

ALASKA LEGISLATURE COMMITTEE FILES

1997-1998 8672

9383

HOUSE RESOURCES

including those parties described in 6 AAC 85.140. DGC's evaluation will include:

- (1) a summary of the proposed program amendment;
- (2) an analysis of the evidence that the requirements in (c) have been satisfied; and
- (3) an evaluation of the amendment's consistency with the Alaska Coastal Management Program (ACMP).

(e) If the criteria established in (c) of this section are not met, then DGC will report this finding to the council. DGC's finding will be distributed to all parties involved during the consultation period specified in (b) of this section and to the council. DGC's finding is subject to council review if a review is requested by a council member.

(f) The procedures set out in 6 AAC 85.150(g) - (j) for review of district programs apply to council review of a petition under this section.

(g) The procedures set out in 6 AAC 85.170 for mediation and adjudicatory hearings apply if the district is dissatisfied with the council's decision on the petition.

(h) An amendment to a district program approved by the council under (f) of this section takes effect as part of the ACMP upon the lieutenant governor's filing of the council's decision approving the amendment. If mediation or an adjudicatory hearing under (g) of this section occurs, an amendment to a district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40.060(c) and 6 AAC 85.170(c) takes effect upon the lieutenant governor's filing of the council's order either ratifying the results of the mediation or determining the adjudication, respectively. (Eff. 8/23/86, Register 99)

Authority: AS 44.19.160 AS 46.40.040
AS 44.19.161 AS 46.40.060
AS 46.40.010

6 AAC 85.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "beaches" means the area affected by wave action directly from the sea;

(2) "marine coastal water" means water adjacent to shorelines which contains a measurable quantity of seawater, including sounds, bays, lagoons, bayous, ponds and estuaries, and the living resources which are dependent on these bodies

of water;

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

(4) "district" means a coastal resource district as defined in AS 46.40.210(2);

(5) "district program" means a district coastal management program;

(6) "islands" means bodies of land surrounded by water on all sides; interior portions of major islands may be excluded from the coastal area if uses of these islands do not cause direct and significant impacts on coastal waters;

(7) "saltwater wetlands" has the same meaning as that contained in 6 AAC 80.900(19);

(8) "transitional and intertidal areas" means areas subject to periodic or occasional inundation by tides, including coastal floodplains, storm surge areas, tsunami and hurricane zones, and washover channels;

(9) "feasible and prudent" has the same meaning as in 6 AAC 80.900;

(10) "including" has the same meaning as in 6 AAC 80.900; and

(11) "significant amendment" means an amendment to an approved district program which

(A) results in a major revision, addition or deletion to the policies or implementation methods or authorities included in the district program under 6 AAC 85.090 and 6 AAC 85.100;

(B) alters the district boundaries, other than by technical adjustments;

(C) designates an area which merits special attention or alters an existing area which merits special attention designation; or

(D) restricts or excludes a use of state concern not previously restricted or excluded. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 9/9/81, Register 79; am 3/2/84, Register 89)

Authority: AS 44.19.160 AS 46.40.040
 AS 44.19.161 AS 46.40.060
 AS 46.40.010(c) AS 46.40.070

Sec. 41.17.900. Applicability of chapter; relationship to other law.

(a) Unless otherwise specified, this chapter applies to forest land under state, municipal, or private ownership.

(b) For federal land,

(1) the degree of resource protection may not be less than that established by this chapter for state land except that AS 41.17.119 establishes the minimum riparian standard;

(2) a timber harvest activity subject to this chapter shall satisfy the requirement to be consistent to the maximum extent practicable with the Alaska coastal zone management program if the federal land management plans, guidelines, and standards applicable to that timber harvest activity provide no less resource protection than the standards that are established in this chapter provide for state land except that

(A) AS 41.17.119 establishes the minimum riparian standards; and

(B) this paragraph does not apply to a timber harvest activity that requires a state or federal authorization under a provision of law other than this chapter.

(c) The commissioner shall exempt by regulation from the provisions of this chapter

(1) minor, small scale, or incidental commercial operations of little significance with respect to the purposes of this chapter; and

(2) operations for primarily noncommercial purposes, including but not limited to the harvesting of timber for personal use.

(d) Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other state agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for

(1) regulations under the Coastal Management Act; and

(2) regulations, if authorized by the commissioner of environmental conservation, relating to control of nonpoint source pollution.

(e) Subject to 16 U.S.C. 1456(f) (sec. 307(f) of the Coastal Zone Management Act of 1972, P.L. 92-583) as to private land, this chapter and the regulations adopted under this chapter establish the forest management standards, policies, and review processes under AS 46.40 (Alaska Coastal Management Act). This subsection does not apply to timber harvest activity that requires a state or federal authorization under a provision of law other than this chapter.

(f) This chapter does not diminish the rights, privileges, or immunities of Alaska Natives or Alaska Native corporations with respect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act), and does not alter or diminish the authority of the Department of Fish and Game under AS 16, of the Department of Environmental Conservation under AS 46, or of a state agency under other law.

History -

(sec. 1 ch 108 SLA 1978; am sec. 24, 25 ch 34 SLA 1990)

Revisors Notes -

Subsections (a) - (c) were formerly AS 41.17.050 and subsection (d) was formerly AS 41.17.020(j). Renumbered in 1983.

Amendment Notes -

The 1990 amendment, effective October 1, 1990, rewrote subsection (b) and added subsections (e) and (f).

Sec. 44.19.145. Functions and duties of the office.

(a) The office shall

(1) provide technical assistance to the governor and the legislature in identifying long range goals and objectives for the state and its political subdivisions;

(2) prepare and maintain a state comprehensive development plan;

(3) provide information and assistance to state agencies to aid in governmental coordination and unity in the preparation of agency plans and programs;

(4) review planning within state government as may be necessary for receipt of federal, state, or other funds;

(5) participate with other countries, provinces, states, or subdivisions of them in international or interstate planning, and assist the state's local governments, governmental conferences, and councils in planning and coordinating their activities;

(6) encourage educational and research programs that further state planning and development, and provide administrative and technical services for them;

(7) publish such statistical information or other documentary material as will further the provisions and intent of AS 44.19.141 - 44.19.152;

(8) assist the governor and the Department of Community and Regional Affairs in coordinating state agency activities that have an effect on the solution of local and regional development problems;

(9) serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to federal, state, or local governmental agencies in discharging their respective responsibilities or in obtaining federal or state financial or technical assistance;

(10) review all proposals for the location of capital improvements by any state agency and advise and make recommendations concerning location of these capital improvements;

(11) render, on behalf of the state, all federal consistency determinations and certifications authorized by 16 U.S.C. 1456 (sec. 307, Coastal Zone Management Act of 1972), and each conclusive state consistency determination when a project requires a permit, lease, or authorization from two or more state resource agencies.

(b) The office shall, in carrying out its functions, consult with local, regional, state and federal officials, private groups and individuals, and with officials of other countries, provinces, and states, and may hold public hearings to obtain information for the purpose of carrying out the provisions of AS 44.19.141 - 44.19.152.

(c) The governor may establish coordinating or advisory planning groups.

(d) The office shall

(1) coordinate its services and activities with those of other state departments and agencies to the fullest extent possible to avoid duplication;

(2) [Repealed, sec. 35 ch 126 SLA 1994].

(3) cooperate with the University of Alaska and other appropriate public and private institutions in research and investigations.

History -

(sec. 2 ch 103 SLA 1966; am sec. 2 ch 219 SLA 1970, am sec. 2 ch 60 SLA 1972; am sec. 8, 10 ch 200 SLA 1972; am sec. 5 ch 207 SLA 1975, am sec. 20 ch 63 SLA 1983; am sec. 1 ch 44 SLA 1990; am sec. 35 ch 126 SLA 1994)

Revisors Notes -

Formerly AS 44.19.880. Renumbered in 1980.

Amendment Notes -

The 1990 amendment substituted "requires a permit, lease, or authorization from two or more state resource agencies" for "requires two or more state or federal permits, leases, or authorizations" at the end of paragraph (a)(11) and made grammatical changes.

The 1994 amendment, effective July 1, 1994, repealed paragraph (d)(2), relating to the office's preparation of an integrated annual report on the long-range development program of the state.

Editors Notes -

Section 3, ch. 44, SLA 1990 provides that the 1990 amendment to (a) of this section is retroactive to March 11, 1984.

Decisions -

Competitive sale of oil and gas development rights - to offshore state land constituted a project requiring a review and finding by the Office of Management and Budget as to whether the project was consistent with the Alaska Coastal Management Program. Trustees for Alaska v. State, Dep't of Natural Resources, 795 P.2d 805 (Alaska 1990).

Consistency determinations by Department of Natural Resources. - The legislature has amended paragraph (a)(11) to permit the Department of Natural Resources to make consistency determinations pursuant to AS 46.40.010. Trustees for Alaska v. State, Dep't of Natural Resources, 847 P.2d 1061 (Alaska 1993).

Consistency determination to be in state's best interest. - The Department of Natural Resources consistency determination is one section of its finding, made in accordance with AS 38.05.035(e), that a sale would serve the State's best interest. Trustees for Alaska v. State, Dep't of Natural Resources, 847 P.2d 1061 (Alaska 1993).

Consistency determination to identify hazards. - The Department of Natural Resources is to identify and report on known and, as to areas of high development potential, substantially possible areas of geographical hazards within the land for which it is making a consistency determination. Trustees for Alaska v. State, Dep't of Natural Resources, 847 P.2d 1061 (Alaska 1993).

Sec. 44.19.155. Alaska Coastal Policy Council.

(a) There is created in the Office of the Governor the Alaska Coastal Policy Council. The council consists of the following:

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

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

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

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

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

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

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

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

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

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

(2) each of the following:

(A) the director of the office of management and budget;

(B) the commissioner of commerce and economic development;

(C) the commissioner of community and regional affairs;

(D) the commissioner of environmental conservation;

(E) the commissioner of fish and game;

(F) the commissioner of natural resources; and

(G) the commissioner of transportation and public facilities.

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

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

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, the member shall advise the alternate who may attend and act in the place of the member. The alternate for a public member appointed under (a)(1) of this section shall, at the time of the alternate's designation and throughout the period of service as a permanent alternate, be the mayor or member of the

assembly or council of a municipality within the region from which the permanent member is appointed. The alternate for the director of the office of management and budget, serving under (a)(2)(A) of this section, shall be the director's designee within that office. The alternate for a designated member serving under (a)(2)(B) - (G) of this section shall be a deputy commissioner of the department or the director of a division in the department. The names of alternates shall be filed with the council.

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

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

(g) If an incumbent public member ceases to meet the qualifications prescribed in (a)(1) of this section for nomination to the council or if a vacancy exists among the public members for any other reason except for a vacancy due to the expiration of the term of a public member, the governor shall, within 30 days of the establishment of the vacancy by lack of qualification or other reason, make an appointment, to be immediately effective, for the unexpired portion of the term. An appointment by the governor made under this subsection to fill an unexpired term of a public member shall comply with the requirements of (a)(1) of this section; however, the governor may appoint from qualified persons without soliciting from municipalities nominations of persons to fill the unexpired portion of the term.

History -

(sec. 3 ch 84 SLA 1977; am E.O. No. 39, sec. 11 (1977); am sec. 4, 5 ch 129 SLA 1978; am sec. 22, 23 ch 63 SLA 1983; am sec. 30 ch 168 SLA 1990; am sec. 25 ch 23 SLA 1995)

Revisors Notes -

Formerly AS 44.19.891. Renumbered in 1980.

Cross References -

For per diem and travel expenses, see AS 39.20.180.

Amendment Notes -

The 1990 amendment, effective June 22, 1990, deleted an exception at the end of the first sentence in subsection (b) pertaining to the term of a public member first appointed.

The 1995 amendment, effective May 11, 1995, deleted "after July 9, 1978" preceding "under (a)(1)" in the third sentence in subsection (d).

Article Notes -

Cross References. For the Alaska coastal management program, see AS 46.40; for planning assistance for development and maintenance of district coastal management programs, see AS 44.47.095; for provisions stating the legislative findings and legislative policy, see sec. 1 and 2, ch. 84, SLA 1977 in the Temporary and Special Acts of 1977.

Sec. 44.19.160. Powers of the council.

The council may

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

(2) contract for necessary services;

(3) consult and cooperate with

(A) persons, organizations, and groups, public or private, interested in,

affected by, or concerned with coastal area planning and management;

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

(4) take any reasonable action necessary to carry out the provisions of AS 44.19.155 - 44.19.162.

History -

(sec. 3 ch 84 SLA 1977)

Revisors Notes -

Formerly AS 44.19.892. Renumbered in 1980. Also in 1980, former AS 44.19.160 was renumbered as AS 44.99.007.

Sec. 44.19.161. Duties of the council.

In conformity with 16 U.S.C. 1451-1464 (Coastal Zone Management Act of 1972), as amended, the council shall

(1) through the public hearing process and the recording of the minutes of the hearings, develop guidelines and standards for the preparation of, and approve, in accordance with AS 46.40, the Alaska coastal management program;

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; in carrying out its duties under this paragraph, the council shall initiate an interagency program of comprehensive coastal resource planning for each geographic region described in AS 44.19.155(a)(1);

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

(4) [Repealed, sec. 35 ch 126 SLA 1994].

History -

(sec. 3 ch 84 SLA 1977; am sec. 35 ch 126 SLA 1994)

Revisors Notes -

Formerly AS 44.19.893. Renumbered in 1980.

Amendment Notes -

The 1994 amendment, effective July 1, 1994, repealed paragraph (4), relating to the council's duty to submit annually the portion of the coastal management program approved or amended by the council during the preceding year.

Sec. 44.19.162. Council staff.

The council shall use the staff of the office of coastal management within the office of management and budget in discharging its powers and duties. The coordinator of the office of coastal management, under the direction of the council co-chair who is selected from among the members designated in AS 44.19.155(a)(2), may contract with or employ personnel or consultants the coordinator considers necessary to carry out the powers and duties of the council.

History -

(sec. 3 ch 84 SLA 1977; am sec. 24 ch 63 SLA 1983)

Revisors Notes -

Formerly AS 44.19.894. Renumbered in 1980.

Chapter 46.40. THE ALASKA COASTAL MANAGEMENT PROGRAM
Cross References -

For regulations for the Alaska Coastal Management Program, see 6 AAC 80 and 6 AAC 85.

AG Opinions -

The activities of lessees, permittees and other private persons on nonexclusive federal coastal lands remain subject to state regulatory authority including the coastal management program unless the particular state regulation is preempted by, irreconcilably conflicts with or frustrates the purpose of another federal law. February 3, 1978 Cp. Att'y Gen.

While federal land use decisions will not be governed or controlled by the state's coastal management program, they must, to the degree that they directly affect nonfederal coastal resources, conform to the state program to the maximum extent practicable. February 3, 1978 Op. Att'y Gen.

Article 01. DEVELOPMENT OF ALASKA COASTAL MANAGEMENT PROGRAM

Sec. 46.40.010. Development of Alaska coastal management program.

(a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

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

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

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

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

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

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

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

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040.

History -

(sec. 4 ch 84 SLA 1977)

AG Opinions -

The doctrine of federal preemption, derived from the supremacy clause of the United States Constitution, Article VI, clause 2, would not apply to state regulation of outer continental shelf activities in the coastal zone. May 12, 1980 Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980 Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. sec. 1451 et seq. May 12, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, sec. 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980 Op. Att'y Gen.

Decisions -

Competitive sale of oil and gas development rights - to offshore state land constituted a project requiring a review and finding by the Office of Management and Budget as to whether the project was consistent with the Alaska Coastal Management Program. Trustees for Alaska v. State, Dep't of Natural Resources, 795 P.2d 805 (Alaska 1990).

Consistency determinations by Department of Natural Resources. - The legislature has amended AS 44.19.145 (a)(11) to permit the Department of Natural Resources to conduct ACMP consistency determinations, formerly under the strict purview of the Office of Management and Budget. Trustees for Alaska v. State, Dep't of Natural Resources, 847 P.2d 1061 (Alaska 1993).

Article Notes -

Collateral References. - 78 Am. Jur. 2d, Waters, sec. 59-116, 375-438.

65 C.J.S., Navigable Waters, sec. 10-18, 20-132; 93 C.J.S., Waters, sec. 71-85.

Sec. 46.40.020. Objectives.

The Alaska coastal management program shall be consistent with the following objectives:

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

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

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

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

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

aesthetic values and natural systems or processes within the coastal area;

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

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

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

History -

(sec. 4 ch 84 SLA 1977)

Decisions -

Archeological identification at initial sale stage. - Furtherance of the objectives of this section requires the identification of known archeological sites at the initial sale stage of government leases. Trustees for Alaska v. State, Dep't of Natural Resources, 847 P.2d 1061 (Alaska 1993).

Stated in Hammond v. North Slope Borough, 645 P.2d 750 (Alaska 1982).

Sec. 46.40.030. Development of district coastal management programs.

Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives, and standards governing the use of resources within the coastal area of the district. The program must be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and must include

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

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

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

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

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

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

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

History -

(sec. 4 ch 84 SLA 1977)

AG Opinions -

The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations, 6 AAC 80.100, in

regulating timber harvest and processing in the coastal area. April 20, 1981 Op. Att'y Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981 Op. Att'y Gen. Decisions -

Stated in *Hammond v. North Slope Borough*, 645 P.2d 750 (Alaska 1982).

Sec. 46.40.040. Duties of the Alaska Coastal Policy Council.

Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

- (1) by regulation, adopt under the provisions of AS 44.62 (Administrative Procedure Act) for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, guidelines and standards for
 - (A) identifying the boundaries of the coastal area subject to the district coastal management program;
 - (B) determining the land and water uses and activities subject to the district coastal management program;
 - (C) developing policies applicable to the land and water uses subject to the district coastal management program;
 - (D) developing regulations applicable to the land and water uses subject to the district coastal management program;
 - (E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;
 - (F) designating and developing policies for the use of areas of the coast which merit special attention; and
 - (G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;
- (2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development and implementation of district coastal management programs;
- (3) undertake review and approval of district coastal management programs in accordance with this chapter;
- (4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;
- (5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state;
- (6) by regulation, establish a consistency review and determination or certification process that conforms to the requirements of AS 46.40.096.

History -

(sec. 4 ch 84 SLA 1977; am sec. 1 ch 129 SLA 1978; am sec. 1 ch 34 SLA 1994)

Cross References -

For regulations for the Alaska Coastal Management Program, see 6 AAC 80 and 6 AAC 85.

Amendment Notes -

The 1994 amendment, effective August 7, 1994, made a minor stylistic change in the introductory language in paragraph (1), added paragraph (6), and made a related stylistic change.

Sec. 46.40.050. Action and submission by coastal resource districts.

Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of June 4, 1977 or within 30 months of certification of the results of the district's organization, whichever is later. If, in the opinion of the council, after receipt of a written request for extension from the district which includes the reasons for the extension, an extension is considered proper, the council may grant an extension to a date which is not later than December 4, 1981, or to a date which is within 54 months of certification of the results of the district's organization, whichever is later.

History -

(sec. 4 ch 84 SLA 1977; am sec. 1 ch 66 SLA 1979)

Sec. 46.40.060. Review and approval by council.

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

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

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

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

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

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

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

History -

(sec. 4 ch 84 SLA 1977)

AG Opinions -

The invalid provisions of AS 46.40.080 are severable from the remainder of the Coastal

Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations and this section. April 29, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, sec. 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

Sec. 46.40.070. Standards for council review and approval.

(a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

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

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

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

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

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

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

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

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

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

History -

(sec. 4 ch 84 SLA 1977)

AG Opinions -

Reading subsection (b) as vesting local officials with complete control over policy formulation would probably render the Alaska Coastal Management Act unconstitutional under Alaska Const., art. VIII, sec. 2. May 12, 1980 Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, sec. 11 on the exclusion of municipal authority if that restriction or exclusion is reasonable, within the meaning of subsection (c). May 12, 1980 Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal

management plan which comports with the Alaska Coastal Management Program. May 12, 1980 Op. Att'y Gen.

Sec. 46.40.080. Effective date of Alaska coastal management program.

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

History -

(sec. 4 ch 84 SLA 1977)

Cross References -

For effective dates related to the Alaska Coastal Management Program, see 6 AAC 80.170(n) and 6 AAC 85.180; for resolution approving certain regulations under this section before the A.L.I.V.E. decision (discussed in notes below), see LR 41 in the 1978 Temporary and Special Acts and Resolves.

AG Opinions -

Under the decision in *State v. A.L.I.V.E. Voluntary*, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980), that the use of legislative resolutions as a veto over regulations, programs or other actions or proposed actions is constitutionally impermissible except as expressly provided by the constitution, this section is invalid. March 6, 1980 Op. Att'y Gen.

The invalid provisions of section are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations, and AS 46.40.060. April 29, 1980 Op. Att'y Gen.

Sec. 46.40.090. Implementation of district coastal management programs.

(a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies.

Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives, and standards adopted by the district.

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

History -

(sec. 4 ch 84 SLA 1977)

Sec. 46.40.094. Consistency determinations for phased uses and activities.

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

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

(2) the proposed use or activity is capable of proceeding in discrete phases based upon developing information obtained in the course of a phase; and

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

(b) When a use or activity is authorized or developed in discrete phases and each phase will require decisions relating to a permit, lease, or authorization for that particular phase, the agency responsible for the consistency determination for the particular phase

(1) may, in its discretion, limit the consistency review to that particular phase if, but only if,

(A) the agency or another state agency must carry out a subsequent consistency review and make a consistency determination before a later phase may proceed; and

(B) the agency responsible conditions its consistency determination for that phase on a requirement that a use or activity authorized in a subsequent phase be consistent with the Alaska coastal management program; and

(2) shall, when the consistency review is limited under (1) of this subsection, conduct the consistency review for the particular phase and make the consistency determination based on

(A) applicable statutes and regulations;

(B) the facts pertaining to a use or activity for which the consistency determination is sought that are

(i) known to the state agency responsible or made a part of the record during the consistency review; and

(ii) material to the consistency determination; and

(C) the reasonably foreseeable, significant effects of the use or activity for which the consistency determination is sought;

(3) shall, when the consistency review is limited under (1) of this subsection, describe in the consistency determination the reasons for its decision to make the consistency determination for the use or activity in phases.

(c) In this section,

(1) "agency responsible for the consistency determination" means

(A) the office of management and budget, for a consistency determination required to be made under AS 44.19.145(a)(11); and

(B) the commissioner of the resource agency that coordinates a consistency review for a proposed use or activity, or for a proposed phase of a use or activity, when required by this chapter for which a permit, lease, or authorization is required to be approved or issued only by that resource agency;

(2) "resource agency" has the meaning given in AS 44.19.152.

History -

(sec. 8 ch 38 SLA 1994)

Cross References -

For legislative findings in connection with the enactment of this section, see sec. 1, ch. 38, SLA 1994 in the Temporary and Special Acts.

History Reports -

For legislative letter of intent in connection with the enactment of this section, see the Senate Letter of Intent for CSSB 308(FIN) am, as amended, at 1994 Senate Journal 3853.

Sec. 46.40.096. Consistency reviews and determinations.

(a) The council shall, by regulation, establish a consistency review and determination process that conforms to the requirements of this section.

(b) If a consistency review is not subject to AS 44.19.145(a)(11) because the project for which a consistency review is made requires a permit, lease, or authorization from only one state agency, that state agency shall coordinate the consistency review of the project. The state agency shall coordinate the consistency review according to the requirements of the regulations adopted by the council under this section.

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

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

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

(2) prepare proposed consistency determinations;

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

(A) is limited to a review by the state resource agencies; and

(B) may occur only if requested by

(i) the project applicant;

(ii) a state resource agency; or

(iii) an affected coastal resource district;

(4) after providing an opportunity to file a petition for review under (e) of this section, render the final consistency determination and certification.

(e) Under regulations adopted by the council, the reviewing entity shall provide opportunity to file a petition under AS 46.40.100(b)(1) seeking a review by the council of the proposed consistency determination prepared under (d)(2) of this section. The regulations must include provisions that establish a reasonable limit on the time that may elapse between the completion of the proposed consistency determination prepared under (d)(2) of this section and a hearing to consider a petition filed under this subsection. Not more than 30 days shall elapse between the filing of the petition and the decision by the council. Under this subsection,

(1) the right to file a petition is limited to

(A) each of the following parties, but only if the party had submitted comments during the period for receipt of public comments established under (c) of this section:

(i) an affected coastal resource district;

(ii) a state agency; or

- (iii) a citizen of an affected coastal resource district; or
- (B) the project applicant; and
- (2) the reviewing entity
 - (A) may not accept a petition filed under this subsection if a final consistency determination has been rendered under (d)(4) of this section;
 - (B) may accept a petition filed by a party identified in (1)(A)(i), (1)(A)(ii), or (1)(B) of this subsection only if a party had requested a review of the proposed consistency determination prepared under (d)(2) of this section;
 - (C) may accept a petition filed by a party identified in (1)(A)(iii) of this subsection without regard to whether a party had requested a review of the proposed consistency determination prepared under (d)(2) of this section.
- (f) For a consistency review subject to AS 44.19.145(a)(11), the council may, by regulation, limit consideration of a petition under (e) of this section seeking review of a proposed consistency determination to the extent necessary to meet the deadlines set by federal law for timely submission of a federal consistency determination as allowed by 16 U.S.C. 1456.
- (g) In this section,
 - (1) "affected coastal resource district" means a coastal resource district in which a project is proposed to be located or which may experience a direct and significant impact from a proposed project;
 - (2) "reviewing entity" means the
 - (A) office, for a consistency review subject to AS 44.19.145(a)(11);
 - (B) state agency identified in (b) of this section, for a consistency review not subject to AS 44.19.145(a)(11).

History -

(sec. 2 ch 34 SLA 1994)

Sec. 46.40.100. Compliance and enforcement.

(a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

(b) A party that is authorized under AS 46.40.096(e)(1) or (g) of this section may file a petition showing that a district coastal management program is not being implemented, enforced, or complied with. On receipt of a petition, the council, after giving public notice in the manner required by (f) of this section, shall convene a hearing to consider the matter. A hearing called under this subsection shall be held in accordance with regulations adopted by the council. After hearing,

- (1) if the petition was filed under AS 46.40.096(e) and the council finds that
 - (A) the office or the state agency responsible for coordinating the consistency review has not fairly considered the petitioner's comments in the development of a proposed consistency determination, the council shall remand the proposed consistency determination to the office, or to the state agency responsible for coordinating the consistency review, for preparation of a revised proposed consistency determination that gives fair consideration to the petitioner's comments;
 - (B) a remand of the consistency determination is not required under (A) of this paragraph, the council shall dismiss the petition;
- (2) if the petition was not filed under AS 46.40.096(e), the council may order that

the coastal resource district or a state agency take any action the council considers necessary to implement, enforce, or comply with the district coastal management program.

(c) Except when a petition has been filed under AS 46.40.096(e), in determining whether an approved district coastal management program is being implemented, enforced, or complied with by a coastal resource district that exercises zoning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

(1) zoning or other regulations have been adopted and are being enforced;
(2) variances are being granted according to procedures and criteria that are elements of the district coastal management program, or the variance is otherwise approved by the council; and

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

(d) Except when a petition has been filed under AS 46.40.096(e), in determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

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

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

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

(f) Upon receipt of a petition under (b) of this section, the council shall give notice of the hearing convened to consider the petition as follows:

(1) notice of the hearing shall be given at least 10 days before the scheduled date of the hearing

(A) by publication in

(i) a newspaper of statewide circulation; or

(ii) a newspaper of general circulation in the vicinity of the district coastal management program that is the subject of the petition; and

(B) by at least one of the following methods:

(i) publication through public service announcements on the electronic media serving the area affected by the district coastal management program;

(ii) posting in a conspicuous location in the vicinity of the proposed project or action;

(iii) notifying parties known or likely to be affected by the proposed project or action; or

(iv) another method calculated to effectively notify affected interested parties.

(2) a notice provided under (1) of this subsection must

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

(B) indicate the manner in which the public may comment on the petition if the petition is filed under (b)(2) of this section.

(g) The opportunity to petition under (b)(2) of this section is limited to

- (1) a coastal resource district;
- (2) a citizen of the coastal resource district; or
- (3) a state agency.

History -

(sec. 4 ch 84 SLA 1977; am sec. 3 - 6 ch 34 SLA 1994)

Amendment Notes -

The 1994 amendment, effective August 7, 1994, in subsection (b), added the first sentence, rewrote the second sentence, substituted "regulations adopted by the council" for "the Administrative Procedure Act (AS 44.62)" in the third sentence, added paragraph (1), added the paragraph (2) designation and added "if the petition was not filed under AS 46.40.096(e)," at the beginning therein; in subsections (c) and (d), substituted "Except when a petition has been filed under AS 46.40.096(e), in" for "In" in the introductory language and made stylistic changes; and added subsections (f) and (g).

AG Opinions -

For effective date of coastal management programs, see notes under this heading following AS 46.40.080.

Decisions -

Quoted in *Kuitsarak Corp. v. Swope*, 870 P.2d 387 (Alaska 1994).

Article 02. COASTAL MANAGEMENT PROGRAMS IN THE UNORGANIZED BOROUGH

Sec. 46.40.110. Authority in the unorganized borough.

Under AS 29.03.020 and AS 46.40.110 - 46.40.180, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants authority to the service areas which may be organized to perform the duties required under this chapter.

History -

(sec. 4 ch 84 SLA 1977)

Article Notes -

Collateral References.- 78 Am. Jur. 2d, *Waters*, sec. 59-116, 375-438.

65 C.J.S., *Navigable Waters*, sec. 10-18, 20-132; 93 C.J.S., *Waters*, sec. 71-85.

Sec. 46.40.120. Coastal resource service areas.

(a) Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

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

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

(2) if, after giving due consideration to the standards applicable to incorporation of borough governments and the likelihood that a borough will be incorporated within the area,

the commissioner determines that the functions to be performed under this chapter could be undertaken more efficiently through the combination of two or more regional educational attendance areas as a single coastal resource service area.

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area.

(d) For purposes of coastal zone management only, the commissioner of community and regional affairs may, after public hearings held in the regional educational attendance area affected, divide an existing regional educational attendance area into no more than three coastal resource service areas according to geographic, cultural, economic, environmental, or other features relevant to coastal management planning. However

(1) each coastal resource service area formed by dividing an existing regional educational attendance area must contain at least one first class city or home rule city;

(2) a city within a coastal resource service area formed by dividing an existing regional educational attendance area may not elect to exclude itself from the coastal resource service area; and

(3) a coastal resource service area formed before June 1, 1980, may not be divided for coastal management planning purposes.

History -

(sec. 4 ch 84 SLA 1977; am sec. 2 ch 129 SLA 1978; am sec. 1, 2 ch 48 SLA 1980)

Sec. 46.40.130. Organization of coastal resource service area.

(a) Organization of a coastal resource service area may be initiated

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

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

(3) at the direction of a majority of the members of the council in the manner set out in AS 46.40.160.

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

History -

(sec. 4 ch 84 SLA 1977)

Sec. 46.40.140. Coastal resource service area boards.

(a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

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

(c) The commissioner of community and regional affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose

of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under AS 46.40.130(a)(1), in the resolution submitted under AS 46.40.130(a)(2), at the direction of the council under AS 46.40.130(a)(3), or may be proposed at any time by the members of the coastal resource service area board. If proposed by the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal resource service area board.

(d) The term of office of a member of a coastal resource service area board is three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. This section does not prohibit the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal resource service area boards. The first election of board members shall occur at the same time as the organization election under AS 46.40.130(b).

(f) Except for the first election of members of coastal resource service area boards, elections shall be held annually on the date of election of members of regional educational attendance area boards under AS 14.08.071(b). For an election under this subsection or under (e) of this section, a newly elected board member takes office at the first coastal resource service area board meeting after certification of the election. If no candidate files for election to a seat on the coastal resource service area board, the seat is considered vacant at the time a newly elected member would have taken office.

(g) A seat on a coastal resource service area board shall be declared vacant by the board if the criteria under AS 14.08.045(a) apply to the person elected. A vacancy on a coastal resource service area board shall be filled by appointment as provided in AS 14.12.070 for vacancies in the membership of regional educational attendance area boards.

(h) Members of coastal resource service area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.26.240 - 29.26.350. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of recall elections.

History -

(sec. 4 ch 84 SLA 1977; am sec. 85 ch 74 SLA 1985; am sec. 5 - 7 ch 129 SLA 1990)

Sec. 46.40.150. Elections in coastal resource service areas.

Organization elections under AS 46.40.130 and other elections, including recall elections conducted under AS 46.40.140, shall be administered by the lieutenant governor in the general manner provided in AS 15 (Election Code). In addition, the lieutenant governor may adopt regulations necessary to the conduct of coastal resource service area board elections. The state shall pay all election costs.

History -

(sec. 4 ch 84 SLA 1977)

Sec. 46.40.160. Organization at the direction of the council.

(a) Whenever it appears that major economic development activity will occur in a coastal

MILLER MCCRAY - DEC Anchorage



LAWS OF ALASKA

1977

Source

CGS SCS CSMB 342

Chapter No.

84

AN ACT

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

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

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

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

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

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

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

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

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

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

Chapter 84

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

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

(3) develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among users of the coastal resources upon the coastal land and water of the state;

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

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

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

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

ARTICLE 11A. ALASKA COASTAL POLICY COUNCIL.

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

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

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

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

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

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

Chapter 84

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

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

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

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

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

(2) each of the following:

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

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

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

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

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

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

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

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

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

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

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

Hypothetical Permit Review Process

Coastal zone
Project

→ Coastal project
questionnaire

DEC coordinates the
consistency review - multi-
agency

50 day review -
may be stopped at
Day 25 based on the
need for more info.

3 agency
permits
needed

DNR - Tidelands permit

[EPA - NPDES
DEC's - 401 certification

DEC - air permit

Agencies required to have
a public review process -
regardless of ACMP
requirements

coordinated agency / applicant
meetings w/ local district,
agencies, possible special
interest groups.

→ Participates in
~~DEC~~ consistency
determination
F-4G - Participates too

→ possible
project stipulations:

1) mitigation for
potential habitat
impacts - moose

population studies or
suspension of project
during calving season
2) limitations on
activities involving
air emissions.

could be proposed
by any agency involved
although DEC's permit
jurisdiction.

→ DNR Best Interest Finding
→ possible w/ hearing w/ EPA & DEC

→ DEC - Draft air permit w/ public
hearings

meetings take
permit writers
away from
this point to
participate in
Acamp deter-

mination

→ Administrative appeal
→ court

Scott Nak 4243800

AS 29 + 46 - planning
6 AAC 80 ^{46.40.210(2)} ♂

44.19.145(a)(11)

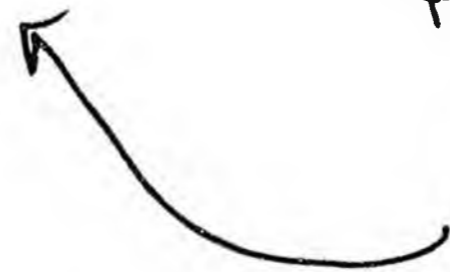
AS 40 +

→ agencies, district or applicant
may disagree w/ determination

→ elevate to director

→ elevate to Commissioner

petition
→ elevate to CPC
included eligible
petitioners:
✓ community members
✓ agencies
✓ applicant



possible remand to agencies

HB

46

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 46

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to mining; and providing BRU: Resource Development
for an effective date. Component: Mining Development
 Sponsor: Kelly, Therriault
 Requestor: H(RES) Component Serial No. 442

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	1.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	1.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ none

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

HB46 is housekeeping in nature. There will be a cost to the State in making regulation changes of approximately \$1.0. The change in the requirements for adjusting annual rental for state-owned mineral property is better in that adjustments are made whenever the base CPI changes by \$5 to the base index for Anchorage from the base period of Jan-Jun 1989. Change in the rental is to the nearest whole \$5. Change in the current cost of administration or to mineral property holders are speculative since there may be bookkeeping savings by both that would likely be offset by more timely change in rental as a result of change in the base index CPI.

Prepared by: Jules Tileston, Director Phone: 269-8625
 Division: Division of Mining and Water Management Date: 22-Jan-97
 Approved by Commissioner: [Signature] Date: 1/22/97
 Agency: Natural Resources

referred to Committee: January 13, 1997

FURTHER REFERRALS:

Committee Action: 1/30/97

RESOURCES Committee considered:

HB 46

BILL NO. 46

MINING CLAIMS ON PUBLIC LANDS

relating to mining; and providing for an effective date."

ommends it be replaced [] the same title
h the following committee substitute [] a new title

additional referral to _____ Committee
attached amendment(s)

OPTS: _____ Letter of Intent

TACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____ [] fiscal note(s) _____

zero fiscal note(s) _____ [] zero fiscal note(s) _____

AGREING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Frank Dixon</i> DIXON	<input checked="" type="checkbox"/>			
<i>W. K. Williams</i> WILLIAMS	<input checked="" type="checkbox"/>			
<i>Ray D. Green</i> GREEN	<input checked="" type="checkbox"/>			
<i>Scott Ogden</i> OGDEN	<input checked="" type="checkbox"/>			
<i>Bill Hudson</i> HUDSON	<input checked="" type="checkbox"/>			
<i>James Barnes</i> BARNES	<input checked="" type="checkbox"/>			
<i>Anna M. Nicholas</i> NICHOLIA	<input checked="" type="checkbox"/>			
<i>Joseph J. Jule</i> JULE	<input type="checkbox"/>			

AIR'S SIGNATURE *Bill Hudson Co.* *Scott Ogden Co. Co.*

v

Alaska State Legislature

REPRESENTATIVE

PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203

Fairbanks, Alaska 99701

(907) 456-8161

While in Juneau

State Capitol

Juneau, Alaska

99801-1182

(907) 465-2327

House District 31

House Of Representatives

Comparison

HB 46 with CS HB 46

The Committee Substitute before you differs from the original bill as a result of external legal review. The CS adds several reference sections following modification of language in of Section 7 (was Sect 4).

The key provision changed in the CS was the addition of language in Section 7 that makes it unnecessary for the department to develop regulations defining a mill site lease. Section 7 now makes it clear that the Department can issue a mill site lease for a reasonable annual rent. This lease is in addition to the mining claim lease, and is for a restricted set of uses approved by the director, i.e. mill sites, tailings sites, etc.

Sections 1, 2, 3, and 10 result from the need to make it clear that a mill site lease, in Section 7, is still exempt from the leasing provisions in AS 38.05.035(e). The change from [PERMIT] to "lease" in Section 7 of the bill presented the possibility of confusing mining leases with other land leases, and it was deemed best to specifically add this new language to the statutes.

Alaska State Legislature

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House District 31

House Of Representatives

Sponsor Statement

House Bill 46

Mining

House Bill 46 provides technical corrections to language in the existing mining code. These corrections reflect the actual practices of the Department of Natural Resources.

Alaska State Legislature

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State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

Sectional

House Bill 46

Mining

Sec. 1. Deletes "mining," which is an activity, and inserts "location," which establishes the right to mine. Because the closure is prospective. i.e. it is subject to existing rights, it is necessary to close an area to location. Mineral closures do not preclude mining on mineral locations that exist prior to the date of mineral closure. Mineral closures only apply to new mineral locations.

Sec. 2. Updates title 38 definition of corporation to reflect current definitions used elsewhere in state statutes and in federal laws.

Sec. 3. Reduces paperwork within DNR, and provides a clean \$5 unit for increase or change, not fractions of a dollar. The current language could make the calculation of rental payments needlessly cumbersome for both the mineral holder and the state.

Sec. 4. The Department of Natural Resources issues Leases not [PERMITS]. Miners pay annual rent not a "[charge]." Miners are restricted to a specific set of uses relating to mining.

Sec. 5. Surface uses are narrowly confined to mining uses, such as the mill site that is necessary to develop a mineral property like Fort Knox, to be readily leased.

Sec. 6. Conforms the abandonment procedures to other technical modifications in the bill.

Sec. 7, & 8. Eliminate redundancy by deleting the portions of the production license paperwork now achieved better in the existing requirements of the Department of Revenue.

Sec. 9 and 10. Effective dates.

Alaska State Legislature

REPRESENTATIVE

PETER KELLY

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Juneau, Alaska

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House District 31

House Of Representatives

Sectional CS House Bill 46

Sec. 1. Technical reference to the "Lease" in Section 7. Exempts mining lease from oil & gas lease requirements.

Sec. 2. Technical deletion of the old language referring to mining "production licenses" on page 2, and, on page 3, the insertion of the new mining "**surface use lease**" from section 7.

Sec. 3. Technical renumbering of reference in prior section.

Sec. 4. Deletes "mining," which is an activity, and inserts "**location**," which establishes the right to mine. Because the closure is prospective, i.e. it is subject to existing rights, it is necessary to close an area to location. Mineral closures do not preclude mining on mineral locations that exist prior to the date of mineral closure. Mineral closures only apply to new mineral locations.

Sec. 5. Updates title 38 definition of corporation to reflect current definitions used elsewhere in state statutes and in federal laws.

Sec. 6. Reduces paperwork within DNR, and provides a clean \$5 unit for increase or change, not fractions of a dollar. The current language could make the calculation of rental payments needlessly cumbersome for both the mineral holder and the state.

Sec. 7. Clarifies the language in this section. The Department of Natural Resources issues Leases not [PERMITS] for a mill site. Miners pay annual rent not a "[charge]." Miners are restricted to a specific set of uses relating to mining.

Sec. 8. Confirms that the mill site lease of Sec. 7, is treated the same as a mining lease, not competitive bid leases.

Sec. 9. Conforms the mining claim abandonment procedures to other technical modifications in the bill.

Sec. 10. Technical renumbering from section 2.

Sec. 11. Eliminates redundancy by deleting the portions of the production license paperwork now achieved better in with the "mining license" issued by the Department of Revenue.

Sec. 12 and 13, and 14. Effective dates.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 46

1 Page 3, lines 13 - 24:

2 Delete all material and insert:

3 "Sec. 38.05.255. Surface use of land or water. Surface uses of land or water
4 that are considered necessary for the exploration, development, or extraction of
5 minerals included within a mining property [PROPERTIES] by the owners, or by
6 the lessee or operator, of that property [THOSE PROPERTIES] shall be limited to
7 those necessary for the prospecting for, extraction of, or basic processing of mineral
8 deposits and shall be subject to reasonable concurrent uses. Leases [PERMITS] for
9 millsites, [AND] tailings disposal, and other mine related facilities may be issued
10 [GRANTED] by the director. The leases [PERMITS] shall be conditioned upon
11 payment of a reasonable annual rent [CHARGE] for the lease [USE] and restricted
12 to uses approved by the director [CONTINUANCE OF THE LIMITED USE].
13 Timber from land open to mining without lease, except timberland, may be used by
14 a mining claimant or prospecting site locator for the mining or development of the
15 location or adjacent claims under common ownership. On other land, timber may be
16 acquired as provided in this chapter. Use of water shall be made in accordance with
17 AS 46.15."

18 Page 3, lines 27 - 28:

19 Delete "The commissioner, by regulation, shall establish appropriate leasing
20 procedures and annual rent amounts for leases under this section."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: Draft CSHB 46() ("B" Version)

1 Page 5, line 29, through page 6, line 1:

2 Delete "The rental amount shall be revised by the commissioner if the change between
3 the index for the first six months of the current year and the most recent index used to revise
4 the rental, or the reference base index if the rental amount has never been revised, equals or
5 exceeds \$5."

6 Page 6, line 4:

7 Delete "index annually"

8 Insert "rental amount each 10 years"

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

☐ 400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

☐ 3601 C STREET, SUITE 1210
ANCHORAGE, ALASKA 99503-5921
PHONE: (907) 269-8431
FAX: (907) 269-8918

January 31, 1997

The Honorable Bill Hudson
The Honorable Scott Ogan
Co-Chairmen, House Resources Committee
Capitol Building
Juneau, AK 99801

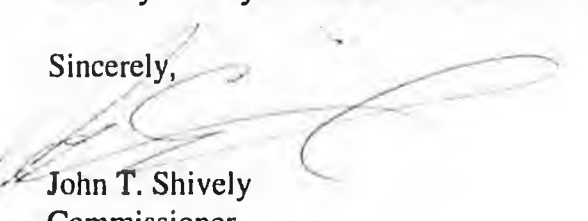
RE: House Bill 46, Related to Mining

Dear Representatives Hudson and Ogan:

The department, on behalf of the administration, is pleased to confirm our support to the changes in Title 38 as amended by the House Resources Committee on January 30th. We appreciate your prompt action in helping government become more efficient by revising outdated sections dealing with mining.

Thank you for your consideration and we urge passage of this bill

Sincerely,



John T. Shively
Commissioner

cc: Representative Pete Kelly, Representative Gene Therriault

FAIRBANKS BRANCH, ALASKA MINERS ASSOCIATION

P. O. Box 73069, Fairbanks, AK 99701, (907)474-2080, FAX (907)474-2082

January 17, 1997

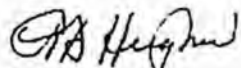
Representative Pete Kelly
Rm 513
State Capitol
Juneau, AK 99801-1182

Dear Representative Kelly:

I have taken the opportunity to review your proposed House Bill 46, "An Act relating to mining; and providing for an effective date." The proposed bill provides necessary and beneficial housekeeping. I support the bill as proposed.

I understand that there is some effort to add to the bill to provide for relief of rental fees for claims on streams in contention for navigable status, where the claims can not be worked. This appears to be a favorable addition to the bill. I expect to receive a copy of the modified bill next week.

Yours truly,



Richard A. Hughes, P. E.
Branch Chairman

JAN 23 1997



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

Honorable Bill Hudson
 Honorable Scott Ogan
 Co-Chairmen, House Resources Committee
 Capitol Building
 Juneau, AK 99801

January 22, 1997

RE: House Bill 46, Related to Mining

Dear Representatives Hudson and Ogan,

The Alaska Miners Association supports the changes to Title 38 proposed in House Bill 46. The changes contained in this bill are basically housekeeping items that will clarify the statute and remove items that could otherwise become un-intended stumbling blocks for miners.

During our review of this bill we identified an area in Section 4 that needs some further modification. We would suggest the section read as follows with new material underlined and removed material [BRACKETED AND CAPITALIZED]:

Sec. 4. AS 38.05.255. Surface use of land or water. Surface uses of land or water that are necessary for the exploration, development or extraction of minerals included within a mining property [PROPERTIES] by owners of that property [THOSE PROPERTIES] or a lessee or operator, shall be limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent uses. Leases [PERMITS] for millsites and tailings disposal or other mine-related facilities, either on or off the mining property, may be issued [GRANTED] by the director. The leases [PERMITS] shall be conditioned upon payment of a reasonable annual rent [CHARGE] for the lease [USE] and restricted to [CONTINUANCE OF THE LIMITED] uses approved by the director. Timber from the land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location or adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with AS 46.15.

These changes are necessary to clarify that lands adjacent to the mining claims may be leased for mills and other facilities. Thank you for consideration of our comments. We urge passage of this bill with these changes.

Sincerely,

Steven C. Borell, P.E.
 Executive Director

cc: Representative ^{Pex} Kelly
 Representative Gene Theriault

HB

89

FISCAL NOTE

No. 1
 Bill Version: CSHB 89 (CRA)
 (H) Publish Date: 2/12/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BII

Revision Date: _____ Dept Affected: Natural Resources
 Title: All Act relating to the Shuyak Island BRU: Parks & Recreation Management
State Park Component: Parks Management
 Sponsor: Austerman
 Requestor: (H)CRA Component Serial No. 452

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	5.0	7.0				
TRAVEL	5.0	3.0				
CONTRACTUAL SUPPLIES	5.0	3.0	4.0	5.0	5.0	6.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.0	13.0	4.0	5.0	5.0	6.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	15.0	13.0	4.0	5.0	5.0	6.0
1007 GF/Mental Health						
Other						
TOTAL	15.0	13.0	4.0	5.0	5.0	6.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Day-to-day management of the expanded park can be handled by existing staff and volunteer levels with some additional supply monies to pay for boat gas and other supplies. These costs are necessary for expanded patrol areas. A new park brochure would need to be designed and printed in FY98.

\$10.0 is needed in FY98 and FY99 to revise the Shuyak Island State Park Master Plan. The first year is \$5.0 each for personnel and travel to gather baseline information on use patterns in the new park area. Second year is \$7.0 for personnel and \$3.0 for travel to prepare the written update and hold the requisite public meetings and public comment period leading to adoption of a revised park plan.

Prepared by: Jim Stratton, Director *Jim Stratton for* Phone: 269-8720
 Division: Parks Date: 28-Jan-97
 Approved by Commissioner: *Jim Stratton for* Date: 1-28-97
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 89

DATE: 2/19/97

Dept. Affected: Natural Resources
BRU: Parks & Recreation Man.

Title: An Act relating to Shuyak Island
State Park
Sponsor: Austerman
Requestor: House Resources Committee

Components: Parks Management
Serial # _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

See attached analysis

Prepared by: House Resources Committee

Representative Scott Ogan, Co-Chair

Date: 2/19/97

Phone: 465-3715

Phone: _____


REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

FEB 11 1997

Memorandum

TO: Representative Bill Hudson, Co-Chairman
Representative Scott Ogan, Co-Chairman
House Resources Committee

FROM: Representative Alan Austerman 

DATE: February 11, 1997

RE: HB 89 - Relating to the Shuyak Island State Park

I respectfully request that a hearing for my bill, HB 89, be scheduled in House Resources Committee at your earliest possible convenience.

The Shuyak State Park was established in 1984 from a portion of the state's holdings to protect the area's fish and wildlife habitat and allow public recreation opportunities. Following the Exxon Valdez oil spill the Trustee Council selected additional lands adjacent to the Park for the protection of habitat. This bill completes the land acquisition transaction by formally incorporating all state lands on the island into the Park. We have received only favorable public support of this legislation.

My staff will be providing the referral file which includes backup and a small fiscal note. Your assistance with this matter is appreciated.



SPONSOR STATEMENT

HB 89 Shuyak Island State Park

House Bill 89, and companion Senate Bill 64 have been introduced by the Kodiak delegation at the request of the Kodiak Island Borough Assembly. The bills represent the outcome of a long and complex effort by state and federal authorities along with locally affected entities to compensate for the effects of the Exxon Valdez oil spill. The bill adds specific land and water areas to the Shuyak State Park. Shuyak Island was heavily impacted by pollution streaming westward from the 1989 accident.

In 1984, the Shuyak State Park was established from part of the state's holdings to protect the area's fish and wildlife habitat and public recreation opportunities, while maintaining customary hunting and fishing uses. The two largest land owners on Shuyak Island are the State of Alaska and the Kodiak Island Borough.

One provision of the oil spill settlement was the establishment of a joint federal and state council to manage remediation and recovery efforts. Previous litigation imposed management restrictions that required the state to maintain wildlife habitat and public recreation values while the borough was partially prohibited from commercial or industrial uses on its lands.

It is for this purpose that the Oil Spill Trustee Council, on which I serve, selected the Borough's Shuyak Island lands and purchased them in 1996. Responsibilities of the group include the replacement of lost fish and wildlife habitat with the acquisition and protection of other high value habitat. The final effort is the consolidation of the lands under the protective management of the Shuyak State Park.

HB 89 completes the transaction by formally incorporating all state lands on the island into the Shuyak Island State Park. The expanded park retains the management goals, purposes, and allows uses of the original park.

**HB - 89 *CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE***

**PAGE 1,
LINES 7-11**

Requires that DNR/Division of Parks follow the agreement they reached with the Kodiak Island Borough to keep Shuyak Island traditional uses as management priorities. Adds commercial fishing as one of those traditional uses.

**PAGE 3,
LINES 26-30**

Provides specific language to protect the Department of Fish and Game's management authority within the Park.

**PAGE 4,
LINES 4-7**

Restricts the ability of Parks to prohibit the use of a weapon both in circumstance and time period.

**PAGE 4,
LINE 15**

Adds commercial fishing to protected uses.

**PAGE 4
LINES 18-28**

Requires the commissioner to be specific about any incompatible use which may be disallowed in the Park.

0-LS0382B
Luckhaupt
2/17/97

CS FOR HOUSE BILL NO. 89(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE AUSTERMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Shuyak Island State Park."

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

3 * Section 1. AS 41.21.170(a) is amended to read:

4 (a) The purpose of AS 41.21.170 - 41.21.178 is to establish, subject to valid
5 existing rights, the state-owned or acquired land and water [UPLANDS AND
6 FRESHWATER BODIES] described in AS 41.21.172 as the Shuyak Island State Park.
7 In accordance with the covenants and deed restrictions set by the Kodiak Island
8 Borough that support the basic tenets of the Alaska lifestyle, the [THE] primary
9 purpose [PURPOSES] of establishing the Shuyak Island State Park is [ARE] to
10 preserve, protect, and enhance traditional public access to and use of the area's
11 natural resources for various activities including [THE AREA'S RECREATIONAL
12 AND SCENIC RESOURCES, TO PROTECT THE AREA'S FISH AND WILDLIFE
13 HABITAT, AND TO PRESERVE AND ENHANCE THE CONTINUED USE OF
14 THE AREA FOR] sport and subsistence hunting, sport, subsistence, and commercial
15 [AND] fishing, and trapping [, AND RECREATIONAL ACTIVITIES].

A *

B *

1 * Sec. 2. AS 41.21.172 is repealed and reenacted to read:

2 **Sec. 41.21.172. Designated state land and water.** The upland, shoreland,
3 tideland, land underlying tidally influenced inland water, and water overlying this land,
4 including both the surface and subsurface estate, owned or acquired by the state within
5 the following described parcels are designated as the Shuyak Island State Park:

6 (1) Township 17 South, Range 19 West, Seward Meridian

7 Section 18

8 Section 19

9 Section 30;

10 (2) Township 17 South, Range 20 West, Seward Meridian

11 Section 24

12 Section 25;

13 (3) Township 18 South, Range 18 West, Seward Meridian

14 Section 6

15 Section 7

16 Section 20

17 Section 28

18 Section 29;

19 (4) Township 18 South, Range 19 West, Seward Meridian

20 Section 1

21 Section 2

22 Section 4

23 Section 5

24 Sections 7 - 36;

25 (5) Township 18 South, Range 20 West, Seward Meridian

26 Section 2

27 Section 3

28 Sections 9 - 11

29 Sections 13 - 17

30 Sections 19 - 36;

31 (6) Township 18 South, Range 21 West, Seward Meridian

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- Section 36;
- (7) Township 19 South, Range 19 West, Seward Meridian
 - Sections 1 - 24
 - Sections 26 - 34;
- (8) Township 19 South, Range 20 West, Seward Meridian
 - Sections 1 - 30
 - Section 32: N1/2
 - Sections 33 - 36;
- (9) Township 19 South, Range 21 West, Seward Meridian
 - Section 1
 - Sections 12 - 14
 - Section 24
 - Section 25;
- (10) Township 20 South, Range 19 West, Seward Meridian
 - Section 4
 - Section 5
 - Section 6: N1/2, N1/2S1/2;
- (11) Township 20 South, Range 20 West, Seward Meridian
 - Section 1: N1/2, N1/2S1/2
 - Section 2: N1/2
 - Section 3: N1/2.

* Sec. 3. AS 41.21.174(a) is amended to read:

(a) The state land and water [UPLANDS AND FRESHWATER BODIES] described in AS 41.21.172 are assigned to the department for control, maintenance, and development consistent with the purposes and provisions of AS 41.21.170 - 41.21.178.

* Sec. 4. AS 41.21.174(g) is amended to read:

(g) Nothing in AS 41.21.170 - 41.21.178 prohibits the Department of Fish and Game from engaging in [STREAM] rehabilitation, enhancement, and development of fish and game habitat under AS 16.05 [AS 16.05.092] on land and water within the Shuyak Island State Park.

* Sec. 5. AS 41.21.176 is amended to read:

c' *

1 Sec. 41.21.176. Incompatible uses. (a) Except as provided in this section,
 2 the [THE] commissioner may designate by regulation incompatible uses within the
 3 land and water of the Shuyak Island State Park [PARK UPLANDS AND
 4 FRESHWATER BODIES].

5 (b) Use of a weapon in the Shuyak Island State Park shall be allowed at all
 6 times for personal protection and may be prohibited only under extraordinary
 7 circumstances and only at such times that public safety is unduly threatened
 8 [EXCEPT IN UNIQUE AREAS THAT MAY BE CLOSED FOR PURPOSES OF
 9 PUBLIC SAFETY BY REGULATION BY THE COMMISSIONER].

10 (c) The [THE REGULATIONS GOVERNING PUBLIC USE OF THE
 11 SHUYAK ISLAND STATE PARK SHALL PROVIDE AMPLE ACCESS FOR
 12 LEGAL SPORT AND SUBSISTENCE HUNTING AND FISHING, TRAPPING, AND
 13 RECREATIONAL USES. EXCEPT TO PROTECT PUBLIC SAFETY THE]
 14 commissioner may not restrict lawful [THE EXERCISE OF] sport, [OR] subsistence,
 15 or commercial fishing, sport or subsistence [OR] hunting, or trapping permitted
 16 under law or under a regulation of the Board of Fisheries or the Board of Game within
 17 the Shuyak Island State Park.

18 * Sec. 6. AS 41.21.176 is amended by adding new subsections to read:

19 (d) The commissioner shall allow traditional access to

- 20 (1) Shuyak Island State Park for recreational purposes and for lawful
- 21 sport, subsistence, and commercial fishing, sport and subsistence hunting, and trapping;
- 22 (2) private land within the park.

23 (e) If the commissioner determines that a use is incompatible with one or more
 24 other uses in a portion of the Shuyak Island State Park, the commissioner shall state

- 25 (1) each determination of incompatibility;
- 26 (2) the specific area where the incompatibility is determined to exist;
- 27 (3) the time within which the incompatibility is determined to exist; and
- 28 (4) the reasons for each determination of incompatibility.

29 * Sec. 7. AS 41.21.178 is amended to read:

30 Sec. 41.21.178. Additions to park. Land and water outside of the
 31 boundaries established in AS 41.21.172 may be added to the Shuyak Island State

1 Park only by an act of the legislature. The commissioner may [NOT] acquire land and
2 water within the boundaries of the Shuyak Island State Park except by eminent
3 domain.

1711 Mill Bay Road #1
Kodiak AK 99615
907-486-8369

February 20, 1997

House Resources Committee
State Capitol
Juneau AK 99801-1182

Dear Committee Members:

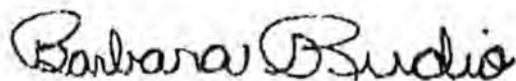
I have asked the Kodiak LIO to forward this letter to you, as I am unable to attend today's committee hearing on HB 89.

The members of the Kodiak State Parks Advisory Board would like to express our support for House Bill 89, dealing with adding acreage to Shuyak Island State Park.

Having essentially all of Shuyak Island under the management of the Division of State Parks is a logical step that will involve a minor, if any, increase in state funding. The additional land will greatly enhance what is already a premiere park.

Visitors to Shuyak Island State Park enjoy kayaking, hunting, fishing, camping, photography, hiking, and solitude, among others. Since the park is about equal-distance between Kodiak and Homer, float plane operators and guides from both communities will gain from the increase in size and use of the park.

Thank you for your consideration of HB 89.



Barbara Rudio
Chairman, Kodiak State Parks Advisory Board

page 2



As the northernmost island of the Kodiak Archipelago, Shuyak is remote even by Alaskan standards. This small island and its surrounding waters are home to sea otters, Sitka black-tailed deer, hump-back whales, brown bear, harbor seals, and at least 121 species of inland and seabirds. Alpine plants usually found in much higher elevations cover the island's windswept and rocky coast. The interior of the island is blanketed with a mature Sitka spruce forest. Archaeological evidence indicates the island's once quite large human population has long known of its productive fish and wildlife resources.



SUPPORT FOR DESIGNATING THE ENTIRE ISLAND A PARK TO PERPETUATE ITS ABUNDANT FISHING AND HUNTING HAS A LONG HISTORY.

1981 - As a result of a consent decree between the State of Alaska and the Kodiak Island Borough settling municipal selections on the island, 9,900 acres of Shuyak's eastern side must be managed by the state for wildlife habitat and public recreation purposes. Proposals in the 1980s to create a state game refuge in this part of the island were never completed.

1984 - The existing 11,000 acre Shuyak Island State Park was legislatively established.

1986 - Kodiak Island Borough Comprehensive Plan for Shuyak Island called for the entire island to be managed as a state park. Eighty-four percent of surveyed Kodiak residents supported park designation.

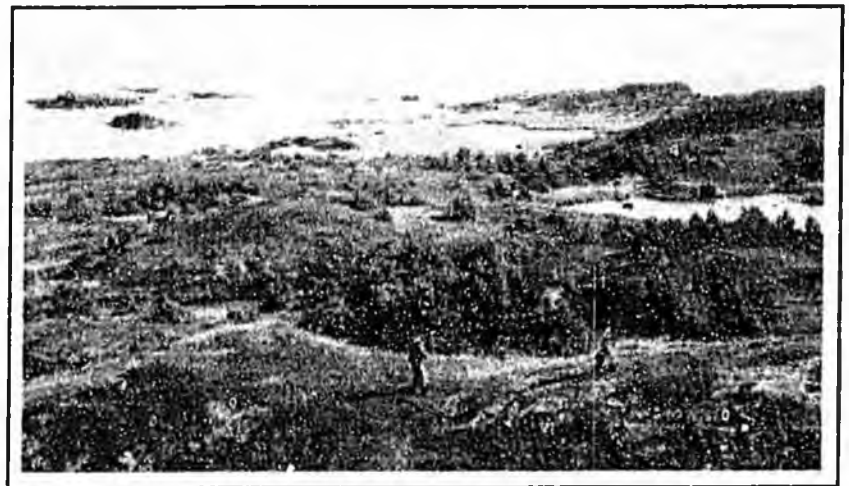
1995 - Kodiak Island Borough sells its rights to 26,000 acres of Shuyak to the State of Alaska. Funds for acquisition were provided by the Exxon Valdez Oil Spill (EVOS) Trustee Council. The Kodiak Borough identified four goals it sought from the sale:

1. To retain Shuyak Island in a natural state;
2. Preserve Shuyak Island for its recreational attributes;
3. Enlarge Shuyak Island State Park; and
4. Replace habitat impacted by the Exxon-Valdez oil spill.

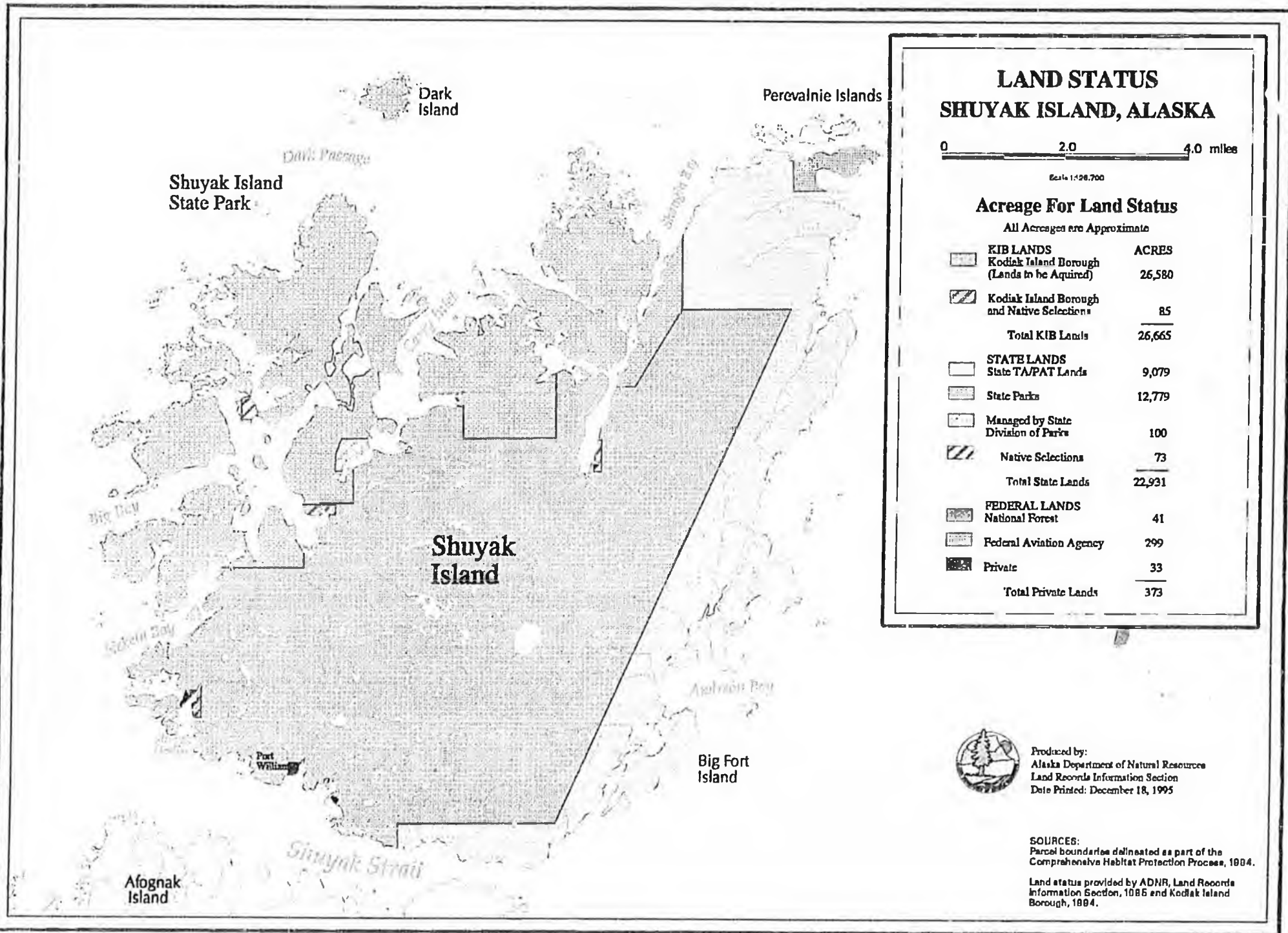
1995 - Lands transferred to the State of Alaska are subject to conservation easements held by the federal government that protect the existing ecological integrity of the island and allow for development of only those facilities determined by the Division of Parks to be necessary for public recreation use. Public use of land shall continue, including sport and subsistence hunting, fishing, trapping and recreational uses.



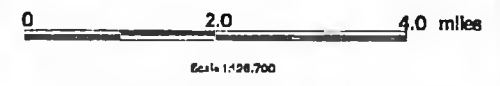
Proposals before the Alaska legislature would add approximately 36,000 acres to the existing 11,000 acre Shuyak Island State Park, adding to the fishing, hunting, and trapping opportunities available to Alaskans. With an existing State Park Ranger Station on the island, this additional designation will allow for seamless management of the entire island's natural resources with no additional state staffing requirement. In addition to the Ranger Station, State Park staff and volunteers currently manage four public use cabins and two ADF&G fish weirs in the existing state park.



This new park designation will establish State Parks as the only agency for citizens to contact when inquiring about visiting and/or doing business on the island. Given the island's great fishing, hunting, recreational boating, hiking, and wildlife viewing opportunities, park designation will provide the Kodiak and Homer adventure travel businesses with a new world class park destination within an hour's floatplane time. State Parks will include the newly expanded park as one of the Gems of the State Park System, on a par with Chugach, Wood-Tikchik, and Kachemak Bay.



LAND STATUS SHUYAK ISLAND, ALASKA



Acreage For Land Status

All Acreages are Approximate

	ACRES
KIB LANDS	
Kodiak Island Borough (Lands to be Acquired)	26,580
Kodiak Island Borough and Native Selections	85
Total KIB Lands	26,665
STATE LANDS	
State TA/PAT Lands	9,079
State Parks	12,779
Managed by State Division of Parks	100
Native Selections	73
Total State Lands	22,931
FEDERAL LANDS	
National Forest	41
Federal Aviation Agency	299
Private	33
Total Private Lands	373



Produced by:
Alaska Department of Natural Resources
Land Records Information Section
Date Printed: December 18, 1995

SOURCES:
Parcel boundaries delineated as part of the
Comprehensive Habitat Protection Process, 1994.
Land status provided by ADNR, Land Records
Information Section, 1085 and Kodiak Island
Borough, 1994.

... This is a true and correct
copy of the original on file in the office of the
Kodiak Island Borough Clerk
Issued this 5th day of MAR, 1996
Michael Sanchez Borough Clerk

Introduced by: Mayor Selby
Requested by: Mayor Selby
Drafted: Borough Attorney
Introduced: 12/08/94
Adopted: 12/08/94

**KODIAK ISLAND BOROUGH
RESOLUTION NO. 94-41**

**A RESOLUTION APPROVING DISPOSAL OF ALL BOROUGH LAND
ON SHUYAK ISLAND TO THE STATE OF ALASKA**

- WHEREAS,** the Kodiak Island Borough has received title to certain land on Shuyak Island and has an absolute right to receive a patent from the State to other land on Shuyak Island, consisting in total of approximately 26.665 acres more or less (hereinafter "Land"); and
- WHEREAS,** the Land has been identified as high value habitat that will benefit the recovery of resources and services injured by the Exxon Valdez oil spill; and
- WHEREAS,** the Borough administration has determined that the Land is surplus to the needs of Borough residents, so long as the Land is maintained in public ownership; and
- WHEREAS,** the proposed use of the Land to be acquired through the process of the Exxon Valdez Oil Spill Trustee Council is consistent with the goals and objectives of the 1986 Shuyak Island Comprehensive Plan; and
- WHEREAS,** compensation for the Shuyak Island Land will benefit all residents of the Kodiak Island Borough consistent with the intent of the State land entitlement at the time of incorporation; and
- WHEREAS,** the use of the land for habitat protection and recreation are public purposes that are beneficial to the Borough within the meaning of Kodiak Island Borough Code 18.20.100; and
- WHEREAS,** the Assembly has adopted Resolution No. 94-05 approving the disposal of the Land for fair market value, subject to Assembly review and approval of the final settlement agreement; and
- WHEREAS,** the Trustee Council, through the USDA Forest Service, has provided an appraisal estimating the market value of the land as of September 1, 1994 to be \$27 million; and

the clerk's copy shall be a true and correct copy of the original as filed in the office of the Kodiak Island Borough Clerk.

Dated this 21st day of MAR. 96

Donna F. Smith
Donna F. Smith, Borough Clerk

0196 100

Introduced by: Mayor Selby
Requested by: Mayor Selby
Drafted: Borough Attorney
Introduced: 12/21/95
Adopted: 12/21/95

KODIAK ISLAND BOROUGH
RESOLUTION NO. 95-46

A RESOLUTION APPROVING A PURCHASE AGREEMENT FOR DISPOSAL
OF ALL BOROUGH LAND ON SHUYAK ISLAND TO THE STATE OF ALASKA

WHEREAS, the Assembly previously adopted Resolution No. 94-41 approving disposal of all Kodiak Island Borough lands on Shuyak Island (hereinafter "Land") to the State of Alaska for the purchase price of \$42 million; and

WHEREAS, the Exxon Valdez Oil Spill Trustee Council adopted a resolution on December 5, 1995 to provide the funds for the State of Alaska to offer to purchase the Land in accordance with the Agreement for Sale and Purchase of Interests in Lands on Shuyak Island (hereinafter "Purchase Agreement") for a price of \$42 million payable in installments over a period of seven years; and

WHEREAS, the Kodiak Island Borough Assembly, having reviewed the pertinent facts relating to this land disposal, approves the disposal of the Land for the price of \$42 million in accordance with the Purchase Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH that the disposal of all Kodiak Island Borough lands on Shuyak Island to the State of Alaska for the purchase price of \$42 million is hereby approved on the terms and conditions for the Purchase Agreement.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH that the mayor, or his designee, is authorized to execute the Purchase Agreement and all other documents required for the completion of this transfer.

ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS TWENTY-FIRST DAY OF DECEMBER, 1995.



KODIAK ISLAND BOROUGH

Jerome M. Selby
Jerome M. Selby, Borough Mayor

Gary L. Stevens
Gary L. Stevens, Presiding Officer

ATTEST:

Donna F. Smith
Donna F. Smith, CMC, Borough Clerk

Kodiak Recording District

WHEREAS, the Kodiak Island Borough Assembly has enacted an ordinance to establish a Facilities Fund in which the proceeds from the sale of these Lands are to be deposited. As part of this ordinance, funding was authorized by the Assembly for the Kodiak Fishery Industrial Technology Center; and

WHEREAS, the Trustee Council adopted a resolution on December 2, 1994 to provide the funds for the State of Alaska to offer to purchase the Land in accordance with the Agreement for Sale and Purchase of Interests in Lands on Shuyak Island (hereinafter "Purchase Agreement") for a price equal to the final approved appraised fair market value of the land plus 20% of the final approved appraised fair market value, except that the price may not exceed \$42 million; and

WHEREAS, the Kodiak Island Borough Assembly, having reviewed the pertinent facts relating to this land disposal, approves the disposal of the Land for the price of \$42 million in accordance with the Purchase Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT:

Section 1: The disposal of all Kodiak Island Borough lands on Shuyak Island to the State of Alaska for the purchase price of \$42 million is hereby approved on the terms and conditions of the Purchase Agreement.

Section 2: The mayor is authorized to execute the Purchase Agreement and all other documents required for the completion of this transfer.

ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS EIGHTH DAY OF DECEMBER, 1994



ATTEST:

Donna F. Smith
Donna F. Smith, CMC, Borough Clerk

KODIAK ISLAND BOROUGH

Jerome M. Selby
Jerome M. Selby, Borough Mayor

Mary A. Monroe
Mary A. Monroe, Presiding Officer

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WARRANTY DEED

GRANTOR, the Kodiak Island Borough, an Alaska municipal corporation, whose address is 710 Mill Bay Road, Kodiak, Alaska, 99615, for and in consideration of ten dollars (\$10.00) and other good and sufficient considerations received, grants, conveys and warrants to GRANTEE, the State of Alaska, whose address is Department of Natural Resources, 3601 C Street, Suite 960, Anchorage Alaska, 99503, the surface estate of the following described real property situated in the Kodiak Recording District, Third Judicial District, State of Alaska, more fully described as follows:

U.S. Survey 1738, located within Township 19 South, Range 20 West, Seward Meridian. Containing 9.30 acres.

Together with the improvements located thereon.

SUBJECT, however, to:

- (1) Easements rights and reservations of the State of Alaska, and third parties, if any, of record at the Kodiak Recording District, Third Judicial District, State of Alaska; and
- (2) Enforcement Rights of the United States as established by the Conservation Easement granted by Grantor to the United States dated March 27, 1996, attached and incorporated herein, authorizing the United States to enforce on a non-exclusive basis the restrictive covenants set forth therein.

RESERVING to the Grantor the covenant that there shall be no commercial timber harvest on said real property nor any other commercial use of said real property excepting such limited commercial use as may be consistent with State law and the goals of restoration to its prespill condition of any natural resource injured, lost, or destroyed as a result of the *Exxon Valdez* oil spill of March 24, 1989 and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

RESERVING to the Grantor the covenant that public use of said real property shall be permitted in perpetuity and shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Alaska Board of Fisheries, Alaska Board of Game or the Division of

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SPECIAL WARRANTY DEED

GRANTOR, the Kodiak Island Borough, an Alaska municipal corporation, whose address is 710 Mill Bay Road, Kodiak, Alaska, 99615, for and in consideration of ten dollars (\$10.00) and other good and sufficient consideration, grants and conveys to GRANTEE, State of Alaska, whose address is Department of Natural Resources, 3601 C Street, Suite 960, Anchorage, Alaska, 99505, with the special warranties of title noted herein, subject to the conditions, restrictions and limitations noted herein all of GRANTOR'S right, title and interest in the surface estate of the following described property, excepting only those rights specifically reserved in to the GRANTOR by this Special Warranty Deed, situated in the Kodiak Recording District, Third Judicial District, State of Alaska, more fully described as follows:

All uplands within the following described boundaries and in addition includes the island in the SW1/4 of Section 17 of Tract A, T.19S., R.20W., S.M. on the easterly side of Neketa Bay and all islands, islets, pinnacles and rocks within the unnamed bay that connects to Shelikof Strait within Section 19 of Tract A, T.19S., R.20W., S.M. (all sections of land are unsurveyed/protracted): Commencing at the monumented section corner common to Sections 7 and 18 of Tract A, T.19S., R.19W., S.M. and Sections 12 and 13 of Tract A, T.19S., R.20W., S.M.; thence west between Sections 12 and 13, Sections 11 and 14, and Sections 10 and 15 3.0 miles to the corner of Sections 9, 10, 15 and 16 of Tract A, T.19S., R.20W., S.M., the true point of beginning of this description; thence west between Sections 9 and 16 and Sections 8 and 17 crossing over a small lagoon approximately 1.3 miles to the intersection with the mean high water line on the easterly shore of Neketa Bay; thence meandering southerly and westerly along the mean high water line of Neketa Bay and Shelikof Strait to an unnamed bay that connects to Shelikof Strait within Section 19 of Tract A, T.19S., R.20W., S.M. and then continuing easterly, southerly and westerly in a clockwise direction along the mean high water line

SPECIAL WARRANTY DEED

March 26, 1996

Page 1 of 10

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All uplands lying within the following described boundaries (all sections of land are unsurveyed/protracted): Commencing at the monumented witness corner to the meander corner of section 35, T.18S., R.20W., S.M. and Section 2 of Tract A, T.19S, R.20W., S.M. on the easterly shore of Carry Inlet; thence west between Section 35 and Section 2, crossing over Carry Inlet approximately 0.45 miles to the intersection with the mean high water line on the westerly shore of Carry Inlet, the true point of beginning of this description; thence meandering westerly along the mean high water line of Carry Inlet within Section 2 approximately 0.05 miles to a point on the line common to Section 35 and Section 2; thence west between Section 35 and Section 2 and between Section 34 and Section 3, crossing over a small lagoon, approximately 0.05 miles to the intersection with the mean high water line on the westerly shore of Carry Inlet; thence meandering southerly and westerly along the mean high water line of Carry Inlet approximately 1.0 miles to a point common to the E-W center 1/4 line of Section 3, T.19S., R.20W., S.M. and on the boundary of the Shuyak Island State Park; thence west, along the boundary of the Shuyak Island State park approximately 0.1 miles on the E-W center 1/4 line of Section 3 to the C 1/4 corner of Section 3; thence north, along the boundary of the Shuyak Island State Park 0.25 miles on the N-S 1/4 line of Section 3 to the C-N 1/16th corner of Section 3; thence north-northeasterly, along the boundary of the Shuyak Island State park, along a line to the C-E-W-SW 1/256th corner of Section 26, T.18S., R.20W., S.M., approximately 0.3 miles to the intersection with the line common to Section 34, T.18S., R.20W., S.M. and Section 3 of Tract A, T.19S., R.20W., S.M.; thence east between Section 34 and Section 3 and between Section 35 and Section 2, crossing over a small lagoon, approximately 0.45 miles to the intersection with the mean high water line on the west shore of Carry Inlet, the point of beginning, all within the Kodiak Recording District, Third Judicial District, State of Alaska. Containing 85 acres more or less.

Containing in sum 26949 acres, more or less.

Together with the improvements located thereon.

SUBJECT, however, to:

SPECIAL WARRANTY DEED
March 26, 1996
Page 7 of 10

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- (1) Easements, rights and reservations of the State of Alaska, and third parties, if any, of record at the Kodiak Recording District, Third Judicial District, State of Alaska.
- (2) Rights of the United States as established by the Conservation Easement granted by Grantor to the United States dated March 27, 1996, attached and incorporated herein, authorizing the United States to enforce on a non-exclusive basis the restrictive covenants set forth therein.

RESERVING to the Grantor the covenant that there shall be no commercial timber harvest on said real property nor any other commercial use of said real property excepting such limited commercial use as may be consistent with State law and the goals of restoration to its pre-spill condition of any natural resource injured, lost, or destroyed as a result of the Exxon Valdez oil spill on March 24, 1989 and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

RESERVING to the Grantor the covenant that public use of said real property shall be permitted in perpetuity and shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Alaska Board of Fisheries, Alaska Board of Game or the Division of Parks, Department of Natural Resources of the State of Alaska;

RESERVING further to the Grantor, the non-exclusive right to enforce the restrictive covenants in the Conservation Easement granted by Grantor to the United States dated March 27, 1996, attached and incorporated herein; except that such reservation shall terminate as to any portion of the land when it is designated a state park.

The GRANTOR hereby covenants to and with the GRANTOR and its successors and assigns, that the Grantor has equitable title in the in the surface estate of the above described real property with a good and lawful right and power to sell and convey the same with the consent of the State of Alaska as noted below, that the same is free and clear of encumbrances, except as noted hereon, and that the Grantor warrants the quiet and peaceable possession of the same, and will defend the title to the same against all persons claiming the same.

TO HAVE AND TO HOLD unto GRANTEE, its successors, and assigns forever.

Dated: 3/26 1996.

0142 114

CONSERVATION EASEMENT

THIS Conservation Easement is made this 27th day of MARCH 1996, by the Kodiak Island Borough ("KIB") 710 Mill Bay Road, Kodiak, Alaska 99615-6340 ("Grantor") and the United States of America, ("Grantee") under the authority of Section 1302(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3192(a)), the Fish and Wildlife Act of 1956 (16 U.S.C. § 742f(b)(1)) and the Agreement for Sale and Purchase of Interests in Lands on Shuyak Island between the KIB and the State of Alaska ("State"), dated February 15, 1996 ("Agreement") and the State.

WHEREAS, Grantor has received title to or has equitable title in the surface estate of certain land on Shuyak Island;

WHEREAS, the real property subject to this conservation easement (the "Protected Property") is a natural area that provides significant habitat for migratory birds and other fish and wildlife and plant species that were injured as a result of the *Exxon Valdez* oil spill;

WHEREAS, the *Exxon Valdez* Oil Spill Trustee Council ("Trustee Council") has approved the use of joint settlement funds for acquisition by the State of the protected property, subject to certain third-party rights to be held by the Grantee in order to assure that the restoration objectives for use of the settlement funds are achieved;

WHEREAS, Grantor intends to convey its interest in the surface estate of the Protected Property to the State;

WHEREAS, Grantor desires to provide to the Grantee an independent right in perpetuity to enforce the restrictive covenants as to the surface estate set forth herein;

WHEREAS, the Protected Property is within the Alaska Maritime National Wildlife Refuge;

NOW THEREFORE, pursuant to the laws of Alaska and in particular AS 34.17.010 - 34.17.060 and AS 29.65.070, and in accordance with the provisions of the Agreement, Grantor does hereby grant and convey to Grantee, its successors and assigns, forever, with special warranties of title noted herein, subject to conditions, restrictions and limitations of record, a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (the "Easement"), as to the surface estate of the property described as follows:

U.S. Survey 1738, located within Township 19 South, Range 20 West, Seward Meridian. Containing 9.30 acres.

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miles to a point common to the E-W center 1/4 line of Section 3, T.19S., R.20W., S.M. and on the boundary of the Shuyak Island State Park; thence west, along the boundary of the Shuyak Island State Park approximately 0.1 miles on the E-W center 1/4 line of Section 3 to the C 1/4 corner of Section 3; thence north, along the boundary of the Shuyak Island State Park 0.25 miles on the N-S 1/4 line of Section 3 to the C-N 1/16th corner of Section 3; thence north-northeasterly, along the boundary of the Shuyak Island State Park, along a line to the C-E-W-SW 1/256th corner of Section 26, T.18S., R.20W., S.M., approximately 0.3 miles to the intersection with the line common to Section 34, T.18S., R.20W., S.M. and Section 3 of Tract A, T.19S., R.20W., S.M.; thence east between Section 34 and Section 3 and between Section 35 and Section 2, crossing over a small lagoon, approximately 0.45 miles to the intersection with the mean high water line on the west shore of Carry Inlet, the point of beginning, all within the Kodiak Recording District, Third Judicial District, State of Alaska. Containing 85 acres more or less.

Containing in sum 26,963.3 acres more or less.

The acquiring agency is the Department of the Interior, U.S. Fish and Wildlife Service.

SUBJECT, however, to easements, rights and reservations of the State, and third parties if any, of record.

The Grantee shall be entitled to enforce on a non-exclusive basis the terms of the following restrictive covenants against the Grantor, its successors or assigns:

- (a) The following listed activities are prohibited on the Protected Property except as determined by the State, Department of Natural Resources, Division of Parks and Outdoor Recreation, or its successors in administrative function ("Division of Parks"), to be necessary for either conservation research or management of the subject lands (whether carried out by the Division of Parks, an entity approved by the Division of Parks, or its successors in law or interests), or for conveying information to the public to protect public safety or natural resources:
 - (i) the construction or placing of buildings, fixed or improved camping accommodations or mobile homes, fences, billboards or signs, except that the Department of Natural Resources, with the approval

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of the Division of Parks may construct public use cabins, trails, camping facilities and other facilities for public use as are in keeping with the management of a wilderness state park and do not have a significant negative impact on the restoration objectives of the Trustee Council;

- (ii) the changing of the topography of the Protected Property in any manner except as is reasonably necessary for the actions permitted in paragraph (i);
- (iii) the removal, destruction or cutting of trees or plants except for local subsistence uses or as is reasonably necessary for the actions permitted in paragraph (i);
- (iv) the use of biocides except as necessary to control or remove non-indigenous fish, wildlife or plants;
- (v) the manipulation or alteration of natural water courses, shores, marshes or other water bodies or activities or uses detrimental to water purity on the Protected Property; or
- (vi) the use of motorized vehicles, provided that this provision shall not be construed to prohibit the use of float equipped aircraft on waterbodies within the Protected Property.

(b) The following listed activities by any person are prohibited:

- (i) the introduction of fish, wildlife or plants which are not indigenous to the Kodiak Archipelago, including, but not limited to, the grazing of domestic animals or the introduction of reindeer; and
- (ii) the dumping of trash, garbage, or other unsightly or offensive material.

* * * *

Nothing herein shall be deemed to create in any third party the right to enforce these covenants.

Nothing herein shall be deemed to pertain to, affect, expand or limit the rights of the subsurface owner to utilize that estate in accordance with applicable law.



RECEIVED

FEB 03 1997

Ans'd.....

January 29, 1997

Representative Alan Austerman
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Alan:

On behalf of the Kodiak Island Convention & Visitors Bureau (KICVB) Board of Directors and membership I am writing in support of SB/HB 89 which provides for the addition of 36,000 acres of land to Shuyak Island State Park. By adding these lands to the Park, the State of Alaska will reaffirm its past efforts and ensure the conservation of these lands for wildlife habitat and mixed-use recreational purposes.

Shuyak Island is an increasingly important destination for visitors to the Kodiak area. Expansion of Shuyak Island State Park will ensure the ongoing viability of small-scale, appropriate tourism and recreation in this area. In turn, this demand will necessitate protecting Shuyak's view shed, unique ecosystems and wildlife habitat. The addition of these lands, in a sense, makes Shuyak whole. It will be a coveted, uncrowded wilderness destination.

The best advocates for the Park may be the many Alaskans and visitors from around the world who have had the privilege to experience Shuyak (from the Management Plan for Shuyak Island State Park):

"Shuyak is a gem well worth preserving for its pristineness. A place that should be left ultimately wild as there are fewer and fewer places that offer just that."

"The beauty of Shuyak is in its remoteness and wildness. It is a natural area for kayakers and small boaters. The outer coast should be declared a critical habitat area on the Sbelikof side."

"We came to watch sea otters and other animals, we saw more than we had expected."

"Keep this place natural forever!"

"This is the greatest place. Please continue your effort to maintain this nature."

"This is a very wild and beautiful place . . . I loved being here."

"Like all of Kodiak this park is an undiscovered paradise."

Kodiak Island Convention & Visitors Bureau
100 Marine Way, Kodiak, Alaska 99615 907-486-4782 Fax 907-486-6545

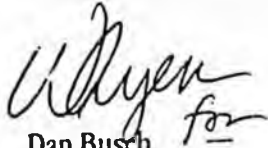
"This was my first visit. It is a very beautiful and wild place . . . I hope it stays a wonderful place to visit."

Preservation and protection of our area's natural resources are critical to our long term viability as a visitor destination. The Kodiak Island Convention & Visitors Bureau and our more than 130 member businesses support SB/HB 89, providing for the addition of 36,000 acres to Shuyak Island State Park.

Thank you for considering these comments during your upcoming deliberations. Should you require any further information or comments, please contact the KICVB at 486-4782.

Sincerely,

KODIAK ISLAND
CONVENTION & VISITORS BUREAU


Dan Busch
President

WAVETAMER KAYAKING

KAYAK KODIAK ADVENTURES
POB 228, KODIAK, ALASKA 99615
PH/FAX: 907-486-2604
e-mail: wavtamer@ptialaska.net

January 29, 1997

Alan
Willie Hensley, Commissioner,
Department of Commerce and Economic Development
Ninth Floor, State Office Building
POB 110800
Juneau, AK 99811-0800

Dear Commissioner Hensley,

In the process of reviewing the State of Alaska *Executive Budget Summary for FY98*, I read the comments about tourism in Alaska. The statement I wish to draw to your attention is: "...and a push for greater access to Alaska's public lands so the effects of tourism can be dispersed."

I encourage you to carefully consider the scope of that "push" and the affects it can have on areas that may not be capable or suitable for expanded or mass tourism efforts. Clearly there are many more opportunities to open areas for increased visitation. However, even those areas may have zones or sub-areas more suitable for mass tourism activities than others.

Currently there are issues in Katmai National Park directly related to the ever-increasing desire by visitors to view bears in the wild. Some of the issues that are related to this desire are: closing of hunting areas; issuance of mooring buoys in bays to allow for larger ships to anchor; and caps on concession permits in these areas.

Some operators in the state, for many reasons, prefer to be small, eco-sensitive operators who do not want, (nor do a percentage of their clientele want,) mass or developed tourism across the board in these resource areas. Clearly there are access issues that preclude too much mass intrusion. However in those areas where access can be enhanced, I hope the planning effort is particularly sensitive to those areas that may not be compatible with extensive increases in visitations that negatively impact the quality of the experience for other user groups.

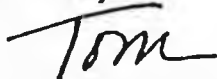
There has been discussions over that past several years to consider zonation as a possible way to sectionalize parks and other resource attraction areas. These zones could provide particular activities only in particular zones. These zones protect the resources and provide levels of activity in stages of impacts that can be more easily contained or mitigated at that level.

Other areas targeted for increased tourism must be review and, if necessary, broken out into different degrees of use. Operators, and the various factions of visitors with different levels of expectation and experiential interests, can all be reasonably assured of a quality experience in Alaska.

I have not seen the most current plans for tourism development in Alaska but know that ATMC, AVA and AWRTA all have agendas, many of which overlap, some of which conflict. Zonation has been discussed in tourism circles for some time now. Hopefully the state will see the need to continue funding at even higher levels so we can attract the visitor, but can also provide all levels of experiences to be enjoyed at optimum levels when and wherever possible.

Thank you for your considerations.

Sincerely,



Tom Watson, Owner
WAVETAMER KAYAKING

cc: Governor Knowles
Sen. Mackie
Rep. Austerman ✓
AWTRA
ATMC
AVA

ACTIVE MEMBER

Trade Association of Sea Kayaking ☞ Alaska Wilderness Recreation & Tourism Association ☞ Kodiak Island CVB

Kodiak Audubon Society
P.O. Box 1756
Kodiak AK 99615

Representative Alan Austerman
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

RECEIVED
FEB 04 1997
Ans'd.....

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January 30, 1997

Dear Representative Austerman,

On behalf of the Kodiak Audubon Society, I would like to thank you for introducing HB 89, adding approximately 36,000 acres of land to Shuyak Island State Park. Preserving all of Shuyak Island has strong broad based support in the Kodiak Island community and your introduction of this legislation is greatly appreciated.

This legislation benefits citizens of the Kodiak Island Borough as well as the State of Alaska in several ways. Preserving Shuyak Island in its natural state will provide hunting, fishing and other recreational opportunities for the people of Alaska and tourists. It will replace habitat that was damaged by the Exxon Valdez Oil Spill. Park designation also satisfies the conditions of the 1981 consent decree requiring the State of Alaska to manage their Shuyak Island lands for wildlife habitat and public recreation purposes.

Once again, thank you for introducing this legislation. Please contact me if there is any way we can help ensure HB 89's passage.

Sincerely,

Mary Forbes

Mary Forbes
President, Kodiak Audubon Society
907-486-2685

Y Knot Charter *Port William Lodge*
P.O. Box 670556
Chugiak, Alaska 99567
(907) 688-2253

January 30, 1997

Rep. Alan Austerman
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Letter of Support

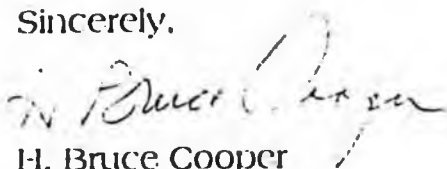
Dear Sir:

This letter is re SB HB 89 which would add approximately 36,000 acres of land to Shuyak Island State Park.

I, along with all partner landowners of Port William on Shuyak Island, support the addition of the rest of Shuyak Island to the Shuyak Island State Park.

Thank you.

Sincerely,


H. Bruce Cooper

cc: Barbara Rudio

cc: file

Community and Regional Affairs Committee
Alaska State Legislature
State Capitol
Juneau, AK
99801

February 10, 1997

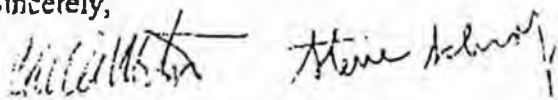
Dear Representatives,

I am writing you to testify in support of House Bill No. 89, "An act relating to the Shuyak Island State Park".

My husband and I have been residents in Kodiak for several years and have spent a lot of time on Shuyak Island. Shuyak Island State Park has become an important recreational, hunting, and sport and commercial fishing area for many people from Kodiak, Anchorage and Kenai Peninsula. There is an abundance of wildlife on the island and in the area, from deer and bears to salmon and halibut. It's well known in Kodiak as the ideal place for kayaking due to its unique inlets and bays. Because of its remote location it is only accessible by boat or floatplane. The popularity of this place brings economic benefit to charter businesses. The expansion of Shuyak State Park would only mean an increase in these tourism and business activities and help increase the economic diversity that is needed in Kodiak.

This legislation gives you the unique opportunity to preserve the present state of this Island in its entirety and make Shuyak Island a renowned state park in Alaska. I'd like to thank Representative Alan Austerman for sponsoring this bill and urge you to pass this bill.

Sincerely,


Carrie Worton and Steve Schrof
P.O. Box 1614
Kodiak, AK
99615

ke
car

The meeting
that evening

To <i>Lovejoy</i>	From <i>Carroll</i>
Co. <i>1</i>	Co. <i>Leg. Budget</i>
Dept.	Phone #
Fax # <i>3517</i>	Fax #

at 5:00 p.m.

Chairman Terry Martin RECONVENED the January 8, 1996 meeting of the Legislative Budget and Audit Committee at approximately 5:02 p.m.

REVISED PROGRAMS

10-6-4011 Natural Resources Requesting \$42,000,000 of EVOS Trust Funds to Purchase Shuyak Island. Approved

Sen. Adams MOVED to approve the action and discussion ensued.

Sen. Zharoff explained that the project would entail one month and that the EVOS Trustee Counsel had completed a number of appraisals and approved of the investment for the State. Sen. Zharoff described the area as rich in fish and wildlife. Chairman Martin requested clarification regarding the agreement with the Trustee Counsel, in view that a number of special interest groups in the past have requested State monies to purchase land, and then have subsequently resold the land to another special interest group. Sen. Zharoff expressed his concern that the agreement would also allow for public use to continue.

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ac

JEROME SELBY, Mayor of the Kodiak Island Borough, expressed his view that the land acquisition is the best land purchase that the Exxon Valdez Trustee Counsel will consider, and the best investment that the State of Alaska could make with the \$900 million settlement. He further explained that the State of Alaska owns the rest of Shuyiak Island, with the exception of the parcel in question; with the acquisition of the parcel, the State of Alaska will own the entire island, enabling the implementation of a comprehensive land management plan.

In terms of land restoration, Mr. Selby described the parcel as a prime habitat in terms of impact on species damaged by the Exxon Valdez oil spill, thereby maximizing the opportunity for recovery. The parcel is also a heavily used recreational property for the State of Alaska, with a great deal of hunting and fishing activity on Shuyiak Island from residents of Anchorage, the Kenai Peninsula, and Kodiak. Therefore, the acquisition presented a unique opportunity whereby the State may forward the recovery of fish and wildlife species, while encouraging public activities, and implement land management. One third of the island is a state park; one quarter of the island is a state wildlife refuge. The parcel is situated to the southwest of those two parcels and completes the island.

In response to a question by Sen. Phillips, Ms. McCammon pointed out that the Counsel was currently committed to spend approximately \$450 million, roughly half of the total settlement. Of that expenditure, close to \$200 million was spent on land acquisition. She further noted that in September, during her presentation on the Counsel's overall work plan, it was discovered that many people desired to spend the entire \$900 million on land acquisition, while others wanted to spend the entire amount on research projects. The Counsel adopted a plan three years ago committing approximately one third of the funds toward habitat protection. Following the commitment, they met with Federal counterparts to determine the priorities for Federal and State acquisitions. She explained that the Counsel continues to proceed according to the restoration plan.

Providing further clarification for Sen. Phillips, Ms. McCammon explained that approximately 60% of the settlement funds would be placed in research efforts. The Counsel has adopted a restoration reserve, in anticipation of further development over the next 15 to 20 years; currently \$36 million are placed in the restoration reserve earning interest, with a commitment of to place \$12 million in the reserve. By the year 2000, this amount would reach a total of \$150 million, and, if inflation-proofed, could provide \$5 to \$6 million a year of revenue for the Counsel.

Addressing Sen. Phillips' concern that the Counsel would once again approach the Legislature to request funding for land acquisition, Ms. McCammon confirmed the Counsel's intention to request a state, joint venture acquisition of a large parcel on Frog Neck Island. In addition, she explained that there are smaller, discreet areas which the Department of Natural Resources would like to use for marine parks and recreation. She also referenced the small parcel program for lands under one thousand acres, through which the Counsel has authorized agencies to make offers on approximately \$16 million's worth of small properties, in areas such as Seward, Palmer, and other locations along the Kenai River, which are key habitat areas. As the transaction progress, the Counsel intends to approach the Legislature for approval.

In response to a question by Sen. Bunde, Ms. McCammon explained the restrictions on the use of the land acquisition. Since the main purpose for the acquisition was to ensure protection of habitation, commercial timber harvest is restricted. Other activities on State Lands, such as hunting and fishing, would still be allowed.

CRAIG TILLERY, Assistant Attorney General, Civil Division, Environmental Section, Alaska Department of Law, responded to Sen. Halford's question about the language of these restrictions by referring to the Conservation Easement, on page 9 of Exhibit B. He also referenced the Warranty Deeds themselves, containing a covenant which states that "public use of land shall

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