards are vague and open to different interpretations by state agencies and local coastal districts. This concern is shared by state resource agencies, the coastal policy council, and coastal districts. The Coastal Policy Council has directed DGC to work with the coastal

program participants to address not only improvement of policy statements, but simplification of procedures to implement program revisions. Fixing this problem is our top priority.

Another question about the coastal program is "does it allow the unorganized borough to create quasi-governmental entities that participates in coastal program and development decisions?" Yes, this is true. These districts are called Coastal Resource Service Areas. Every community wants a say in development that affects the area it relies on for their economic opportunity and their quality of life. Alaskans living in the unorganized borough are no different. These communities deserve a voice in activities that affect their areas. The coastal program gives them an opportunity to fully participate. It is local participation that often builds understanding and support for projects and reduces legal challenges at the end of the reviews.

Taking a longer view, coastal resource service areas have proven to be a stepping stone to borough formation. Of the seven CRSA's originally formed, three have organized into boroughs and others are now seriously considering taking the next step.

For developers, elimination of the Alaska Coastal Management Program will mean they will be on their own to navigate the maze of federal and state permitting

requirements. One-stop shopping will disappear. There will not be a standard process resolving disagreements between agencies and no way to make sure that local communities are fully informed about projects in their area. If a new system is developed, the State will have lost its federal funding and an experienced staff to get the new system up and running.

Whole-sale repeal of Alaska's coastal program forfeits our position of power over federal decisions that affect our coast; it turns back federal dollars that largely benefit local communities in their attempt to responsibly direct coastal development in their areas; and it unravels Alaska's project review system that provides one-stop services and development solutions for individuals and companies proposing coastal projects. The Knowles Administration is opposed to HB 28 - the repeal of this important program.

Mr. Chairman, since this is a networked program with significant initiatives underway, we thought it would be beneficial for the committee to have access to Marty Rutherford, Deputy Commissioner of DNR and Craig Tillery, Assistant AG. Ms. Rutherford is a Coastal Policy Council Member and has an extensive background in community issues from her years with Community and Regional Affairs. Mr. Tillery is our legal guide in the current streamlining effort. We are all available to help answer any questions you might have.

FINDINGS AND RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

USER FEES

FINDING 1. As State revenues decline, agencies with the authority to assess fees will predictably attempt to both increase and broaden the scope of those fees in an act of budgetary self-preservation. Unfortunately, this system provides no meaningful incentive for the agency to minimize these costs to the regulated community. There is an inherent conflict of interest in asking for timely permit reviews from agency personnel whose jobs depend upon hourly billings for the given review, and unlike the free market, the regulated community cannot take its business elsewhere.

Alaska cannot afford such an irresponsible process, especially when regulatory stability is a key element in marketing Alaska as an attractive and competitive place to do business. The citizens and businesses of Alaska deserve an open budgetary process that includes legislative oversight and that clearly details the relationship between user fees and agency expenditures.

COMMISSION RECOMMENDATIONS

- 1a** *Long-term, the State needs to move toward paying for essential public services out of general fund revenue instead of assessing user fees at all levels of government. This will keep the budgetary process public, allow the public to establish priorities, and remove the inherent conflict of interest between efficient permit processing and agency hourly fees.*
- 1b** *Short term, the Legislature should amend AS 44.46.025 to require public review and legislative approval of all fees affecting the mining industry. Proposed fees shall include a detailed schedule justifying the applicable direct costs of inspections, permit preparation and administration, plan review and approval, and other services provided by the department that are to be paid for by the proposed fee. In no event should the proposed fee exceed those costs reasonably necessary to cover the direct costs of the above.*

GEOPHYSICAL AND GEOLOGICAL MAPPING

FINDING 2. Since 1993, 12 state funded airborne geophysical surveys have covered about 5,000 square miles of the State of Alaska's 162,500 square mile land entitlement, at a total cost of about \$2.3 million.

One such survey in the Fairbanks district cost \$300,000, and since the results were released in 1995 the number of mining claims has doubled, and more than \$10 million has been spent exploring just the new claims. Further major investments are expected in the coming years. Information compiled by the Alaska Division of Mining & Water Management indicates that at least 65% of the \$35 million claimed by companies under the Exploration Incentives Credit are for Alaskan goods and services.

As a result of the airborne surveys, most of the Nome and Circle survey areas are now staked, and increased activity is reported in the Manley-Rampart, Yentna and Chulitna survey areas.

This increased activity was the intent of the surveys and will accelerate discovery of new Alaskan mines. However, with a landbase of 162,500 square miles, much of it chosen for its mineral potential, it will take the State of Alaska another 75 years to survey only 50% of its land endowment at the present rate of funding.

COMMISSION RECOMMENDATIONS

- 2 *The Governor and the Legislature should invest \$5 million per year (approximately 10% of what industry spent on exploration in 1997) for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.*

COASTAL ZONE MANAGEMENT

FINDING 3. As presently implemented, the Coastal Zone Management program is not an efficient means of permitting necessary development activities in Alaska. The present jurisdiction of the "coastal zone" extends so far inland that an unnecessary level of bureaucracy is created in regions that have little to do with the marine environment.

In many cases the Coastal Management boundaries are many miles inland based on the Alaska Department of Fish & Game (ADF&G) boundary studies of the early 1980's which defined "zones of direct interaction" and "direct influence" that included transitional and intertidal areas; salt marshes and wetlands; islands; beaches; and water under tidal influence, including areas where anadromous fish, such as salmon, migrate upstream to spawn. These areas were mapped with the intent that Coastal Management Programs do detailed resource inventories in order to redefine coastal zone boundaries. In some cases, over a decade later, fish (trout and grayling) streams 85 miles from the coast are still within the coastal zone boundaries, with no studies done nor any changes made to the boundaries. The ADF&G and Department of Environmental Conservation already have authority to restrict uses of waterways (including waters that support anadromous fish) for resource development activities without this additional inland boundary.

The present Coastal Zone Management program creates a duplicative appeal process that allows the same issues to be challenged at two different stages of the process. This creates unnecessary delays and adds needless uncertainty during the permitting of any project. Both the Governor and the Legislature have recognized some of the shortcomings of the Coastal Zone Management programs, and have recommended various solutions. The key points that must be incorporated into any final solution are detailed below.

COMMISSION RECOMMENDATIONS

- 3 *During any efforts to streamline the Coastal Zone Management Program, the Governor and Legislature should ensure that the following key provisions are incorporated:*
 - a *The jurisdiction of the coastal zone should be limited to those regions defined as wetlands, beaches, islands, waters under saline influence, transitional and intertidal areas, and not to include anadromous fish streams.*
 - b *There must only be a single notice, public comment, and appeal procedure, and*
 - c *The Department of Natural Resources should remain the lead agency for all mining related actions on a statewide basis, including within the coastal zone.*

RECORDERS OFFICE TECHNOLOGY UPGRADE

FINDING 4. Modern technological improvements in imaging systems and computer systems make significant improvements in information management, search and retrieval, and document handling. In order for the Alaska Recorders Office to cost-effectively fulfill its function in government, an upgrade with state-of-the-art hardware, software and procedures is necessary. This upgrade will benefit all users

H. Mariska
JUL 15 1997

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE ALASKA COASTAL POLICY COUNCIL

Notice is given that the Alaska Coastal Policy Council, under the authority of AS 44.19.161, AS 46.40.010, and AS 46.40.040, proposes to adopt, amend, and repeal regulations in Title 6 of the Alaska Administrative Code dealing with development and amendment of district coastal management programs, special area management plans, and areas meriting special attention, to implement, interpret, or make specific AS 46.40, including the following:

1. 6 AAC 80.158, TYPES OF AREAS TO BE DESIGNATED AS AREAS WHICH MERIT SPECIAL ATTENTION, is proposed to be repealed. This regulation defined the type of areas that may be designated as an area which merits special attention. The substance of this regulation is proposed to be moved to 6 AAC 85.
2. 6 AAC 80.160, AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS, is proposed to be repealed. This regulation defined the process and requirements for proposal and designation of an area which merits special attention inside a district. The substance of this regulation is proposed to be moved to 6 AAC 85.
3. 6 AAC 80.170, AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS, is proposed to be repealed. This regulation defined the process and requirements for proposal and designation of an area which merits special attention outside a district. The substance of this regulation is proposed to be moved to 6 AAC 85.
4. 6 AAC 85 is proposed to be amended to amend existing sections, repeal existing sections, and add new sections providing for more defined requirements of district programs and streamlined district program approval processes.

Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to Randy Bates, Division of Governmental Coordination, Office of the Governor, P.O. Box 110030, Juneau, Alaska, 99811-0030, so that they are received no later than August 22, 1997. Additionally, any interested person may present oral or written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, at a hearing to be held in the Division of Governmental Coordination Conference Room, Suite 370, Frontier Building, 3601 "C" Street, Anchorage, Alaska, at 9 a.m., on August 13, 1997. The hearing will be held from 9 a.m. to 4 p.m. and might be extended to accommodate those present before 2 p.m. who do not have an opportunity to testify.

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Coastal Policy Council
2. General subject of regulation: Guidelines for District Coastal Management Programs
3. Citation of regulation (may be grouped): 6 AAC 80.158 - 80.170 & 6 AAC 85
4. Reason for the proposed action:
 compliance with federal law
 compliance with new or changed state statute
 compliance with court order
 development of program standards
 other: (please list) amendment of existing regulations
5. Program category and BRU affected: Office of Management & Budget Division of Governmental Coordination
6. Cost of implementation to the state agency and available funding (in thousands of dollars)
- | | Initial Year
FY 1998 | Subsequent
Years |
|--------------|-------------------------|---------------------|
| Cost | \$0.00 | \$0.00 |
| General fund | \$0.00 | \$0.00 |
| Federal fund | \$0.00 | \$0.00 |
| Other funds | \$0.00 | \$0.00 |
| (specify) | \$0.00 | \$0.00 |
7. The name of the contact person for the regulations:
- Name Randy Bates
Title District Program Coordinator
Address Governmental Coordination
P.O. Box 110030
Juneau, AK 99811-0030
Telephone (907)465-3937
8. The origin of the proposed action:
 staff of state agency
 federal government
 general public
 petition for regulation change
 other (please list)
9. Date: 7/9/97

Prepared by:

Randy Bates
(signature)

Name (typed) Randy Bates
Title (typed) District Program Coordinator
Telephone: (907)465-3937

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

H. Maricle
JUL 15 1997

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE ALASKA
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The State of Alaska, Division of Governmental Coordination complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Randy Bates at (907) 465-3937 or via email at Randy_Bates@gov.state.ak.us no later than August 1, 1997, to ensure that any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to:

Randy Bates
Division of Governmental Coordination
Office of the Governor
P.O. Box 110030
Juneau, Alaska 99811-0030

After the close of the public comment period, the Coastal Policy Council will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

DATE: 7-9-97

Diane Mayer
Diane Mayer, Director
Division of Governmental Coordination

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Coastal Policy Council
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 other: (please list) amendment of existing regulations
5. Program category and BRU affected: Office of Management & Budget Division of Governmental Coordination
6. Cost of implementation to the state agency and available funding (in thousands of dollars)
- | | Initial Year
FY 1998 | Subsequent
Years |
|--------------------------|-------------------------|---------------------|
| Cost | \$0.00 | \$0.00 |
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(specify) | \$0.00 | \$0.00 |
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8. The origin of the proposed action:
 staff of state agency
 federal government
 general public
 petition for regulation change
 other (please list)
9. Date: 7/9/97

Prepared by:

Randy Bates
(signature)

Name (typed) Randy Bates
Title (typed) District Program Coordinator
Telephone: (907)465-3937

Register ____, ____, 19__ Governor's Office

**TITLE 6. GOVERNOR'S OFFICE
ALASKA COASTAL POLICY COUNCIL**

**CHAPTER 80. STANDARDS OF THE ALASKA
COASTAL MANAGEMENT PROGRAM**

Article

1. Government Process (6 AAC 80.010-6 AAC 80.030)
2. Uses and Activities (6 AAC 80.040-6 AAC 80.120)
3. Resources and Habitats (6 AAC 80.130-6 AAC 80.150)
4. [AREAS WHICH MERIT SPECIAL ATTENTION (6 AAC 80.158-6 AAC 80.170)
- 5.] General Provisions (6 AAC 80.900)

Article 4.

[AREAS WHICH MERIT SPECIAL ATTENTION

SECTION

158. TYPES OF AREAS TO BE DESIGNATED AS AREAS WHICH MERIT SPECIAL ATTENTION
160. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS
170. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS]

6 AAC 80.158 is repealed:

6 AAC 80.158. TYPES OF AREAS TO BE DESIGNATED AS AREAS WHICH MERIT SPECIAL ATTENTION. Repealed. (Eff. 6/9/85, Register 94; repealed / / , Register)

6 AAC 80.160 is repealed:

6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS. Repealed. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 6/9/85, Register 94; am 4/2/86, Register 97; repealed / / , Register)

6 AAC 80.170 is repealed:

6 AAC 80.170. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS. Repealed. (Eff. 6/9/85, Register 94; am 4/2/86, Register 97; repealed / / , Register)

[ARTICLE 5.]

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**TITLE 6. GOVERNOR'S OFFICE
ALASKA COASTAL POLICY COUNCIL**

**CHAPTER 85. GUIDELINES FOR DISTRICT
COASTAL MANAGEMENT PROGRAMS**

Article

1. Program Elements (6 AAC 85.010-6 AAC 85.110)
2. Government Process (6 AAC 85.135 [120]-6 AAC 85.185)
3. Special Area Management Plans and Areas Which Merit Special Attention (6 AAC 85.195-6 AAC 85.225)
4. General Provisions (6 AAC 85.900)

Article 1. Program Elements

Section

10. Coverage of chapter
20. Issues [NEEDS], goals, and objectives [, AND GOALS]
30. Organization
40. Boundaries
50. Resource inventory
60. Resource suitability and sensitivity analysis
70. Subject uses
80. Proper and improper uses
90. Enforceable policies
100. Implementation
110. Public participation

6 AAC 85.010 is repealed:

6 AAC 85.010. COVERAGE OF CHAPTER. Repealed. (Eff. 7/18/78, Register 67; repealed // , Register)

6 AAC 85.020 is amended to read:

6 AAC 85.020. ISSUES [NEEDS], GOALS, AND OBJECTIVES [, AND GOALS].
A [EACH] district program must include a statement of the district's overall coastal management issues, goals, and [NEEDS,] objectives [, OR GOALS], or summarize or reference the district's comprehensive land and resource use plan. The statement must reference the implementation mechanisms that will be used to achieve the goals and objectives. (Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

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6 AAC 85.030 is amended to read:

6 AAC 85.030. ORGANIZATION. (a) A [EACH] district program must describe [INCLUDE A DESCRIPTION OF] the organizational structure of the district, and define whether the district is a coastal resource service area or a municipality [DISTRICT PROGRAM ORGANIZATION FOR COASTAL MANAGEMENT]. The description must include the district's budgetary [BUDGETARY] and staff needs and, if [WHERE] appropriate, a schedule for necessary reorganization [MUST BE INCLUDED].

(b) The district program must identify and give an address for the official or department [CLEARLY STATE THE NAME AND ADDRESS OF THE INDIVIDUAL OR ORGANIZATION] within the district that is assigned to receive from the state notice of proposed activities and authorizations affecting the district, and that submits comments [IS RESPONSIBLE FOR RESPONDING] to the state under 6 AAC 50.070 [ON CONSISTENCY REVIEWS]. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89; am //, Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.040 is amended to read:

6 AAC 85.040. BOUNDARIES. (a) A [EACH] district must include a map and description of the boundaries of the coastal area that is [WITHIN THE DISTRICT] subject to the district program. The boundaries must be within the district and must enclose those lands that [WHICH] would reasonably be included in the coastal area and subject to the district program if they were not subject to the exclusive jurisdiction of the federal government.

(b) Before council approval of the district program, initial district boundaries must be based on *Biophysical Boundaries of Alaska's Coastal Zone* [(PUBLISHED BY THE OFFICE OF COASTAL MANAGEMENT AND THE ALASKA DEPARTMENT OF FISH AND GAME, 1978, A COPY OF WHICH IS ON FILE WITH THE OFFICE OF THE LIEUTENANT GOVERNOR, AND WHICH IS AVAILABLE FROM THE OFFICE OF COASTAL MANAGEMENT)] and must include the zone of direct interaction and the zone of direct influence.

(c) Final boundaries of the coastal area [SUBJECT TO THE DISTRICT PROGRAM] may diverge from the initial boundaries if the final boundaries

(1) extend inland and seaward to the extent necessary to manage a use or activity [USES AND ACTIVITIES] that has [HAVE] or is [ARE] likely to have a direct and significant impact on marine coastal water, or is likely to be affected by or vulnerable to sea level rise; and

(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches.

(d) If the criteria in (c) of this section are met, final boundaries of the coastal area [SUBJECT TO THE DISTRICT PROGRAM] may be based on political jurisdiction, cultural features, planning areas, watersheds, topographic features, uniform setbacks, or the dependency of uses and activities on water access.

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(e) The boundaries of the district must be sufficiently compatible with those of an adjoining area [AREAS] to allow consistent administration of the Alaska Coastal Management Program [COASTAL MANAGEMENT PROGRAM]. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

Editor's note: The *Biophysical Boundaries of Alaska's Coastal Zone* is published by the Office of Coastal Management and the Alaska Department of Fish and Game, 1978. A copy is on file and available by writing the Office of the Governor, Office of Management and Budget, P.O. Box 110030, Juneau, Alaska, 99811-0030.

6 AAC 85.050 is amended to read:

6 AAC 85.050. RESOURCE INVENTORY. (a) For the coastal area within the district, a [EACH] district program must include a resource inventory that [WHICH] describes, in a manner sufficient for program development and implementation ,

(1) natural resources such as forests, minerals, soils, wetlands, water, and fish and wildlife, including those habitats listed in 6 AAC 80.130, and their functional relationship, if appropriate [THAT ARE FOUND WITHIN OR ADJACENT TO THE DISTRICT]; and

(2) major cultural, historic, prehistoric, and archaeological resources [THAT ARE FOUND WITHIN OR ADJACENT TO THE DISTRICT; AND].

(b) A district program must describe, in a manner sufficient for program development and implementation,

(1) a [(3)] major land or [AND] water use or activity that is or has been [USES AND ACTIVITIES WHICH ARE] conducted or designated within or adjacent to the district; and

(2) [(4)] major land and resource ownership, jurisdiction, and management responsibilities within or adjacent to the district [; AND (5) MAJOR HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES WHICH ARE FOUND WITHIN OR ADJACENT TO THE DISTRICT].

(c) A district program should incorporate local knowledge into the resource inventory.

(d) Information in the resource inventory must be substantiated or documented with a citation or reference.

(e) If inventory information is contained in another published source, the relevant information must be summarized, referenced in the district program, and made available upon request. (Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.060 is amended to read:

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6 AAC 85.060. RESOURCE SUITABILITY AND SENSITIVITY ANALYSIS. (a) A [EACH] district program must include a resource suitability and sensitivity analysis for areas or resources within the district. The analysis must evaluate [WHICH DESCRIBES], in a manner sufficient for program development and implementation,

(1) a significant anticipated change [CHANGES] in a matter [THE MATTERS] identified under 6 AAC 85.050, including a use or activity likely to occur in the foreseeable future;

(2) the direct or indirect impact of a specific use or activity, with consideration of natural hazards and conflicting or competing uses;

(3) [AN EVALUATION OF THE ENVIRONMENTAL CAPABILITY AND SENSITIVITY OF] resources and habitats, including cultural, soil, and water resources [FOR LAND AND WATER USES AND ACTIVITIES]; and

(4) [(3) AN ASSESSMENT OF THE] present and anticipated needs, [AND] demands, and conflicts for and among coastal habitats, [AND] resources, uses, and activities.

(b) A district should incorporate local knowledge into the resource suitability and sensitivity analysis. (Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.070 is amended to read:

6 AAC 85.070. SUBJECT USES. A [EACH] district program must include a description of the land and water uses and activities which are subject to the district program. The uses and activities mentioned in 6 AAC 80 are, if applicable, subject to the district program. (Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.080 is amended to read:

6 AAC 85.080. PROPER AND IMPROPER USES. A [EACH] district program must include a description of the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of state concern, that will be considered improper within the coastal area, including land and water use designations. This description must be based on the district's statement of issues, goals, and [OVERALL NEEDS,] objectives [, OR GOALS, OR THE DISTRICT'S COMPREHENSIVE LAND AND RESOURCE USE PLAN,] under 6 AAC 85.020, and must be consistent with the standards contained in 6 AAC 80. (Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161

AS 46.40.030
AS 46.40.040

6 AAC 85.090 is repealed and readopted to read:

6 AAC 85.090. ENFORCEABLE POLICIES. (a) A district program must include the enforceable policies and definitions that will be applied to a land or water use or activity subject to the district program. An enforceable policy or definition must

- (1) be consistent with the standards contained in 6 AAC 80;
- (2) be comprehensive, applying to all uses, activities, and areas in need of management;
- (3) be specific, allowing clear understanding of who will be affected by the district program, how they will be affected, and whether specific proposals for land and water uses and activities will be allowed;
- (4) ensure implementation of and adherence to the district program; and
- (5) achieve the goals and objectives identified in 6 AAC 85.020.

(b) A district program must clearly identify an enforceable policy, definition, map, or boundary description. Enforceable policies and definitions must be located in a single section of the program document. The enforceable policies, definitions, maps, and boundary descriptions provide the basis for a determination of consistency with the district program.

(c) For a sensitive use area or sensitive resource area identified and analyzed in 6 AAC 85.050 and 6 AAC 85.060, a district may adopt enforceable policies that will be used to determine whether a specific land or water use or activity will be allowed. An area subject to these policies must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area. A description or map developed under this subsection must be referenced in the applicable enforceable policy and is an enforceable components of the district program. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.100 is amended to read:

6 AAC 85.100. IMPLEMENTATION. A [EACH] district program must describe [INCLUDE A DESCRIPTION OF]

(1) the methods and authorities [AUTHORITY WHICH WILL BE USED] to implement, monitor, and enforce the district program; methods [METHODS] and authorities

(A) [AUTHORITY] must be adequate to ensure [INSURE] program implementation and enforcement; [,] and

(B) [ANY ADDITIONAL METHODS OR AUTHORITY WHICH ARE REQUIRED MUST BE SPECIFIED. METHODS AND AUTHORITY] include

- (i) land and water use plans;

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(ii) [,] municipal ordinances and resolutions; [(including shoreline, zoning, and subdivision ordinances and building codes;
(iii) [,] state and federal statutes and regulations;
(iv) [,] capital improvement programs;
(v) [,] the purchase, sale, lease, or exchange of coastal land and water resources;
(vi) [,] cooperative agreements;
(vii) [,] tax exemptions for nondevelopment purchase of development rights;
(viii) [,] memoranda of understanding;
(ix) [,] coordinated project or permit review procedures; and
(x) the means and procedure to document public need, should the district comment on public need under 6 AAC 50;
(2) the planning, implementation, and enforcement relationship between the coastal district and a city or village inside the district; the district program must address consistency reviews, municipal appeals, planning and plan revisions, municipal land use regulations, and review of municipal land use regulations for consistency with the district plan.
(Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.110 is amended to read:

6 AAC 85.110. PUBLIC PARTICIPATION. A [EACH] district program must document an [INCLUDE EVIDENCE OF] effective and significant opportunity [OPPORTUNITIES] for public participation in program development under this chapter [6 AAC 85.130]. (Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

Article 2. Government Process

Section

[120. SUBMITTALS TO COUNCIL]

[130. PUBLIC INVOLVEMENT DURING PROGRAM DEVELOPMENT]

135. Scoping

140. Public Hearing Draft Development | COORDINATION AND REVIEW|

145. Review of public hearing draft

146. Revised public hearing draft development and review in coastal resource service areas

148. Development, coordination, and public review of concept approved drafts

150. Council review of final findings and conclusions and concept approved drafts of district programs

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160. Minor amendments

170. Mediation

175. Office of Ocean and Coastal Resource Management review

180. Local adoption and effective [EFFECTIVE] date [AND LOCAL ADOPTION]

183. Annual progress report submissions to council

185. Petition for amendment to an approved district program regarding uses of state concern

6 AAC 85.120 is repealed:

6 AAC 85.120. SUBMITTALS TO COUNCIL. Repealed. (Eff. 7/18/78, Register 67; am 5/2/81, Register 78; am 9/9/81, Register 79; am 3/2/84, Register 89; repealed / / , Register)

6 AAC 85.130 is repealed:

6 AAC 85.130. PUBLIC INVOLVEMENT DURING PROGRAM DEVELOPMENT. Repealed. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 3/2/84, Register 89; repealed / / , Register)

6 AAC 85 is amended by adding a new section to read:

6 AAC 85.135. SCOPING. (a) As soon as practicable after a district identifies its intent to adopt or amend a district program, the district shall hold at least one meeting with the office. This meeting may be a teleconference meeting. An opportunity to participate in the meeting must also be provided to federal, state, and local governmental agencies, adjacent districts, cities and villages within the district, and the public. The purpose of the meeting is to identify issues that will need to be addressed by the district.

(b) A record file containing all material relating to the development and approval of the district program or significant amendment to the district program shall be created and maintained at a convenient location at the office. Districts shall forward all relevant material to the office for inclusion in the record file. (Eff. / / , Register)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 85.140 is repealed and readopted to read:

6 AAC 85.140. PUBLIC HEARING DRAFT DEVELOPMENT. (a) No less than two public meetings must be held within the district during the public hearing draft development to inform the public and receive comments concerning the program.

(b) A district shall provide the public, in a timely manner and in understandable form, information explaining the Alaska Coastal Management Program, the district coastal management program, the requirement of public participation during program development, how and when the public may participate in program development, what information is available, and

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where that information may be obtained.

(c) A district shall provide an opportunity during the public hearing draft development for participation by federal, state, and local governmental agencies, adjacent districts, cities and villages within the district, and the public.

(d) The public hearing draft must include all elements to be included in the district program when it is approved by the district, as described in 6 AAC 85.148(a).

(e) A district shall submit the public hearing draft to the office for review before distribution under 6 AAC 85.145. Within 15 days, the office shall determine whether the public hearing draft contains the requirements as set forth in 6 AAC 85.020 - 6 AAC 85.110. If, upon its review of the public hearing draft, the office determines that the public hearing draft does not contain the requirements, the office may request more information from the district. (Eff. 7/18/78, Register 67; am // , Register)

Authority: AS 44.19.161
AS 44.19.162
AS 46.40.030
AS 46.40.040

6 AAC 85.145 is repealed and readopted to read:

6 AAC 85.145. REVIEW OF PUBLIC HEARING DRAFT. (a) The district must distribute the public hearing draft to all parties identified as having a significant interest in the district program. A transmittal letter that states the comment deadline and identifies the recipient of comments must be sent with the document. The mailing list of these parties must be reviewed and approved by the office before distribution.

(b) Public notice of the availability of the public hearing draft must be given to any person who has requested it in writing, and through advertisement in a newspaper of general circulation within the district. Notice must also be posted in cities and villages within the district. A coastal resource service area shall also notify cities and villages within the district of the regulations contained within this chapter and the provisions of AS 46.40.180.

(c) At least a 45-day review and comment period must be provided if the district is a city or unified borough. At least a 60-day review and comment period must be provided if the district is a coastal resource service area.

(d) During the review period under (c) of this section, the district shall hold at least one meeting with state agency representatives. If the district is a coastal resource service area or borough, the district shall hold at least one meeting with the representative of an affected city or village within the district boundaries. A meeting may be a teleconference meeting.

(e) During the review period under (c) of this section, the district shall hold at least one public hearing. At least 30 days before the hearing, notice of the time and place of the hearing must be provided to a recipient of the public hearing draft, advertised in a newspaper of general circulation within the district or by an announcement on radio or television that broadcasts within the district, and advertised in a newspaper of general circulation within the state. At the public hearing, a person shall be given the opportunity to present statements orally or in writing.

As necessary, a district shall provide translation into and out of a Native language prevalent within the district. In addition, the district shall provide the office with a transcript or electronic recording of the hearing.

(f) A city or village within a coastal resource service area shall submit a comment as a resolution. The city or village shall issue a public notice and hold a public hearing to adopt a resolution. Notice of the time and place for that hearing must be posted in the city or village, given to a person who requests it in writing, advertised in a newspaper of general circulation within the city or village or by an announcement on radio or television that broadcasts within the city or village, or through another applicable provision for public notice. A comment from a city or village must

(1) focus on elements of the program affecting resources or the use of resources within the corporate limits of the city or within two miles of the village; and

(2) provide an alternative element, component, or provision, as appropriate.

(g) The district shall consider a comment received within the review period under (c) of this section. A coastal resource service area must incorporate a resolution into the revised public hearing draft if it is an element of the program affecting resources or the use of resources within the corporate limits of the city or within two miles of the village.

(h) No later than the end of the review and comment period as defined in (c) of this section, state agencies must give their comments on the public hearing draft to the office and the district.

(i) Within 30 days following the review and comment deadline as defined in (c) of this section, the office shall consolidate the state agency comments. This consolidation will represent the position of state agencies, and will be developed in consultation with the district so as to resolve any significant differences between the state agency comments and the public hearing draft.

(j) Following receipt of the consolidated position of state agencies, the district shall

(1) consolidate all public comments and identify issues raised during the review under (c) of this section;

(2) resolve any outstanding issues. If the district and commentor cannot resolve the outstanding issues, the district may request the office consider the issues and provide a recommendation;

(3) incorporate any necessary changes into the revised public hearing draft or concept approved draft, as appropriate; and

(4) issue within 90 days a copy of all comments submitted by the deadline as defined in (c) of this section, and a written response explaining how the district considered a comment received during the review period under (c) of this section. The district shall distribute the written response to a person who submitted comments during that review period. The office may extend the 90 day period for the written response, upon request by the district.

(k) A district, other than a coastal resource service area, may revise the public hearing draft to allow for further review and comment. (Eff. 3/2/84, Register 89; am // , Register)

Authority: AS 44.19.161
AS 44.19.162

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AS 46.40.010
AS 46.40.040
AS 46.40.180

6 AAC 85 is amended by adding a new section to read:

6 AAC 85.146. REVISED PUBLIC HEARING DRAFT DEVELOPMENT AND REVIEW IN COASTAL RESOURCE SERVICE AREAS. (a) In addition to the 60-day review and comment period required in 6 AAC 85.145(c), a coastal resource service area shall provide an affected city or village a second 60-day review and comment period for a revised public hearing draft. An affected city or village may waive by resolution its right to review the revised public hearing draft. Adoption of that resolution must follow the provisions of 6 AAC 85.145(f).

(b) The service area shall distribute the revised public hearing draft to an affected city and village within the service area. A transmittal letter that states the comment deadline, identifies the recipient of comments, and identifies the regulations contained within this chapter and the provisions of AS 46.40.180, must be sent with the document.

(c) A city or village within the service area requesting new matter on the revised public hearing draft shall submit a comment as a resolution, as defined 6 AAC 85.145(f).

(e) A comment must

(1) focus on new material or specific elements that were submitted as comments or resolutions during the first 60-day review. A city or village within the district may not request changes or adopt a resolution to material or issues not commented on during the first 60-day review period, or agreed to in previous resolutions;

(2) focus on elements of the program affecting resources or the use of resources within the corporate limits of the city or within two miles of the village, as appropriate; and

(3) include alternative suggested elements, components or language, as appropriate.

(f) A coastal resource service area must incorporate a resolution into the concept approved draft if it is an element of the program affecting resources or the use of resources within the corporate limits of the city or within two miles of the village, as appropriate. (Eff. // , Register)

Authority: AS 44.19.160
AS 44.19.161
AS 46.40.010
AS 46.40.040
AS 46.40.180

6 AAC 85 is amended by adding a new section to read:

6 AAC 85.148. DEVELOPMENT, COORDINATION, AND PUBLIC REVIEW OF CONCEPT APPROVED DRAFTS. (a) A district shall conceptually approve its district

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program before submitting it to the office. Conceptual approval of the district program must be by resolution of

(1) the municipality's governing body, if the district represents that municipality;

or

(2) the board of a district that is a coastal resource service area.

(b) As soon as practicable after conceptually approving its district program, the district shall submit to the office and to state agencies

(1) the concept approved draft; and

(2) the names and addresses of persons who testified at a public hearing or provided a written comment during the review period under 6 AAC 85.145(c); and

(3) a copy of the district's response to comments, as described in 6 AAC

85.145(j).

(c) No later than 30 days after receipt of the concept approved draft, state agencies shall give their comments on the draft to the office and the district. Comments shall focus on new material or specific elements that were submitted under 6 AAC 85.145(h) during the first review period as defined in 6 AAC 85.145(c).

(d) Within 15 days following the review and comment deadline as defined in (c) of this section, the office shall prepare the revised findings and conclusions. The revised findings and conclusions will represent the consolidated position of state agencies, and will be developed in consultation with the district so as to resolve any significant differences between the positions of state agencies and the concept approved draft.

(e) Following completion of the revised findings and conclusions, the district or the office shall distribute, as soon as practicable, the

(1) concept approved draft;

(2) revised findings and conclusions; and

(3) copies of the district's responses to all comments, as described in 6 AAC

85.145(j).

The material shall be distributed to all parties that provided comments during a review period, or that identified themselves as having a significant interest in the district program. The mailing list of these parties must be reviewed and approved by the office before distribution.

(f) Reviewing parties, as described in (e) of this section, shall have at least 21 days following distribution of the materials to provide comments to the office. A comment shall focus on new material or specific elements that were submitted as comments previously.

(g) Within 15 days following the comment deadline as defined in (f) of this section, the office will

(1) determine whether the final concept approved draft contains the requirements as set forth in 6 AAC 85.020 - 85.110; and

(2) prepare final findings and conclusions as its recommendation to the council on the program. The final findings and conclusions shall be developed by the office in consultation with the district so as to resolve any significant differences between the requirements of this chapter and the district program.

(h) If the office and the district cannot resolve the outstanding issues, or the coastal

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resource service area does not agree with the change required by a resolution submitted by a city or village, the district may request the council consider the issues and provide a recommendation. For consideration by the council, a coastal resource service area must demonstrate that a resolutions submitted by an affected city or village within the coastal resource service area is not substantially consistent with the guidelines and standards contained in this chapter, 6 AAC 50 and 6 AAC 80, the provisions contained in AS 46.40, or in an district program. The district must submit the request as a response to the office's final findings and conclusions. (Eff. // , Register)

Authority: AS 44.19.161
AS 44.19.162
AS 46.40.040

6 AAC 85.150 is repealed and readopted to read:

6 AAC 85.150. COUNCIL REVIEW OF FINAL FINDINGS AND CONCLUSIONS AND CONCEPT APPROVED DRAFTS OF DISTRICT PROGRAMS. (a) The concept approved draft, the office's final findings and conclusions, the comments received during the comment period, and district responses to the comments received during the comment periods shall be distributed to the council, all persons who testified at the public hearing or presented written comments during the comment periods, and any other person who has requested this material in writing. If any of these materials were distributed under 6 AAC 85.148 and have not been amended, they do not need to be resent to the recipients. The mailing list of these parties must be reviewed and approved by the office before distribution. Public notice of the availability of the material and notice of the council meeting shall be given to a person who has requested it in writing, and through advertisement in a newspaper of general circulation. The public notice shall be issued at least 21 days before council review.

(b) The council will approve or disapprove the district program, in whole or in part, and issue a decision with findings and conclusions. The council will, in its discretion, adopt the findings and conclusions of the office by reference.

(c) The council will serve its decision under this section on ail persons as defined in (a) of this section, and to all persons who have requested a copy of the decision in writing. Notice of the council's action also must be published, at a minimum, in newspaper of general circulation in the district and in the Alaska Administrative Journal. (Eff. 7/18/78, Register 67; am 1/22/81, Register 77; am 3/2/84, Register 89; am // , Register)

Authority: AS 44.19.161
AS 46.40.040
AS 46.40.060
AS 46.40.070

6 AAC 85 is amended by adding a new section to read:

6 AAC 85.160. MINOR AMENDMENTS. (a) Notwithstanding another provision of this chapter, this section and 6 AAC 85.180 govern a minor amendment.

(b) A minor amendment is an amendment to an approved district program including

(1) a revision, addition or deletion to the issues, goals and objectives included in the approved district program under 6 AAC 85.020, which improves clarity or specificity, or which reflects the district's current views, but which does not result in a modification of a policy's intent, performance or design standard, or variance procedure;

(2) a revision, addition or deletion to the resource inventory under 6 AAC 85.050;

(3) a revision, addition or deletion to the resource suitability and sensitivity analysis under 6 AAC 85.060;

(4) a revision, addition or deletion to the policies or definitions included in the district program under 6 AAC 85.090 which

(A) helps to improve specificity or clarity, and which do not modify the goals, objectives or intent;

(B) adopts policies or definitions which have already been approved by the council and the National Oceanic and Atmospheric Administration, and which have undergone a public review in the district; or

(C) changes policies or definitions to be consistent with ordinances;

(5) altering the boundaries of a sensitive use area or sensitive resource area created under 6 AAC 85.090, but does not change the enforceable policies of the district program or coastal zone;

(6) a revision, addition or deletion to the implementation methods or authorities included in the district program under and 6 AAC 85.100 in which

(A) a coastal resource service area becomes a borough, and the district program is implemented by the borough;

(B) an area which merits special attention outside a district is annexed to a municipality, and the area which merits special attention program is implemented by the municipality; or

(C) a borough or coastal resource service area delegates coastal management planning and or implementation responsibility to a city or village within its boundaries, and adds a section in its implementation chapter on the relationship of a city inside its boundaries specifically for state consistency reviews and elevations, municipal appeals, planning and plan revisions, implementation through municipal land use regulations, and city land use regulations and how they will be reviewed for consistency with the district program;

(7) a district adopting a procedure for incorporating local knowledge into the implementation procedures of an approved district program;

(8) a district adopting a procedure for documenting public need;

(9) altering a coastal resource service area or municipal corporate boundary by

(A) annexing land where no existing coastal district program applies and the district designates the initial biophysical coastal zone boundary in the new territory as the final coastal zone boundary; or

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(B) annexing land already covered by a district coastal management program whereby the district does not want to make significant changes to the policies which apply to the area nor change the coastal zone boundary in the area; or

(10) an editorial change, reprint, change of format or program layout, or translation into another language of dialect.

(c) To make a minor amendment, a district must submit a request to the office. The request must include

(1) a brief description of the proposed change and an enclosure containing the actual change;

(2) the basis upon which the district believes the amendment is a minor program amendment;

(3) the reason the change is necessary;

(4) an assessment of the effects or potential effects of the change on district program implementation;

(5) documentation that state agencies have been consulted; this documentation may include a district's response to an agency's comments;

(6) a letter of support for the change from the coastal resource service area board, municipal planning commission, or municipal governing body; and

(7) a letter of support from a municipal governing body or a village, if that governing body or village

(A) exercises planning powers within a coastal resource service area or borough; and

(B) is materially affected by the change.

(d) Within 30 days after submission of the request, the office shall

(1) review the proposed amendment and the material submitted under (a) of this section;

(2) discuss the proposed amendment with an affected

(A) state or federal agency;

(B) district; or

(C) other interest; and

(3) prepare a recommendation on the amendment.

(e) The district may modify its proposed amendment to address the concerns identified by any of the parties listed in (d) of this subsection, or identified by the office.

(f) The office shall submit its recommendation on the amendment to the council. Public notice of the availability of the proposed amendment, recommendation, and notice of council meeting shall be given to a person who has requested that notice in writing, and through advertisement in a newspaper of general circulation. The public notice shall be issued at least 21 days before council review.

(g) The council will review the office's recommendations, material submitted by the district, and public comment offered at the council hearing. The council will, in its discretion, adopt the recommendation of the office by reference, and

(1) determine whether the amendment is a minor amendment, a minor amendment

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provided certain changes are made, or a significant amendment; and

(2) approve the minor amendment in whole, approve the minor amendment provided certain changes are made, or disapprove the minor amendment.

If the council determines that the amendment is a significant amendment, the amendment is subject to the significant amendment provisions of this chapter. (Eff. // , Register)

Authority: AS 44.19.161
AS 44.19.162
AS 46.40.040
AS 46.40.060
AS 46.40.070

6 AAC 85.170 is amended to read:

6 AAC 85.170. MEDIATION. (a) If the council's decision under 6 AAC 85.150 or 6 AAC 85.160 [6 AAC 85.150(i)] disapproves the district program or amendment [,] in whole or in part, the district may

(1) amend the district program [THE DISAPPROVED PORTION] to comply with the council's directive; or

(2) submit the disapproved portion [MUST BE SUBMITTED] to mediation as required by AS 46.40.060(b).

(b) Before the [INITIAL] mediation session, the council will, in its discretion, call for a [ONE OR MORE] public hearing [HEARINGS] in the district to discuss the part [CONCERNED, FOR THE PURPOSE OF DISCUSSING THOSE PORTIONS] of the program subject to mediation. Public notice shall be issued at least 30 days before the hearing. Upon request, a district shall provide [PUBLIC HEARINGS MUST BE PRECEDED BY 30 DAYS' NOTICE. IF PUBLIC HEARINGS ARE HELD, DISTRICTS SHALL INSURE THAT, WHERE REASONABLY REQUESTED,] translation into and out of a [APPROPRIATE] Native language prevalent within the district. The [LANGUAGES IS PROVIDED. ALL] public hearing [HEARINGS] must be electronically recorded. A person may submit oral [ORAL] or written testimony [MAY BE SUBMITTED], except that unduly repetitious testimony may be excluded. The oral and written testimony [AND WRITTEN SUBMISSIONS] constitute the hearing record, which shall [MUST] be transmitted to the mediator. [MEDIATION SESSIONS WILL BE CONDUCTED AS FOLLOWS:]

(c) [(1)] The parties to the mediation are [WILL BE] the council and the district. The parties shall, within 10 days after the date of the council's decision under 6 AAC 85.150 [6 AAC 85.150(i)], agree upon the selection of a mediator. If the parties cannot agree, they shall immediately, in writing, ask the Federal Mediation and Conciliation Service to appoint a mediator. If that mediator is unacceptable to either party, that party shall request the Federal Mediation and Conciliation Service to submit to the parties the names of three qualified mediators. Upon receipt of these names, each party shall strike one name from the list and the remaining name will be the mediator. A mediator shall perform [HIS OR HER] duties in a manner consistent with the standards of conduct set out in the Code of Professional Conduct for

Labor Mediators, referred to in and set out as an appendix to 29 C.F.R. 1400.735-20.

(d) [(2)] A mediation session [MEDIATION SESSIONS] must be held within the district. The mediator shall schedule a session [THE SESSIONS], with due regard for the convenience of the parties, upon at least seven days' notice, except that the parties may, by mutual consent, waive the notice period. The parties shall mutually agree upon the place of the meeting.

(e) [(3)] The mediator shall schedule the first mediation session to be held as soon as possible after the mediator [HE OR SHE] has been selected. At the initial session, the mediator shall establish reasonable rules of procedure. A mediation session [MEDIATION SESSIONS] must be conducted in a manner so that the parties will have the assurance and confidence that information disclosed to the mediator will remain confidential. The mediator shall determine the length and frequency of a mediation session. If [SESSIONS; HOWEVER, IF] an accord is not reached within 60 days after the initial session, [AN IMPASSE WILL BE DECLARED BY] the mediator shall declare an impasse, except that [. BY MUTUAL CONSENT OF] the parties and the mediator may agree to extend the 60-day [, THIS DEADLINE MAY BE EXTENDED FOR A] period by no more than [NOT TO EXCEED AN ADDITIONAL] 30 days.

(f) [(4)] If the mediator determines that an impasse has been reached, the mediator [HE OR SHE] shall notify the parties in writing within 10 days after the determination is made.

(g) [(5)] If the mediator determines that an accord has been reached, the mediator [HE OR SHE] shall direct the parties to set out in writing the terms of the agreement. This agreement [, TO BE SIGNED BY THE PARTIES,] signifies the final settlement of the dispute [OUTSTANDING DISPUTES], subject to ratification at a public meeting by [THE OFFICIAL BODIES OF] each party. With the approval of the parties, mediation may be used to resolve a difference that [ANY DIFFERENCES WHICH] may arise as the result of the public meetings. After ratification [UNDER (A)(5) OF THIS SECTION], the agreement may be set aside only for fraud, misconduct, or gross mistake.

(h) [(b)] If the council and the district reach an accord [IN MEDIATION SESSIONS HELD UNDER (A) OF THIS SECTION], the council will, within 20 days after ratification by both parties, serve its modified decision, in the form of an order, on the district and a person [ALL PERSONS] who WAS [WERE] served with the council's decision under 6 AAC 85.150(c) [6 AAC 85.150(i)], and will place the modified decision in the record file. The modified decision must [WILL] contain findings and conclusions, based on the record file and additional material presented during mediation, necessary to demonstrate that the modified decision is consistent with AS 46.40, this chapter, and [THE STANDARDS CONTAINED IN] 6 AAC 80 [, AS 46.40.060, OR 46.40.070].

(i) [(c)] If the council and the district do not reach an accord, the council will, within 20 days after a determination that an impasse has been reached, set the matter for an adjudicatory hearing under AS 46.40.060(c). Notice of the hearing must be served on the district and on a person [ALL PERSONS] who was [WERE] served with the council's decision under 6 AAC 85.150(c). A [6 AAC 85.150(I). ANY] person served with notice of the hearing under this subsection may intervene as a party to the hearing. (Eff. 3/2/84, Register 89; am // , Register)

Authority: [AS 44.19.160]
AS 44.19.161

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[AS 46.19.167]
AS 46.40.010
AS 46.40.030
AS 46.40.040

6 AAC 85 is amended by adding a new section to read:

6 AAC 85.175. OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT REVIEW. Within 30 days after a council approval under 6 AAC 85.150 or 6 AAC 85.160, or a modified decision under 6 AAC 85.170, the office shall submit the district program or amendment to the United States Department of Commerce for review under 16 U.S.C. 1455 (Coastal Zone Management Act). (Eff. //, Register)

Authority: AS 44.19.161
AS 44.19.162
AS 46.40.040

6 AAC 85.180 is amended to read:

6 AAC 85.180. LOCAL ADOPTION AND EFFECTIVE DATE [AND LOCAL ADOPTION]. (a) The council will, in its discretion, waive the requirements of this section for minor program amendments that do not involve a change to an enforceable element or component of the district program.

(b) Within 90 days after [THE DATE] a district program or [SIGNIFICANT] amendment is approved by the council under 6 AAC 85.150 - 6 AAC 85.170 and has been approved by the United States Department of Commerce as described in 6 AAC 85.175, the district shall approve or disapprove the district program or amendment in its entirety. The district shall issue a public notice for a hearing to adopt the district program or amendment. Public notice of the hearing shall be given to a person who has requested it in writing, and through advertisement in a newspaper of general circulation within the district, through radio or television announcements, or through another applicable provision for public notice. The district shall, by ordinance or resolution, whichever is required by other applicable provision of law, adopt the district program or amendment approved by the council at the hearing or as soon thereafter as practicable. [HOWEVER,] A [a] coastal resource service area shall adopt the district program by resolution of the coastal resource service area board. [IN THE SAME MANNER, A CHANGE] Following change in a district program after [RESULTING FROM] mediation under 6 AAC 85.170 [AS 46.40.060(b) AND 6 AAC 85.170(a) AND (b)] or an [FROM] adjudication under AS 46.40.060(c), [AND 6 AAC 85.170(c) MUST BE ADOPTED BY] the district shall adopt that change after a council [FOLLOWING THE COUNCIL'S] order under 6 AAC 85.170 [6 AAC 85.170 (b) OR (c) RATIFYING THE RESULTS OF THE MEDIATION OR DETERMINING THE ADJUDICATION].

(c) A district program or [SIGNIFICANT] amendment to a district program takes effect as part of the Alaska Coastal Management Program 30 days after public notice of [UPON] the lieutenant governor's filing of the council's decision approving the district program or