

*Alaska Coastal Management Program*  
**Coastal Laws & Regs**

Alaska Coast Online | Division of Governmental Coordination | AS 46.40 | 6 AAC 50 | 6 AAC 80 | 6 AAC 85 | ABC Lists

**Below are the state laws and supporting information for the Alaska Coastal Management Program**

**Alaska Statutes**

- ▶ 46.40 Alaska Coastal Management Program

**ACMP Regulations**

- ▶ 6 AAC 50
- ▶ 6 AAC 80
- ▶ 6 AAC 85

**References and Valuable Links**

- ▶ Memoranda of Understanding (MOUs)
- ▶ ABC List
- ▶ Coastal Zone Management Act (CZMA)
- ▶ Code of Federal Regulations (CFR)

*Alaska Coastal Management Program***Memoranda of Understanding**

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**The following documents are written agreements between DGC and other state or federal agencies regarding consistency issues.**

Joint EPA/State of Alaska Procedures for NPDES permit reviews	coming soon
Memorandum of Agreement between Department of Natural Resources (DNR) and DGC regarding concurrence of DNR disposals in coastal areas	coming soon
Memorandum of Agreement between DGC and Federal Aviation Administration (FAA)	Download PDF version (42.3 KB)
Memorandum of Agreement between DGC and Minerals Management Service (MMS)	coming soon
Memorandum of Agreement between DGC and Western Federal Land Highway Division (WFLHD)	Download PDF version (125 KB)
Partnership Agreement between DGC and the U.S. Army Corps of Engineers (COE)	Download PDF version (189 KB)
Memorandum of Agreement between DGC and USDA Forest Service (USFS)	Download PDF version (212 KB)

*Alaska Coastal Management Program***ABC Lists**

Alaska Coast Online | Division of Governmental Coordination | Coastal Laws &amp; Regs | AS 46.40 | 6 AAC 50 | 6 AAC 80 | 6 AAC 85

The Classification of State Agency Approvals, or "ABC List", contains lists of categorically consistent approvals (A-List), general concurrence determinations (B-List), and State permits for projects that require individual consistency review (C-List).

Introduction (PDF, 164KB)	<b>Table of Contents, Overview, and Definition of Acronyms</b>
A-List (PDF, 23KB)	<b>Categorically Consistent Approvals, Effective May 1995</b> Under 6 AAC 50 Regs effective January 21, 2003, the "A-List" will be known as Categorically Consistent Determinations
B-List, Section I (PDF, 325KB)	<b>General Concurrence Determinations, Effective March 1999</b> Under 6 AAC 50 Regs effective January 21, 2003, the "B-List" will be known as General Consistency Determinations
B-List, Section II (PDF, 176KB)	<b>General Concurrence Determinations, Effective May 1995</b> Under 6 AAC 50 Regs effective January 21, 2003, the "B-List" will be known as General Consistency Determinations
C-List (PDF, 21KB)	<b>Individual Project Consistency Review, Effective January 2003</b> Under 6 AAC 50 Regs effective January 21, 2003, the "C-List" will be known as Permits Subject to Review
Appendices	<i>We are still developing links and online information for the ABC List Appendices.</i> <b>Appendix A- Copies of Nationwide Permits, General Permits, and NPDES Permits</b> <b>Appendix B- Coastal Project Questionnaire and Coastal District Contacts</b> <b>Appendix C- ABC List Summary Tables</b>

The ABC Lists are currently under revision. If you have questions, contact Randy Bates:

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**TITLE 46. WATER, AIR, ENERGY, AND ENVIRONMENTAL  
CONSERVATION**

**CHAPTER 40. THE ALASKA COASTAL MANAGEMENT PROGRAM**

**ARTICLE 1. DEVELOPMENT OF ALASKA COASTAL MANAGEMENT  
PROGRAM (AS 46.40.010 – 46.40.100)**

**ARTICLE 2. COASTAL MANAGEMENT PROGRAMS IN THE  
UNORGANIZED BOROUGH (AS 46.40.110 – 46.40.180)**

**ARTICLE 3. GENERAL PROVISIONS (AS 46.40.190 – 46.40.210)**

**ARTICLE 1. DEVELOPMENT OF  
ALASKA COASTAL MANAGEMENT PROGRAM**

**Section:**

- 10. Development of Alaska Coastal Management Program**
- 20. Objectives**
- 30. Development of district coastal management programs**
- 40. Duties of Alaska Coastal Policy Council**
- 50. Action and submission by coastal resource districts**
- 60. Review and approval by council**
- 70. Standards for council review and approval**
- 80. Effective date of Alaska coastal management program**
- 90. Implementation of coastal management programs**
- 94. Consistency determinations for phased uses and activities**
- 96. Consistency reviews and determinations**
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**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. (§ 4 ch 84 SLA 1977)

**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. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.030. DEVELOPMENT OF DISTRICT COASTAL MANAGEMENT PROGRAMS.**

(a) 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. (§ 4 ch 84 SLA 1977)

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

#### **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. (§ 4 ch 84 SLA 1977; am § 1 ch 129 SLA 1978; am § 1 34 SLA 1994)

**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. (§ 4 ch 84 SLA 1977; am § 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. (§ 4 ch 84 SLA 1977)

**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. (§ 4 ch 84 SLA 1977)



**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. (§ 4 ch 84 SLA 1977)

**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. (§ 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) Notwithstanding any other provision of this section, for a natural gas pipeline project from the Alaska North Slope following a route that parallels the Trans Alaska Pipeline System and the Alaska Highway to the Canadian border or a route that runs south to Alaska tidewater, any agency responsible for the consistency determination with respect to proposed uses or activities involved in the project may, in its discretion, conduct the review and make the consistency determination in separate phases in a manner that promotes review of proposed uses and activities based upon the project's design, construction sequence, and schedule.

(d) In this section, "agency responsible for the consistency determination" means the office of management and budget, for a consistency determination required to be made under AS 44.19.145(a)(11); and 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.

**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) render the final consistency determination and certification.

(e) [Repealed, Sec. 9 ch 29 SLA 2002].

(f) [Repealed, Sec. 9 ch 29 SLA 2002].

(g) The reviewing entity may exclude from the consistency review and determination process for a project

(1) an activity that is authorized under a general or nationwide permit that has previously been determined to be consistent with the applicable coastal management programs;

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

(h) 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).

**Sec. 46.40.100. COMPLIANCE AND ENFORCEMENT.** (a) Municipalities and state resource agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and in effect.

(b) A party that is authorized under (g) of this section may file a petition showing that a district coastal management program is not being implemented. A petition filed under this subsection may not seek review of a proposed or final consistency determination regarding a specific project. 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, the council may order that the coastal resource district or a state resource agency take any action with respect to future implementation of the district coastal management program that the council considers necessary, except that the council may not order that the coastal resource district or a state agency take any action with respect to a proposed or final consistency determination that has been issued.

(c) In determining whether an approved district coastal management program is being implemented by a coastal resource district that exercises zoning authority or controls on the use of resources within the coastal area or by a state resource agency, the council shall find in favor of the district or the state resource agency, unless the council finds a pattern of nonimplementation.

(d) [Repealed, Sec. 9 ch 29 SLA 2002].

(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 at least 10 days before the scheduled date of the hearing. The notice must

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

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

(g) The opportunity to petition is limited to

(1) a coastal resource district;

(2) a citizen of the coastal resource district; or

(3) a state resource agency.

(h) If the council finds a pattern of nonimplementation under (c) of this section, the council may order a coastal resource district or a state resource agency to take action with respect to future implementation of the district coastal management program that the council considers necessary to implement the district coastal management program. The council's determination under (c) of this section and any order issued under this subsection shall be considered a final administrative order for purposes of judicial review under AS 44.62.560.

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

### **Section:**

- 110. Authority in the unorganized borough**
- 120. Coastal resource service areas**
- 130. Organization of coastal resource service area**
- 140. Coastal resource service area boards**
- 150. Elections in coastal resource service areas**
- 160. Organization at the direction of the council**
- 170. Preparation of district coastal management program by the Department of Community and Economic Development**
- 180. Approval of programs in coastal resource service areas**

**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. (§ 4 ch 84 SLA 1977)

**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 economic development 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 economic development 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. (§ 4 ch 84 SLA 1977; am § 2 ch 129 SLA 1978; am §§ 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. (§ 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 economic development, 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. (§ 4 ch 84 SLA 1977; am § 85 ch 74 SLA 1985; am §§ 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. (§ 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 resource service area or in water adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

(b) In this section, "major economic development activity" includes a call for nomination by the Secretary of the United States Department of the Interior for leasing of tracts within petroleum basins in water of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal water of the state. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.170. PREPARATION OF DISTRICT COASTAL MANAGEMENT PROGRAM BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT.**

(a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the Department of Community and Economic Development to prepare and recommend for consideration by the council and for submission to the legislature a district coastal management program for the service area.

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

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established in this section. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.180. APPROVAL OF PROGRAMS IN COASTAL RESOURCE**

**SERVICE AREAS.** (a) Before adoption by a coastal resource service area board, or by the Department of Community and Economic Development under AS 46.40.170, a



district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or traditional village council shall consider the program submitted for review. Within 60 days of submission, the council of a city or traditional village council shall either approve the program or enter objections to all or any portion of the program.

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

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

(d) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Community and Economic Development. (§ 4 ch 84 SLA 1977)

### ARTICLE 3. GENERAL PROVISIONS

**Section:**

**190. Cooperative administration**

**200. State agencies**

**210. Definitions**

**Sec. 46.40.190. COOPERATIVE ADMINISTRATION.** (a) A city within the coastal area that is not part of a coastal resource service area shall be included for purposes of this chapter within an adjacent coastal resource service area unless its governing body, by resolution adopted by a majority of its membership, chooses to exclude the city from an adjacent coastal resource service area and a copy of the resolution is filed with the commissioner of community and economic development.

(b) This chapter does not restrict or prohibit cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose. A city that elects to be excluded from an adjacent coastal resource service area under (a) of this section shall enter into a mutual agreement for cooperative or joint administration of functions with the coastal resource service area board from the adjacent coastal resource service area. (§ 4 ch 84 SLA 1977; am § 3 ch 48 SLA 1980; am § 72 ch 58 SLA 1999)

**Sec. 46.40.200. STATE AGENCIES.** Upon the adoption of the Alaska coastal management program, state departments, boards, and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.210. DEFINITIONS.** In this chapter, unless the context otherwise requires,

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

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

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

(C) areas of substantial recreational value or opportunity;

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

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

(F) areas of significant hazard due to storms, slides, floods, erosion, or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches, and offshore sand deposits;

(2) **“coastal resource district”** means each of the following that contains a portion of the coastal area of the state:

(A) unified municipalities;

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

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

(D) second class cities of the unorganized borough, or within boroughs that do not exercise planning and zoning authority, that have established a planning commission, and that, in the opinion of the commissioner of community and economic development, have the capability of preparing and implementing a comprehensive district coastal management program under AS 46.40.030 ;

(E) coastal resource service areas established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180;

(3) **“consistency review”** means the evaluation of a proposed project against the standards adopted by the council under AS 46.40.040 and a district coastal management program approved by the council under AS 46.40.060;

(4) **“council”** means the Alaska Coastal Policy Council;

(5) **“department”** means the Department of Community and Economic Development;

(6) **“office”** means the office of management and budget established in the Office of the Governor;

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

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

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

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

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

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

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

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

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

(E) uses in areas established as state parks or recreational areas under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat areas under AS 16.20. (§ 4 ch 84 SLA 1977; am § 3 ch 129 ALA 1978; am § 86 ch 74 SLA 1985; am § 7 ch 34 SLA 1994; am § 73 ch 58 SLA 1999)

(9) **“resource agency”** has the meaning given in AS 44.19.152.

# 6 AAC 50 Regulations

*consistency review regulations revision project*



ACMP Home | Project Contact

Last modified January 8, 2003

## Overview

### 6 AAC 50 Regulations Revision Project Information

The consistency review regulations at 6 AAC 50 were developed and codified in 1984. Since that time, participants in the Alaska Coastal Management Program have gained considerable experience with using and implementing these regulations. Now it is time to use this experience to update the regulations. The Alaska Coastal Policy Council authorized the Division of Governmental Coordination to proceed with public review of the proposed consistency review regulations on November 15, 2000.

## History

View information and documents produced throughout the Regulations Revision Project

### ▶ The Coastal Policy Council Invites you to Participate

### ▶ Purpose of this Regulations Revision Project

### ▶ Download the Proposed Regulations at 6 AAC 50 -- dated December 10, 2000

These are the proposed regulations as released for public review on December, 10, 2000.

### ▶ Download Comments Received as of February 2001 and DGC's responses

The Division of Governmental Coordination has developed a "comment and response" document. This document includes all the comments received during the first public comment period (December 10, 2000 - February 28, 2001), DGC's response to each of those comments, the redrafted regulations in mark-up format (underline for new material, [BRACKET/CAPS] for deleted material), and the general rationale for amending the regulations.

### ▶ Download the Proposed Regulations at 6 AAC 50 -- dated October 1, 2001

These are the proposed regulations as released for public review on October 1, 2001.

### ▶ Download Comments Received as of December 13, 2001

### ▶ Download Proposed Regulations at 6 AAC 50 -- dated June, 2002

### ▶ Download Proposed Regulations at 6 AAC 50 -- dated July 8, 2002

### ▶ Download (PDF size 115KB) Proposed Regulations at 6 AAC 50 -- dated July 24, 2002

### ▶ Download (PDF size 23KB) the eighteen Amendments to 6 AAC 50 dated July 24, 2002

### ▶ Download (PDF size 107KB) Proposed Regulations at 6 AAC 50 -- dated October 9, 2002

### ▶ Download (PDF size 91KB) Regulations at 6 AAC 50 -- effective January 21, 2003

## **Web Links**

View useful web links

## **Project Contact**

Questions? Comments? Contact the project coordinator, Randy Bates.

## **Chapter 50**

### **Alaska Coastal Management Program (ACMP) Implementation**

#### **Article**

- 1. Program Administration (6 AAC 50.005 – 6 AAC 50.190)**
- 2. State Consistency Review Process (6 AAC 50.200 – 6 AAC 50.280)**
- 3. Consistency Review Process for Federal Activities (6 AAC 50.305 – 6 AAC 50.395)**
- 4. Consistency Review Process for Activities Requiring a Federal Authorization (6 AAC 50.405 – 6 AAC 50.495)**
- 5. Public Participation (6 AAC 50.500 – 6 AAC 50.520)**
- 6. Elevation and Petition (6 AAC 50.600 – 6 AAC 50.620)**
- 7. General and Nationwide Permits, Categorically Consistent Determinations, and General Consistency Determinations (6 AAC 50.700 – 6 AAC 50.780)**
- 8. Project Modifications and Renewals of Authorizations (6 AAC 50.800 – 6 AAC 50.820)**
- 9. General Provisions (6 AAC 50.925 – 6 AAC 50.990)**

#### **Article 1. Program Administration.**

#### **Section**

- 05. Applicability of the ACMP consistency review process**
- 25. Scope of project subject to consistency review**
- 35. Division of Governmental Coordination (DGC) responsibility**
- 45. State agency authority**
- 55. Coastal resource district responsibility**

**6 AAC 50.005. Applicability of the ACMP consistency review process.** (a) A project is subject to one, and only one, of the consistency review processes set out in this chapter if any activity that is part of the project

(1) requires a

- (A) resource agency authorization;
- (B) federal consistency determination from a federal agency in accordance with 16 U.S.C. 1456(c)(1)-(2) (sec. 307(c)(1)-(2) of the Coastal Zone Management Act) and 15 C.F.R. 930.36 - 930.40; or
- (C) federal consistency certification, in accordance with
  - (i) 16 U.S.C. 1456(c)(3)(A) (sec. 307(c)(3)(A) of the Coastal Zone Management Act) and 15 C.F.R. 930.57 - 930.58; or
  - (ii) 16 U.S.C. 1456(c)(3)(B) (sec. 307(c)(3)(B) of the Coastal Zone Management Act) and 15 C.F.R. 930.76, from a person who submits to the United States Secretary of the Interior an OCS plan within the meaning given in 15 C.F.R. 930.73; and

(2) is located

- (A) within the coastal zone; or

(B) outside the coastal zone but is subject to a consistency determination under 15 C.F.R. Part 930.

(b) Only the consistency review process set out in

(1) 6 AAC 50.200 - 6 AAC 50.280 applies, if the project requires only an authorization from one or more resource agencies;

(2) 6 AAC 50.305 - 6 AAC 50.395 applies, if the project requires

(A) a federal consistency determination; or

(B) an authorization from one or more resource agencies and a federal consistency determination; or

(3) 6 AAC 50.405 - 6 AAC 50.495 applies, if the project requires

(A) a federal consistency certification; or

(B) an authorization from one or more resource agencies and a federal consistency certification. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.025. Scope of project subject to consistency review.** (a) Except for a project subject to review under 6 AAC 50.305 - 6 AAC 50.395 or 6 AAC 50.405 - 6 AAC 50.495, the coordinating agency, in consultation with the applicant, any resource agency that requires an authorization, and any potentially affected coastal resource district, shall determine the scope of the project subject to a consistency review. For a project subject to review under 6 AAC 50.305 - 6 AAC 50.395, the scope of the project subject to a consistency review shall be determined in accordance with 15 C.F.R. 930.30 - 930.46. For a project subject to review under 6 AAC 50.405 - 6 AAC 50.495, the scope of the project subject to a consistency review shall be determined in accordance with 15 C.F.R. 930.50 - 930.66 or 15 C.F.R. 930.70 - 930.85.

(b) Except as provided under AS 46.40.094 and 6 AAC 50.700, the scope of the project subject to a consistency review must, at a minimum, include each activity that requires a

(1) resource agency authorization;

(2) federal agency authorization identified under 6 AAC 50.405; or

(3) federal consistency determination. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.035. Division of Governmental Coordination (DGC) responsibility.** (a) For a consistency review, and in accordance with AS 44.19.145, AS 46.40.096, and

(1) 6 AAC 50.200 - 6 AAC 50.280, DGC shall serve as the coordinating agency and render the consistency determination for a project that requires an authorization from two or more resource agencies;

(2) 6 AAC 50.305 - 6 AAC 50.395, DGC shall serve as the coordinating agency and render the consistency response for a project that requires

(A) a federal consistency determination; or

(B) an authorization from one or more resource agencies and a federal consistency determination; or



(3) 6 AAC 50.405 - 6 AAC 50.495, DGC shall serve as the coordinating agency and render the consistency response for a project that requires

(A) a federal consistency certification; or

(B) an authorization from one or more resource agencies and a federal consistency certification.

(b) If, in accordance with 16 U.S.C. 1456(c) (sec. 307(c) of the Coastal Zone Management Act) and 15 C.F.R. Part 930, an item is to be submitted to the state agency designated under 16 U.S.C. 1455(d)(6) (sec. 306(d)(6) of the Coastal Zone Management Act) and 15 C.F.R. 923.47, that item must be submitted to DGC.

(c) DGC shall develop, maintain, and update a coastal project questionnaire. A coordinating agency shall use the coastal project questionnaire to solicit information regarding the project description, site information, consistency with the enforceable policies of the ACMP, and necessary authorizations.

(d) At the request of a resource agency coordinating a consistency review under AS 46.40.096(b) and 6 AAC 50.045(b), DGC shall act as a facilitator to attempt to resolve conflicts among the resource agencies, an affected coastal resource district or an applicant regarding the consistency determination. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

Editor's note: On April 18, 1979, the predecessor to the Office of Management and Budget, Division of Governmental Coordination (DGC), within the Office of the Governor, was named by the governor to serve as the designated state agency for purposes of 16 U.S.C. 1455(d)(6) (sec. 306(d)(6) of the Coastal Zone Management Act), 15 C.F.R. 923.47, and 15 C.F.R. Part 930.

**6 AAC 50.045. State agency authority.** (a) Nothing in this chapter displaces or diminishes the authority of a state agency with respect to coastal uses and resources under that agency's own statutory and regulatory authorities.

(b) For a consistency review, and in accordance with AS 44.19.145(a)(11), AS 46.40.096(b), and 6 AAC 50.200 - 6 AAC 50.280, a resource agency shall serve as the coordinating agency and render the consistency determination for a project that

(1) requires one or more authorizations from only that resource agency; and

(2) does not require a federal consistency determination or federal consistency certification. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096

**6 AAC 50.055. Coastal resource district responsibility.** (a) A coastal resource district may participate in a consistency review under this chapter by submitting comments to the coordinating agency regarding consistency of the proposed project with the enforceable policies of the ACMP.

(b) A coastal resource district may participate in a consistency review as an affected coastal resource district if the

(1) project is proposed to be located within the coastal resource district boundaries; or

(2) district demonstrates that a project located outside the coastal resource district boundaries may have a direct and significant impact on a coastal use or resource within the coastal zone and within the coastal resource district boundaries.

(c) A coastal resource district whose district coastal management program is incorporated into the ACMP is considered to have expertise in the interpretation of its program. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

## Article 2. State Consistency Review Process.

### Section

**200. Applicability**

**210. Coastal project questionnaire**

**215. Pre-review assistance**

**220. Applicant consistency review packet**

**225. Determination of completeness and notice to applicant**

**230. Determination of the scope of the project subject to consistency review**

**235. Timing of a consistency review**

**240. Initiation of a consistency review**

**245. Request for additional information**

**250. Comment deadlines**

**255. Review participant comments**

**260. Proposed consistency determination**

**265. Final consistency determination**

**270. Time for issuance of a final consistency determination**

**275. Resource agency authorization**

**280. Consistency review schedule modification and termination**

**6 AAC 50.200. Applicability.** The consistency review process described in

(1) 6 AAC 50.200 - 6 AAC 50.280 applies to a project if the project requires one or more resource agency authorizations; or

(2) 6 AAC 50.235 - 6 AAC 50.280 applies to a proposed categorically consistent determination under 6 AAC 50.710 and to a proposed general consistency determination under 6 AAC 50.730. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.210. Coastal project questionnaire.** (a) Except as provided in (c) of this section, DGC on request, or a resource agency that receives an application for an activity that may require a resource agency authorization, shall provide to the applicant a coastal project questionnaire. The applicant must return the completed coastal project questionnaire to the resource agency that provided it or to DGC. Based on the information provided by the applicant

in response to the coastal project questionnaire, DGC or the resource agency shall, to the extent feasible, preliminarily identify the authorizations that are required for the project.

(b) If, during its review of the coastal project questionnaire, a resource agency preliminarily identifies a federal authorization or authorizations from more than one resource agency that may be required, the resource agency shall

- (1) send the coastal project questionnaire to DGC; and
- (2) refer the applicant to DGC.

(c) A coastal project questionnaire is not required

(1) for placer mining activity that is reviewed by means of a joint agency annual placer mining application provided by the Department of Natural Resources (DNR); the application must be submitted to DNR;

(2) for an aquatic farm project proposed on state-owned tidelands and applied for through the joint agency aquatic farm application provided by DNR; the application must be submitted to DNR; or

(3) if a categorically consistent determination developed under 6 AAC 50.710 or a general consistency determination developed under 6 AAC 50.730 specifically states that a coastal project questionnaire is not required for the activity to which that determination applies. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.215. Pre-review assistance.** (a) Before the start of a consistency review, a coordinating agency shall, on request, assist an applicant by providing information about the consistency review requirements.

(b) At the time an applicant requests pre-review assistance under this section, the applicant shall, at a minimum, provide a brief description of the proposed project. To the extent feasible, the applicant shall provide the coordinating agency with a

- (1) completed coastal project questionnaire;
- (2) map identifying the location of the project and adjacent facilities; and
- (3) description of any man-made structures or natural features that are at or near

the project site.

(c) The applicant may request that the coordinating agency provide information including

(1) information about the coastal project questionnaire and the consistency review process;

(2) preliminary identification of coastal resource districts that may have an interest in the project;

(3) to the extent feasible, preliminary identification of applicable enforceable policies of the ACMP;

(4) preliminary identification of the state and federal authorizations likely required for the project and individuals, if known, to contact in other state or federal agencies;

(5) to the extent feasible, preliminary identification of the activities that may require a resource agency authorization, or that may require a federal authorization listed under 6 AAC 50.405;

(6) to the extent feasible, an estimated time schedule for the consistency and resource agency authorization reviews; and

(7) to the extent feasible, preliminary identification of information that may be required to determine consistency with the enforceable policies of the ACMP, compliance with resource agency authorizations, and potential mitigation requirements.

(d) If an applicant requests pre-review assistance under this section,

(1) the coordinating agency may consult with resource agencies and DGC as necessary to assist the coordinating agency in developing the information described in (c) of this section; and

(2) a resource agency may identify issues related to the authorization and potential mitigation requirements and, to the extent feasible, discuss with the applicant how the activity may comply with its statutory and regulatory authorities.

(e) The coordinating agency shall make reasonable efforts to inform a coastal resource district of a proposed project that may affect a coastal use or resource within the district. If a pre-review assistance meeting is scheduled, the coordinating agency shall invite a representative from any potentially affected coastal resource district to the meeting. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.220. Applicant consistency review packet.** (a) The applicant shall submit a consistency review packet to the coordinating agency that includes

(1) a completed coastal project questionnaire that includes

(A) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource;

(B) a consistency certification; the consistency certification must include a statement using the following language: "The proposed project complies with the applicable enforceable policies of the ACMP and will be conducted in a manner consistent with the program";

(C) data and information sufficient to support the consistency certification required by (B) of this paragraph;

(D) maps, diagrams, technical data, and other relevant material that precisely describe the project site location, topographical information, township, range, section, and meridian, and other site specific information; and

(E) a signature and the date signed; and

(2) completed copies of all resource agency authorization applications required for the project, except as provided in (e) of this section.

(b) If a project requires an authorization from two or more resource agencies, the applicant must submit the consistency review packet to DGC, and must submit any authorization application to the appropriate authorizing agency. If a project requires one or more authorizations from only a single resource agency, the applicant must submit the consistency review packet and any authorization application to the resource agency.

(c) The coordinating agency, on its own initiative, or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet, maps, or other documents that the agency cannot duplicate conveniently.

(d) If a resource agency requires a fee for its authorization, an applicant must submit that fee directly to the resource agency.

(e) An applicant must submit, directly to the resource agency responsible for issuing the authorization, an application for an authorization requiring information that must be held in confidence by law. The resource agency shall forward to the coordinating agency a copy of the application with the confidential information deleted, as appropriate. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.225. Determination of completeness and notice to applicant.** (a) Except as provided under AS 46.14.160, the coordinating agency shall, within 14 days after receipt of a consistency review packet, determine whether the packet is complete.

(b) A consistency review packet is complete if

(1) the packet meets the submission requirements of 6 AAC 50.220;

(2) an authorizing resource agency determines that an authorization application is sufficient to begin a review under the resource agency's statutory and regulatory requirements; and

(3) the coordinating agency, in consultation with the authorizing resource agencies, determines the packet is sufficient for continued processing even though additional information may be required subsequently.

(c) If the coordinating agency determines that the consistency review packet is complete, the coordinating agency shall notify the applicant and identify the start date for initiating the consistency review under 6 AAC 50.240.

(d) If the coordinating agency determines that the consistency review packet is incomplete, the coordinating agency shall notify the applicant and identify the information necessary to make the consistency review packet complete. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.230. Determination of the scope of the project subject to consistency review.** Before the initiation of the consistency review and within the timeframes established under 6 AAC 50.240(a) and (b), the coordinating agency shall determine the scope of the project subject to a consistency review in accordance with 6 AAC 50.025 and 6 AAC 50.700. If a project requires an authorization from more than one resource agency, DGC shall determine the scope of the project subject to review in consultation with each resource agency that requires an authorization. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.235. Timing of a consistency review.** (a) Except as provided under 6 AAC 50.280, the consistency review process shall be completed within 30 or 50 days after the start date set under 6 AAC 50.240.

(b) A project is subject to a 30-day consistency review if all required authorizations for the activities, as identified in the list adopted by reference in 6 AAC 50.750, are listed as authorizations subject to a 30-day review.

(c) Except as provided in (b) of this section, a project is subject to a 50-day consistency review. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.240. Initiation of a consistency review.** (a) If a project requires an authorization from two or more resource agencies, DGC shall start Day 1 of the consistency review as soon as practicable after, and no more than 14 days after, the date DGC receives a consistency review packet that is determined to be complete in accordance with 6 AAC 50.225.

(b) If a project requires one or more authorizations from only a single resource agency, and if the consistency review packet is determined to be complete in accordance with 6 AAC 50.225, the resource agency may start the consistency review at the time the agency initiates its authorization review.

(c) Day 1 of a consistency review is the date on which the coordinating agency's public notice is provided in accordance with 6 AAC 50.500.

(d) On or before Day 3, the coordinating agency shall

(1) provide to the applicant a notice that the consistency review has been initiated and a review schedule;

(2) provide to each review participant a copy of the consistency review packet, the review schedule with a solicitation for review participants' comments, and a deadline for receipt of comment;

(3) provide a copy of the consistency review packet to a person requesting the information; and

(4) make a copy of the consistency review packet available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely to be an affected coastal resource district. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.245. Request for additional information.** (a) On or before Day 13 in a 30-day consistency review or Day 25 in a 50-day consistency review, a review participant shall provide the coordinating agency with any request for additional information necessary to determine whether the requestor concurs with or objects to the applicant's consistency certification.

(b) The coordinating agency may, on or before Day 13 in a 30-day consistency review or Day 25 in a 50-day consistency review, request additional information at its own initiative or based on a request received under (a) of this section.

(c) The coordinating agency shall request from the applicant additional information relevant to the proposed project and appropriate in the context of the requestor's expertise or area of responsibility. If a request for additional information is submitted to the coordinating agency that is outside the requestor's expertise or area of responsibility, the coordinating agency shall consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) The applicant must provide the requested additional information to the requestor and a copy to the coordinating agency. The coordinating agency shall ensure that other review participants receive the additional information.

(e) The requestor shall notify the coordinating agency when the requested information is received. Within seven days after receiving the information, the requestor shall notify the coordinating agency whether the information is adequate. If the information is considered to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed to satisfy the original request or new issues raised in the response to the original request.

(f) Nothing in this section prohibits a resource agency from requiring additional information under the statutory and regulatory authorities applicable to the review of the resource agency's authorization. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.250. Comment deadlines.** Except as provided under 6 AAC 50.280(a), the coordinating agency shall establish the deadline for receipt of comments at Day 17 in a 30-day consistency review and Day 30 in a 50-day consistency review. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.255. Review participant comments.** (a) A comment submitted by a review participant must be in writing, and must

(1) identify that, and explain why, the review participant concurs with the applicant's consistency certification; or

(2) identify that the review participant objects to the applicant's consistency certification, and

(A) explain how the proposed project is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and the reasons why the review participant considers the proposed project inconsistent with those enforceable policies; and

(C) identify any alternative measure that, if adopted by the applicant, would achieve consistency with the specific enforceable policies identified in accordance with (B) of this paragraph, and explain how the alternative measure would achieve consistency with those specific enforceable policies.

(b) In its consistency review comment, a review participant may address an enforceable policy outside the review participant's expertise or area of responsibility. The coordinating agency may not give a resource agency or coastal resource district due deference outside that agency's or district's expertise or area of responsibility.

(c) The coordinating agency shall send the applicant, each resource agency, and any potentially affected coastal resource district, or ensure that those persons receive, a copy of timely submitted comments. Upon request, the coordinating agency shall send other persons interested in the project, or ensure that other persons interested in the project receive, a copy of the comments. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.260. Proposed consistency determination.** (a) In developing a proposed consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give a commenting resource agency and coastal resource district with an approved program due deference within that agency's or district's expertise or area of responsibility. In developing a proposed consistency determination and any applicable alternative measures, the coordinating agency must evaluate the applicability of the enforceable policies of the ACMP to the proposed activity and decide how to afford due deference.

(b) Based on the comments received and other available information, the coordinating agency shall determine whether a consensus exists among the review participants regarding a project's consistency with the enforceable policies of the ACMP and any alternative measures that would achieve consistency with the enforceable policies of the ACMP.

(c) If the comments indicate that a consensus does not exist among the review participants, the coordinating agency shall facilitate a discussion among the review participants to attempt to reach a consensus. If the review participants cannot reach consensus, the coordinating agency shall develop a proposed consistency determination that is based on the comments and positions of the resource agencies and affected coastal resource districts.

(d) If the coordinating agency substantially modifies or rejects an alternative measure requested by a commenting review participant within its respective expertise or area of responsibility, the coordinating agency shall consult with the review participant and provide a brief written explanation stating the reasons for rejecting or modifying the alternative measure before issuance of the proposed consistency determination.

(e) On or before Day 24 in a 30-day consistency review or Day 44 in a 50-day consistency review, the coordinating agency shall distribute a proposed consistency determination to the review participants, the applicant, and any person who submitted timely ACMP comments under 6 AAC 50.500(a)-(b).

(f) The proposed consistency determination must

- (1) contain a description of the proposed project;
- (2) contain a description of the scope of the project subject to consistency review;
- (3) propose to concur with or object to the applicant's consistency certification;

and

(4) contain a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.



(g) In addition to the requirements in (f) of this section, if a concurrence is proposed with the applicant's consistency certification, the proposed consistency determination must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP.

(h) In addition to the requirements in (f) of this section, if an objection is proposed to the applicant's consistency certification, the coordinating agency shall notify the applicant of the objection and shall include in the proposed consistency determination

(1) an explanation of how the proposed project is inconsistent with the enforceable policies of the ACMP;

(2) the identification of the specific enforceable policies and the reasons why the proposed project is to be found inconsistent with those enforceable policies; and

(3) any alternative measure that, if adopted by the applicant, would achieve consistency with the specific enforceable policies identified in accordance with (2) of this subsection, and an explanation of how the alternative measures would achieve consistency with those specific enforceable policies; the alternative measure must be described with sufficient specificity to allow the applicant to determine whether to

(A) adopt the alternative measure;

(B) otherwise modify the project to achieve consistency with the enforceable policies of the ACMP; or

(C) abandon the project.

(i) If a project is modified under (h)(3)(B) of this section, or if the coordinating agency is able to informally resolve an issue that has or could result in the submission of a request for elevation under 6 AAC 50.600, the coordinating agency, with the applicant's concurrence, may issue a revised proposed consistency determination.

(j) The coordinating agency may immediately issue a final consistency determination under 6 AAC 50.265 if the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under (h)(3) of this section. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.265. Final consistency determination.** (a) A final consistency determination rendered in accordance with AS 44.19.145(a)(11) and AS 46.40.096(d)(4) must

(1) contain a description of the proposed project;

(2) contain a description of the scope of the project subject to consistency review;

(3) concur with or object to the applicant's consistency certification; and

(4) contain a statement that the final consistency determination is a final administrative order and decision under the ACMP.

(b) In addition to meeting the requirements in (a) of this section, a final consistency determination that

(1) concurs with the applicant's consistency certification must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP; or

(2) objects to the applicant's consistency certification must include

(A) an explanation of how the proposed project is inconsistent with the enforceable policies of the ACMP; and

(B) the identification of the specific enforceable policies and the reasons why the proposed project has been found inconsistent with those enforceable policies.

(c) In addition to meeting the requirements in (a) of this section, the final consistency determination must include any change made between issuance of the proposed consistency determination and issuance of the final consistency determination, including

(1) the incorporation, within the project description, of any

(A) alternative measures that are

(i) proposed under 6 AAC 50.260(h)(3) in the proposed consistency determination; and

(ii) adopted by the applicant; and

(B) modification by the applicant of the project to achieve consistency with the enforceable policies of the ACMP; and

(2) any minor editorial or technical corrections.

(d) The coordinating agency shall provide the final consistency determination to

(1) the applicant;

(2) each resource agency;

(3) each commenting review participant;

(4) each agency that commented on the project; and

(5) each person who submitted timely ACMP comments under 6 AAC 50.500(a)-

(b).

(e) If an applicant, after receiving a final consistency determination, fails to implement an alternative measure adopted under (c) of this section, or if the applicant undertakes a project modification not incorporated into the final consistency determination and not reviewed under 6 AAC 50.800 - 6 AAC 50.820, a resource agency may take enforcement action according to the resource agency's statutory and regulatory authorities, priorities, available resources, and preferred methods.

(f) A final consistency determination is a final administrative order and decision under the ACMP. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.270. Time for issuance of a final consistency determination.** (a) The final consistency determination shall be issued on or before Day 30 in a 30-day consistency review or Day 50 in a 50-day consistency review, except as described in (b) of this section and 6 AAC 50.280(a).

(b) The final consistency determination shall be issued

(1) five days after the review participants receive the proposed consistency determination, if the coordinating agency does not receive a timely request for an elevation under 6 AAC 50.600(a);

(2) five days after the review participants receive a director-level proposed consistency determination under 6 AAC 50.600(h)(3), if an elevation to the resource agency commissioners is not requested under 6 AAC 50.600(i); or

(3) no later than 15 days after an elevation to the resource agency commissioners is requested under 6 AAC 50.600(b) or (i). (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.275. Resource agency authorization.** (a) A resource agency may not issue an authorization for an activity that is part of a project that is subject to a consistency review unless the coordinating agency issues a final consistency determination that concurs with the applicant's consistency certification.

(b) Following issuance of a final consistency determination, a resource agency may not include an additional alternative measure on its authorization.

(c) If a requirement set out in a project description under 6 AAC 50.265 is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement.

(d) Except for a disposal of interest in state land, if a final consistency determination concurs with the applicant's consistency certification, a resource agency shall issue an authorization necessary for a project within five days after the resource agency issues or receives the final consistency determination, unless the resource agency considers additional time to be necessary to fulfill the resource agency's statutory or regulatory requirements.

(e) If a final consistency determination concurs with the applicant's consistency certification, and after DNR issues or receives the final consistency determination, DNR will authorize a disposal of interest in state land at the time and in the manner provided by applicable statutory or regulatory requirements.

(f) If a project requires one or more authorizations from only a single resource agency, the resource agency may incorporate a consistency determination into the resource agency's authorization document for a project if, for the part of the document that is the consistency determination, a consistency review is conducted and the consistency determination is rendered in accordance with AS 46.40 and 6 AAC 50.200 - 6 AAC 50.280.

(g) Notwithstanding having concurred in a final consistency determination for a project, a resource agency may deny approval of an authorization application under that agency's own statutory and regulatory authorities. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.280. Consistency review schedule modification and termination.** (a) The coordinating agency may modify the consistency review schedule under the following circumstances and for the time specified:

(1) the coordinating agency and a resource agency may agree to modify the review schedule as necessary to coordinate the consistency review with the resource agency's statutory or regulatory authorization review process, including a disposal of interest in state land, if the length of time for receipt of comments is at least as long as under 6 AAC 50.250;

(2) if the coordinating agency receives a request for additional information from a review participant under 6 AAC 50.245, the coordinating agency may modify the review schedule by up to three days to evaluate the request, and consult with other review participants with expertise or responsibility;

(3) if the coordinating agency requests additional information from the applicant under 6 AAC 50.245, the coordinating agency may modify the review schedule as necessary until the requesting review participant receives the information and considers it adequate within the timeframe identified under 6 AAC 50.245(e);

(4) the coordinating agency may modify the review schedule as necessary for a public hearing or public meeting that is held as part of

(A) a consistency review;

(B) a resource agency's review of a necessary authorization application;

or

(C) preparation of an affected coastal resource district's comments for submission to the coordinating agency;

(5) the coordinating agency may modify the review schedule as necessary for the adjudication process of an authorization issued by a coastal resource district exercising authority under AS 29, if the coastal resource district's consistency review comments under 6 AAC 50.255 are pending the results of the adjudication;

(6) the coordinating agency may extend the review schedule at the request of the applicant;

(7) the coordinating agency may modify the review schedule to address a question of law;

(8) the coordinating agency may modify the review schedule by up to five days for a resource agency or coastal resource district to consider timely submitted public comments;

(9) the coordinating agency may extend the comment deadline by up to 10 days for a project within a coastal resource service area;

(10) the coordinating agency may extend the review schedule by up to 10 days if a review participant requests time for a field review;

(11) the coordinating agency may modify the review schedule as necessary following distribution of the proposed consistency determination or response to await acknowledgment, by return receipt or another means of verification, that the applicant received the determination;

(12) if the coordinating agency issues a revised proposed consistency determination or response under 6 AAC 50.260(i) or 6 AAC 50.475(e), the coordinating agency may modify the review schedule by up to five days to allow for the submission of a request for elevation under 6 AAC 50.600;

(13) if the coordinating agency receives a request for elevation under 6 AAC 50.600, the coordinating agency shall suspend the review schedule by 15 days for each elevation.

(b) The coordinating agency shall notify the applicant and each review participant of a schedule modification and the reasons for the schedule modification.

(c) When the coordinating agency restarts a review that was suspended under this section, the day that the review is restarted shall be assigned the day of the review schedule on which the review was suspended.

(d) A resource agency may deny an authorization any time before, during, or after the consistency review has been completed. If an authorization is denied during a consistency

review, the coordinating agency and review participants may agree to suspend or terminate the consistency review. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096

### **Article 3. Consistency Review Process for Federal Activities.**

#### **Section**

#### **305. Applicability**

#### **316. Pre-review assistance for a federal agency**

#### **325. Federal consistency determination**

#### **335. Initiation of consistency review of a federal consistency determination**

#### **345. Request for additional information for a federal consistency determination**

#### **355. Comment deadline for a federal consistency determination, and review schedule modification or extension**

#### **365. Review participant comments regarding a federal consistency determination**

#### **375. Proposed consistency response to a federal consistency determination**

#### **380. Elevation and mediation of a proposed consistency response**

#### **385. Final consistency response to a federal consistency determination**

#### **390. Resource agency authorization**

#### **395. Process for a federal negative determination**

**6 AAC 50.305. Applicability.** The consistency review process described in 6 AAC 50.305 - 6 AAC 50.395 applies to

(1) an activity if the activity requires

(A) a federal consistency determination; or

(B) an authorization from one or more resource agencies and a federal consistency determination;

(2) a federal general permit or nationwide permit proposed in accordance with 15 C.F.R. 930.31(d); or

(3) a general consistency determination provided in accordance with 15 C.F.R. 930.36(c). (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.316. Pre-review assistance for a federal agency.** At the request of a federal agency, DGC shall provide pre-review assistance in accordance with 6 AAC 50.215. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.325. Federal consistency determination.** (a) Upon receipt of a federal consistency determination, DGC shall review it for completeness in accordance with the requirements of 15 C.F.R. 930.39(a), and shall immediately notify the federal agency if the determination is not complete.

(b) DGC may request that the federal agency provide additional copies of the consistency review packet, maps, or other documents that DGC cannot duplicate conveniently. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.335. Initiation of consistency review of a federal consistency determination.** (a) The consistency review process, as contained in 6 AAC 50.305 - 6 AAC 50.395, shall be initiated, coordinated, and completed within the timeframes specified in 15 C.F.R. 930.30 - 930.46.

(b) Upon receipt of a complete federal consistency determination for purposes of 6 AAC 50.325, DGC shall immediately initiate a consistency review as follows:

(1) DGC shall establish Day 1 of the consistency review as the date on which the public notice is provided in accordance with 6 AAC 50.500;

(2) on or before Day 3, DGC shall

(A) provide to the federal agency a notice that the consistency review has been initiated and a review schedule;

(B) provide to each review participant a copy of the federal consistency determination, supporting information, the review schedule with a solicitation for the review participants' comment, and a deadline for receipt of comment;

(C) provide a copy of the federal consistency determination and supporting information to a person requesting the information; and

(D) make a copy of the federal consistency determination and supporting information available for public inspection and copying at a public place in an area that the activity may affect, including within a district that the coordinating agency considers is likely to be an affected coastal resource district. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096  
AS 44.19.161

**6 AAC 50.345. Request for additional information for a federal consistency determination.** (a) On or before Day 25 of the consistency review, a review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with or objects to the federal consistency determination.

(b) DGC may request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the federal agency additional information relevant to the proposed activity and appropriate in the context of the requestor's expertise or area of responsibility. If a request for additional information is submitted that is outside the requestor's expertise or area of responsibility, DGC shall consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the activity's consistency with the enforceable policies of the ACMP.

(d) Unless DGC and the federal agency agree that the federal agency may provide the requested information directly to the requestor, the federal agency shall provide the requested information to DGC. The federal agency shall provide sufficient copies of the requested

information to DGC for distribution to other interested review participants. DGC shall ensure that the requestor and other interested review participants receive the additional information.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is considered to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed to satisfy the original request or new issues raised in the response to the original request. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.355. Comment deadline for a federal consistency determination, and review schedule modification or extension.** (a) DGC shall establish a 30-day comment deadline for receipt of public and review participant comment regarding a federal consistency determination.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), if the final consistency response is provided under 6 AAC 50.385 to the federal agency on or before the deadline set under 15 C.F.R. 930.41, including any extensions granted by the federal agency. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096  
AS 44.19.161

**6 AAC 50.365. Review participant comments regarding a federal consistency determination.** A comment submitted by a review participant must be in writing and must

(1) identify and explain why the review participant concurs with the federal consistency determination that the proposed activity will be undertaken in a manner consistent to the maximum extent practicable, for purposes of 15 C.F.R. 930.32, with the enforceable policies of the ACMP; or

(2) identify that the review participant objects to the federal consistency determination that the proposed activity will be undertaken in a manner consistent to the maximum extent practicable, for purposes of 15 C.F.R. 930.32, with the enforceable policies of the ACMP, and

(A) explain how the proposed activity is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and the reasons why the review participant considers the proposed activity inconsistent with those enforceable policies; and

(C) identify any alternative measure that, if adopted by the federal agency, would achieve consistency with the enforceable policies identified in accordance with (B) of this paragraph, and explain how that alternative measure would achieve consistency with those enforceable policies. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.375. Proposed consistency response to a federal consistency determination.** (a) DGC shall develop, in accordance with 6 AAC 50.260(a)-(d) and (j), a proposed consistency response to a federal consistency determination.

(b) On or before Day 44 of the consistency review, DGC shall provide a federal agency and the review participants with a proposed consistency response that

- (1) contains a description of the proposed federal activity;
- (2) contains a description of the scope of the federal activity subject to

consistency review;

(3) indicates whether

- (A) a concurrence is proposed with the federal consistency determination;
- (B) an objection is proposed to the federal consistency determination; or
- (C) DGC requests an extension for the consistency response; and

(4) contains a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(c) In addition to the requirements in (b) of this section, if a concurrence is proposed with the federal consistency determination, the proposed consistency response must include an evaluation of the activity against the applicable enforceable policies of the ACMP. In the evaluation, DGC may incorporate by reference the federal consistency determination, if the determination sufficiently supports the proposed concurrence.

(d) In addition to the requirements in (b) of this section, if an objection is proposed to the federal consistency determination, DGC shall provide the proposed objection and any proposed alternative measure in the form and manner required by 15 C.F.R. 930.43, and shall include a statement informing the federal agency of the availability of elevation under 6 AAC 50.600 and OCRM assistance under 15 C.F.R. 930.111 (OCRM Mediation) during the elevation.

(e) A proposed consistency response is not the final response for purposes of 15 C.F.R. 930.41(a), and is subject to elevation under 6 AAC 50.600. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.380. Elevation and mediation of a proposed consistency response.** If a federal agency requests, under 6 AAC 50.600, an elevation of the proposed consistency response, the federal agency or DGC may request that OCRM, under 15 C.F.R. 930.111 (OCRM Mediation), assist in the elevation. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.385. Final consistency response to a federal consistency determination.**

(a) A final consistency response rendered in accordance with AS 44.19.145(a)(11) and AS 46.40.096(d)(4) must

- (1) contain a description of the proposed activity;
- (2) contain a description of the scope of the activity subject to consistency

review; and

(3) concur with or object to the federal consistency determination.



(b) In addition to meeting the requirements in (a) of this section, a final consistency response that

(1) concurs with the federal consistency determination must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP; in the evaluation, DGC may incorporate by reference the federal consistency determination, if the determination sufficiently supports the proposed concurrence; or

(2) objects to the federal consistency determination must set out that objection in the form and manner required by 15 C.F.R. 930.43, and must include a statement informing the federal agency of the availability of mediation through the United States Secretary of Commerce under 15 C.F.R. 930.112 - 930.116.

(c) In addition to meeting the requirements of (a) of this section, the final consistency response must include any change made between issuance of the proposed consistency response and issuance of the final consistency response, including

(1) the incorporation, within the project description, of any

(A) alternative measures that are

(i) proposed under 6 AAC 50.375(d) in the proposed consistency response; and

(ii) adopted by the federal agency; and

(B) modification by the federal agency of the activity to achieve consistency with the enforceable policies of the ACMP; and

(2) any minor editorial or technical corrections.

(d) On or before Day 50 of the consistency review, except as provided under 6 AAC 50.355, DGC shall provide the final consistency response to

(1) the federal agency as required under 15 C.F.R. 930.41;

(2) the director of OCRM, as required under 15 C.F.R. 930.43(c), if the final consistency response objects to the federal consistency determination;

(3) each resource agency;

(4) each commenting review participant;

(5) each agency that commented on the activity; and

(6) each person who submitted timely ACMP comments under 6 AAC 50.500(a)-

(b). (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.390. Resource agency authorization.** For an activity that requires a federal consistency determination and an authorization from one or more resource agencies,

(1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process so that the consistency review can be completed within the timeframes specified in 15 C.F.R. 930.30 - 930.46; and

(2) if a federal agency seeks mediation from the United States Secretary of Commerce under 15 C.F.R. 930.112 - 930.116, a resource agency may not issue an authorization until mediation is concluded; consistent with any policy direction given by the commissioners of the resource agencies or the governor, DGC may amend a final consistency response to reflect the outcome of the mediation process. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.395. Process for a federal negative determination.** (a) If DGC receives a negative determination in accordance with 15 C.F.R. 930.35, DGC shall solicit comments regarding concurrence or objection to the negative determination from each resource agency and any potentially affected coastal resource district. DGC shall establish the deadline for receipt of comment as appropriate based on the scope and complexity of the activity.

(b) Within 60 days after receipt of a negative determination in accordance with 15 C.F.R. 930.35, DGC shall

- (1) concur with the federal negative determination;
- (2) object to the federal negative determination; or
- (3) request, in writing, an extension for the state response.

(c) If an objection is made to a negative determination, the federal agency and DGC shall follow the process in 15 C.F.R. 930.35(c). (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

#### **Article 4. Consistency Review Process for Activities Requiring a Federal Authorization.**

##### **Section**

- 405. Activities requiring a federal authorization subject to consistency review**
- 415. Pre-review assistance for an applicant for a federal authorization**
- 425. Consistency certification for a federal authorization**
- 435. Initiation of consistency review for a federal consistency certification**
- 445. Request for additional information for a federal consistency certification**
- 455. Comment deadline for a federal consistency certification, and review schedule modifications and extensions**
- 465. Review participant comments regarding a federal consistency certification**
- 475. Proposed consistency response to a federal consistency certification**
- 485. Final consistency response to a federal consistency certification**
- 490. Resource agency authorization**
- 495. Review process for OCS exploration, development, and production activities**

**6 AAC 50.405. Activities requiring a federal authorization subject to consistency review.** (a) The consistency review process described in 6 AAC 50.405 - 6 AAC 50.495 applies to a project if the project requires

- (1) a federal consistency certification; or
- (2) an authorization from one or more resource agencies and a federal

consistency certification.

(b) For purposes of 15 C.F.R. 930.53(a), federal authorizations subject to consistency review include

permit (1) a United States Department of Agriculture, United States Forest Service

(A) required under 36 C.F.R. Part 251 for outfitter and guide operations for freshwater boat trips that include a designated area for exclusive commercial use by the permit holder;

(B) for mining plans of operation required under 36 C.F.R. 228.4 - 228.8, and that require an environmental assessment or environmental impact statement under 42 U.S.C. 4332 (National Environmental Policy Act);

(C) required under 36 C.F.R. 228.58 - 228.61 for mineral material sales and sites, if those sales and sites are greater than five acres or not previously reviewed;

(D) required under 36 C.F.R. Part 251 for a hotel, a motel, a resort, a service station, a fish hatchery, mariculture, a liquid waste disposal area, a sewage transmission line, hydroelectric projects, oil and gas pipelines, an airport, a heliport, a dam, a reservoir, water transmission, a fish ladder, power lines, telephone lines, or a water easement; or

(E) for ground disturbing construction that require one or more of the following:

(i) an environmental assessment or environmental impact statement under 42 U.S.C. 4332 (National Environmental Policy Act);

(ii) a permit from the United States Environmental Protection Agency under 33 U.S.C. 1342 (sec. 402 of the Clean Water Act);

(iii) a permit from the United States Department of Defense, Army Corps of Engineers, under 33 U.S.C. 1344 (sec. 404 of the Clean Water Act);

(iv) an authorization from the Department of Environmental Conservation under 18 AAC 50, 18 AAC 60, 18 AAC 70, or 18 AAC 72 with respect to air emissions, solid waste, or wastewater;

(v) an authorization from the Department of Fish and Game under AS 16.05.840 or 16.05.870;

(vi) a DNR water rights or tidelands authorization under AS 46.15.010 - 46.15.160 and 11 AAC 93.040 - 11 AAC 93.130;

(2) a permit from the United States Secretary of Commerce under 33 U.S.C. 1441, for activities in a national marine sanctuary;

(3) a permit from the United States Department of Defense, Army Corps of Engineers,

(A) under 33 U.S.C. 401 and 403 (secs. 9 and 10 of the Rivers and Harbors Act), authorizing the construction of bridges, causeways, dams, and dikes, and the obstruction of navigable waters;

(B) under 43 U.S.C. 1333 (sec. 4 of the Outer Continental Shelf Lands Act), authorizing artificial islands or fixed structures on the outer continental shelf;

(C) under 33 U.S.C. 1413 (sec. 103 of the Marine Protection Research and Sanctuaries Act), authorizing ocean dumping outside the limits of the territorial sea; or

(D) under 33 U.S.C. 1344 (sec. 404 of the Clean Water Act), authorizing discharges of dredged or fill material into navigable waters;

(4) a United States Department of Energy, Federal Energy Regulatory Commission

(A) license for the construction and operation of non-federal hydroelectric projects and associated transmission lines under 16 U.S.C. 797(e) and 808 (secs. 4(e) and 15 of the Federal Power Act);

(B) order for interconnection of electric transmission facilities under 16 U.S.C. 824a(b) (sec. 202(b) of the Federal Power Act);

(C) permission and approval for the abandonment of natural gas pipeline facilities under 15 U.S.C. 717f(b) (sec. 7(b) of the Natural Gas Act); or

(D) certificate of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under 15 U.S.C. 717f(c) (sec. 7(c) of the Natural Gas Act);

(5) a United States Environmental Protection Agency

(A) permit required under 33 U.S.C. 1342 (sec. 402 of the Clean Water Act), authorizing discharge of pollutants into navigable waters;

(B) permit required under 33 U.S.C. 1345 (sec. 405 of the Clean Water Act), authorizing disposal of sewage sludge;

(C) permit under 40 C.F.R. Part 63 for new sources or for modification of existing sources, or a waiver of compliance allowing extensions of time to meet air quality standards under 42 U.S.C. 7412(c)(1) (sec. 112(c)(1) of the Clean Air Act); or

(D) air quality exemption granted under 40 C.F.R. 60.14 or 40 C.F.R. 64.2 for stationary sources;

(6) a United States Department of the Interior,

(A) Bureau of Land Management permit and license under 43 C.F.R. Part 2920, for drilling and mining and related facilities on public lands;

(B) Bureau of Land Management permit under 43 C.F.R. 2800.0-1 - 2808.6, for pipeline rights-of-way on public lands;

(C) Bureau of Land Management permit and license under 43 C.F.R. 2800.0-1 - 2808.6, for rights-of-way on public lands; or

(D) Minerals Management Service OCS plans within the meaning given in 15 C.F.R. 930.73;

(7) a United States Nuclear Regulatory Commission permit and license for the

(A) siting of nuclear facilities under 10 C.F.R. Part 52;

(B) construction of nuclear facilities under 10 C.F.R. Part 52; or

(C) operation of nuclear facilities under 10 C.F.R. Parts 54-55; and

(8) a United States Department of Transportation, United States Coast Guard permit under

(A) 33 U.S.C. 401 (sec. 9 of the Rivers and Harbors Act) and 33 C.F.R. Part 321, for construction or modification of bridge structures and causeways across navigable waters;

(B) 33 U.S.C. 1501- 1524, for siting, construction, and operation of deepwater ports; or

(C) 33 U.S.C. 401 (sec. 9 of the Rivers and Harbors Act), authorizing the obstruction of navigable waters.

(b) In accordance with 15 C.F.R. 930.54, DGC may notify a federal agency, the applicant, and the director of OCRM of unlisted federal license or permit activities affecting any coastal use or resource that require a consistency review. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.415. Pre-review assistance for an applicant for a federal authorization.**

At the request of an applicant for a federal authorization, DGC shall provide pre-review assistance in accordance with 6 AAC 50.215. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.425. Consistency certification for a federal authorization.** (a) In accordance with 15 C.F.R. 930.50 - 930.66, an applicant for a federal authorization subject to consistency review under the ACMP must provide in the application to the federal authorizing agency a certification that the project complies with and will be conducted in a manner consistent with the ACMP. The applicant must provide a copy of the certification to DGC along with the necessary data and information identified in (c) of this section.

(b) Except as provided in AS 46.14.160, DGC shall, within 14 days after receipt of a consistency determination, review the information and data for completeness in accordance with the requirements of (c) of this section, and shall notify the applicant if the information and data are not complete.

(c) To be complete, a consistency certification must include a completed coastal project questionnaire that includes

(1) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource;

(2) data and information sufficient to support the consistency certification required by 15 C.F.R. 930.57;

(3) maps, diagrams, technical data, and other relevant material that precisely describe the project site location, topographical information, township, range, section, meridian, and other site-specific information;

(4) the consistency certification required by 15 C.F.R. 930.57; the consistency certification must include a statement using the following language: "The proposed project complies with the applicable enforceable policies of the Alaska coastal management program and will be conducted in a manner consistent with the program";

(5) a signature and the date signed;

(6) copies of all resource agency authorization applications required for the project, except as provided in (g) of this section; each application must meet the authorizing resource agency's statutory and regulatory requirements for completeness; and

(7) completed copies of all necessary federal authorization applications.

(d) If an applicant fails to submit a complete consistency certification, DGC shall notify the applicant and the federal agency in accordance with 15 C.F.R. 930.60.

(e) DGC, on its own initiative or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet, maps, or other documents that DGC, the coastal resource district, or the resource agency cannot duplicate conveniently.

(f) If a resource agency requires a fee for its authorization, an applicant must submit that fee directly to the resource agency.

(g) An applicant must submit, directly to the agency responsible for issuing the authorization, an application for a resource agency or federal authorization requiring information that must be held in confidence by law. A resource agency shall forward to DGC a copy of the application with the confidential information deleted, as appropriate. The applicant shall arrange with the federal agency for a copy of the application, with the confidential information deleted, as appropriate, to be forwarded to DGC. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.435. Initiation of consistency review for a federal consistency**

**certification.** Within 14 days after receipt of a complete consistency certification, or within 14 days after a notification under 15 C.F.R. 930.60(a)(1)(ii), DGC shall initiate a consistency review as follows:

(1) DGC shall establish Day 1 of the consistency review as the date on which the public notice is provided in accordance with 6 AAC 50.500;

(2) on or before Day 3, DGC shall

(A) provide to the applicant and federal authorizing agency a notice that the consistency review has been initiated and a review schedule;

(B) provide to each review participant a copy of the consistency certification, supporting information, the review schedule with a solicitation for review participants' comments, and a deadline for receipt of comment;

(C) provide a copy of the consistency certification and supporting information to a person requesting the information; and

(D) make a copy of the consistency certification and supporting information available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely to be an affected coastal resource district. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.445. Request for additional information for a federal consistency**

**certification.** (a) On or before Day 25 of the consistency review, a review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with or objects to the federal consistency certification.

(b) DGC may, on or before Day 25 of the consistency review, request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the applicant additional information relevant to the proposed project and appropriate in the context of the requestor's expertise or area of responsibility. If a request for additional information is submitted that is outside the requestor's expertise or area of responsibility, DGC shall consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) Unless DGC and the applicant agree that the applicant may provide the requested information directly to the requestor, the applicant shall provide the requested information to DGC. The applicant shall provide sufficient copies of the requested information to DGC for distribution to other interested review participants. DGC shall ensure that the requestor and other interested review participants receive the additional information.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is considered to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information needed to satisfy the original request or new issues raised in the response to the original request. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.455. Comment deadline for a federal consistency certification, and review schedule modifications and extensions.** (a) Except as provided under 6 AAC 50.280(a), DGC shall establish a 30-day comment deadline for receipt of public and review participant comment regarding a federal consistency certification.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), if the final consistency response is provided under 6 AAC 50.485 to the federal agency on or before the deadline set under 16 U.S.C. 1456(c)(3)(A) (sec. 307(c)(3)(A) of the Coastal Zone Management Act).

(c) If DGC has not issued a proposed consistency response within three months after receipt of a complete consistency certification, DGC shall notify the applicant and federal agency of the status of the consistency review and the reason for further delay.

(d) DGC and an applicant may mutually agree, in accordance with 15 C.F.R. 930.60(a)(3), to stay the consistency review or extend the six-month federal review period. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.465. Review participant comments regarding a federal consistency certification.** (a) A comment submitted by a review participant must be in writing and must

(1) identify and explain why the review participant concurs with the applicant's federal consistency certification; or

(2) identify that the review participant objects to the applicant's federal consistency certification, and

(A) explain how the proposed project is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and the reasons why the review participant considers the proposed project inconsistent with those enforceable policies; and

(C) identify any alternative measure that, if adopted by the applicant, would achieve consistency with the specific enforceable policies identified in accordance with (B) of this paragraph, and explain how that alternative measure would achieve consistency with those specific enforceable policies.

(b) In its consistency review comment, a review participant may address an enforceable policy outside the review participant's expertise or area of responsibility. DGC may not give a resource agency or coastal resource district due deference outside that agency's or district's expertise or area of responsibility.

(c) DGC shall send the applicant, each resource agency, and any potentially affected coastal resource district, or ensure that those persons receive a copy of timely submitted comments. Upon request, DGC shall send other persons interested in the project, or ensure that other persons interested in the project receive, a copy of the comments. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.475. Proposed consistency response to a federal consistency certification.**

(a) DGC shall develop, in accordance with 6 AAC 50.260(a)-(d) and (j), a proposed consistency response to a federal consistency certification.

(b) On or before Day 44 of the consistency review, DGC shall provide the applicant, the federal agency, each review participant, an agency that commented on the project, and a person who submitted timely ACMP comments under 6 AAC 50.500(a)-(b) with a proposed consistency response that

(1) contains a description of the proposed project;

(2) contains a description of the scope of the project subject to consistency

review;

(3) indicates whether

(A) a concurrence is proposed with the applicant's federal consistency certification; or

(B) an objection is proposed to the applicant's federal consistency certification; and

(4) contains a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(c) In addition to the requirements in (b) of this section, if a concurrence is proposed with the applicant's federal consistency certification, the proposed consistency response must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP.



(d) In addition to the requirements in (b) of this section, if an objection is proposed to the applicant's federal consistency certification, DGC shall provide the proposed objection and any proposed alternative measure in the form and manner required by 15 C.F.R. 930.63(a)-(d). Any proposed alternative measure must include an explanation of how the alternative measure would achieve consistency with the applicable enforceable policies of the ACMP. The alternative measure must be described with sufficient specificity to allow the applicant to determine whether to

(1) adopt the alternative measure;  
(2) otherwise modify the project to achieve consistency with the enforceable policies of the ACMP;

(3) abandon the project; or  
(4) file an appeal under 15 C.F.R. 930.120 - 930.132.

(e) DGC, with the applicant's concurrence, may issue a revised proposed consistency response

(1) based upon a project modification developed under (d)(2) of this section; or  
(2) if DGC is able to informally resolve an issue that has or could result in the submission of a request for elevation under 6 AAC 50.600.

(f) DGC may immediately issue a final consistency response under 6 AAC 50.485 if the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under 15 C.F.R. 930.63.

(g) A proposed consistency response is not the final response for purposes of 15 C.F.R. 930.62 - 930.63, and is subject to elevation under 6 AAC 50.600. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.485. Final consistency response to a federal consistency certification.**

(a) A final consistency response rendered in accordance with AS 44.19.145(a)(11) and AS 46.40.096(d)(4) must

(1) contain a description of the proposed activity;  
(2) contain a description of the scope of the activity subject to consistency review; and

(3) concur with or object to the applicant's federal consistency certification.

(b) In addition to meeting the requirements in (a) of this section, a final consistency response that

(1) concurs with the applicant's federal consistency certification must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP; or

(2) objects to the applicant's federal consistency certification must set out that objection in the form and manner required by 15 C.F.R. 930.63.

(c) In addition to meeting the requirements in (a) of this section, the final consistency response must include any change made between issuance of the proposed consistency response and issuance of the final consistency response, including

(1) the incorporation, within the project description, of any  
(A) alternative measures that are

- (i) proposed under 6 AAC 50.475(d) in the proposed consistency response; and
- (ii) adopted by the applicant; and
- (B) modification by the applicant of the project to achieve consistency with the enforceable policies of the ACMP; and
- (2) any minor editorial or technical corrections.
- (d) Within 50 days after receipt of the applicant's federal consistency certification, except as provided under 6 AAC 50.455, DGC shall provide the final consistency response to
  - (1) the applicant;
  - (2) the federal agency as required under 15 C.F.R. 930.62(a) and 15 C.F.R. 930.63(a);
  - (3) the director of OCRM, as required under 15 C.F.R. 930.63(a), if the final consistency response objects to the applicant's federal consistency certification;
  - (4) each resource agency;
  - (5) each commenting review participant;
  - (6) each agency that commented on the project; and
  - (7) each person who submitted timely ACMP comments under 6 AAC 50.500(a)-

(b).  
 (e) If an applicant, after receiving a final consistency response, fails to implement an alternative measure adopted under (c) of this section, or if the applicant undertakes a project modification not incorporated into the final consistency response and not reviewed under 6 AAC 50.800 - 6 AAC 50.820, a resource agency may take enforcement action according to the resource agency's statutory and regulatory authorities, priorities, available resources, and preferred methods. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
 AS 44.19.160 AS 46.40.040

**6 AAC 50.490. Resource agency authorization.** For a proposed project that requires a federal consistency certification and an authorization from one or more resource agencies,

- (1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process so that the consistency review can be completed within the timeframes specified in 16 U.S.C. 1456(c)(3)(A) and 15 C.F.R. 930.50 - 930.66; and
- (2) if an applicant appeals a consistency response to the United States Secretary of Commerce under 15 C.F.R. 930.120 - 930.131, a resource agency may not issue an authorization necessary for the project until the appeal is decided; consistent with any policy direction given by the commissioners of the resource agencies or the governor, DGC may amend a final consistency response to reflect the outcome of the appeal. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
 AS 44.19.160 AS 46.40.040

**6 AAC 50.495. Review process for OCS exploration, development, and production activities.** A consistency review for federal license or permit activities described in detail within an OCS plan, within the meaning given in 15 C.F.R. 930.71 and 930.73, shall be conducted in

accordance with the requirements of 15 C.F.R. 930.70 - 930.85 and 6 AAC 50.415 - 6 AAC 50.490. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

## **Article 5. Public Participation.**

### **Section**

#### **500. Public notice**

#### **510. Public comments**

#### **520. Public hearings**

**6 AAC 50.500. Public notice.** (a) Public notice must be provided for the consistency review of a project.

(b) To provide sufficient public notice of a consistency review, a notice must

(1) comply with the requirements of AS 46.40.096(c);

(2) solicit comments to be addressed and submitted to the coordinating agency regarding the project's consistency with the enforceable policies of the ACMP;

(3) specify the deadline for receipt of comments by the coordinating agency;

(4) identify, to the extent known at the time the notice is issued, each public place at which copies of the consistency review packet and review schedule will be available for public inspection and copying, if the coordinating agency makes them available under 6 AAC 50.240(d)(4), 6 AAC 50.335(b)(2)(D), or 6 AAC 50.435(2)(D);

(5) be issued by at least one of the following methods:

(A) publication in a newspaper of general circulation within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect;

(B) posting

(i) on an Internet web site dedicated to consistency review public notices; and

(ii) in at least three public places within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect; however, notwithstanding the requirement of this sub-subparagraph, public notice may be posted in no less than one public place if the coordinating agency determines the area likely to be affected to have a population of 1,000 or fewer residents, and if the coordinating agency consults with any affected coastal resource district in which the area is located; and

(6) be provided by mail, or by electronic format if the person agrees, to each person who has requested from the coordinating agency public notice of

(A) the proposed project; or

(B) any proposed project affecting a specific coastal resource district.

(c) A coordinating agency may issue a joint public notice of a consistency review with other state or federal agencies if that notice complies with the minimum requirements of this

section. To the extent feasible, and in cooperation with the state or federal agency, the coordinating agency shall ensure that the joint public notice includes a

- (1) reference to the agency's authorization; and
- (2) solicitation of comments on the agency's authorization, distinct from the

solicitation of ACMP comments.

(d) If a public notice of a consistency review is issued that does not comply with the minimum requirements of this section, the coordinating agency shall issue a supplemental notice that does comply. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.040 AS 46.40.096

**6 AAC 50.510. Public comments.** (a) A person may comment on the consistency of a project by submitting written comments addressed directly to the coordinating agency on or before the comment deadline established under 6 AAC 50.250, 6 AAC 50.355, or 6 AAC 50.455, as applicable, or by presenting oral or written comment to the coordinating agency at a public hearing that the coordinating agency schedules and holds under 6 AAC 50.520.

(b) If a person contends that a project is inconsistent with an enforceable policy of the ACMP, the oral or written comment must identify the enforceable policy and explain how the project is inconsistent with the policy.

(c) To be considered, comments must comply with (a) and (b) of this section.

(d) The coordinating agency shall send the applicant, each resource agency, and any potentially affected coastal resource district, or shall ensure that they receive, a copy of timely submitted comments and, if the coordinating agency holds a public hearing under 6 AAC 50.520, the summary of the comments prepared under 6 AAC 50.520(d). Upon request, the coordinating agency shall send a copy of the comments to other persons interested in the project.

(e) For a timely submitted comment, the coordinating agency may consult with the resource agency or coastal resource district with expertise or responsibility to consider the comment. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.040 AS 46.40.096

**6 AAC 50.520. Public hearings.** (a) The coordinating agency shall schedule and hold a public hearing in an area that the coordinating agency considers a project will likely affect if the coordinating agency

(1) receives a written request for a public hearing regarding the project no later than

- (A) Day 17 in a 30-day review; or
- (B) Day 30 in a 50-day review; and

(2) finds that the request is based on facts or information

(A) relevant to the project's consistency with an enforceable policy of the ACMP; and

(B) that would not otherwise be available in the consistency review.

(b) Within seven days after receiving a request under (a) of this section, the coordinating agency shall

(1) decide whether to hold a public hearing; and

(2) notify the requestor if the coordinating agency will accept the request under (a) of this section.

(c) At least 15 days but no more than 30 days before the date of a public hearing scheduled under (a) of this section, the coordinating agency shall give notice of the time and place of the hearing

(1) by publication in a newspaper of general circulation in the area the project is likely to affect;

(2) by written notice to the governing body of an affected coastal resource district and any authorizing resource agencies; and

(3) if the project is to be located in the unorganized borough, by radio or television broadcast to the area the project is likely to affect.

(d) If a comment at a public hearing held under this section presents a new issue or information that the review participants have not already considered, the coordinating agency shall summarize any ACMP comment and distribute the summary to each review participant and the applicant within five days after the hearing. A review participant or the applicant may submit a written response to the summary, if the coordinating agency receives the response within seven days after distribution of the summary.

(e) If a resource agency or an affected coastal resource district holds a public hearing as part of its permit process under its authority or to develop its consistency review comments, the coordinating agency may consider a comment received at the hearing as part of the consistency review if

(1) the comment meets the requirements of 6 AAC 50.510(a)-(c);

(2) with respect to a resource agency hearing, the resource agency holds the hearing jointly with the coordinating agency; and

(3) the coordinating agency receives the comment from the resource agency or the affected coastal resource district on or before the comment deadline established under 6 AAC 50.250.

(f) DGC may, at the request of a resource agency coordinating a public hearing under this section, assist the resource agency in implementing the public hearing requirements under this section. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.040 AS 46.40.096

## **Article 6. Elevation and Petition.**

### **Section**

#### **600. Elevation process**

#### **610. Petitions to the council**

#### **620. General hearing procedures on petitions**

**6 AAC 50.600. Elevation process.** (a) If a resource agency, applicant, or affected coastal resource district does not concur with the proposed consistency determination or response, it may request an elevation to the resource agencies of the proposed consistency determination or response.

(b) At the request of a resource agency, applicant, or affected coastal resource district, the coordinating agency may proceed directly to a commissioner-level elevation under (j) - (l) of this section.

(c) An elevation is limited to consideration of

(1) the proposed consistency determination or response regarding whether the project is consistent with the enforceable policies of the ACMP; or

(2) any alternative measure or other project modification that would achieve consistency with the enforceable policies of the ACMP.

(d) A request for elevation must

(1) be in writing;

(2) be received by the coordinating agency within five days after the requestor receives the proposed consistency determination or response; and

(3) explain the requestor's concern, including any addition of or modification to an alternative measure identified that would achieve consistency with the enforceable policies of the ACMP.

(e) Upon receipt of a request for elevation in accordance with (a), (c), and (d) of this section, the coordinating agency shall

(1) distribute the request for elevation to each review participant, the applicant, and each person who submitted timely comments;

(2) suspend the review schedule by 15 days; and

(3) arrange and facilitate a meeting among the requestor and at least one director or delegate of that director from each resource agency.

(f) The coordinating agency shall invite the resource agencies, the applicant, and any affected coastal resource district to participate in, and may invite any other affected person to attend, the meeting arranged under (e) of this section.

(g) Only the participating directors from the resource agencies or the directors' delegates may make a final decision on an elevation requested under (a) of this section.

(h) Within the 15 days identified in (e)(2) of this section, the coordinating agency shall

(1) attempt to resolve the disputed issue given the policy direction provided by the participating directors from the resource agencies or the directors' delegates;

(2) render a director-level proposed consistency determination or response that reflects the decision of participating directors from the resource agencies or the directors' delegates; and

(3) distribute the director-level proposed consistency determination or response to each review participant, the applicant, and each person who submitted timely ACMP comments.

(i) If a resource agency, project applicant, or affected coastal resource district does not concur with the director-level proposed consistency determination or response rendered under (h) of this section, it may request, in the format required by (d) of this section, an elevation to the resource agency commissioners of the director-level proposed consistency determination or response.

(j) An elevation to the resource agency commissioners received under (b) or (i) of this section shall be conducted in the manner set out in (c), (e), and (f) of this section.

(k) Only resource agency commissioners or their delegates may make a final decision on an elevation requested under (b) or (i) of this section.

(l) Within 15 days after receipt of the request for elevation under (b) or (i) of this section, the coordinating agency shall

(1) attempt to resolve the disputed issue given the policy direction provided by the resource agency commissioners or their delegates;

(2) render a final consistency determination or response that reflects the decision of the resource agency commissioners or their delegates and that is consistent with any policy direction given by the commissioners of the resource agencies or the governor; and

(3) distribute the final consistency determination or response to each review participant, the applicant, and each person who submitted timely ACMP comments. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.610. Petitions to the council.** (a) A petition under AS 46.40.100 must be submitted in writing to DGC. The petition must

(1) include the petitioner's name, mailing address, and street address, and must also include a telephone number, and any facsimile number, at which the petitioner may be reached;

(2) specify whether the petitioner is a coastal resource district, a citizen of the coastal resource district, or a state resource agency;

(3) include a list of points that the person intends to argue in the petition;

(4) explain how the approved program of the coastal resource district is not being implemented; and

(5) suggest an alternative action that will implement the approved program of the coastal resource district.

(b) DGC shall prepare and submit to the council, and any affected coastal resource district, draft written findings and a draft written decision. The council may adopt as its findings and decision the draft findings and decision from DGC. The council may order that the coastal resource district or state resource agency take any action with respect to future implementation of the district's coastal management program.

(c) Within five days after the decision by the council, DGC shall distribute the decision to

(1) the petitioner;

(2) the coastal resource district whose district coastal management program was the subject of the petition; and

(3) each state agency and person whom DGC identifies as having an interest in the petition.

(d) The effective date of a council decision is the date DGC distributes the decision. As of the date of distribution, the council decision is a final administrative decision under the ACMP. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.100

**6 AAC 50.620. General hearing procedures on petitions.** (a) A petition hearing may be conducted by teleconference.

(b) The council may conduct a petition hearing by establishing a quorum of council members to conduct the hearing and make a decision. If a quorum cannot be established before the hearing date, the council may assign at least one council member to preside over the hearing, and will establish a quorum of council members at a later date to make a decision. Before making a decision at a later date, participating council members who did not attend the hearing will review the tape or transcript of the hearing and the documentary evidence presented at the hearing.

(c) The council will convene a hearing to consider a petition during the next scheduled council meeting or within 60 days, unless all parties to the hearing agree to a reasonable time extension. In a hearing held on a petition,

(1) the burden of proof is on the petitioner;

(2) the council will allow admission of material evidence of the type on which a reasonable person might rely in the conduct of serious business affairs; and

(3) formal rules of evidence need not apply. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160

AS 44.19.161

AS 46.40.100

## **Article 7. General and Nationwide Permits, Categorically Consistent Determinations, and General Consistency Determinations.**

### **Section**

**700. Use of general and nationwide permits, categorically consistent determinations, and general consistency determinations in project consistency reviews**

**710. Review process for categorically consistent determinations for activities that require a resource agency authorization**

**720. Implementation of categorically consistent determinations for activities that require a resource agency authorization**

**730. Review process for general consistency determinations for activities that require a resource agency authorization**

**740. Implementation of general consistency determinations for activities that require a resource agency authorization**

**750. Activities generally subject to individual consistency review**

**760. Review process for resource agency general permits**

**770. Review process for a federal general permit and nationwide permit**

**780. General consistency determinations for federal activities**

**6 AAC 50.700. Use of general and nationwide permits, categorically consistent determinations, and general consistency determinations, in project consistency reviews.** (a) If an activity that is part of a project is authorized by a general or nationwide permit that was previously evaluated and found consistent with the enforceable policies of the ACMP, the scope of the project subject to review may exclude the activity authorized by the general or nationwide permit in accordance with AS 46.40.096(h).



(b) If all activities of a project are subject to a categorical or general consistency determination under 6 AAC 50.700 - 6 AAC 50.780, the project is not subject to additional consistency review.

(c) If an activity that is part of a project is subject to a categorical or general consistency determination under 6 AAC 50.700 - 6 AAC 50.780, and the project includes an activity that requires an individual consistency review, all activities shall be included in the scope of a project subject to review except as permitted under (d) of this section.

(d) If a project includes an activity that is subject to a categorical or general consistency determination under 6 AAC 50.700 - 6 AAC 50.780, the coordinating agency, with the concurrence of the resource agencies and affected coastal resource district, may exclude the activity from the scope of the project subject to a consistency review if the impact of the activity, when in compliance with the categorical or general consistency determination, has a temporary and de minimis impact to coastal uses and resources. An activity excluded from a consistency review may be authorized by an authorizing resource agency subject to the standard alternative measures in the general consistency determination.

(e) DGC shall develop and maintain a list of general and nationwide permits, categorically consistent determinations, and general consistency determinations. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.710. Review process for categorically consistent determinations for activities that require a resource agency authorization.** (a) DGC, a resource agency, or a coastal resource district may propose under this section

(1) a categorically consistent determination for an activity that requires a resource agency authorization; or

(2) an amendment to an existing categorically consistent determination, based on new information regarding the impacts of the activity, including cumulative impacts.

(b) To be eligible for a categorically consistent determination under this section, an activity that requires a resource agency authorization may have only a de minimis impact on coastal uses and resources.

(c) DGC shall develop and maintain a list of categorically consistent determinations (the "A" list).

(d) A categorically consistent determination must

(1) identify the resource agency authorization required for the activity; and

(2) specifically describe the activity subject to the determination.

(e) If a new categorically consistent determination or an amendment to an existing determination is proposed, DGC shall

(1) distribute the proposed categorically consistent determination or amendment to the review participants;

(2) provide public notice of the proposed categorically consistent determination or amendment in accordance with 6 AAC 50.500; and

(3) in accordance with 6 AAC 50.235 - 6 AAC 50.280, render a consistency determination for the proposed categorically consistent determination or amendment. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.720. Implementation of categorically consistent determinations for activities that require a resource agency authorization.** (a) An applicant for an activity subject to a categorically consistent determination under 6 AAC 50.710 must submit a completed coastal project questionnaire to the authorizing resource agency unless the categorically consistent determination specifically states that a coastal project questionnaire is not needed.

(b) The authorizing resource agency shall review the authorization application and coastal project questionnaire.

(c) An activity that meets the description in the categorically consistent determination is not subject to further consistency review, unless the

(1) coastal project questionnaire indicates an authorization is needed for an additional activity that is part of the project; and

(2) additional activity is not subject to a

(A) categorically consistent determination under 6 AAC 50.710; or

(B) general consistency determination under 6 AAC 50.730.

(Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.730. Review process for general consistency determinations for activities that require a resource agency authorization.** (a) DGC, a resource agency, or a coastal resource district may propose under this section

(1) a general consistency determination for an activity that requires a resource agency authorization; or

(2) an amendment to an existing general consistency determination, based on new information regarding the impacts of the activity, including cumulative impacts.

(b) To be eligible for a general consistency determination under this section, an activity that requires a resource agency authorization must be an activity that can be made consistent with the ACMP through application of standard alternative measures.

(c) DGC shall develop and maintain a list of general consistency determinations (the "B" list).

(d) A general consistency determination must

(1) identify the resource agency authorization required for the activity;

(2) specifically describe the activity subject to the determination; and

(3) set out standard alternative measures that would achieve consistency with the enforceable policies of the ACMP.

(e) If a new general consistency determination or an amendment to an existing determination is proposed, DGC shall

(1) distribute the proposed general consistency determination or amendment to the review participants;

(2) provide public notice of the proposed general consistency determination or amendment in accordance with 6 AAC 50.500; and

(3) in accordance with 6 AAC 50.235 - 6 AAC 50.280, render a consistency determination for the proposed general consistency determination. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.740. Implementation of general consistency determinations for activities that require a resource agency authorization.** (a) An applicant for an activity subject to a general consistency determination under 6 AAC 50.730 must submit a completed coastal project questionnaire to the authorizing resource agency unless the general consistency determination specifically states that a completed coastal project questionnaire is not needed.

(b) The authorizing resource agency shall review the authorizing application and coastal project questionnaire.

(c) An activity that meets the description in the general consistency determination is not subject to further consistency review, unless the

(1) coastal project questionnaire indicates an authorization is needed for an additional activity that is part of the project; and

(2) additional activity is not subject to a

(A) categorically consistent determination under 6 AAC 50.710; or

(B) general consistency determination under 6 AAC 50.730.

(d) A resource agency authorization for an activity that is consistent based on a general consistency determination may not be issued unless the applicant adopts the alternative measures identified in the general consistency determination that would achieve consistency with the enforceable policies of the ACMP. The applicant shall submit to the coordinating agency, in writing, a statement adopting the alternative measures as part of the project description. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.750. Activities generally subject to individual consistency review.** (a) DGC, in consultation with the resource agencies, shall maintain a list of resource agency authorizations that authorize activities that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource (the C list). The "C List", as revised, as of October 9, 2002, is adopted by reference.

(b) An activity that requires an authorization that is on the "C List" and that meets the requirements of 6 AAC 50.005(a)(2) is subject to an individual consistency review in accordance with this chapter, except as provided for in 6 AAC 50.700.

(c) An activity requiring a resource agency authorization that is not identified on the "C List" is not subject to an individual consistency review. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096

**6 AAC 50.760. Review process for resource agency general permits.** (a) A resource agency that develops a general permit under the resource agency's statutory or regulatory authority shall subject the general permit to a consistency review in accordance with the procedures identified in (b) of this section if the activities covered under the general permit may have a reasonably foreseeable direct or indirect effect on a coastal use or resource.

(b) If a new resource agency general permit or amendment to an existing resource agency general permit is proposed, the resource agency shall

- (1) distribute the proposed general permit to the review participants and DGC;
- (2) provide public notice of the proposed general permit in accordance with

6 AAC 50.500; and

- (3) review the proposed general permit under 6 AAC 50.235 - 6 AAC 50.280.

(c) The resource agency shall provide DGC with a copy of the final approved general permit. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.770. Review process for a federal general permit and nationwide permit.**

In accordance with 15 C.F.R. 930.31(d), a federal general permit or nationwide permit is subject to the consistency review process set out in 6 AAC 50.305 - 6 AAC 50.395. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**6 AAC 50.780. General consistency determinations for federal activities.** (a) In accordance with 15 C.F.R. 930.36(c), a federal agency may provide DGC with a general consistency determination for a federal agency activity.

(b) A general consistency determination provided in accordance with 15 C.F.R. 930.36(c) is subject to the consistency review process set out in 6 AAC 50.305 - 6 AAC 50.395.

(c) If the final consistency response concurs with a general consistency determination for a federal agency activity, the activity will not be given further consistency review.

(d) DGC shall develop and maintain a list of general consistency determinations for federal agency activities. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

**Article 8. Project Modifications and Renewals of Authorizations.**

**Section**

**800. Project modifications during a consistency review**

**810. Project modifications after issuance of a final consistency determination**

**820. Authorization renewals, re-issuances, and expirations**

**6 AAC 50.800. Project modifications during a consistency review.** Except for a project subject to review under 6 AAC 50.305 - 6 AAC 50.395 or 6 AAC 50.405 - 6 AAC 50.495, the coordinating agency may terminate a consistency review if, after initiation of the consistency review,

(1) the coordinating agency receives information that indicates an additional authorization subject to the consistency review is required; or

(2) the applicant substantially modifies the description of the project. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.810. Project modifications after issuance of a final consistency determination.** (a) An applicant that proposes a modification to an activity that is part of a project for which a final consistency determination or response has been issued must submit a new coastal project questionnaire that includes a detailed description of the proposed modification. The coastal project questionnaire for the proposed modification must be submitted to the agency that coordinated the consistency review of the project.

(b) A modification that is proposed to a project for which a final consistency determination or response has been issued is subject to a consistency review if the proposed modification may cause additional impacts to a coastal use or resource and

(1) a new resource agency authorization subject to the consistency review process or a new federal authorization under 6 AAC 50.405 is required; or

(2) a change to an existing resource agency or federal authorization is required.

(c) Only the part of the project affected by a proposed modification is subject to a consistency review. Alternative measures developed during the consistency review of a proposed modification must address only the impacts caused by the modification.

(d) Except as provided in (e) of this section, the resource agency that is issuing a new authorization, or whose authorization requires modification, shall serve as the coordinating agency and render the consistency determination for a proposed modification.

(e) DGC shall serve as the coordinating agency and render the consistency determination or response for a proposed modification if

(1) the modification requires a new or amended federal authorization;

(2) the modification requires a new authorization from two or more resource agencies;

(3) a change to an existing authorization from two or more resource agencies is required; or

(4) more than one modification is proposed at the same time and the combined proposed modifications require authorization action from two or more resource agencies.

(f) The coordinating agency shall distribute the coastal project questionnaire for the proposed modification to the review participants. Each review participant shall respond to the coordinating agency within seven days after the coastal project questionnaire is distributed and a

(1) resource agency shall determine whether a new authorization or change to an existing authorization is required; and

(2) review participant shall consider whether the proposed modification may cause additional impacts to a coastal use or resource.

(g) If, after reviewing responses received under (f) of this section, the coordinating agency determines that the proposed modification will not cause additional impacts to coastal uses and resources, the modification is not subject to consistency review. The appropriate resource agency or federal agency will process the proposed modification as required under the agency's statutory and regulatory authority.

(h) If, after reviewing responses received under (f) of this section, the coordinating agency determines that the proposed modification may cause an additional impact to a coastal use or resource, the coordinating agency shall initiate a consistency review for the proposed modification under the appropriate consistency review process described under 6 AAC 50.005.

(i) The following modifications, that have no additional effect on coastal uses and resources, are not subject to further consistency review:

- (1) a change in ownership;
- (2) a change in contractor or subcontractor;
- (3) a decrease in the impact of the project with no change of purpose;
- (4) authorization modifications that are within the scope of the original project that was reviewed;
- (5) authorization modifications that are allowed under the original authorization conditions;
- (6) authorization modifications that are meant to clarify requirements in the previously issued authorization.

(j) A modification to a federal agency activity shall be addressed under 15 C.F.R. 930.30 - 930.46. A modification to a project requiring a federal license or permit shall be addressed under 15 C.F.R. 930.50 - 930.66 or 15 C.F.R. 930.70 - 930.85. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

**6 AAC 50.820. Authorization renewals, re-issuances, and expirations.** The renewal or re-issuance of an authorization for an existing project, or the issuance of an authorization to replace an expired authorization for an existing project, is not subject to a consistency review under this chapter, unless the applicant proposes a modification. If an applicant proposes a modification to an activity that is part of an existing project when seeking the renewal or re-issuance of an authorization for that project, or when seeking an authorization to replace an expired authorization for that project, the applicant must submit the proposed modification for review under 6 AAC 50.810. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096  
AS 44.19.160 AS 46.40.040

## Article 9. General Provisions.

### Section

920. Emergency expedited review

950. Computation of time

## 990. Definitions

**6 AAC 50.920. Emergency expedited review.** (a) If an applicant needs an expedited consistency review due to a disaster emergency declared under AS 26.23 or AS 46.04.080, or if the coordinating agency finds that an expedited review is necessary for the immediate preservation of the public peace, health, safety or general welfare, the coordinating agency, in consultation with the resource agencies and any affected coastal resource district, may expedite a consistency process established in this chapter as necessary to meet the emergency. The decision to expedite the review shall be based upon clear and convincing evidence of a need to expedite the review.

(b) The coordinating agency shall document in writing a decision under (a) of this section to expedite a consistency review. The coordinating agency shall expedite the consistency review process as necessary to meet the emergency, shall provide public notice of the expedited consistency review process in accordance with AS 46.40.096 and in the appropriate format and medium given the emergency, and as soon as practicable, shall issue a proposed consistency determination and final consistency determination in accordance with AS 46.40.096(d), 6 AAC 50.260 and 6 AAC 50.265.

(c) Notwithstanding (a) of this section, if the Department of Environmental Conservation determines that an oil spill or hazardous substance release poses an imminent threat to public health, safety, or the environment, the coordinating agency shall expedite, in accordance with (b) and (d) of this section, the consistency review for the immediate containment and cleanup of oil or hazardous substance release under AS 46.04.020 or AS 46.09.020 in order to reduce or remove the threat to public health, safety, or the environment.

(d) An expedited consistency review is not subject to the public notice requirements under 6 AAC 50.500. The elevation process under 6 AAC 50.600 shall be expedited as necessary to meet the emergency.

(e) Nothing in this section affects the governor's powers under AS 26.23 during a disaster emergency declared under that chapter. (Eff. 1/21/2003, Register 164)

**6 AAC 50.950. Computation of time.** A time period under this chapter must be calculated using calendar days. An action required to be taken on a specific day must be taken no later than 5:00 p.m. that day, except that an action required to be taken on a Saturday, Sunday, or state or federal holiday must be taken no later than 5:00 p.m. the next working day. (Eff. 7/1/99, Register 150; am 1/21/2003, Register 164)

Authority: AS 46.40.040 AS 46.40.096 AS 46.40.100

**6 AAC 50.990. Definitions.** (a) In this chapter, unless the context indicates otherwise,

(1) "ACMP" means the Alaska coastal management program, as set out in AS 46.40, this chapter, 6 AAC 80, 6 AAC 85, and the program's enforceable policies;

(2) "affected coastal resource district" has the meaning given in AS 46.40.096(g)(1);

(3) "alternative measure" means a modification to a project that, if adopted by the applicant, would achieve consistency with the enforceable policies of the ACMP;

(4) "applicant" means a person who submits

(A) an application for a resource agency or federal authorization; or  
(B) to the United States Secretary of the Interior an OCS plan within the meaning given in 15 C.F.R. 930.73;

(5) "approved program" means a district coastal management program approved by the council under AS 46.40 and filed by the lieutenant governor's office as provided under 6 AAC 85.180;

(6) "authorization" means

(A) a permit, license, authorization, certification, approval, or other form of permission that a resource agency is empowered to issue to an applicant and that appears in the list adopted by reference at 6 AAC 50.750; for purposes of this subparagraph, "authorization" does not include a notice of intent required to obtain a general permit reviewed and approved under this chapter; and

(B) a federal permit or license within the meaning given in 15 C.F.R. 930.51;

(7) "biological or physical resources" means resources in the coastal zone; "biological or physical resources" includes plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, submerged aquatic vegetation, lands, gravel, sand, fresh water, air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, barrier islands, lagoons, exposed high energy coasts, and upland habitat;

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

(9) "coastal zone" means the coastal waters, including the lands within and under those waters, and adjacent shorelands, including the waters within and under those shorelands, within the boundaries established under 6 AAC 85.040; "coastal zone" does not include those lands excluded under 16 U.S.C. 1453(1);

(10) "consistency certification" means a declaration that is supported by the necessary data and information by an applicant that a proposed project complies with the enforceable policies of the ACMP and that the project will be conducted in a manner consistent with the ACMP;

(11) "consistency determination" means a document rendered by a coordinating agency that indicates whether a proposed project is consistent or inconsistent with the ACMP; "consistency determination"

(A) includes a consistency response; and

(B) does not include a federal consistency determination;

(12) "consistency response" means the response rendered by DGC under

(A) 6 AAC 50.305 - 6 AAC 50.395 to a federal consistency determination; or

(B) 6 AAC 50.405 - 6 AAC 50.495 to a federal consistency certification;

(13) "consistency review" has the meaning given in AS 46.40.210;

(14) "coordinating agency"



- (A) means the agency responsible for coordinating a consistency review and rendering a proposed or final consistency determination as set out under AS 44.19.145(a)(11) and AS 46.40.096; and
- (B) has the same meaning as "reviewing entity," as used in AS 46.40.096;
- (15) "council" means the Alaska Coastal Policy Council;
- (16) "cumulative impacts" means reasonably foreseeable effects on a coastal use or resource that result from the incremental impact of an individual project when viewed together with the impacts of past and currently authorized projects;
- (17) "DGC" means the division of governmental coordination within the office of management and budget in the Office of the Governor;
- (18) "de minimis impact" means an insignificant
- (A) direct effect on a coastal use or resource; or
- (B) indirect effect on a coastal use or resource; for purposes of this subparagraph, "indirect effect" includes cumulative impacts and secondary effects;
- (19) "DNR" means the Department of Natural Resources;
- (20) "disposal of interest in state land" means the sale, lease, or other disposition of state-owned or state-managed land or resources by DNR;
- (21) "district" has the meaning given "coastal resource district" in AS 46.40.210;
- (22) "due deference" means that deference that is appropriate in the context of the commentor's expertise or area of responsibility, and all the evidence available to support any factual assertions;
- (23) "elevation" means a subsequent review under AS 46.40.096(d)(3) of a proposed consistency determination;
- (24) "enforceable policy" means a
- (A) standard under 6 AAC 80.040 - 6 AAC 80.150; and
- (B) policy in an approved program that is legally binding, as developed under 6 AAC 85.090;
- (25) "federal consistency certification" means a consistency certification that
- (A) an applicant for a required federal license or permit provides to DGC in accordance with 16 U.S.C. 1456(c)(3)(A) (sec. 307(c)(3)(A) of the Coastal Zone Management Act) and 15 C.F.R. 930.57 - 930.58; or
- (B) is provided to DGC, in accordance with 16 U.S.C. 1456(c)(3)(B) (sec. 307(c)(3)(B) of the Coastal Zone Management Act) and 15 C.F.R. 930.76, by a person who submits to the United States Secretary of the Interior an OCS plan within the meaning given in 15 C.F.R. 930.73;
- (26) "federal consistency determination" means a submission that a federal agency provides to DGC in accordance with 16 U.S.C. 1456(c)(1)-(2) (sec. 307(c)(1)-(2) of the Coastal Zone Management Act) and 15 C.F.R. 930.36 - 930.40, to indicate whether a federal agency activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP;
- (27) "general permit" means an authorization that covers a group of similar facilities or activities subject to standard requirements;

(28) "OCRM" means the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration of the United States Department of Commerce;

(29) "OMB" means the office of management and budget in the Office of the Governor;

(30) "project" means all activities that will be part of a proposed development;

(31) "render" has the meaning given in AS 44.19.152;

(32) "resource agency" means the Department of Environmental Conservation, the Department of Fish and Game, or the Department of Natural Resources;

(33) "review participant" means

(A) a resource agency, a state agency that has requested participation, and an affected coastal resource district; and

(B) if a project includes an oil discharge prevention and contingency plan required under AS 46.04.030, an affected regional citizens advisory council as established under 33 U.S.C. 2732(d), in addition to the persons listed in (A) of this paragraph.

(b) For purposes of AS 46.40.096(g)(1) and this chapter, "direct and significant impact" means an impact that contributes to a material change in or alteration of natural, social, cultural, or economic characteristics of a coastal use or resource.

(c) In AS 44.19.145(a)(11),

(1) "conclusive state consistency determination" means a final consistency determination as described in AS 46.40 and this chapter;

(2) "federal consistency certification" means a consistency response rendered under 6 AAC 50.405 - 6 AAC 50.495;

(3) "federal consistency determination" means a consistency response rendered under 6 AAC 60.305 - 6 AAC 50.395. (Eff. 7/1/99, Register 150; am 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 46.40.010	AS 46.40.096
	AS 44.19.161	AS 46.40.040	AS 46.40.100

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

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

- ARTICLE 1. Government Process (6 AAC 80.010-6 AAC 80.030)**
- ARTICLE 2. Uses and Activities (6 AAC 80.040-6 AAC 80.120)**
- ARTICLE 3. Resources and Habitats (6 AAC 80.130-6 AAC 80.150)**
- ARTICLE 4. Areas Which Merit Special Attention  
(6 AAC 80.158-6 AAC 80.170)**
- ARTICLE 5. General Provisions (6 AAC 80.900)**

**ARTICLE 1. GOVERNMENT PROCESS.**

**Section:**

- 10. Coverage of chapter**
- 20. Public participation and information**
- 30. Program management and coordination**

**6 AAC 80.010. COVERAGE OF CHAPTER.** (a) This chapter contains standards for the use of and application by districts and state agencies in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40, and AS 44.19.155 -44.19.162).

(b) Nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area. Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter. However, if the district program and the standards in this chapter both address the same operational subject or issue, the provisions of the district program are controlling.

(c) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Register 67; am 9/9/81, Register 79)

**Authority:** AS 44.19.160  
AS 46.40.040

**AS 46.40.100**

**6 AAC 80.020. PUBLIC PARTICIPATION AND INFORMATION.** (a) The council will provide adequate, effective, and continuing opportunities for public participation from the beginning of the Alaska coastal management program. The council will give notice of when and where opportunities for public participation will be provided before adoption of guidelines and standards, review and approval of district programs and amendments to district programs, and amendments to the Alaska coastal management program.

(b) The council will not approve a district program or significant amendment of a district program unless evidence of significant opportunities for public participation at the district level has been provided.

(c) The council will make available to the public information and educational materials concerning coastal management, in understandable form, including

- (1) a guide for the development of district programs;
- (2) maps and narratives describing physical and biological characteristics to be used in establishing boundaries of coastal areas;
- (3) areas recommended for council designation as areas which merit special attention;
- (4) maps showing the distribution and abundance of coastal fish and wildlife species with commercial, recreational, subsistence, or general ecological importance;
- (5) an identification of major data and information sources concerning coastal management;
- (6) a summary of information regarding coastal regions;
- (7) summaries of public hearings and workshops;
- (8) films and slide programs;
- (9) written material summarizing or explaining the Alaska coastal management program; and
- (10) the council's annual report to the legislature.

(d) At public meetings concerning the Alaska coastal management program, the council will ensure that, when requested and reasonably necessary, translation into the appropriate Native language is provided. (Eff. 7/18/78, Register 67)

**Authority:** AS 44.19.161

**AS 46.40.040**

**6 AAC 80.030. PROGRAM MANAGEMENT AND COORDINATION.** (a) The division of governmental coordination of the Office of Management and Budget is the designated lead agency for the Alaska Coastal Management Program. The division of governmental coordination of the Office of Management and Budget shall

(1) present the staff position regarding matters before the council;  
(2) coordinate the activities of state agencies participating in the Alaska coastal management program; and

(3) review state and federal actions for consistency with the Alaska coastal management program, as provided in 6 AAC 50.

(b) The council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.155. Regional programs will

(1) assist the council and districts in identifying uses of state concern and developing management policies for these uses;

(2) provide resource, social, and economic information on a coordinated regional basis; and

(3) assist the council and districts in identifying, avoiding, or minimizing existing or potential conflicts.

(c) Plans and recommendations developed as part of the regional program described in (b) of this section must be transmitted to the district through the division of governmental coordination. District planning efforts must demonstrate review and consideration of these plans and recommendations. If the final district program proposed does not agree with the regional program plans and recommendations, the differences will be resolved by the council.

(d) The council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs. (Eff. 7/18/78, Register 67; am 10/28/84, Register 92)

**Authority:** AS 44.19.145(a)  
AS 44.19.161

**AS 46.40.040**

## ARTICLE 2. USES AND ACTIVITIES.

### Section:

- 40. Coastal Development
- 50. Geophysical hazard areas
- 60. Recreation
- 70. Energy facilities
- 80. Transportation and utilities
- 90. Fish and seafood processing
- 100. Timber harvest and processing
- 110. Mining and mineral processing
- 120. Subsistence

**6 AAC 80.040. COASTAL DEVELOPMENT.** (a) In planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to:

- (1) water-dependent uses and activities;
- (2) water-related uses and activities; and
- (3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations (Vol. 42 of the Federal Register, pp. 37133 - 47 (July 19, 1977)). (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**Authority:** AS 44.19.161

**AS 46.40.040**

**6 AAC 80.050. GEOPHYSICAL HAZARD AREAS.** (a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided. (Eff. 7/18/78, Register 67)

**Authority:** AS 44.19.161

**AS 46.40.040**

**6 AAC 80.060. RECREATION.** (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

- (1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or
- (2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**Authority:** AS 44.19.161

AS 46.40.040

**6 AAC 80.070. ENERGY FACILITIES.** (a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

- (1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;
- (2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;
- (3) consolidate facilities;
- (4) consider the concurrent use of facilities for public or economic reasons;
- (5) cooperate with landowners, developers, and federal agencies in the development of facilities;
- (6) select sites with sufficient acreage to allow for reasonable expansion of facilities;
- (7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;
- (8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;
- (9) encourage the use of vessel traffic control and collision avoidance systems;
- (10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;
- (11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable

habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**Authority:** AS 44.19.161 AS 46.40.040

**6 AAC 80.080. TRANSPORTATION AND UTILITIES.** (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs.

(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**Authority:** AS 44.19.161 AS 46.40.040

**6 AAC 80.090. FISH AND SEAFOOD PROCESSING.** Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. (Eff. 7/18/78, Register 67)

**Authority:** AS 44.19.161 AS 46.40.040

**6 AAC 80.100. TIMBER HARVEST AND PROCESSING.** AS 41.17, Forest Resources and Practices Act, and the regulations and procedures adopted under that chapter with respect to the harvest and



processing of timber, are incorporated into the Alaska coastal management program and constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 3/30/84, Register 89)

**Authority:** AS 44.19.161

**AS 46.40.040**

*(Note: AS 41.17 was amended in 1990. The revised Forest Resources and Practices regulations were incorporated into the ACMP effective August 4, 1993.)*

**6 AAC 80.110. MINING AND MINERAL PROCESSING. (a)**

Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**Authority:** AS 44.19.161

**AS 46.40.040**

**6 AAC 80.120. SUBSISTENCE. (a)** Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Register 67)

**Authority:** AS 44.19.161

**AS 46.40.040**

### ARTICLE 3. RESOURCES AND HABITATS.

#### Section:

#### 130. Habitats

#### 140. Air, land and water quality

#### 150. Historic, prehistoric, and archaeological resources

**6 AAC 80.130. HABITATS.** (a) Habitats in the coastal area which are subject to the Alaska coastal management program include

- (1) offshore areas;
- (2) estuaries;
- (3) wetlands and tideflats;
- (4) rocky islands and seacliffs;
- (5) barrier islands and lagoons;
- (6) exposed high energy coasts;
- (7) rivers, streams, and lakes; and
- (8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources,

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat;

(3) wetlands and tideflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in 6 AAC 80.030(b). (Eff. 7/18/78, Register 67)

**Authority:** AS 44.19.161

AS 46.40.040

**6 AAC 80.140. AIR, LAND, AND WATER QUALITY.**

Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality, in effect on August 18, 1992, are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Register 67; am 5/20/93, Register 126)

**Authority:** AS 44.19.161

AS 46.40.040

AS 46.40.010

**6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES.**

Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Register 67)

**Authority:** AS 44.19.161

AS 46.40.040

**ARTICLE 4. AREAS WHICH MERIT SPECIAL ATTENTION.**

**Section:**

**158. Repealed**

**160. Repealed**

**170. Repealed**

**6 AAC 80.158. TYPES OF AREAS TO BE DESIGNATED AS AREAS WHICH MERIT SPECIAL ATTENTION.** Repealed. (Eff. 6/9/85, Register 94; repealed 7/16/99, Register 151)

**6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS.** Repealed. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 6/9/85, Register 94; am 4/2/86, Register 97; repealed 7/16/99, Register 151)

**6 AAC 80.170. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS.** Repealed. (Eff. 6/9/85, Register 94; am 4/2/86, Register 97; repealed 7/16/99, Register 151)

## ARTICLE 5. GENERAL PROVISIONS.

### Section:

### 900. Definitions

**6 AAC 80.900. DEFINITIONS.** (a) Unless the context indicates otherwise, in this chapter

(1) "**barrier islands and lagoons**" means depositional coastal environments formed by deposits of sediment offshore or coastal remnants which form a barrier of low-lying islands and bars protecting a salt-water lagoon with free exchange of water to the sea;

(2) "**coastal water**" means all water bodies in the coastal area, including wetlands and the intertidal area;

(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) "**estuary**" means a semiclosed coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(7) "**exposed high-energy coasts**" means open and unprotected sections of coastline with exposure to ocean generated wave impacts and usually characterized by coarse sand, gravel, boulder beaches, and well-mixed coastal water;

(8) "**facilities related to commercial fishing and seafood processing**" includes hatcheries and related facilities, seafood processing plants and support facilities, marine industrial and commercial facilities, and aquaculture facilities;

(9) "**geophysical hazard areas**" means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami run-up, storm surge run-up, landslides, snowslides, faults, ice hazards, erosion, and littoral beach process;

(10) "**mining and mineral processing**" means the development of mineral resources extracted in tidal rivers, coastal water, and on continental shelves of the open sea, and found in surface, subsurface, and aqueous deposits;

(11) "**offshore areas**" means submerged lands and waters seaward of the coastline;

(12) "**rocky islands and seacliffs**" means islands of volcanic or tectonic origin with rocky shores and steep faces, offshore rocks, capes, and steep rocky seafronts;

(13) "**tideflats**" means mostly unvegetated areas that are alternately exposed and inundated by the falling and rising of the tide;

(14) "**transportation and utility routes and facilities**" include power transmission lines, mineral slurry lines, oil and gas pipelines, land and marine corridors, railways, highways, roadways, air terminals, water and sewage transfer, and facilities required to operate and maintain the route or facility;

(15) "**upland**" means drainages, aquifers, and land, the use of which would have a direct and significant impact on coastal water;

(16) "**uses of state concern**" has the same meaning as in AS 46.40.210(6);

(17) "**water-dependent**" means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body;

(18) "**water-related**" means a use or activity which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water-dependence and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered;

(19) "**wetlands**" includes both freshwater and saltwater wetlands; "freshwater wetlands" means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth; "**saltwater wetlands**" means those coastal areas along sheltered shorelines characterized by halophilic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes;

(20) "**feasible and prudent**" means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard which is modified by the term "feasible and prudent";

(21) "**including**" means including but not limited to;

(22) "**major energy facility**" includes marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing facilities,

and geothermal facilities; "major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:

(A) a facility required to support energy operations for exploration or production purposes;

(B) a facility used to produce, convert, process, or store energy resources or marketable products;

(C) a facility used to transfer, transport, import, or export energy resources or marketable products;

(D) a facility used for in-state energy use; or

(E) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (A) - (D) of this paragraph;

(23) "**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;

(24) "**area which merits special attention**" has the same meaning as in AS 46.40.210(1);

(25) "**village**" has the same meaning as in AS 46.40.180(d).

(b) In AS 44.19.155, "**deputy commissioner**" includes assistant commissioners of state agencies. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 9/9/81, Register 79; am 6/9/85, Register 94; am 10/16/87, Register 104)

**Authority:** AS 44.19.160(4)

AS 44.19.161

AS 46.40.030

AS 46.40.040

AS 46.40.060 AS 46.40.010(c)

AS 46.40.070

**TITLE 6. GOVERNOR'S OFFICE  
DIVISION OF GOVERNMENTAL COORDINATION**

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

- Article 1. Program Elements (6 AAC 85.010-6 AAC 85.110)**
- Article 2. Government Process (6 AAC 85.120-6 AAC 85.185)**
- Article 3. Special Area Management Plans and Areas Which Merit Special Attention (6 AAC 85.195-6 AAC 85.225)**
- Article 4. General Provisions (6 AAC 85.900)**

**ARTICLE 1. PROGRAM ELEMENTS.**

**Section:**

- 10. Repealed**
- 20. Issues, goals, and objectives**
- 30. Organization**
- 40. Coastal zone boundaries**
- 50. Resource inventory**
- 60. Resource analysis**
- 70. Subject uses**
- 80. Proper and improper uses**
- 90. Enforceable policies**
- 100. Implementation**
- 110. Public participation**

**Editor's note:** As of Register 151 (October 1999), the functions of the former Department of Community and Regional Affairs were transferred to other state agencies. In accordance with ch. 58, SLA 1999 and AS 44.62.125(b)(6), the regulations attorney revised 6 AAC 85, as of Register 152 (January 2000), to reflect changes in the names of state agencies.

**6 AAC 85.010. COVERAGE OF CHAPTER.** Repealed. (Eff. 7/18/78, Register 67; repealed 7/16/99, Register 151)



**6 AAC 85.020. ISSUES, GOALS, AND OBJECTIVES.** A district program must include the district's overall coastal management issues, goals, and objectives, or summarize or reference the district's overall coastal management issues, goals, and objectives contained in the district's comprehensive land and resource use plan. The means used to achieve an objective must be stated in the district program. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.030. ORGANIZATION.** (a) A district program must describe the organizational structure of the district, and state whether the district is a coastal resource service area (CRSA) or a municipality.

(b) A district program must identify and give addresses for the officials or departments within the district that are assigned to

(1) determine, for the purposes of issuing a municipal authorization or permit, the consistency of proposed uses and activities with the approved district program; or

(2) submit comments to the state under 6 AAC 50.070. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.040. COASTAL ZONE BOUNDARIES.** (a) A district program must include, in a manner sufficient for district program development and implementation, a map and description of the boundaries of the coastal zone subject to the district program. The boundaries must be within or coterminous with the district and must enclose those lands that would reasonably be included in the coastal zone and subject to the district program if those lands were not subject to the exclusive jurisdiction of the federal government.

(b) Initial coastal zone boundaries must be based on *Biophysical Boundaries of Alaska's Coastal Zone (1978)*, reprinted January 1985, adopted by reference, and must include the zone of direct interaction and the zone of direct influence.

(c) Final coastal zone boundaries may diverge from the initial boundaries if the final boundaries

(1) extend inland and seaward to the extent necessary to manage a use

or an activity that has or is likely to have a direct and significant impact on marine coastal water; and

(2) include all of the following areas within the district:

(A) transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches; and

(B) areas that are likely to be affected by or vulnerable to sea level rise.

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

(e) The coastal zone boundaries must be sufficiently compatible with those of an adjoining coastal zone to allow consistent administration of the Alaska coastal management program. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**

**Editor's note:** The *Biophysical Boundaries of Alaska's Coastal Zone (1978)*, reprinted January 1985, was prepared by the Office of Coastal Management and the Alaska Department of Fish and Game. A copy is on file and available by writing the Office of the Governor, Office of Management and Budget, Division of Governmental Coordination, P.O. Box 110030, Juneau, Alaska, 99811-0030.

**6 AAC 85.050. RESOURCE INVENTORY.** (a) For the resources within the district's coastal zone, a district program must include a resource inventory that describes, as necessary to complete the resource analysis in 6 AAC 85.060 and in a manner sufficient for program development and implementation,

(1) natural resources such as forests, minerals, soils, wetlands, water, and fish and wildlife, and those habitats listed in 6 AAC 80.130, and their functions, if appropriate; and

(2) major cultural, historic, prehistoric, and archaeological resources.

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

(1) major land or water uses or activities that are or have been conducted or designated within or adjacent to the district; and

(2) major land and resource ownership, jurisdiction, and management responsibilities within or adjacent to the district.

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

(d) Information in the resource inventory must be substantiated or documented with a citation or reference to the source of that information.

(e) If inventory information is contained in another published source, the relevant information must be summarized, referenced in the district program, and made available upon request. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.060. RESOURCE ANALYSIS.** (a) A district program must include an analysis of the impacts of uses and activities on the habitats and resources identified in 6 AAC 85.050(a) within the district's coastal zone. The analysis must describe, in a manner sufficient for district program development and implementation,

(1) the present and anticipated needs, demands, and competing uses for coastal zone habitats and resources;

(2) the direct and indirect impacts of uses and activities;

(3) the suitability of habitats, natural hazard areas, and resources for development;

(4) the sensitivity of habitats, natural hazard areas, and resources to development; and

(5) the conflicts among coastal zone uses and activities.

(b) A district may incorporate local knowledge into the resource analysis required by this section. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.070. SUBJECT USES.** A district program must include a description of the land and water uses and activities that are subject to the district program. The uses and activities set out at 6 AAC 80.040-6 AAC 80.120 are, if applicable, subject to the district program. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.080. PROPER AND IMPROPER USES.** A district program must describe the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of

state concern, that will be considered improper within the district's coastal zone, including land and water use designations. This description must be based on the district's statement of issues, goals, and objectives under 6 AAC 85.020, and must be consistent with the standards contained in 6 AAC 80. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**

**6 AAC 85.090. ENFORCEABLE POLICIES.** (a) A district program must include the enforceable policies that will be applied to land or water uses or activities subject to the district program. An enforceable policy must

(1) be consistent with state and federal constitutions, statutes, and regulations, and the standards contained in 6 AAC 80;

(2) be comprehensive, applying to all uses, activities, and areas in need of management;

(3) be specific, allowing clear understanding of persons, uses, or activities that will be affected by the policies, how the persons, uses, or activities will be affected, and whether specific land and water uses and activities will be allowed;

(4) use language that can be implemented and enforced, consistent with the means of implementation identified in 6 AAC 85.100; and

(5) address the issues and achieve the goals and objectives identified in 6 AAC 85.020.

(b) A district program must clearly identify each enforceable policy. Except for a boundary map or description developed under (c) of this section, enforceable policies must be located in a single section of the district program. The enforceable policies provide the basis for a determination of consistency with the district program. A state or federal statute or regulation may not be repeated within the enforceable policies.

(c) For a habitat, area, or resource identified and analyzed in 6 AAC 85.060 as sensitive to development, for a special area management plan developed under 6 AAC 85.195, or for an area which merits special attention inside a district as developed under 6 AAC 85.215, a district may adopt enforceable policies that will be used to determine whether a specific land or water use or activity will be allowed. An area subject to these policies must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area. A description or map developed under this subsection must be referenced in the applicable enforceable policy and is an enforceable component of the district program. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**

**6 AAC 85.100. IMPLEMENTATION.** A district program must describe

(1) the methods and authorities used to implement, monitor, and enforce the district program; methods and authorities

(A) must be adequate to ensure program implementation and enforcement; and

(B) may include, if appropriate,

(i) land and water use plans;

(ii) municipal ordinances and resolutions, including shoreline, zoning, and subdivision ordinances and building codes;

(iii) state and federal statutes and regulations;

(iv) capital improvement programs;

(v) the purchase, sale, lease, or exchange of coastal zone land and water resources;

(vi) cooperative agreements;

(vii) tax exemptions for non-development purchase of development rights;

(viii) memoranda of understanding;

(ix) coordinated project or permit review procedures; and

(x) the means and procedures to document public need for purposes of submitting comments under 6 AAC 50.070; and

(2) the planning, implementation, and enforcement relationship between the coastal district and the cities or villages inside the district; the district program must address consistency reviews, any municipal appeals, planning and plan revisions, applicable municipal land use regulations, and review of applicable municipal land use regulations for consistency with the district program. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**

**6 AAC 85.110. PUBLIC PARTICIPATION.** A district program must document an effective and significant opportunity for public participation in district program development under this chapter. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**



## ARTICLE 2. GOVERNMENT PROCESS.

### Section:

- 120. Repealed
- 121. Issues meeting; file maintenance
- 126. Public hearing draft development
- 130. Repealed
- 131. Distribution and notice of public hearing draft
- 134. Comment on public hearing draft
- 137. District action on public hearing draft
- 140. Repealed
- 141. Revised public hearing draft development and review in coastal resource service areas
- 145. Repealed
- 146. Development, coordination, and public review of concept-approved drafts
- 150. Council review of final findings and conclusions and concept-approved drafts of district programs
- 160. Minor amendments
- 170. Mediation
- 175. Federal review
- 180. Local adoption and effective date
- 183. Progress reports to council and updates to district programs
- 185. Petition for amendment to an approved district program regarding uses of state concern

**6 AAC 85.120. SUBMITTALS TO COUNCIL.** Repealed. (Eff. 7/18/78, Register 67; am 5/2/81, Register 78; am 9/9/81, Register 79; am 3/2/84, Register 89; repealed 7/16/99, Register 151)

### **6 AAC 85.121. ISSUES MEETING; FILE MAIN-TENANCE.**

(a) As soon as practicable after a district identifies its intent to adopt or amend a district program, the district shall hold at least one meeting with the division. The meeting may be held by teleconference. The district shall provide each interested person notice of the meeting and the opportunity to participate in the meeting. The purpose of the meeting is to identify issues that may or must be addressed in the district program.

(b) The division shall create and maintain a record file containing all material relating to the development and approval of the district program or an

amendment to the district program. The district shall forward all relevant material to the division for inclusion in the record file for the district program. (Eff. 7/16/99, Register 151)

Authority: AS 44.19.161  
AS 44.19.162

AS 46.40.040

**6 AAC 85.126. PUBLIC HEARING DRAFT DEVELOPMENT.** (a) At least two public meetings must be held within the district during development of the public hearing draft to inform the public and receive comments concerning the district program.

(b) A district shall provide the public, in a timely manner and in understandable form, information explaining

(1) the Alaska coastal management program;

(2) the district program;

(3) the requirement of public participation during the development of the district program;

(4) how and when the public may participate in the development of the district program;

(5) what information is available on the development of the district program; and

(6) where the information described in this subsection may be obtained.

(c) A district shall provide each person an opportunity for participation during development of the public hearing draft.

(d) A district shall submit the public hearing draft to the division for review before distribution under 6 AAC 85.131. Within 15 days of receipt of the public hearing draft, the division shall determine whether the public hearing draft is complete for review. A public hearing draft is complete for review if

(1) it contains all the information set out in 6 AAC 85.020-6 AAC 85.110;

(2) the district provided the meetings, information, and opportunity for public participation under 6 AAC 85.121 and (a)-(c) of this section; and

(3) the district provides the division, for review and approval, a mailing list of the persons whom the district considers to be interested in the district program; in compiling the mailing list under this paragraph, the district shall consult with the division to ensure that interested persons are included; the division may add names of persons to the mailing list as a part of its approval under this paragraph.

(e) If the division determines under (d) of this section that the public hearing draft is not complete for review, the division may

(1) request more information from the district; or



(2) require the district to postpone distribution of the public hearing draft until the draft is complete for review. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 44.19.162 AS 46.40.040  
AS 46.40.010

**6 AAC 85.130. PUBLIC INVOLVEMENT DURING PROGRAM DEVELOPMENT.** Repealed. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 3/2/84, Register 89; repealed 7/16/99, Register 151)

**6 AAC 85.131. DISTRIBUTION AND NOTICE OF PUBLIC HEARING DRAFT.** (a) The district shall distribute the public hearing draft to each person on the mailing list approved under 6AAC 85.126(d). A transmittal letter that states the comment deadline and identifies the recipient of comments must be sent with the public hearing draft.

(b) Public notice of the availability of the public hearing draft must be given to a person who has requested it in writing, and through advertisement in a newspaper of general circulation within the district. Notice must also be posted in cities and villages within the district.

(c) If a district is a CRSA, it shall notify each governing body or village within the district of the regulations contained within this chapter and the provisions of AS 46.40.180.

(d) At least a 45-day review and comment period must be provided if the district is a city or unified municipality. At least a 60-day review and comment period must be provided if the district is a borough or CRSA.

(e) During the review and comment period, the district shall hold at least one meeting for federal and state agency representatives. If the district is a CRSA, the district shall hold at least one meeting for representatives of an affected city or village within the district boundaries. A meeting may be held by teleconference.

(f) During the review and comment period, the district shall hold at least one public hearing. At least 30 days before the hearing, notice of the time and place of the hearing must be provided to each recipient of the public hearing draft, advertised in a newspaper of general circulation within the district or by an announcement on radio or television that broadcasts within the district, and advertised in a newspaper of general circulation within the state. At the public hearing, a person shall be given the opportunity to present statements orally or in writing. As the district considers necessary, a district shall provide translation into and out of a Native language prevalent within the district. In addition, the district shall provide the division with a transcript or electronic recording of the

hearing. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.010 AS 46.40.180

**6 AAC 85.134. COMMENT ON PUBLIC HEARING DRAFT.**

- (a) A person may comment on the public hearing draft by
- (1) submitting written comments so that the district receives them within the review and comment period set under 6 AAC 85.131(d); or
  - (2) testifying at a public hearing under 6 AAC 85.131(f).
- (b) To submit a comment on the public hearing draft, a city or village within a CRSA must
- (1) submit that comment in the form of a resolution; and
  - (2) timely deliver that resolution so that the district receives it within the review and comment period set under 6 AAC 85.131(d).
- (c) The city or village shall adopt a resolution under (b) of this section at a public hearing. Notice of the time and place for that hearing must be posted in the city or village, given to a person who has requested it in writing, and advertised in a newspaper of general circulation within the city or village, by an announcement on a radio or television station that broadcasts to the city or village, or through another similar means for public notice.
- (d) A city or village within a CRSA may comment on the public hearing draft. To ensure that the changes requested by a city or village are incorporated into the concept approved draft as described in 6 AAC 85.141(d), a city or village must
- (1) comment and enter any objections on an element of the program affecting resources or the use of resources within the corporate limits of the city or within two miles of the village; and
  - (2) provide a recommendation for a deletion or an alternative relating to any objection made.
- (e) Subject to the procedures under (a) of this section, a state agency is strongly encouraged to give comments on the public hearing draft to the division and the district. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.010 AS 46.40.180

**6 AAC 85.137. DISTRICT ACTION ON PUBLIC HEARING DRAFT.** (a) The district shall consider all comments and resolutions received during the review and comment period set under 6 AAC 85.131(d) or at a public hearing held under 6 AAC 85.131(f).

(b) Within 30 days after the end of the review and comment period, the division shall summarize the state agency comments. This summary represents the tentative position of the state, and the division shall prepare it in consultation with the state agencies. The division shall coordinate among state agencies and the district to resolve a significant difference between a state agency comment and the public hearing draft.

(c) Following receipt of the summary under (b) of this section, the district shall

(1) consolidate all public comments and identify issues raised during the review and comment period under 6 AAC 85.131(d) or a public hearing under 6 AAC 85.131(f);

(2) address any outstanding issues; if the district and a commentor cannot resolve an outstanding issue, the district or commentor may request that the division consider the issue and provide a recommendation for resolution to the district;

(3) incorporate any necessary change into

(A) a revised public hearing draft prepared under (d) of this section; or

(B) a public hearing draft that is to be presented for conceptual approval under 6 AAC 85.146(a); and

(4) issue to a person who submitted timely comments or testimony during the review and comment period

(A) a copy of all comments received during that period; and

(B) a written response explaining how the district considered all comments and testimony received during that period.

(d) Except when 6 AAC 85.141 requires a CRSA to prepare a revised public hearing draft, a district may prepare and distribute a revised public hearing draft to allow for additional review and comment. A CRSA shall incorporate into its revised public hearing draft any new matter requested by a city or village inside the CRSA, if that city or village submits a resolution in accordance with 6 AAC 85.134(b)-(d) that meets the requirements of AS 46.40.180. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 44.19.162 AS 46.40.180  
AS 46.40.010

**6 AAC 85.140. COORDINATION AND REVIEW.** Repealed.  
(Eff. 7/18/78, Register 67; repealed 7/16/99, Register 151)

**6 AAC 85.141. REVISED PUBLIC HEARING DRAFT**

**DEVELOPMENT AND REVIEW IN COASTAL RESOURCE SERVICE AREAS.** (a) After complying with 6 AAC 85.137, and before conceptual approval under 6 AAC 85.146, a CRSA shall provide an affected city or village

(1) the revised public hearing draft that the CRSA proposes to present to the board of the CRSA for conceptual approval under 6 AAC 85.146(a);

(2) a 60-day period for the city or village to review and comment on that draft; and

(3) a transmittal letter that states the deadline for receipt of the city or village's comments, identifies the recipient of the comments, and identifies the relevant regulations contained in this chapter and the provisions of AS 46.40.180.

(b) An affected city or village may waive by resolution its right to review and comment on the revised public hearing draft. Adoption of that resolution must follow the provisions of 6 AAC 85.134(b)-(c), as if those provisions applied to a waiver described in this subsection.

(c) In order to have its requested change incorporated into the concept-approved draft under (d) of this section, an affected city or village

(1) must submit a comment as a resolution, following the provisions of 6 AAC 85.134(b)-(c), except that the CRSA must receive that resolution within the period described in (a)(2) of this section;

(2) may comment only upon an element of the program

(A) that has changed since the review and comment period under 6 AAC 85.131, or to which the city or village objected to in accordance with 6 AAC 85.134; and

(B) that affects resources or the use of resources within the corporate limits of the city or within two miles of the village; and

(3) must provide a recommendation for a deletion or an alternative relating to the objection made.

(d) A CRSA shall incorporate into the concept-approved draft new matter requested by a city or village that meets the requirements of AS 46.40.180. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.010 AS 46.40.180

**6 AAC 85.145. REVIEW OF PUBLIC HEARING DRAFT.**  
Repealed. (Eff. 3/2/84, Register 89; repealed 7/16/99, Register 151)

**6 AAC 85.146. DEVELOPMENT, COORDINATION, AND PUBLIC REVIEW OF CONCEPT APPROVED DRAFTS.** (a) A

district shall conceptually approve its district program before submitting it to the division. Conceptual approval must be by resolution of

- (1) the governing body of a municipality that is a district; or
- (2) the board of a district that is a CRSA.

(b) As soon as practicable after conceptually approving its district program, the district shall submit to the division, and to state agencies that the division has identified as interested in that district program,

- (1) the concept-approved draft;
- (2) the name and address of each person who provided a written comment during a review and comment period under 6 AAC 85.131(d) or testified at a public hearing under 6 AAC 85.131(f); and
- (3) a copy of the comments submitted, and the district's response to the comments and testimony as described in 6 AAC 85.137(c)(4)(B).

(c) No later than 30 days after a state agency receives the concept-approved draft, a state agency may comment on the draft to the division and the district. To be considered by the division, a state agency must focus its comment on an element of the program that has changed since the review under 6 AAC 85.131-6 AAC 85.141, or to which the state agency objected to in comments under 6 AAC 85.134(e).

(d) Within 15 days following the end of the period for state agency comments under (c) of this section, the division shall prepare proposed findings and conclusions on the concept-approved draft. The proposed findings and conclusions represents the tentative position of the state agencies, and the division shall prepare them in consultation with the state agencies. The division shall coordinate among state agencies and the district to resolve a significant difference between the state agency comments and the concept-approved draft.

(e) Following completion of the findings and conclusions,

(1) the district or the division shall distribute, as soon as practicable, the

- (A) concept-approved draft;
- (B) proposed findings and conclusions; and
- (C) copies of the district's responses to all comments and testimony, as described in 6 AAC 85.137(c)(4)(B); and

(2) a district may distribute the material under this subsection only after providing the division, for review and approval, a mailing list of the persons described in (f) of this section.

(f) The material described in (e) of this section must be distributed to

- (1) each person who provided comments during a review and comment period under 6 AAC 85.131(d) or testified at a public hearing under 6 AAC 85.131(f);
- (2) each person whom the district or division identifies as having a significant interest in the district program;

(3) a city or village within a CRSA that commented under 6 AAC 85.134 or 6 AAC 85.141; or

(4) a state agency that commented under 6 AAC 85.134 or (c) of this section.

(g) A recipient of material under (f) of this section may comment upon that material. For the division to consider comments from that recipient,

(1) the division must receive the comments within 21 days following the date set for distribution of that material; the division may extend the comment period as appropriate; and

(2) a comment must focus on an element of the program that has changed since the review under 6 AAC 85.131-6 AAC 85.141, or to which the commentator objected in those comments that the commentator had previously submitted.

(h) Within 15 days following the comment deadline as defined in (g) of this section, the division shall

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

(2) prepare final findings and conclusions as its recommendation to the council on the program.

(i) The division shall develop the final findings and conclusions with consideration of the comments received under (g) of this section, and in consultation with the district so as to resolve any significant differences between the requirements of AS 46.40.040 and this chapter and the district program.

(j) If the division and the district cannot resolve an outstanding issue, or a CRSA does not agree with the change required by a resolution submitted by a city or village in accordance with 6 AAC 85.141, the district may request the council consider the issue and the district's recommendation. The district shall submit the recommendation as a response to the division's final findings and conclusions. The council will review the district's recommendation as part of the council's review of the district program or amendment as described in 6 AAC 85.150(c). (Eff. 7/16/99, Register 151)

<b>Authority:</b>	<b>AS 44.19.161</b>	<b>AS 46.40.040</b>
	<b>AS 44.19.162</b>	<b>AS 46.40.060</b>
	<b>AS 46.40.010</b>	<b>AS 46.40.070</b>

**6 AAC 85.150. COUNCIL REVIEW OF FINAL FINDINGS AND CONCLUSIONS AND CONCEPT-APPROVED DRAFTS OF DISTRICT PROGRAMS.**

(a) The concept-approved draft, the division's final findings and conclusions, the comments received during the comment period described in 6 AAC 85.146(g), the division's response to those comments, and the district's response to comments as described in 6 AAC 85.137(c)(4)(B) shall be distributed to the council, a person who makes a written request for that material, a person who testified at a public hearing under 6 AAC 85.131(f) or presented written comments during a review and comment period under 6 AAC 85.131(d), or a city or village that submitted comments under 6 AAC 85.141. However, if an item for distribution, as described in this subsection, was already distributed under 6 AAC 85.146 and has not been amended, it does not need to be redistributed to a recipient. Before distribution, the division shall review and approve the mailing list of those recipients.

(b) Public notice of the availability of the material described in (a) of this section and of the public hearing at which the council will review the concept-approved draft shall be given to each person who has requested it in writing, and through advertisement in a newspaper of general circulation. The public notice shall be issued at least 21 days before the hearing of the council.

(c) At a public hearing, the council will approve or disapprove the district program, in whole or in part, and issue a decision with findings and conclusions based on the information submitted in (a) of this section, relevant portions of the record file as described in 6 AAC 85.121, testimony presented at the hearing, and a district recommendation, if any, submitted under 6 AAC 85.146(j). The council will, in its discretion, adopt the findings and conclusions of the division by reference. If a CRSA has submitted a recommendation under 6 AAC 85.146(j), and if that recommendation differs from the new matter that a city or village within that CRSA has required under 6 AAC 85.141, then in order for the council to approve the CRSA's recommendation, the CRSA must demonstrate that the new matter requested by the city or village is not substantially consistent with the guidelines and standards contained in AS 46.40, this chapter, 6 AAC 80, or the district program.

(d) The council will serve its decision under this section on the persons listed under (a) of this section, and to each person who has requested a copy of the decision in writing. Notice of the council's action must be published in a newspaper of general circulation in the district. (Eff. 7/18/78, Register 67; am 1/22/81, Register 77; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.010  
AS 46.40.040  
AS 46.40.060  
AS 46.40.070

**6 AAC 85.160. MINOR AMENDMENTS.** (a) Notwithstanding another provision of this chapter, this section and 6 AAC 85.180 govern a minor amendment to an approved district program.

(b) A minor amendment to an approved district program includes

(1) a revision, an addition, or a deletion to the issues, goals, and objectives included in the approved district program, if that change

(A) improves clarity or specificity, or reflects the district's current views; and

(B) does not result in a modification of an enforceable policy under 6 AAC 85.090;

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

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

(4) a revision, an addition, or a deletion to an enforceable policy, if that change

(A) improves specificity or clarity, and does not modify the goals, objectives, or intent of the approved district program;

(B) changes that policy to be consistent with an ordinance or federal or state statute or regulation; or

(C) adopts, as an enforceable policy, text that

(i) the division or a district has previously developed as part of a project that receives federal money under 16 U.S.C. 1455 or 16 U.S.C. 1456b (Coastal Zone Management Act);

(ii) the council has approved, through the public hearing process, as text that a district may adopt with minimal change;

(iii) the United States Secretary of Commerce has approved under 16 U.S.C. 1455;

(iv) receives, at the most, minimal change by the district adopting the text; and

(v) receives, in the district adopting that text, a public review that includes at least public notice and a 30-day public comment period;

(5) an alteration of a boundary map or description developed under 6 AAC 85.090(c), if the alteration does not otherwise change an enforceable policy;

(6) a deletion of a local ordinance, state statute or regulation, or federal law or regulation from the enforceable policies of a district program;

(7) a revision, an addition, or a deletion of a local ordinance, state statute or regulation, or federal law or regulation that is contained within an appendix of a district program;



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

(A) a CRSA becomes a borough;

(B) an area which merits special attention outside a district is annexed to a municipality; or

(C) a borough delegates coastal management planning or municipal implementation responsibility to a city inside a borough, as provided for in AS 29.40.010(b);

(9) an alteration of a CRSA or municipal corporate boundary by

(A) annexing land where

(i) an existing district program does not apply; and

(ii) the district designates the initial biophysical coastal zone boundary, as described in 6 AAC 85.040(b), as the final coastal zone boundary; or

(B) annexing land already covered by a district program, if the district does not

(i) make a significant change to an enforceable policy that applies to the area; or

(ii) change the coastal zone boundary in the area; or

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

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

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

(2) the basis upon which the district considers the amendment to be a minor program amendment;

(3) the reason that the change is necessary;

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

(5) documentation that the district has consulted the Departments of Natural Resources, Environmental Conservation, and Fish and Game; this documentation may include a district's response to those state agencies' comments;

(6) a letter of support for the change from the CRSA board for the district, municipal planning commission, or governing body; and

(7) a letter of support from a governing body or village, if the city or village is located within a CRSA and is materially affected by the minor amendment.

(d) Within 30 days after submission of the request under (c) of this section, the division shall

(1) review the proposed amendment and the material submitted under

(c) of this section;

(2) discuss the proposed amendment with each person who is interested in the minor amendment, or whom the district or the division considers to be interested, including

(A) a state or federal agency; or

(B) a district other than the one proposing the amendment; and

(3) prepare an analysis of the amendment, with a recommendation that the council

(A) approve the amendment as a minor amendment;

(B) approve the amendment if the district makes each change that the council considers necessary for the amendment not to be treated as a significant amendment; or

(C) identify the amendment as a significant amendment, and require that the amendment undergo the review set out at 6 AAC 85.126 - 6 AAC 85.150.

(e) The district may modify its proposed minor amendment to address the concerns identified by a person listed in (d)(2) of this subsection, or identified by the division.

(f) The division shall submit its analysis and recommendation on the amendment to the council. Public notice of the availability of the proposed amendment and the division's analysis and recommendation, as well as notice of the public hearing to be held under (g) of this section, shall be given to any person who has requested that notice in writing, and through advertisement in a newspaper of general circulation. The public notice must be issued at least 21 days before council review.

(g) At a public hearing, the council will review the division's analysis and recommendation, the material submitted by the district under (c) of this section, and public testimony presented at the hearing of the council. The council will, in its discretion, adopt the recommendation of the division by reference. In its determination, the council will

(1) approve the amendment as a minor amendment;

(2) approve the amendment if the district makes each change that the council considers necessary for the amendment not to be treated as a significant amendment; or

(3) identify the amendment as a significant amendment, and require that the amendment undergo the review set out at 6 AAC 85.126 - 6 AAC 85.150. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 44.19.162  
AS 46.40.040

AS 46.40.060  
AS 46.40.070

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

(1) amend the district program to comply with the council's directive;

or

(2) submit the disapproved portion to mediation as set out in (b)-(i) of this section and required by AS 46.40.060(b).

(b) Before the mediation session, the council will, in its discretion, call for a public hearing in the district to discuss the part of the program subject to mediation. Public notice shall be issued at least 30 days before the hearing. Upon request unless prohibited by AS 44.12.320, a district shall provide translation into and out of a Native language prevalent within the district. The public hearing must be electronically recorded. A person may submit oral or written testimony, except that unduly repetitious testimony may be excluded. The oral and written testimony constitute the hearing record, which shall be transmitted to the mediator.

(c) The persons who are parties to the mediation are the council and the district. The persons shall, within 10 days after the date of the council's decision under 6 AAC 85.150, agree upon the selection of a mediator. If the persons cannot agree, they shall immediately, in writing, ask the Federal Mediation and Conciliation Service to appoint a mediator. If that mediator is unacceptable to either person, that person shall request the Federal Mediation and Conciliation Service to submit to the persons the names of three qualified mediators. Upon receipt of these names, each person shall strike one name from the list and the remaining name will be the mediator. A mediator shall perform duties in a manner consistent with the standards of conduct set out in the Code of Professional Conduct for Labor Mediators, set out as an appendix to 29 C.F.R. part 1400 (1997) adopted by reference.

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

(e) The mediator shall schedule the first mediation session to be held as soon as possible after the mediator has been selected. At the initial session, the mediator shall establish reasonable rules of procedure. A mediation session must be conducted in a manner so that the persons will have the assurance and confidence that information disclosed to the mediator will remain confidential. The mediator shall determine the length and frequency of a mediation session.

If an accord is not reached within 60 days after the initial session, the mediator shall declare an impasse, except that the persons and the mediator may agree to extend the 60-day period by no more than 30 days.

(f) If the mediator determines that an impasse has been reached, the

mediator shall notify the persons in writing within 10 days after the determination is made.

(g) If the mediator determines that an accord has been reached, the mediator shall direct the persons to set out in writing the terms of the agreement. This agreement signifies the final settlement of the dispute, subject to ratification at a public meeting by each person. With the approval of those persons, mediation may be used to resolve a difference that may arise as the result of the public meetings. After ratification, the agreement may be set aside only for fraud, misconduct, or gross mistake.

(h) If the council and the district reach an accord, the council will, within 20 days after ratification by both persons, serve its modified decision, in the form of an order, on the district and a person who was served with the council's decision under 6 AAC 85.150(d), and will place the modified decision in the record file. The modified decision must contain findings and conclusions, based on the record file and additional material presented during mediation, necessary to demonstrate that the modified decision is consistent with AS 46.40, this chapter, and 6 AAC 80.

(i) If the council and the district do not reach an accord, the council will, within 20 days after a determination that an impasse has been reached, set the matter for an adjudicatory hearing under AS 46.40.060(c). Notice of the hearing must be served on the district and on each person who was served with the council's decision under 6 AAC 85.150(d). Each person served with notice of the hearing under this subsection may intervene as a party to the hearing. (Eff. 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 46.40.010 AS 46.40.040

**6 AAC 85.175. FEDERAL REVIEW.** Within 30 days after a council approval under 6 AAC 85.150 or 6 AAC 85.160, or a modified decision under 6 AAC 85.170, the division shall submit the district program or amendment to the United States Department of Commerce for review under 16 U.S.C. 1455 (Coastal Zone Management Act). (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 44.19.162

**6 AAC 85.180. LOCAL ADOPTION AND EFFECTIVE DATE.** (a) Within 90 days after the council has approved a district program or amendment under 6 AAC 85.150 or 6 AAC 85.160, or has issued an order after mediation under 6 AAC 85.170 or an adjudicatory hearing under

AS 46.40.060(c), and unless the United States Department of Commerce has not within that period fully approved that program or amendment under 16 U.S.C. 1455 (Coastal Zone Management Act), the district shall approve or disapprove the district program or amendment in its entirety. If the district

(1) is a municipality, the district shall adopt the district program or amendment by ordinance, following the procedures set out at AS 29.25.020; or

(2) is a CRSA, the district shall

(A) adopt the district program or amendment by resolution of the CRSA board at a public hearing; and

(B) provide public notice of that hearing

(i) through advertisement in a newspaper of general circulation within the CRSA, or through announcements on a radio or television station that broadcasts within the CRSA; and

(ii) to each person who has requested a copy of the public notice in writing.

(b) The council will waive the requirements of (a) of this section for a minor amendment that the council has approved under 6 AAC 85.160 and that does not change an enforceable policy as described under 6 AAC 85.090, if the waiver is consistent with the provisions of AS 46.40 and this chapter.

(c) A district program or amendment to a district program takes effect as part of the Alaska coastal management program 30 days after the lieutenant governor's filing of the council's decision approving the district program or amendment. A change or an amendment in the district program resulting from mediation under 6 AAC 85.170 or from adjudication under AS 46.40.060(c) takes effect 30 days after the lieutenant governor's filing of the council's order under AS 46.40.060(c) or 6 AAC 85.170(h). The division shall submit the council's order or decision for filing after local adoption as provided in (a) of this section, unless local adoption is waived under (b) of this section. (Eff. 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.162

AS 46.40.040

**6 AAC 85.183. PROGRESS REPORTS TO COUNCIL AND UPDATES TO DISTRICT PROGRAMS.**

(a) After adopting a district program under 6 AAC 85.180, a district shall submit annually to the council a brief progress report concerning program implementation during the state fiscal year. The district shall submit the report by August 15, after the state fiscal year ends. The report must include

(1) a statement describing the district's progress in fulfilling a condition that the council placed upon approval of the district program or an amendment;

(2) a summary, on a form provided by the division, of significant

district land and water use decisions, enforcement actions, activities, and accomplishments in the district during the state fiscal year;

(3) a description of each minor amendment adopted into the district program during the year;

(4) the district's response to a council recommendation; and

(5) identification of any problems encountered in implementing the district program, and a recommendation for solving the problem.

(b) After the district program has taken effect as described under 6 AAC 85.180(c), the district shall submit to the council every five years an evaluation of the program's effectiveness and implementation, a presentation of any new issues, and a recommendation for resolving any problems that have arisen. If a district program took effect as described under 6 AAC 85.180(c) before January 1, 1994, then the report required under this subsection shall be submitted by August 15, 1999 and every five years after that date.

(c) The council will, in its discretion, require that a district amend the district program to resolve a problem with implementing the district program, or to update part of the district program that is outdated, if the amendment is necessary to conform to the provisions of AS 46.40 and this chapter. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 44.19.162

AS 46.40.010  
AS 46.40.040

**6 AAC 85.185. PETITION FOR AMENDMENT TO AN APPROVED DISTRICT PROGRAM REGARDING USES OF STATE CONCERN.** (a) A state agency or other interested person may submit a petition for amendment to a district program if there is substantial evidence that a use of state concern, as defined in AS 46.40.210, is arbitrarily or unreasonably restricted or excluded by the district program. The petitioner shall submit the petition to the division and to the district. The petition must include the following information:

(1) identification of a use of state concern that is arbitrarily or unreasonably restricted or excluded by implementation of the district program;

(2) specific documentation of how the use of state concern is being arbitrarily or unreasonably restricted or excluded;

(3) a description of a significant change in circumstances or new information that has arisen since approval of the district program, and that provides a reasonable basis for concluding that the district program arbitrarily or unreasonably restricts or excludes a use of state concern; and

(4) the proposed district program amendment.

(b) The division shall review the petition for completeness and distribute it to interested state agencies. Within 30 days after the petition is submitted, the







**ARTICLE 3. SPECIAL AREA MANAGEMENT PLANS AND AREAS WHICH MERIT SPECIAL ATTENTION.**

**Section:**

- 195. Special area management plans**
- 205. Types of areas to be designated as areas which merit special attention**
- 215. Areas which merit special attention inside districts**
- 225. Areas which merit special attention outside districts**

**6 AAC 85.195. SPECIAL AREA MANAGEMENT PLANS.** A district may develop a special area management plan to manage a specific resource or activity within the district. Examples of a special area management plan include a harbor management plan, an ocean resource management plan, a public use management plan, a recreation management plan, a watershed management plan, and a wetlands management plan. A special area management plan provides for increased specificity in protecting significant natural resources, coastal-dependent economic growth, improved protection of life and property in hazardous areas, and improved predictability in governmental decision making. Development and council approval of a special area management plan for inclusion in the Alaska coastal management program must follow the procedures for approval of a district program or significant amendment as described in 6 AAC 85.121 - 6 AAC 85.180. (Eff. 7/16/99, Register 151)

<b>Authority:</b>	<b>AS 44.19.161</b>	<b>AS 46.40.030</b>
	<b>AS 46.40.010</b>	<b>AS 46.40.040</b>

**6 AAC 85.205. TYPES OF AREAS TO BE DESIGNATED AS AREAS WHICH MERIT SPECIAL ATTENTION.** (a) A district may develop a program for an area which merits special attention. The development and approval of a program for an area which merits special attention is subject to 6 AAC 85.215 and 6 AAC 85.225.

(b) An area which merits special attention includes the following, in addition to the categories included as examples in AS 46.40.210:

(1) an area important for subsistence hunting, fishing, food gathering, and foraging;

(2) an area with special scientific value, including an area where an ongoing research project could be jeopardized by development or a conflicting use or activity; and

(3) a potential estuarine or marine sanctuary. (Eff. 7/16/99, Register

151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 46.40.010 AS 46.40.040

**Editor's Note:** Before 7/16/99, Register 151, the substance of 6 AAC 85.205 was contained in 6 AAC 80.158. The history of 6 AAC 80.158 is not reflected in the history note for 6 AAC 85.205.

**6 AAC 85.215. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS.** (a) A person may recommend to a district that an area inside the district be submitted to the council for approval as an area which merits special attention. A district may include in its proposed district program, or submit for approval as a significant amendment to its district program, a program for an area which merits special attention.

(b) A program for an area which merits special attention must include

(1) how the area meets the descriptions contained in AS 46.40.210 or 6 AAC 85.205;

(2) a map showing the geographical location, surface area and, if appropriate, bathymetry of the area, along with a legal and narrative description of the boundaries and a justification of the size of the area which merits special attention;

(3) the district program elements described in 6 AAC 85.020 - 6 AAC 85.110;

(4) a summary of the resource values and use conflicts, if any, in the area; and

(5) an analysis showing that designation of an area which merits special attention is the district's preferred planning and management mechanism for meeting the objectives of the proposal and the Alaska coastal management program.

(c) Development and council approval of a program for an area which merits special attention inside a district must follow the procedures for approval of a district program or significant amendment as described in 6 AAC 85.121-6 AAC 85.180.

(d) A program for an area which merits special attention inside a district must preserve, protect, enhance, or restore each value for which the area was designated. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 46.40.010 AS 46.40.040

**Editor's Note:** Before 7/16/99, Register 151, the substance of 6 AAC 85.215 was contained in 6 AAC 80.160. The history of 6 AAC 80.160 is not reflected in the history note for 6 AAC 85.215.

**6 AAC 85.225. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS.** (a) After meeting the requirements imposed upon a district under 6 AAC 85.121, a person may recommend to the council that an area within the coastal zone but outside a coastal resource district be designated as an area which merits special attention. A recommendation to the council for an area which merits special attention outside a district must be submitted to the division, and must include

- (1) the basis for designation;
- (2) a map showing the geographical location of the area, a legal and narrative description of the area's boundaries, and a justification for the size of the area;
- (3) a summary of the resource values and use conflicts, if any, in the area;
- (4) a statement of the purpose and objectives to be met through a program for an area which merits special attention;
- (5) a tentative schedule for completion of planning tasks and reviews;
- (6) the source of funding for developing the area which merits special attention program;
- (7) a list of persons with interests in or adjacent to the proposed area who may be affected by its designation, and a description of how these persons would be involved in program development;
- (8) a letter commenting on the proposed area from
  - (A) a state agency that would implement the program for that area;
  - (B) a district, state agency, or federal agency that is interested, or identified as interested, in the development of that program;
- (9) a written summary of the issues discussed and the participants involved in the meeting as defined under 6 AAC 85.121(a); and
- (10) an analysis showing that a program for an area which merits special attention is the planning and management mechanism that the state agencies responsible for implementation prefer for meeting the objectives of the proposal and the Alaska coastal management program.

(b) A program for an area which merits special attention outside a district must preserve, protect, enhance, or restore each value for which the area is designated.

c) Upon receipt of a recommendation for designation of an area which merits special attention outside of a district, the division shall place the

recommendation on the council's agenda for consideration at its next regularly scheduled meeting, and shall give notice of a public hearing. In addition to providing public notice of that meeting, the division shall give direct notice to each person identified in (a)(7) of this section. The division shall make the recommendation available for public inspection at the time of the public notice.

(d) The council will detail its reasons and either authorize additional planning for the area which merits special attention, or reject the recommendation. The council's authorization of additional planning does not constitute council approval of or funding for a final program for that area.

(e) If the council authorizes additional planning under this section, the division

(1) shall provide public notice by advertisement in a newspaper of general circulation in the affected area and in one of general circulation in the state; and

(2) shall, with assistance from the person recommending the designation, compile a mailing list of state and federal agencies, interested cities and villages, landowners, and other interested persons, and notify them that development of a program may occur for the area which merits special attention outside the district.

(f) A program for an area which merits special attention outside a district must

(1) contain the district program elements described in 6 AAC 85.020-6 AAC 85.110; and

(2) include the information required under (a) of this section.

(g) Designation of an area which merits special attention outside of a district and the development of a program for that area must be in accordance with the procedures for approval of a district program or significant amendment to a district program, as described in 6 AAC 85.126-6 AAC 85.137 and 6 AAC 85.146. For the purposes of those sections, the person recommending the designation of the area shall meet a requirement that a district would have to meet under those sections,

(1) except that submission of the concept-approved draft under 6 AAC 85.146 occurs without conceptual approval by resolution under (a) of that section; and

(2) unless the context of 6 AAC 85.126 - 6 AAC 85.137 or 6 AAC 85.146 indicates otherwise.

(h) The council will approve or disapprove the designation of and program for an area which merits special attention outside a district. The provisions of 6 AAC 85.150 apply to a council decision under this subsection. Within 30 days after a council approval, the division shall submit that designation and program for federal review as described in 6 AAC 85.175. The designation of and program for that area takes effect as part of the Alaska coastal management program 30 days after the lieutenant governor's filing of the

council's decision approving the designation of and program for that area.  
(Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 46.40.040  
AS 46.40.010

**Editor's Note:** Before 7/16/99, Register 151, the substance of 6 AAC 85.225 was contained in 6 AAC 80.170. The history of 6 AAC 80.170 is not reflected in the history note for 6 AAC 85.225.

## ARTICLE 4. GENERAL PROVISIONS.

### Section:

### 900. Definitions

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

(1) "**affected city or village**" means a city or village that may object under AS 46.40.180(c);

(2) "**approved district program**" means a district program approved under 6 AAC 85.150;

(3) "**area which merits special attention**" has the meaning given in AS 46.40.210;

(4) "**beach**" means an area affected by wave action directly from the sea;

(5) "**city**" has the meaning given in AS 29.71.800;

(6) "**concept-approved draft**" means a proposed district program or significant amendment that has received district approval under 6 AAC 85.146(a), but that has not received council approval under 6 AAC 85.150;

(7) "**council**" means the Alaska Coastal Policy Council;

(8) "**CRSA**" means coastal resource service area;

(9) "**direct and significant impact**" means an effect of a use, or an activity associated with the use, which will proximately contribute to a material change or alteration of the marine coastal water, and in which

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

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

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

(10) "**district**" means a coastal resource district as defined in AS 46.40.210;

(11) "**district program**" means a district coastal management program established under AS 46.40;

(12) "**division**" means the Division of Governmental Coordination established in the Office of Management and Budget established in the Office of the Governor;

(13) "**enforceable policy**" means

(A) a provision in a district program that is legally binding, and that provides the basis for a determination of consistency with the district

program;

(B) the definition of a term used in that provision; or

(C) a boundary map or boundary description for an area identified under 6 AAC 85.090(c), if the district developed that enforceable policy to apply only to that area rather than to the full extent of the coastal zone within that district as designated under 6 AAC 85.040;

(14) "**governing body**" has the meaning given in AS 29.71.800;

(15) "**island**" means a body of land surrounded by water on all sides;

(16) "**local knowledge**" means a body of knowledge or information about the coastal environment or the human use of that environment, including information passed down through generations, if that information is

(A) derived from experience and observations; and

(B) generally accepted by the local community;

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

(18) "**new matter**" means new language or deletions;

(19) "**person**" means

(A) an individual;

(B) a corporation, partnership, association, or other entity organized or existing under the laws of a state;

(C) the federal government;

(D) a state, regional, or local government; or

(E) an entity of the federal government, or of a state, regional, or local government;

(20) "**public hearing draft**" means a proposed district program or significant amendment, as developed

(A) through the hearing and review process under

6 AAC 85.126 - 6 AAC 85.141; and

(B) before conceptual approval by a district under 6 AAC 85.146;

(21) "**public need**" means a documented need of the general public and not that of a private person;

(22) "**revised public hearing draft**" means a public hearing draft that includes changes resulting from the review process under 6 AAC 85.137(d) or 6 AAC 85.141;

(23) "**saltwater wetlands**" has the meaning given in 6 AAC 80.900;

(24) "**sensitivity**" means the tendency to be altered easily or to be

vulnerable to changes from other forces, uses, or activity in the environment;

(25) **"significant amendment"** means an amendment to an approved district program that, except as provided under 6 AAC 85.160(b),

(A) results in a major revision, addition, or deletion to

(i) an enforceable policy developed under 6 AAC 85.090; or

(ii) the implementation methods or authorities included in the district program under 6 AAC 85.100;

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

(C) designates and develops a program for an area which merits special attention or special area management program under 6 AAC 85.195; or

(D) restricts or excludes a use of state concern not previously restricted or excluded;

(26) **"suitability"** means the fitness and appropriateness of the coastal environment to support a given use or activity;

(27) **"traditional village council"** means

(A) a council organized under 25 U.S.C. 476 (Indian Reorganization Act);

(B) a council recognized by the United States as eligible for federal aid to Indians; or

(C) a council recognized by the commissioner of the Department of Community and Economic Development under 19 AAC 90.110 - 19 AAC 90.150;

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

(29) **"village"** means an unincorporated community

(A) in which at least 25 persons reside as a social unit as determined by the Department of Community and Economic Development;

(B) that has a traditional village council; and

(C) with boundaries as follows, for the purposes of this chapter:

(i) the area within a three mile radius of the post office in the village; or

(ii) if there is no post office in the village, the area within a three mile radius of a site designated by the commissioner of the Department of Community and Economic Development;

(30) **"zone of direct influence"** means the portion of the coastal zone extending seaward and landward from the zone of direct interaction;

(31) **"zone of direct interaction"** means the portion of the coastal zone where physical and biological processes are a function of direct



contact between land and sea. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 9/9/81, Register 79; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.060  
AS 46.40.010 AS 46.40.070  
AS 46.40.040

**TITLE 6. GOVERNOR'S OFFICE  
DIVISION OF GOVERNMENTAL COORDINATION**

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

- Article 1. Program Elements (6 AAC 85.010-6 AAC 85.110)**
- Article 2. Government Process (6 AAC 85.120-6 AAC 85.185)**
- Article 3. Special Area Management Plans and Areas Which Merit  
Special Attention (6 AAC 85.195-6 AAC 85.225)**
- Article 4. General Provisions (6 AAC 85.900)**

**ARTICLE 1. PROGRAM ELEMENTS.**

**Section:**

- 10. Repealed**
- 20. Issues, goals, and objectives**
- 30. Organization**
- 40. Coastal zone boundaries**
- 50. Resource inventory**
- 60. Resource analysis**
- 70. Subject uses**
- 80. Proper and improper uses**
- 90. Enforceable policies**
- 100. Implementation**
- 110. Public participation**

**Editor's note:** As of Register 151 (October 1999), the functions of the former Department of Community and Regional Affairs were transferred to other state agencies. In accordance with ch. 58, SLA 1999 and AS 44.62.125(b)(6), the regulations attorney revised 6 AAC 85, as of Register 152 (January 2000), to reflect changes in the names of state agencies.

**6 AAC 85.010. COVERAGE OF CHAPTER.** Repealed. (Eff. 7/18/78, Register 67; repealed 7/16/99, Register 151)

**6 AAC 85.020. ISSUES, GOALS, AND OBJECTIVES.** A district program must include the district's overall coastal management issues, goals, and objectives, or summarize or reference the district's overall coastal management issues, goals, and objectives contained in the district's comprehensive land and resource use plan. The means used to achieve an objective must be stated in the district program. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.030. ORGANIZATION.** (a) A district program must describe the organizational structure of the district, and state whether the district is a coastal resource service area (CRSA) or a municipality.

(b) A district program must identify and give addresses for the officials or departments within the district that are assigned to

(1) determine, for the purposes of issuing a municipal authorization or permit, the consistency of proposed uses and activities with the approved district program; or

(2) submit comments to the state under 6 AAC 50.070. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.040. COASTAL ZONE BOUNDARIES.** (a) A district program must include, in a manner sufficient for district program development and implementation, a map and description of the boundaries of the coastal zone subject to the district program. The boundaries must be within or coterminous with the district and must enclose those lands that would reasonably be included in the coastal zone and subject to the district program if those lands were not subject to the exclusive jurisdiction of the federal government.

(b) Initial coastal zone boundaries must be based on *Biophysical Boundaries of Alaska's Coastal Zone (1978)*, reprinted January 1985, adopted by reference, and must include the zone of direct interaction and the zone of direct influence.

(c) Final coastal zone boundaries may diverge from the initial boundaries if the final boundaries

(1) extend inland and seaward to the extent necessary to manage a use

or an activity that has or is likely to have a direct and significant impact on marine coastal water; and

(2) include all of the following areas within the district:

(A) transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches; and

(B) areas that are likely to be affected by or vulnerable to sea level rise.

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

(e) The coastal zone boundaries must be sufficiently compatible with those of an adjoining coastal zone to allow consistent administration of the Alaska coastal management program. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

AS 46.40.040

**Editor's note:** The *Biophysical Boundaries of Alaska's Coastal Zone (1978)*, reprinted January 1985, was prepared by the Office of Coastal Management and the Alaska Department of Fish and Game. A copy is on file and available by writing the Office of the Governor, Office of Management and Budget, Division of Governmental Coordination, P.O. Box 110030, Juneau, Alaska, 99811-0030.

**6 AAC 85.050. RESOURCE INVENTORY.** (a) For the resources within the district's coastal zone, a district program must include a resource inventory that describes, as necessary to complete the resource analysis in 6 AAC 85.060 and in a manner sufficient for program development and implementation,

(1) natural resources such as forests, minerals, soils, wetlands, water, and fish and wildlife, and those habitats listed in 6 AAC 80.130, and their functions, if appropriate; and

(2) major cultural, historic, prehistoric, and archaeological resources.

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

(1) major land or water uses or activities that are or have been conducted or designated within or adjacent to the district; and

(2) major land and resource ownership, jurisdiction, and management responsibilities within or adjacent to the district.

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

(d) Information in the resource inventory must be substantiated or documented with a citation or reference to the source of that information.

(e) If inventory information is contained in another published source, the relevant information must be summarized, referenced in the district program, and made available upon request. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.060. RESOURCE ANALYSIS.** (a) A district program must include an analysis of the impacts of uses and activities on the habitats and resources identified in 6 AAC 85.050(a) within the district's coastal zone. The analysis must describe, in a manner sufficient for district program development and implementation,

(1) the present and anticipated needs, demands, and competing uses for coastal zone habitats and resources;

(2) the direct and indirect impacts of uses and activities;

(3) the suitability of habitats, natural hazard areas, and resources for development;

(4) the sensitivity of habitats, natural hazard areas, and resources to development; and

(5) the conflicts among coastal zone uses and activities.

(b) A district may incorporate local knowledge into the resource analysis required by this section. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.070. SUBJECT USES.** A district program must include a description of the land and water uses and activities that are subject to the district program. The uses and activities set out at 6 AAC 80.040-6 AAC 80.120 are, if applicable, subject to the district program. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.080. PROPER AND IMPROPER USES.** A district program must describe the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of

state concern, that will be considered improper within the district's coastal zone, including land and water use designations. This description must be based on the district's statement of issues, goals, and objectives under 6 AAC 85.020, and must be consistent with the standards contained in 6 AAC 80. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.030

**6 AAC 85.090. ENFORCEABLE POLICIES.** (a) A district program must include the enforceable policies that will be applied to land or water uses or activities subject to the district program. An enforceable policy must

(1) be consistent with state and federal constitutions, statutes, and regulations, and the standards contained in 6 AAC 80;

(2) be comprehensive, applying to all uses, activities, and areas in need of management;

(3) be specific, allowing clear understanding of persons, uses, or activities that will be affected by the policies, how the persons, uses, or activities will be affected, and whether specific land and water uses and activities will be allowed;

(4) use language that can be implemented and enforced, consistent with the means of implementation identified in 6 AAC 85.100; and

(5) address the issues and achieve the goals and objectives identified in 6 AAC 85.020.

(b) A district program must clearly identify each enforceable policy. Except for a boundary map or description developed under (c) of this section, enforceable policies must be located in a single section of the district program. The enforceable policies provide the basis for a determination of consistency with the district program. A state or federal statute or regulation may not be repeated within the enforceable policies.

(c) For a habitat, area, or resource identified and analyzed in 6 AAC 85.060 as sensitive to development, for a special area management plan developed under 6 AAC 85.195, or for an area which merits special attention inside a district as developed under 6 AAC 85.215, a district may adopt enforceable policies that will be used to determine whether a specific land or water use or activity will be allowed. An area subject to these policies must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area. A description or map developed under this subsection must be referenced in the applicable enforceable policy and is an enforceable component of the district program. (Eff. 7/18/78, Register 67; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**

**6 AAC 85.100. IMPLEMENTATION.** A district program must describe

(1) the methods and authorities used to implement, monitor, and enforce the district program; methods and authorities

(A) must be adequate to ensure program implementation and enforcement; and

(B) may include, if appropriate,

(i) land and water use plans;

(ii) municipal ordinances and resolutions, including shoreline, zoning, and subdivision ordinances and building codes;

(iii) state and federal statutes and regulations;

(iv) capital improvement programs;

(v) the purchase, sale, lease, or exchange of coastal zone land and water resources;

(vi) cooperative agreements;

(vii) tax exemptions for non-development purchase of development rights;

(viii) memoranda of understanding;

(ix) coordinated project or permit review procedures; and

(x) the means and procedures to document public need for purposes of submitting comments under 6 AAC 50.070; and

(2) the planning, implementation, and enforcement relationship between the coastal district and the cities or villages inside the district; the district program must address consistency reviews, any municipal appeals, planning and plan revisions, applicable municipal land use regulations, and review of applicable municipal land use regulations for consistency with the district program. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**

**6 AAC 85.110. PUBLIC PARTICIPATION.** A district program must document an effective and significant opportunity for public participation in district program development under this chapter. (Eff. 7/18/78, Register 67; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.030

**AS 46.40.040**





## ARTICLE 2. GOVERNMENT PROCESS.

### Section:

- 120. Repealed
- 121. Issues meeting; file maintenance
- 126. Public hearing draft development
- 130. Repealed
- 131. Distribution and notice of public hearing draft
- 134. Comment on public hearing draft
- 137. District action on public hearing draft
- 140. Repealed
- 141. Revised public hearing draft development and review in coastal resource service areas
- 145. Repealed
- 146. Development, coordination, and public review of concept-approved drafts
- 150. Council review of final findings and conclusions and concept-approved drafts of district programs
- 160. Minor amendments
- 170. Mediation
- 175. Federal review
- 180. Local adoption and effective date
- 183. Progress reports to council and updates to district programs
- 185. Petition for amendment to an approved district program regarding uses of state concern

**6 AAC 85.120. SUBMITTALS TO COUNCIL.** Repealed. (Eff. 7/18/78, Register 67; am 5/2/81, Register 78; am 9/9/81, Register 79; am 3/2/84, Register 89; repealed 7/16/99, Register 151)

### **6 AAC 85.121. ISSUES MEETING; FILE MAINTENANCE.**

(a) As soon as practicable after a district identifies its intent to adopt or amend a district program, the district shall hold at least one meeting with the division. The meeting may be held by teleconference. The district shall provide each interested person notice of the meeting and the opportunity to participate in the meeting. The purpose of the meeting is to identify issues that may or must be addressed in the district program.

(b) The division shall create and maintain a record file containing all material relating to the development and approval of the district program or an

amendment to the district program. The district shall forward all relevant material to the division for inclusion in the record file for the district program. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 44.19.162

**AS 46.40.040**

**6 AAC 85.126. PUBLIC HEARING DRAFT DEVELOPMENT.** (a) At least two public meetings must be held within the district during development of the public hearing draft to inform the public and receive comments concerning the district program.

(b) A district shall provide the public, in a timely manner and in understandable form, information explaining

- (1) the Alaska coastal management program;
- (2) the district program;
- (3) the requirement of public participation during the development of the district program;
- (4) how and when the public may participate in the development of the district program;
- (5) what information is available on the development of the district program; and
- (6) where the information described in this subsection may be obtained.

(c) A district shall provide each person an opportunity for participation during development of the public hearing draft.

(d) A district shall submit the public hearing draft to the division for review before distribution under 6 AAC 85.131. Within 15 days of receipt of the public hearing draft, the division shall determine whether the public hearing draft is complete for review. A public hearing draft is complete for review if

- (1) it contains all the information set out in 6 AAC 85.020-6 AAC 85.110;
- (2) the district provided the meetings, information, and opportunity for public participation under 6 AAC 85.121 and (a)-(c) of this section; and
- (3) the district provides the division, for review and approval, a mailing list of the persons whom the district considers to be interested in the district program; in compiling the mailing list under this paragraph, the district shall consult with the division to ensure that interested persons are included; the division may add names of persons to the mailing list as a part of its approval under this paragraph.

(e) If the division determines under (d) of this section that the public hearing draft is not complete for review, the division may

- (1) request more information from the district; or

(2) require the district to postpone distribution of the public hearing draft until the draft is complete for review. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 44.19.162 AS 46.40.040  
AS 46.40.010

**6 AAC 85.130. PUBLIC INVOLVEMENT DURING PROGRAM DEVELOPMENT.** Repealed. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 3/2/84, Register 89; repealed 7/16/99, Register 151)

**6 AAC 85.131. DISTRIBUTION AND NOTICE OF PUBLIC HEARING DRAFT.** (a) The district shall distribute the public hearing draft to each person on the mailing list approved under 6AAC 85.126(d). A transmittal letter that states the comment deadline and identifies the recipient of comments must be sent with the public hearing draft.

(b) Public notice of the availability of the public hearing draft must be given to a person who has requested it in writing, and through advertisement in a newspaper of general circulation within the district. Notice must also be posted in cities and villages within the district.

(c) If a district is a CRSA, it shall notify each governing body or village within the district of the regulations contained within this chapter and the provisions of AS 46.40.180.

(d) At least a 45-day review and comment period must be provided if the district is a city or unified municipality. At least a 60-day review and comment period must be provided if the district is a borough or CRSA.

(e) During the review and comment period, the district shall hold at least one meeting for federal and state agency representatives. If the district is a CRSA, the district shall hold at least one meeting for representatives of an affected city or village within the district boundaries. A meeting may be held by teleconference.

(f) During the review and comment period, the district shall hold at least one public hearing. At least 30 days before the hearing, notice of the time and place of the hearing must be provided to each recipient of the public hearing draft, advertised in a newspaper of general circulation within the district or by an announcement on radio or television that broadcasts within the district, and advertised in a newspaper of general circulation within the state. At the public hearing, a person shall be given the opportunity to present statements orally or in writing. As the district considers necessary, a district shall provide translation into and out of a Native language prevalent within the district. In addition, the district shall provide the division with a transcript or electronic recording of the

hearing. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.010 AS 46.40.180

**6 AAC 85.134. COMMENT ON PUBLIC HEARING DRAFT.**

- (a) A person may comment on the public hearing draft by
- (1) submitting written comments so that the district receives them within the review and comment period set under 6 AAC 85.131(d); or
  - (2) testifying at a public hearing under 6 AAC 85.131(f).
- (b) To submit a comment on the public hearing draft, a city or village within a CRSA must
- (1) submit that comment in the form of a resolution; and
  - (2) timely deliver that resolution so that the district receives it within the review and comment period set under 6 AAC 85.131(d).
- (c) The city or village shall adopt a resolution under (b) of this section at a public hearing. Notice of the time and place for that hearing must be posted in the city or village, given to a person who has requested it in writing, and advertised in a newspaper of general circulation within the city or village, by an announcement on a radio or television station that broadcasts to the city or village, or through another similar means for public notice.
- (d) A city or village within a CRSA may comment on the public hearing draft. To ensure that the changes requested by a city or village are incorporated into the concept approved draft as described in 6 AAC 85.141(d), a city or village must
- (1) comment and enter any objections on an element of the program affecting resources or the use of resources within the corporate limits of the city or within two miles of the village; and
  - (2) provide a recommendation for a deletion or an alternative relating to any objection made.
- (e) Subject to the procedures under (a) of this section, a state agency is strongly encouraged to give comments on the public hearing draft to the division and the district. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.010 AS 46.40.180

**6 AAC 85.137. DISTRICT ACTION ON PUBLIC HEARING DRAFT.** (a) The district shall consider all comments and resolutions received during the review and comment period set under 6 AAC 85.131(d) or at a public hearing held under 6 AAC 85.131(f).

(b) Within 30 days after the end of the review and comment period, the division shall summarize the state agency comments. This summary represents the tentative position of the state, and the division shall prepare it in consultation with the state agencies. The division shall coordinate among state agencies and the district to resolve a significant difference between a state agency comment and the public hearing draft.

(c) Following receipt of the summary under (b) of this section, the district shall

(1) consolidate all public comments and identify issues raised during the review and comment period under 6 AAC 85.131(d) or a public hearing under 6 AAC 85.131(f);

(2) address any outstanding issues; if the district and a commentor cannot resolve an outstanding issue, the district or commentor may request that the division consider the issue and provide a recommendation for resolution to the district;

(3) incorporate any necessary change into

(A) a revised public hearing draft prepared under (d) of this section; or

(B) a public hearing draft that is to be presented for conceptual approval under 6 AAC 85.146(a); and

(4) issue to a person who submitted timely comments or testimony during the review and comment period

(A) a copy of all comments received during that period; and

(B) a written response explaining how the district considered all comments and testimony received during that period.

(d) Except when 6 AAC 85.141 requires a CRSA to prepare a revised public hearing draft, a district may prepare and distribute a revised public hearing draft to allow for additional review and comment. A CRSA shall incorporate into its revised public hearing draft any new matter requested by a city or village inside the CRSA, if that city or village submits a resolution in accordance with 6 AAC 85.134(b)-(d) that meets the requirements of AS 46.40.180. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 44.19.162 AS 46.40.180  
AS 46.40.010

**6 AAC 85.140. COORDINATION AND REVIEW.** Repealed.  
(Eff. 7/18/78, Register 67; repealed 7/16/99, Register 151)

**6 AAC 85.141. REVISED PUBLIC HEARING DRAFT**

**DEVELOPMENT AND REVIEW IN COASTAL RESOURCE SERVICE AREAS.** (a) After complying with 6 AAC 85.137, and before conceptual approval under 6 AAC 85.146, a CRSA shall provide an affected city or village

(1) the revised public hearing draft that the CRSA proposes to present to the board of the CRSA for conceptual approval under 6 AAC 85.146(a);

(2) a 60-day period for the city or village to review and comment on that draft; and

(3) a transmittal letter that states the deadline for receipt of the city or village's comments, identifies the recipient of the comments, and identifies the relevant regulations contained in this chapter and the provisions of AS 46.40.180.

(b) An affected city or village may waive by resolution its right to review and comment on the revised public hearing draft. Adoption of that resolution must follow the provisions of 6 AAC 85.134(b)-(c), as if those provisions applied to a waiver described in this subsection.

(c) In order to have its requested change incorporated into the concept-approved draft under (d) of this section, an affected city or village

(1) must submit a comment as a resolution, following the provisions of 6 AAC 85.134(b)-(c), except that the CRSA must receive that resolution within the period described in (a)(2) of this section;

(2) may comment only upon an element of the program

(A) that has changed since the review and comment period under 6 AAC 85.131, or to which the city or village objected to in accordance with 6 AAC 85.134; and

(B) that affects resources or the use of resources within the corporate limits of the city or within two miles of the village; and

(3) must provide a recommendation for a deletion or an alternative relating to the objection made.

(d) A CRSA shall incorporate into the concept-approved draft new matter requested by a city or village that meets the requirements of AS 46.40.180. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.010 AS 46.40.180

**6 AAC 85.145. REVIEW OF PUBLIC HEARING DRAFT.**  
Repealed. (Eff. 3/2/84, Register 89; repealed 7/16/99, Register 151)

**6 AAC 85.146. DEVELOPMENT, COORDINATION, AND PUBLIC REVIEW OF CONCEPT APPROVED DRAFTS.** (a) A

district shall conceptually approve its district program before submitting it to the division. Conceptual approval must be by resolution of

- (1) the governing body of a municipality that is a district; or
- (2) the board of a district that is a CRSA.

(b) As soon as practicable after conceptually approving its district program, the district shall submit to the division, and to state agencies that the division has identified as interested in that district program,

- (1) the concept-approved draft;
- (2) the name and address of each person who provided a written comment during a review and comment period under 6 AAC 85.131(d) or testified at a public hearing under 6 AAC 85.131(f); and
- (3) a copy of the comments submitted, and the district's response to the comments and testimony as described in 6 AAC 85.137(c)(4)(B).

(c) No later than 30 days after a state agency receives the concept-approved draft, a state agency may comment on the draft to the division and the district. To be considered by the division, a state agency must focus its comment on an element of the program that has changed since the review under 6 AAC 85.131-6 AAC 85.141, or to which the state agency objected to in comments under 6 AAC 85.134(e).

(d) Within 15 days following the end of the period for state agency comments under (c) of this section, the division shall prepare proposed findings and conclusions on the concept-approved draft. The proposed findings and conclusions represents the tentative position of the state agencies, and the division shall prepare them in consultation with the state agencies. The division shall coordinate among state agencies and the district to resolve a significant difference between the state agency comments and the concept-approved draft.

(e) Following completion of the findings and conclusions,

(1) the district or the division shall distribute, as soon as practicable, the

- (A) concept-approved draft;
- (B) proposed findings and conclusions; and
- (C) copies of the district's responses to all comments and testimony, as described in 6 AAC 85.137(c)(4)(B); and

(2) a district may distribute the material under this subsection only after providing the division, for review and approval, a mailing list of the persons described in (f) of this section.

(f) The material described in (e) of this section must be distributed to

- (1) each person who provided comments during a review and comment period under 6 AAC 85.131(d) or testified at a public hearing under 6 AAC 85.131(f);
- (2) each person whom the district or division identifies as having a significant interest in the district program;

(3) a city or village within a CRSA that commented under 6 AAC 85.134 or 6 AAC 85.141; or

(4) a state agency that commented under 6 AAC 85.134 or (c) of this section.

(g) A recipient of material under (f) of this section may comment upon that material. For the division to consider comments from that recipient,

(1) the division must receive the comments within 21 days following the date set for distribution of that material; the division may extend the comment period as appropriate; and

(2) a comment must focus on an element of the program that has changed since the review under 6 AAC 85.131-6 AAC 85.141, or to which the commentator objected in those comments that the commentator had previously submitted.

(h) Within 15 days following the comment deadline as defined in (g) of this section, the division shall

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

(2) prepare final findings and conclusions as its recommendation to the council on the program.

(i) The division shall develop the final findings and conclusions with consideration of the comments received under (g) of this section, and in consultation with the district so as to resolve any significant differences between the requirements of AS 46.40.040 and this chapter and the district program.

(j) If the division and the district cannot resolve an outstanding issue, or a CRSA does not agree with the change required by a resolution submitted by a city or village in accordance with 6 AAC 85.141, the district may request the council consider the issue and the district's recommendation. The district shall submit the recommendation as a response to the division's final findings and conclusions. The council will review the district's recommendation as part of the council's review of the district program or amendment as described in 6 AAC 85.150(c). (Eff. 7/16/99, Register 151)

<b>Authority:</b>	<b>AS 44.19.161</b>	<b>AS 46.40.040</b>
	<b>AS 44.19.162</b>	<b>AS 46.40.060</b>
	<b>AS 46.40.010</b>	<b>AS 46.40.070</b>



**6 AAC 85.150. COUNCIL REVIEW OF FINAL FINDINGS AND CONCLUSIONS AND CONCEPT-APPROVED DRAFTS OF DISTRICT PROGRAMS.**

(a) The concept-approved draft, the division's final findings and conclusions, the comments received during the comment period described in 6 AAC 85.146(g), the division's response to those comments, and the district's response to comments as described in 6 AAC 85.137(c)(4)(B) shall be distributed to the council, a person who makes a written request for that material, a person who testified at a public hearing under 6 AAC 85.131(f) or presented written comments during a review and comment period under 6 AAC 85.131(d), or a city or village that submitted comments under 6 AAC 85.141. However, if an item for distribution, as described in this subsection, was already distributed under 6 AAC 85.146 and has not been amended, it does not need to be redistributed to a recipient. Before distribution, the division shall review and approve the mailing list of those recipients.

(b) Public notice of the availability of the material described in (a) of this section and of the public hearing at which the council will review the concept-approved draft shall be given to each person who has requested it in writing, and through advertisement in a newspaper of general circulation. The public notice shall be issued at least 21 days before the hearing of the council.

(c) At a public hearing, the council will approve or disapprove the district program, in whole or in part, and issue a decision with findings and conclusions based on the information submitted in (a) of this section, relevant portions of the record file as described in 6 AAC 85.121, testimony presented at the hearing, and a district recommendation, if any, submitted under 6 AAC 85.146(j). The council will, in its discretion, adopt the findings and conclusions of the division by reference. If a CRSA has submitted a recommendation under 6 AAC 85.146(j), and if that recommendation differs from the new matter that a city or village within that CRSA has required under 6 AAC 85.141, then in order for the council to approve the CRSA's recommendation, the CRSA must demonstrate that the new matter requested by the city or village is not substantially consistent with the guidelines and standards contained in AS 46.40, this chapter, 6 AAC 80, or the district program.

(d) The council will serve its decision under this section on the persons listed under (a) of this section, and to each person who has requested a copy of the decision in writing. Notice of the council's action must be published in a newspaper of general circulation in the district. (Eff. 7/18/78, Register 67; am 1/22/81, Register 77; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.010  
AS 46.40.040  
AS 46.40.060  
AS 46.40.070

**6 AAC 85.160. MINOR AMENDMENTS.** (a) Notwithstanding another provision of this chapter, this section and 6 AAC 85.180 govern a minor amendment to an approved district program.

(b) A minor amendment to an approved district program includes

(1) a revision, an addition, or a deletion to the issues, goals, and objectives included in the approved district program, if that change

(A) improves clarity or specificity, or reflects the district's current views; and

(B) does not result in a modification of an enforceable policy under 6 AAC 85.090;

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

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

(4) a revision, an addition, or a deletion to an enforceable policy, if that change

(A) improves specificity or clarity, and does not modify the goals, objectives, or intent of the approved district program;

(B) changes that policy to be consistent with an ordinance or federal or state statute or regulation; or

(C) adopts, as an enforceable policy, text that

(i) the division or a district has previously developed as part of a project that receives federal money under 16 U.S.C. 1455 or 16 U.S.C. 1456b (Coastal Zone Management Act);

(ii) the council has approved, through the public hearing process, as text that a district may adopt with minimal change;

(iii) the United States Secretary of Commerce has approved under 16 U.S.C. 1455;

(iv) receives, at the most, minimal change by the district adopting the text; and

(v) receives, in the district adopting that text, a public review that includes at least public notice and a 30-day public comment period;

(5) an alteration of a boundary map or description developed under 6 AAC 85.090(c), if the alteration does not otherwise change an enforceable policy;

(6) a deletion of a local ordinance, state statute or regulation, or federal law or regulation from the enforceable policies of a district program;

(7) a revision, an addition, or a deletion of a local ordinance, state statute or regulation, or federal law or regulation that is contained within an appendix of a district program;

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

(A) a CRSA becomes a borough;

(B) an area which merits special attention outside a district is annexed to a municipality; or

(C) a borough delegates coastal management planning or municipal implementation responsibility to a city inside a borough, as provided for in AS 29.40.010(b);

(9) an alteration of a CRSA or municipal corporate boundary by

(A) annexing land where

(i) an existing district program does not apply; and

(ii) the district designates the initial biophysical coastal zone boundary, as described in 6 AAC 85.040(b), as the final coastal zone boundary; or

(B) annexing land already covered by a district program, if the district does not

(i) make a significant change to an enforceable policy that applies to the area; or

(ii) change the coastal zone boundary in the area; or

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

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

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

(2) the basis upon which the district considers the amendment to be a minor program amendment;

(3) the reason that the change is necessary;

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

(5) documentation that the district has consulted the Departments of Natural Resources, Environmental Conservation, and Fish and Game; this documentation may include a district's response to those state agencies' comments;

(6) a letter of support for the change from the CRSA board for the district, municipal planning commission, or governing body; and

(7) a letter of support from a governing body or village, if the city or village is located within a CRSA and is materially affected by the minor amendment.

(d) Within 30 days after submission of the request under (c) of this section, the division shall

(1) review the proposed amendment and the material submitted under

(c) of this section;

(2) discuss the proposed amendment with each person who is interested in the minor amendment, or whom the district or the division considers to be interested, including

(A) a state or federal agency; or

(B) a district other than the one proposing the amendment; and

(3) prepare an analysis of the amendment, with a recommendation that the council

(A) approve the amendment as a minor amendment;

(B) approve the amendment if the district makes each change that the council considers necessary for the amendment not to be treated as a significant amendment; or

(C) identify the amendment as a significant amendment, and require that the amendment undergo the review set out at 6 AAC 85.126 - 6 AAC 85.150.

(e) The district may modify its proposed minor amendment to address the concerns identified by a person listed in (d)(2) of this subsection, or identified by the division.

(f) The division shall submit its analysis and recommendation on the amendment to the council. Public notice of the availability of the proposed amendment and the division's analysis and recommendation, as well as notice of the public hearing to be held under (g) of this section, shall be given to any person who has requested that notice in writing, and through advertisement in a newspaper of general circulation. The public notice must be issued at least 21 days before council review.

(g) At a public hearing, the council will review the division's analysis and recommendation, the material submitted by the district under (c) of this section, and public testimony presented at the hearing of the council. The council will, in its discretion, adopt the recommendation of the division by reference. In its determination, the council will

(1) approve the amendment as a minor amendment;

(2) approve the amendment if the district makes each change that the council considers necessary for the amendment not to be treated as a significant amendment; or

(3) identify the amendment as a significant amendment, and require that the amendment undergo the review set out at 6 AAC 85.126 - 6 AAC 85.150. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 44.19.162  
AS 46.40.040

AS 46.40.060  
AS 46.40.070

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

(1) amend the district program to comply with the council's directive;

or

(2) submit the disapproved portion to mediation as set out in (b)-(i) of this section and required by AS 46.40.060(b).

(b) Before the mediation session, the council will, in its discretion, call for a public hearing in the district to discuss the part of the program subject to mediation. Public notice shall be issued at least 30 days before the hearing. Upon request unless prohibited by AS 44.12.320, a district shall provide translation into and out of a Native language prevalent within the district. The public hearing must be electronically recorded. A person may submit oral or written testimony, except that unduly repetitious testimony may be excluded. The oral and written testimony constitute the hearing record, which shall be transmitted to the mediator.

(c) The persons who are parties to the mediation are the council and the district. The persons shall, within 10 days after the date of the council's decision under 6 AAC 85.150, agree upon the selection of a mediator. If the persons cannot agree, they shall immediately, in writing, ask the Federal Mediation and Conciliation Service to appoint a mediator. If that mediator is unacceptable to either person, that person shall request the Federal Mediation and Conciliation Service to submit to the persons the names of three qualified mediators. Upon receipt of these names, each person shall strike one name from the list and the remaining name will be the mediator. A mediator shall perform duties in a manner consistent with the standards of conduct set out in the Code of Professional Conduct for Labor Mediators, set out as an appendix to 29 C.F.R. part 1400 (1997) adopted by reference.

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

(e) The mediator shall schedule the first mediation session to be held as soon as possible after the mediator has been selected. At the initial session, the mediator shall establish reasonable rules of procedure. A mediation session must be conducted in a manner so that the persons will have the assurance and confidence that information disclosed to the mediator will remain confidential. The mediator shall determine the length and frequency of a mediation session.

If an accord is not reached within 60 days after the initial session, the mediator shall declare an impasse, except that the persons and the mediator may agree to extend the 60-day period by no more than 30 days.

(f) If the mediator determines that an impasse has been reached, the

mediator shall notify the persons in writing within 10 days after the determination is made.

(g) If the mediator determines that an accord has been reached, the mediator shall direct the persons to set out in writing the terms of the agreement. This agreement signifies the final settlement of the dispute, subject to ratification at a public meeting by each person. With the approval of those persons, mediation may be used to resolve a difference that may arise as the result of the public meetings. After ratification, the agreement may be set aside only for fraud, misconduct, or gross mistake.

(h) If the council and the district reach an accord, the council will, within 20 days after ratification by both persons, serve its modified decision, in the form of an order, on the district and a person who was served with the council's decision under 6 AAC 85.150(d), and will place the modified decision in the record file. The modified decision must contain findings and conclusions, based on the record file and additional material presented during mediation, necessary to demonstrate that the modified decision is consistent with AS 46.40, this chapter, and 6 AAC 80.

(i) If the council and the district do not reach an accord, the council will, within 20 days after a determination that an impasse has been reached, set the matter for an adjudicatory hearing under AS 46.40.060(c). Notice of the hearing must be served on the district and on each person who was served with the council's decision under 6 AAC 85.150(d). Each person served with notice of the hearing under this subsection may intervene as a party to the hearing. (Eff. 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 46.40.010 AS 46.40.040

**6 AAC 85.175. FEDERAL REVIEW.** Within 30 days after a council approval under 6 AAC 85.150 or 6 AAC 85.160, or a modified decision under 6 AAC 85.170, the division shall submit the district program or amendment to the United States Department of Commerce for review under 16 U.S.C. 1455 (Coastal Zone Management Act). (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 44.19.162

**6 AAC 85.180. LOCAL ADOPTION AND EFFECTIVE DATE.** (a) Within 90 days after the council has approved a district program or amendment under 6 AAC 85.150 or 6 AAC 85.160, or has issued an order after mediation under 6 AAC 85.170 or an adjudicatory hearing under

AS 46.40.060(c), and unless the United States Department of Commerce has not within that period fully approved that program or amendment under 16 U.S.C. 1455 (Coastal Zone Management Act), the district shall approve or disapprove the district program or amendment in its entirety. If the district

(1) is a municipality, the district shall adopt the district program or amendment by ordinance, following the procedures set out at AS 29.25.020; or

(2) is a CRSA, the district shall

(A) adopt the district program or amendment by resolution of the CRSA board at a public hearing; and

(B) provide public notice of that hearing

(i) through advertisement in a newspaper of general circulation within the CRSA, or through announcements on a radio or television station that broadcasts within the CRSA; and

(ii) to each person who has requested a copy of the public notice in writing.

(b) The council will waive the requirements of (a) of this section for a minor amendment that the council has approved under 6 AAC 85.160 and that does not change an enforceable policy as described under 6 AAC 85.090, if the waiver is consistent with the provisions of AS 46.40 and this chapter.

(c) A district program or amendment to a district program takes effect as part of the Alaska coastal management program 30 days after the lieutenant governor's filing of the council's decision approving the district program or amendment. A change or an amendment in the district program resulting from mediation under 6 AAC 85.170 or from adjudication under AS 46.40.060(c) takes effect 30 days after the lieutenant governor's filing of the council's order under AS 46.40.060(c) or 6 AAC 85.170(h). The division shall submit the council's order or decision for filing after local adoption as provided in (a) of this section, unless local adoption is waived under (b) of this section. (Eff. 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.162

AS 46.40.040

**6 AAC 85.183. PROGRESS REPORTS TO COUNCIL AND UPDATES TO DISTRICT PROGRAMS.** (a) After adopting a district program under 6 AAC 85.180, a district shall submit annually to the council a brief progress report concerning program implementation during the state fiscal year. The district shall submit the report by August 15, after the state fiscal year ends. The report must include

(1) a statement describing the district's progress in fulfilling a condition that the council placed upon approval of the district program or an amendment;

(2) a summary, on a form provided by the division, of significant

district land and water use decisions, enforcement actions, activities, and accomplishments in the district during the state fiscal year;

(3) a description of each minor amendment adopted into the district program during the year;

(4) the district's response to a council recommendation; and

(5) identification of any problems encountered in implementing the district program, and a recommendation for solving the problem.

(b) After the district program has taken effect as described under 6 AAC 85.180(c), the district shall submit to the council every five years an evaluation of the program's effectiveness and implementation, a presentation of any new issues, and a recommendation for resolving any problems that have arisen. If a district program took effect as described under 6 AAC 85.180(c) before January 1, 1994, then the report required under this subsection shall be submitted by August 15, 1999 and every five years after that date.

(c) The council will, in its discretion, require that a district amend the district program to resolve a problem with implementing the district program, or to update part of the district program that is outdated, if the amendment is necessary to conform to the provisions of AS 46.40 and this chapter. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 44.19.162

AS 46.40.010  
AS 46.40.040

**6 AAC 85.185. PETITION FOR AMENDMENT TO AN APPROVED DISTRICT PROGRAM REGARDING USES OF STATE CONCERN.**

(a) A state agency or other interested person may submit a petition for amendment to a district program if there is substantial evidence that a use of state concern, as defined in AS 46.40.210, is arbitrarily or unreasonably restricted or excluded by the district program. The petitioner shall submit the petition to the division and to the district. The petition must include the following information:

(1) identification of a use of state concern that is arbitrarily or unreasonably restricted or excluded by implementation of the district program;

(2) specific documentation of how the use of state concern is being arbitrarily or unreasonably restricted or excluded;

(3) a description of a significant change in circumstances or new information that has arisen since approval of the district program, and that provides a reasonable basis for concluding that the district program arbitrarily or unreasonably restricts or excludes a use of state concern; and

(4) the proposed district program amendment.

(b) The division shall review the petition for completeness and distribute it to interested state agencies. Within 30 days after the petition is submitted, the



division shall, in consultation with the district and the petitioner, attempt to resolve the petitioner's concerns without initiating a district program amendment. The division shall extend the 30-day consultation period by 20 days at the request of the district, an interested state agency, or the petitioner. The division may extend the consultation period by up to 60 days.

(c) If the concerns are not resolved through consultation and if the division, in consultation with the district, the interested state agencies, and the petitioner, determines that after original approval of the district program a significant change in circumstances has occurred or new information has developed that might cause the program to arbitrarily or unreasonably restrict or exclude a use of state concern, the procedure described in (d) of this section applies.

(d) Within 20 days after the consultation period under (b) of this section, the division shall distribute the petition, an evaluation of the proposed amendment, and the district's response to the petition to the council and to each person identified as having a significant interest in the district program, including a person described in 6 AAC 85.131(a). The division's evaluation shall include:

- (1) a summary of the proposed amendment;
- (2) an analysis of the evidence that the criteria in (c) of this section have been satisfied; and
- (3) an evaluation of the amendment's consistency with AS 46.40 and 6 AAC 80.

(e) If the criteria established in (c) of this section are not met, then the division shall report this finding to the council. The division shall distribute its finding to each person involved during the consultation period specified in (b) of this section and to the council. The division'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(b)-(d) for review of district programs apply to council review of a petition under this section, except that the material to be identified under 6 AAC 85.150(b) consists of the petition, the district's response, and the evaluation under (d) of this section.

(g) The procedures set out in 6 AAC 85.170 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 upon the lieutenant governor's filing of the council's decision approving the amendment. If mediation or an adjudicatory hearing occurs under AS 46.40.060 and 6 AAC 85.170, an amendment to a district program takes effect upon the lieutenant governor's filing of the council's order either ratifying the results of the mediation or determining the adjudication. (Eff. 8/23/86 , Register 99; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.040  
AS 46.40.010 AS 46.40.060



**ARTICLE 3. SPECIAL AREA MANAGEMENT PLANS AND  
AREAS WHICH MERIT SPECIAL ATTENTION.**

**Section:**

- 195. Special area management plans**
- 205. Types of areas to be designated as areas which merit special attention**
- 215. Areas which merit special attention inside districts**
- 225. Areas which merit special attention outside districts**

**6 AAC 85.195. SPECIAL AREA MANAGEMENT PLANS.** A district may develop a special area management plan to manage a specific resource or activity within the district. Examples of a special area management plan include a harbor management plan, an ocean resource management plan, a public use management plan, a recreation management plan, a watershed management plan, and a wetlands management plan. A special area management plan provides for increased specificity in protecting significant natural resources, coastal-dependent economic growth, improved protection of life and property in hazardous areas, and improved predictability in governmental decision making. Development and council approval of a special area management plan for inclusion in the Alaska coastal management program must follow the procedures for approval of a district program or significant amendment as described in 6 AAC 85.121 - 6 AAC 85.180. (Eff. 7/16/99, Register 151)

**Authority:**    **AS 44.19.161**                               **AS 46.40.030**  
                    **AS 46.40.010**                               **AS 46.40.040**

**6 AAC 85.205. TYPES OF AREAS TO BE DESIGNATED AS AREAS WHICH MERIT SPECIAL ATTENTION.** (a) A district may develop a program for an area which merits special attention. The development and approval of a program for an area which merits special attention is subject to 6 AAC 85.215 and 6 AAC 85.225.

(b) An area which merits special attention includes the following, in addition to the categories included as examples in AS 46.40.210:

- (1) an area important for subsistence hunting, fishing, food gathering, and foraging;
- (2) an area with special scientific value, including an area where an ongoing research project could be jeopardized by development or a conflicting use or activity; and
- (3) a potential estuarine or marine sanctuary. (Eff. 7/16/99, Register

151)

**Authority:** AS 44.19.161  
AS 46.40.010

AS 46.40.030  
AS 46.40.040

**Editor's Note:** Before 7/16/99, Register 151, the substance of 6 AAC 85.205 was contained in 6 AAC 80.158. The history of 6 AAC 80.158 is not reflected in the history note for 6 AAC 85.205.

**6 AAC 85.215. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS.** (a) A person may recommend to a district that an area inside the district be submitted to the council for approval as an area which merits special attention. A district may include in its proposed district program, or submit for approval as a significant amendment to its district program, a program for an area which merits special attention.

(b) A program for an area which merits special attention must include

(1) how the area meets the descriptions contained in AS 46.40.210 or 6 AAC 85.205;

(2) a map showing the geographical location, surface area and, if appropriate, bathymetry of the area, along with a legal and narrative description of the boundaries and a justification of the size of the area which merits special attention;

(3) the district program elements described in 6 AAC 85.020 - 6 AAC 85.110;

(4) a summary of the resource values and use conflicts, if any, in the area; and

(5) an analysis showing that designation of an area which merits special attention is the district's preferred planning and management mechanism for meeting the objectives of the proposal and the Alaska coastal management program.

(c) Development and council approval of a program for an area which merits special attention inside a district must follow the procedures for approval of a district program or significant amendment as described in 6 AAC 85.121-6 AAC 85.180.

(d) A program for an area which merits special attention inside a district must preserve, protect, enhance, or restore each value for which the area was designated. (Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161  
AS 46.40.010

AS 46.40.030  
AS 46.40.040

**Editor's Note:** Before 7/16/99, Register 151, the substance of 6 AAC 85.215 was contained in 6 AAC 80.160. The history of 6 AAC 80.160 is not reflected in the history note for 6 AAC 85.215.

**6 AAC 85.225. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS.** (a) After meeting the requirements imposed upon a district under 6 AAC 85.121, a person may recommend to the council that an area within the coastal zone but outside a coastal resource district be designated as an area which merits special attention. A recommendation to the council for an area which merits special attention outside a district must be submitted to the division, and must include

- (1) the basis for designation;
- (2) a map showing the geographical location of the area, a legal and narrative description of the area's boundaries, and a justification for the size of the area;
- (3) a summary of the resource values and use conflicts, if any, in the area;
- (4) a statement of the purpose and objectives to be met through a program for an area which merits special attention;
- (5) a tentative schedule for completion of planning tasks and reviews;
- (6) the source of funding for developing the area which merits special attention program;
- (7) a list of persons with interests in or adjacent to the proposed area who may be affected by its designation, and a description of how these persons would be involved in program development;
- (8) a letter commenting on the proposed area from
  - (A) a state agency that would implement the program for that area;
  - (B) a district, state agency, or federal agency that is interested, or identified as interested, in the development of that program;
- (9) a written summary of the issues discussed and the participants involved in the meeting as defined under 6 AAC 85.121(a); and
- (10) an analysis showing that a program for an area which merits special attention is the planning and management mechanism that the state agencies responsible for implementation prefer for meeting the objectives of the proposal and the Alaska coastal management program.

(b) A program for an area which merits special attention outside a district must preserve, protect, enhance, or restore each value for which the area is designated.

c) Upon receipt of a recommendation for designation of an area which merits special attention outside of a district, the division shall place the

recommendation on the council's agenda for consideration at its next regularly scheduled meeting, and shall give notice of a public hearing. In addition to providing public notice of that meeting, the division shall give direct notice to each person identified in (a)(7) of this section. The division shall make the recommendation available for public inspection at the time of the public notice.

(d) The council will detail its reasons and either authorize additional planning for the area which merits special attention, or reject the recommendation. The council's authorization of additional planning does not constitute council approval of or funding for a final program for that area.

(e) If the council authorizes additional planning under this section, the division

(1) shall provide public notice by advertisement in a newspaper of general circulation in the affected area and in one of general circulation in the state; and

(2) shall, with assistance from the person recommending the designation, compile a mailing list of state and federal agencies, interested cities and villages, landowners, and other interested persons, and notify them that development of a program may occur for the area which merits special attention outside the district.

(f) A program for an area which merits special attention outside a district must

(1) contain the district program elements described in 6 AAC 85.020-6 AAC 85.110; and

(2) include the information required under (a) of this section.

(g) Designation of an area which merits special attention outside of a district and the development of a program for that area must be in accordance with the procedures for approval of a district program or significant amendment to a district program, as described in 6 AAC 85.126-6 AAC 85.137 and 6 AAC 85.146. For the purposes of those sections, the person recommending the designation of the area shall meet a requirement that a district would have to meet under those sections,

(1) except that submission of the concept-approved draft under 6 AAC 85.146 occurs without conceptual approval by resolution under (a) of that section; and

(2) unless the context of 6 AAC 85.126 - 6 AAC 85.137 or 6 AAC 85.146 indicates otherwise.

(h) The council will approve or disapprove the designation of and program for an area which merits special attention outside a district. The provisions of 6 AAC 85.150 apply to a council decision under this subsection. Within 30 days after a council approval, the division shall submit that designation and program for federal review as described in 6 AAC 85.175. The designation of and program for that area takes effect as part of the Alaska coastal management program 30 days after the lieutenant governor's filing of the

council's decision approving the designation of and program for that area.  
(Eff. 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.030  
AS 46.40.040  
AS 46.40.010

**Editor's Note:** Before 7/16/99, Register 151, the substance of 6 AAC 85.225 was contained in 6 AAC 80.170. The history of 6 AAC 80.170 is not reflected in the history note for 6 AAC 85.225.

## ARTICLE 4. GENERAL PROVISIONS.

### Section:

### 900. Definitions

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

(1) "**affected city or village**" means a city or village that may object under AS 46.40.180(c);

(2) "**approved district program**" means a district program approved under 6 AAC 85.150;

(3) "**area which merits special attention**" has the meaning given in AS 46.40.210;

(4) "**beach**" means an area affected by wave action directly from the sea;

(5) "**city**" has the meaning given in AS 29.71.800;

(6) "**concept-approved draft**" means a proposed district program or significant amendment that has received district approval under 6 AAC 85.146(a), but that has not received council approval under 6 AAC 85.150;

(7) "**council**" means the Alaska Coastal Policy Council;

(8) "**CRSA**" means coastal resource service area;

(9) "**direct and significant impact**" means an effect of a use, or an activity associated with the use, which will proximately contribute to a material change or alteration of the marine coastal water, and in which

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

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

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

(10) "**district**" means a coastal resource district as defined in AS 46.40.210;

(11) "**district program**" means a district coastal management program established under AS 46.40;

(12) "**division**" means the Division of Governmental Coordination established in the Office of Management and Budget established in the Office of the Governor;

(13) "**enforceable policy**" means

(A) a provision in a district program that is legally binding, and that provides the basis for a determination of consistency with the district



program;

(B) the definition of a term used in that provision; or

(C) a boundary map or boundary description for an area identified under 6 AAC 85.090(c), if the district developed that enforceable policy to apply only to that area rather than to the full extent of the coastal zone within that district as designated under 6 AAC 85.040;

(14) "**governing body**" has the meaning given in AS 29.71.800;

(15) "**island**" means a body of land surrounded by water on all sides;

(16) "**local knowledge**" means a body of knowledge or information about the coastal environment or the human use of that environment, including information passed down through generations, if that information is

(A) derived from experience and observations; and

(B) generally accepted by the local community;

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

(18) "**new matter**" means new language or deletions;

(19) "**person**" means

(A) an individual;

(B) a corporation, partnership, association, or other entity organized or existing under the laws of a state;

(C) the federal government;

(D) a state, regional, or local government; or

(E) an entity of the federal government, or of a state, regional, or local government;

(20) "**public hearing draft**" means a proposed district program or significant amendment, as developed

(A) through the hearing and review process under 6 AAC 85.126 - 6 AAC 85.141; and

(B) before conceptual approval by a district under 6 AAC 85.146;

(21) "**public need**" means a documented need of the general public and not that of a private person;

(22) "**revised public hearing draft**" means a public hearing draft that includes changes resulting from the review process under 6 AAC 85.137(d) or 6 AAC 85.141;

(23) "**saltwater wetlands**" has the meaning given in 6 AAC 80.900;

(24) "**sensitivity**" means the tendency to be altered easily or to be

vulnerable to changes from other forces, uses, or activity in the environment;

(25) "**significant amendment**" means an amendment to an approved district program that, except as provided under 6 AAC 85.160(b),

(A) results in a major revision, addition, or deletion to

(i) an enforceable policy developed under 6 AAC 85.090; or

(ii) the implementation methods or authorities included in the district program under 6 AAC 85.100;

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

(C) designates and develops a program for an area which merits special attention or special area management program under 6 AAC 85.195; or

(D) restricts or excludes a use of state concern not previously restricted or excluded;

(26) "**suitability**" means the fitness and appropriateness of the coastal environment to support a given use or activity;

(27) "**traditional village council**" means

(A) a council organized under 25 U.S.C. 476 (Indian Reorganization Act);

(B) a council recognized by the United States as eligible for federal aid to Indians; or

(C) a council recognized by the commissioner of the Department of Community and Economic Development under 19 AAC 90.110 - 19 AAC 90.150;

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

(29) "**village**" means an unincorporated community

(A) in which at least 25 persons reside as a social unit as determined by the Department of Community and Economic Development;

(B) that has a traditional village council; and

(C) with boundaries as follows, for the purposes of this chapter:

(i) the area within a three mile radius of the post office in the village; or

(ii) if there is no post office in the village, the area within a three mile radius of a site designated by the commissioner of the Department of Community and Economic Development;

(30) "**zone of direct influence**" means the portion of the coastal zone extending seaward and landward from the zone of direct interaction;

(31) "**zone of direct interaction**" means the portion of the coastal zone where physical and biological processes are a function of direct

contact between land and sea. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71; am 9/9/81, Register 79; am 3/2/84, Register 89; am 7/16/99, Register 151)

**Authority:** AS 44.19.161 AS 46.40.060  
AS 46.40.010 AS 46.40.070  
AS 46.40.040

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STATE OF ALASKA, DIVISION OF GOVERNMENTAL COORDINATION

AND

THE FEDERAL AVIATION ADMINISTRATION

The Division of Governmental Coordination (DGC), Office of the Governor, State of Alaska and the Federal Aviation Administration (FAA), U.S. Department of Transportation wish to establish a more efficient procedure for activities subject to consistency review under the Alaska Coastal Management Program (ACMP).

It is Mutually Agreed That,

- 1) The FAA and DGC have a mutual interest in assuring that proposed activities are consistent and compatible with state, regional, local, and FAA plans and programs. FAA and DGC agree that the activities in Addendum 1 have no significant effect on coastal resources, are consistent with state and local coastal management programs, and do not need an ACMP consistency determination.
- 2) All other activities not referenced in Addendum 1 will be subject to ACMP consistency review procedures [for example, activities requiring permits in fish-bearing waters, in State legislatively designated Special Areas (AS 16.20), and on State-owned tidelands].
- 3) Nothing herein shall be construed as obligating the FAA or the DGC to violate existing laws or regulations. Direct contacts between the FAA and other state resource agencies and local coastal districts are in no way limited by this agreement. Such contacts are strongly encouraged to promote more effective communication, coordination, and to ensure that all state and local permitting requirements are met.
- 4) The adequacy of this agreement shall be assessed on an as needed basis, at the request of either party.
- 5) This Memorandum of Understanding (MOU) will become

effective on the date of signature. The MOU shall remain in effect until mutually revised in writing or until 30 days after notice of termination by either party.

THIS AGREEMENT WAS REVIEWED AND REAFFIRMED BY THE PARTIES SHOWN BELOW:

Paul C. Rusanowski, Ph.D.  
Director  
Division of Governmental  
Coordination  
Office of the Governor  
State of Alaska

Andrew S. Billick  
Manager  
Airways Facilities Division  
Federal Aviation  
Administration  
U.S. Dept. of Transportation

BY: \_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

G. Laurine Hill  
Manager  
Real Estate and Utilities  
Branch  
Federal Aviation  
Administration  
U.S. Dept of Transportation

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

## ADDENDUM 1

The FAA and the DGC agree that the activities listed below have no significant effect on coastal resources, are consistent with state and local coastal management programs, and do not need an ACMP consistency determination. Any of the activities below that will require an individual permit from a State or federal agency do not meet the requirements of this MOU and are subject to an individual consistency review as per 6 AAC 50.

1. Placement of fill and construction of building pads, parking areas, storage areas, roads and drives which meet all of the following: fill is from a previously approved source; fill is not placed in an Area Meriting Special Attention (as defined in 6 AAC 80, Article 4); clean fill is utilized; fill is placed in upland areas or in wetlands authorized by a Corps of Engineers General Permit or Nationwide Permit (except Nationwide Permit 26); and total fill area is less than 5000 square feet.

2. Construction of buildings which meet all of the following: gross area is less than 500 square feet; total height is less than 30 feet; the building is normally unoccupied; and the building is built on a non-wetland area, existing fill, or on a new fill that meets the conditions of #1 above.

3. Construction of other facilities (e.g. navigation, communication, and lighting facilities, which include antennas, support structures, utilities, trenching, etc.) which meet all of the following: total height is less than 60 feet; maximum horizontal dimension is less than 300 feet; the facility is built on a non-wetland area, existing fill, or on a new fill that meets the conditions of #1 above.

4. Construction of fuel storage tanks which meet all of the following:

- a. Total aggregate capacity of 1000 gallons or less;
- b. Secondary containment<sup>1</sup> shall be provided for fuel storage;

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<sup>1</sup>Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West Coastal Resource Service Area [CRSA]) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). For purposes of this MOU, double-walled tanks qualify as secondary containment for volumes totalling less than 1,000 gallons.

c. All independent fuel containers<sup>2</sup> shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label (Note: The permittee is ultimately responsible for contractor's compliance with these conditions.)

d. Secondary containment or a surface liner<sup>3</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel to respond to a spill of up to five gallons. Transfer operation shall be attended by trained personnel at all times. Vehicle refueling shall not occur within the annual floodplain or tidelands.

e. Containers with a total capacity larger than 55 gallons which contain fuel shall not be stored within 100 feet of a waterbody.

f. The Department of Environmental Conservation (DEC) shall be notified, by phone, of any unauthorized discharges of oil to water and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. The DEC oil spill report number is (800) 478-9300.

5. Maintenance, repair, and replacement of existing buildings, structures, facilities, and grounds. This also covers access if the access meets all of the following: less than fourteen days in duration; no permanent access structures (e.g. docks, ramps, etc.) are constructed; rubber-tired equipment is used; and methods are employed to minimize wildlife and habitat

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<sup>2</sup>Containers means any item which is used to hold fuel. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifolded tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>3</sup>Surface liner means any safe, non-permeable container (e.g. drip pans, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

disturbance. In all instances, the Department of Natural Resources must be contacted to determine if a tidelands permit is required, in which case an individual consistency review is necessary and this MOU does not apply.

6. Development in the 100-year floodplain, as defined by the Federal Insurance Rate Map (FIRM) prepared for the Federal Emergency Management Agency, is contingent upon obtaining a Floodplain Development permit from the local municipal government administering the program.



**MEMORANDUM OF UNDERSTANDING**  
between the  
**Alaska Division of Governmental Coordination**  
and the  
**Western Federal Land Highway Division**  
of the  
**Federal Highway Administration**

**June 1996**

**Signature Page**

This Memorandum of Understanding is entered into by and between Western Federal Lands Highway Division of the United States Federal Highway Administration and the State of Alaska, duly executed by the parties shown below:

**STATE OF ALASKA**

Office of the Governor  
Office of Management and Budget  
Division of Governmental Coordination

**U.S. DEPARTMENT OF TRANSPORTATION,**

Federal Highway Administration,  
Western Federal Lands Highway Division

\_\_\_\_\_  
Diane Mayer  
Director

\_\_\_\_\_  
Jim Hall  
Division Engineer

Date \_\_\_\_\_

Date \_\_\_\_\_

**CONCURRENCE:**

\_\_\_\_\_  
John Shively, Commissioner  
Alaska Department of Natural Resources

\_\_\_\_\_  
Date

\_\_\_\_\_  
Frank Rue, Commissioner  
Alaska Department of Fish & Game

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michele Brown, Commissioner  
Alaska Department of Environmental Conservation

\_\_\_\_\_  
Date

**MEMORANDUM OF UNDERSTANDING**  
between the  
**Alaska Division of Governmental Coordination**  
and the  
**Western Federal Land Highway Division**  
of the  
**Federal Highway Administration**

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Signature Page

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# Introduction

## I. Purpose

This Memorandum of Understanding (MOU) serves to improve cooperation, coordination, and communication between the Alaska Division of Governmental Coordination (DGC) and the Western Federal Lands Highway Division (WFLHD) of the Federal Highway Administration. A main objective is to develop an efficient, effective coastal zone consistency determination process that meets both agencies' requirements. This MOU describes the process both agencies will follow in making and reviewing consistency determinations for direct federal activities and federal land development projects that affect Alaska's coastal zone. The MOU also lists WFLHD activities that have no significant effect on coastal resources, are consistent with state and local coastal management programs, and do not need a state-coordinated determination of consistency with the Alaska Coastal Management Program (ACMP)<sup>1</sup>.

## II. Authority

The authority to enter into this agreement is based on Section 307 of the Coastal Zone Management Act (CZMA) of 1972, as amended, and 15 CFR § 930.10-930.145, the federal regulations implementing the Act. The CZMA requires that all federally conducted or supported activities affecting the coastal zone, including development projects, be undertaken in a manner consistent to the maximum extent practicable with approved state coastal management programs.

## III. Termination, Alteration, and Severability

Either party may terminate the MOU, provided that party gives 60 days notice. Either party may alter the MOU by giving 30 days notice and negotiating the changes with the other party so that the changes reflect a new agreement. Should there arise any conflicts between this MOU and provisions of federal or state law, the provisions of applicable law shall prevail. The components of this MOU are severable so that it remains a useable document even if part of it becomes invalid.

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<sup>1</sup> Municipalities may require local authorizations or consistency determinations for implementation of their coastal management programs or other planning and zoning authorities. The WFLHD should contact potentially affected coastal districts to determine local requirements.

# Federal Activities

## I. Coastal Zone Management Act § 307(c)(1)(A) and (c)(2)

(c)(1)(A): EACH FEDERAL AGENCY ACTIVITY WITHIN OR OUTSIDE THE COASTAL ZONE<sup>2</sup> THAT AFFECTS ANY LAND OR WATER USE OR NATURAL RESOURCE OF THE COASTAL ZONE SHALL BE CARRIED OUT IN A MANNER WHICH IS CONSISTENT TO THE MAXIMUM EXTENT PRACTICABLE WITH THE ENFORCEABLE POLICIES OF APPROVED STATE MANAGEMENT PROGRAMS.

(c)(2): ANY FEDERAL AGENCY WHICH SHALL UNDERTAKE ANY DEVELOPMENT PROJECT IN THE COASTAL ZONE OF A STATE SHALL INSURE THAT THE PROJECT IS, TO THE MAXIMUM EXTENT PRACTICABLE, CONSISTENT WITH THE ENFORCEABLE POLICIES OF APPROVED STATE MANAGEMENT PROGRAMS.

## II. Applicable WFLHD Activities

### A. Federal Activity

This agreement applies to WFLHD activities and development projects as defined by 15 CFR §930.31 (1995):

(a) THE TERM "FEDERAL ACTIVITY" MEANS ANY FUNCTIONS PERFORMED BY OR ON BEHALF OF A FEDERAL AGENCY IN THE EXERCISE OF ITS STATUTORY RESPONSIBILITIES.

(b) A FEDERAL DEVELOPMENT PROJECT IS A FEDERAL ACTIVITY INVOLVING THE PLANNING, CONSTRUCTION, MODIFICATION, OR REMOVAL OF PUBLIC WORKS, FACILITIES, OR OTHER STRUCTURES, AND THE ACQUISITION, UTILIZATION, OR DISPOSAL OF LAND OR WATER RESOURCES.

### B. 23 U.S.C.

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<sup>2</sup> Section 306(d)(2) of the Coastal Zone Management Act requires each state to identify the boundaries of the coastal zone. The seaward limit is "outer limit of the State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et. seq.)." CZMA § 304(1). The Alaska Coastal Policy Council adopted inland boundaries based on biophysical considerations and directed each coastal district to develop a final coastal zone boundary. The ~~Coastal Zone Boundaries of Alaska Atlas (Alaska Department of Fish and Game, and Division of Governmental~~ Coordination, June 1988 as amended) compiles maps and definitions for all of the coastal zone boundaries in Alaska.

*Memorandum of Understanding* - 2- *June 1996*

This agreement specifically applies to WFLHD actions and projects described in 23 U.S.C., limited to:

1. The portion of the federal lands highway program entitled, Public Lands Highways, including the Forest Highway Program<sup>3</sup>, in 23 U.S.C. § 204.
2. Defense Access Roads, described in 23 U.S.C. § 210.
3. Emergency Relief on Federally-owned roads, described in 23 U.S.C. § 125.

C. Activities Not Subject to this Agreement

This agreement does not apply to the Federal Highway Administration's Federal-Aid Highway activities and projects which are included in the Federal-Aid Highway program as described in 23 U.S.C. Chapter 1, Federal Aid Highways. Such federal-aid activities and projects are not considered direct federal actions for purposes of this MOU. Federal-aid funds pass to state and local governments (primarily Alaska Department of Transportation and Public Facilities). These agencies must conduct their activities consistent with the ACMP.

### **III. WFLHD Consistency Determination Procedure**

The WFLHD agrees to use the following procedure for making a consistency determination for WFLHD activities and development projects conducted or authorized by the agency:

A. Determining if an Activity Affects the Coastal Zone

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<sup>3</sup> The term "Forest Highway Program" is described in Federal Highway Administration's regulation, 23 CFR § 660, Subpart A, which WFLHD uses to enhance transportation on forest highways that are under the public lands highway category of the coordinated federal lands highway program.

The WFLHD will review all WFLHD projects or activities, with the exception of activities listed in Appendix A of this MOU, to determine whether an activity may affect any land or water use or natural resource of Alaska's coastal zone. The WFLHD will use the following to help determine if an activity or project affects the coastal zone:<sup>4</sup>

1. 15 CFR § 930.33(b): FEDERAL AGENCIES SHALL CONSIDER ALL DEVELOPMENT PROJECTS WITHIN THE COASTAL ZONE TO BE ACTIVITIES DIRECTLY AFFECTING THE COASTAL ZONE. ALL OTHER TYPES OF ACTIVITIES WITHIN THE COASTAL ZONE ARE SUBJECT TO FEDERAL AGENCY REVIEW TO DETERMINE WHETHER THEY DIRECTLY AFFECT THE COASTAL ZONE.

15 CFR § 930.33(c)(1): FEDERAL ACTIVITIES OUTSIDE THE COASTAL ZONE, AS DEFINED IN CZMA § 304(1), ARE SUBJECT TO FEDERAL AGENCY REVIEW TO DETERMINE WHETHER THEY DIRECTLY AFFECT THE COASTAL ZONE.

2. Consideration of other applicable factors, including but not limited to whether:
  - a. the action causes a change in the manner in which land, water or other coastal zone natural resources are used;
  - b. the action causes a limitation on the range of uses of coastal zone natural resources; or
  - c. the action causes changes in the quality or quantity of coastal zone natural resources.
3. Consideration of cumulative and secondary effects. In its 1990 report reauthorizing the CZMA, Congress stated it was its intent that cumulative and secondary effects be considered when a federal agency makes a determination on whether a specific federal agency activity

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<sup>4</sup> Comment to 15 CFR § 930.33 encourages federal agencies to "construe liberally" an effect in borderline cases "so as to favor inclusion of Federal Activities subject to consistency review." 44 Fed. Register 37146 (1979).

affects any natural resource, land use, or water use in the coastal zone.<sup>5</sup>

4. Coordination. The WFLHD will coordinate with their client agencies (e.g. the Forest Service and the Alaska Department of Transportation) and with other affected state agencies, local governments, and coastal districts (including Coastal Resource Service Areas) to help assure the WFLHD highway projects' consistency with the ACMP. Consistency includes compliance with local ordinances, if any, used to implement local coastal district programs (e.g., floodplain regulation).

Accordingly, the WFLHD will consider direct and cumulative effects to resources in the project corridor caused by the WFLHD's activity, and effects which may be caused by other existing or reasonably foreseeable activities. Effects of WFLHD's activities on mitigative measures (e.g., vegetation buffers for water quality protection) or other reasonably foreseeable or existing projects are of particular concern.

B. Negative Determinations

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<sup>5</sup> See, H.R. Conf. Rep. No. 964, 101st Cong., 2d. Sess. 970 (1990), reprinted in 1990 U.S.C.C.A.N. 2374, 2675.



Pursuant to 15 CFR § 930.35(d) (1995), the WFLHD will provide a negative determination to DGC if the WFLHD determines an activity does not affect the coastal zone and does not require a consistency determination. The WFLHD will provide a brief description of the project and the reasons a consistency determination is not required. Pursuant to 15 CFR § 930.34(b) (1995), the WFLHD will provide the negative determination at least 90 days before final approval of the construction contract documents<sup>6</sup> unless the WFLHD and DGC agree to an alternative notification schedule. To the extent consistent with CZMA § 307(c) (1) (C) and 15 CFR §§ 930.35(d) and 930.41 (c), the project can proceed if and when the State of Alaska concurs with the negative determination and necessary approvals are obtained. In the event the state does not concur with a WFLHD negative determination, and the disagreement cannot be resolved through informal negotiations, 15 CFR § 930.36 (1995) authorizes the WFLHD and the state to follow the mediation procedures described in Subpart G of the federal consistency regulations (15 CFR §§ 930.110 - 930.116 (1995)), or they may seek judicial review.

C. Determining if an Activity is Consistent with the Enforceable Policies of the ACMP

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<sup>6</sup> Note: "Final approval" of a federal activity is not defined in regulations and may take many forms. "Final approval" of a federal activity could mean approval of the planned activity at any stage after the project design stage. In order to avoid confusion, the WFLHD and DGC have agreed that "final approval" occurs at approval of construction contract documents, consisting of plans, specifications and estimates (PS&E).

If an activity or project affects the coastal zone, the WFLHD will determine whether the activity is consistent to the maximum extent practicable with the enforceable policies of the ACMP.<sup>7</sup> The WFLHD will use all of the following to help determine if an activity or project is consistent with the ACMP:

1. ACMP standards identified in Title 6, Alaska Administrative Code, Chapter 80, as amended. The state *Guide to Preparing an ACMP Consistency Determination for Federal Activities* may be used to evaluate the planned activity's consistency with state coastal standards.
2. Approved district (including Coastal Resource Service Areas) coastal management program enforceable policies and definitions.
3. Information made available through the National Environmental Policy Act (NEPA) process (i.e., Environmental Impact Statement, Environmental Assessment, or Categorical Exclusion).<sup>8</sup>

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<sup>7</sup> "Consistent to the maximum extent practicable" is defined in 15 CFR 930.32 (1995). Based on the CZMA and implementing regulations, there are only three situations where a federal activity may deviate from full consistency with a state's approved coastal management program:

- (1) if existing federal law prohibits an agency from full compliance;
- (2) when circumstances arise after the approval of a state coastal management program which were unforeseen at the time of program approval and these circumstances present a "substantial obstacle" preventing "complete adherence" by the agency; or
- (3) through a presidential exemption authorized by CZMA § 307(c)(1)(B).

<sup>8</sup> Comment to 15 CFR § 930.34(a) strongly encourages federal agencies "to provide consistency determinations to State agencies through use of existing notification procedures," such as NEPA documents, so long as such procedures are modified to comply with 15 CFR § 930 et seq. 44 Fed. Reg 37,147 (1979).

Before making a consistency determination, the WFLHD will analyze secondary and cumulative impacts by:

1. coordinating with federal, state, regional, and local agencies, as well as certain private citizens who may be affected; and
2. examining available plans such as for areas adjacent to or within the project area that may be affected by the proposed road construction.

D. Providing a Consistency Determination to the State

The determination in Part III. C will be provided to DGC using the following guidelines:

1. Timing: Pursuant to 15 CFR §930.34(b) and §930.35(d) (1995), the WFLHD will provide a consistency or negative determination to DGC at least ninety (90) days before final approval of the construction contract documents of the WFLHD activity or project, unless both WFLHD and DGC agree to an alternative notification schedule. To the extent consistent with CZMA § 307(c) (1) (C) and 15 CFR §§ 930.35(d) and 930.41 (c), the project can proceed when the final consistency concurrence is issued and other necessary approvals are obtained.
2. Content and Format: The determination must contain the information in a. below but may follow any of the formats described in a. through c.
  - a. Pursuant to 15 CFR § 930.39 (1995), the WFLHD will provide DGC with their consistency determination which shall include a brief statement of whether the proposed activity will comply with the ACMP "to the maximum extent practicable." WFLHD will base this statement upon an evaluation of the ACMP's relevant provisions, including the standards in 6 AAC 80 and district enforceable policies. The consistency determination shall include a description of the project, its associated facilities,

and coastal effects, as well as sufficient information to support WFLHD's consistency determination. This may include data such as design drawings or copies of permit applications. 15 CFR § 930.39(a) (1995) requires that "the amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone."<sup>9</sup>

- b. A completed state *Guide to Preparing an ACMP Consistency Determination for Federal Activities* is intended to assist federal agencies meet federal consistency requirements and may serve as the consistency determination for activities conducted or authorized by the WFLHD.
- c. A consistency determination may be provided to the state as a part of WFLHD's NEPA documents.

#### **IV. State Consistency Review Procedure**

The state agrees to use the following procedure for reviewing a consistency determination and negative determinations submitted to the state by WFLHD:

##### **A. Consistency Review Requirements**

DGC will coordinate the state's review of the WFLHD's consistency determination under procedures contained in Title 6, Alaska Administrative Code, Chapter 50, as amended and in the manner provided in 15 CFR § 930 (1995). DGC will also provide a public notice as required by AS 46.40.096(c).

##### **B. State Notification to WFLHD.**

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<sup>9</sup> Comment to 15 CFR § 930.39 (a) strongly encourages federal agencies "to obtain the views and assistance of the State agency regarding" ACMP provisions "which are related to the proposed activity and the information necessary to determine whether the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the management program." 44 Fed. Reg. 37,148 (1979).

DGC will notify the WFLHD of the state's agreement or disagreement with the consistency determination at the earliest practicable time, not to exceed forty-five (45) days after the start of the state's review. See 15 CFR § 930.41(a). The state is allowed to request an extension of up to fifteen (15) days. 15 CFR § 930.41(b). Due to the state's review schedule specified in 6 AAC 50.110(a), DGC automatically requests the 15-day extension. Additional extensions (past 60-days) are subject to WFLHD approval. See 15 CFR § 930.41(a) and (b). DGC would request additional extensions, if any, during the review for the following reasons.

1. Requests for Information: DGC may request additional information from the WFLHD if a commenting agency, an affected coastal district, or DGC (including consideration of a request from a citizen of an affected coastal district) determines that the information provided by the WFLHD is inadequate for the state to determine agreement or disagreement with the WFLHD consistency determination. The request will identify the information requested and the necessity of having the information to review the determination of the federal activity's consistency with the ACMP. See 15 CFR § 930.42(b) (1995), 6 AAC 50.070 (g).
2. No Response from DGC: WFLHD may presume DGC agreement with WFLHD's consistency determination if DGC fails to provide a response within 60 days from receipt of WFLHD notification. However, the WFLHD will contact DGC before making this presumption. See 15 CFR § 930.41(a) and § 930.41(b).

## **V. Coordinating a Consistency Determination with WFLHD's NEPA Process**

Recognizing that it is difficult for the WFLHD to respond to state consistency concerns after issuance of a final NEPA document which contains a preferred course of action, the WFLHD agrees to use the following procedure to coordinate CZMA requirements and NEPA requirements.

### **A. Providing Necessary Information**

The WFLHD will provide DGC with all needed project-related information during the early stages of WFLHD's NEPA process. DGC will help coordinate

the state's identification of potential coastal zone management issues for the WFLHD to consider during the NEPA process.

B. State Participation

Following its standard environmental procedures, the WFLHD will issue a preliminary environmental document which includes ACMP issues, impacts, and coordination results for public comment. DGC will help coordinate the state's participation in the public comment period.

C. Providing a Consistency Determination

The WFLHD has the following options for providing a consistency determination to DGC.

1. After the close of the NEPA public comment period, but before issuance of the final NEPA document, the WFLHD may submit a consistency determination based on its preferred alternative to DGC for state consistency review. DGC agrees to coordinate the state review of the consistency determination pursuant to the process and timelines specified in this agreement. If the state agrees with the WFLHD consistency determination, the WFLHD agrees to issue a final NEPA document providing the document includes alternative measures, if any, in the state's consistency finding. Any modification to the project in the final NEPA document that was not previously reviewed for consistency or that will not fully conform to the alternative measures in the state consistency finding shall be provided to DGC to determine, in consultation with other agencies, if further review is necessary; or
2. The WFLHD may provide its consistency determination to DGC as a part of its final NEPA document [i.e., the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS)], including the Record of Decision (ROD); or
3. Any other options that are mutually acceptable.

## **VI. State Objection to a WFLHD Consistency Determination**

A. State Response

In the event the state does not concur with an WFLHD consistency determination, the state will explain the reasons why the proposed activity is inconsistent with the ACMP and describe alternative measures, if any exist, that would allow the activity to proceed in a consistent manner.

B. Informal Negotiations

For any disagreement between DGC and the WFLHD, the agencies will first attempt to resolve differences through informal negotiations between agency representatives.

C. Mediation

If a disagreement cannot be resolved through informal negotiations, the state and the WFLHD agree to follow the mediation procedures described in Subpart G of the federal consistency regulations (15 CFR § 930.110 - 930.116) (1995):

1. The state, represented by DGC, and the WFLHD, represented by WFLHD's Division Engineer, will notify the Secretary of Commerce, in writing, of the existence of a serious disagreement and request the Secretary to mediate the disagreement.
2. Recognizing that the Secretary will not mediate a disagreement unless all parties agree to participate, the state and WFLHD agree to participate in the mediation process as long as practicable.

D. Judicial Review

Both the state and WFLHD agree to refrain from seeking judicial review until after informal negotiations and mediation have failed to resolve the disagreement.

## **VII. Consistency Determinations for Emergency Relief on Federally Owned Roads (ERFO)**

Emergency relief funds for the repair or construction of federal roads suffering serious damage from natural disasters or catastrophic failures are provided through WFLHD

to federal land management agencies (FLMA's)<sup>10</sup> who manage these facilities in Alaska. ERFO activities which are administered by WFLHD and described in 23 CFR 668.201-668.215 (1995) are usually divided into two parts, an emergency repair phase and permanent repair work.

In the emergency repair phase, all activities are considered categorical exclusions pursuant to the NEPA procedures in 23 CFR 771.117(c)(9) (1995) and the FLMA's are responsible, themselves, for addressing ACMP requirements. In the permanent repair work, the FLMA's are responsible for addressing both NEPA and ACMP requirements except where the FLMA has formally transferred the repair work to WFLHD for project development and construction. In such cases, WFLHD will follow the process and procedures required by 15 CFR 930.30 (1995) and discussed in Part IV of this MOU.

### **VIII. Defense Access Roads**

Pursuant to 23 CFR §660.501-660.519 (1995) state and local highway agencies are expected to assume the same responsibilities for developing and maintaining access roads to permanent military facilities as they assume for public highways serving private establishments. During project development, the WFLHD will coordinate with state and local agencies and determine whether the proposed project will affect the coastal zone, as discussed in Section III.A. of this Memorandum. The WFLHD will provide the state with a negative determination or a consistency determination, as discussed in Sections III.B. and III.C. of this Memorandum. The WFLHD's Division Engineer will be responsible for necessary coordination between the selected agency and the state or local highway agencies during a defense access project's life. See 23 CFR § 660.515.

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<sup>10</sup> FLMA's are usually the U.S. Forest Service, National Park Service, Bureau of Land Management, or Bureau of Indian Affairs.



## **APPENDIX A**

### **WFLHD Activities Not Requiring an ACMP Consistency Review**

The WFLHD and DGC agree that the activities listed below have no significant effect on the coastal zone and do not need a state coordinated ACMP consistency determination.<sup>11</sup> **Exception: Any of the activities below that require an individual permit from a state or federal agency are subject to an individual state consistency review or negative determination pursuant to 6 AAC 50 and described in Sections III and IV of this MOU.** If a local permit is required for any of the activities below, WFLHD must obtain those permits prior to project initiation.

- 1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307 that do not involve field demonstration; approval of statewide programs under 23 CFR Part 630; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed.
- 2) Approval of utility installations along or across an existing public agency transportation corridor that meet the following conditions:
  - a) overhead utilities must be located within existing, cleared easements that do not require explosives or significant clearing; and
  - b) below ground utilities must not cross resident or anadromous fish bearing streams, or result in siltation, loss of riparian habitat, or the use of explosives.
- 3) Construction of bicycle and pedestrian lanes, paths, and facilities within or adjacent to an existing road and within the road right-of-way that do not cross resident or anadromous fish bearing streams, or result in siltation, loss of riparian habitat, or the use of explosives. This does not include bicycle or pedestrian paths that are separated from a road and in their own independent right-of-way.

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<sup>11</sup> However, these projects may require local land use permits or other authorizations necessary for implementation of local coastal district management programs.

- 4) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- 5) Landscaping.
- 6) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- 7) Transfer of funds to Federal Land Management Agencies for emergency repairs under 23 U.S.C. 125<sup>12</sup>.
- 8) Acquisition of scenic easements.
- 9) Improvements to existing rest areas, overlooks and truck weigh stations.
- 10) Ridesharing activities.
- 11) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- 12) Promulgation of rules, regulations, and directives.
- 13) Resurfacing of existing roads.
- 14) Traffic control improvements including signing, pavement markings, traffic signals and highway lighting
- 15) Intersection modifications including channelization, turn bays and lane configurations
- 16) Roadside safety improvements including guardrail, barriers, obstacle removal, fencing and slope adjustments within the existing right of way.

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<sup>12</sup> 23 U.S.C. § 125 authorizes an emergency relief fund for the Secretary of Transportation to use for the repair or reconstruction of highways, roads, and trails which the Secretary finds have been damaged by natural disaster or catastrophic failures from external causes.

**PARTNERSHIP AGREEMENT**

**between the  
Alaska Division of Governmental Coordination  
and the  
U.S. Army Corps of Engineers,  
Alaska District**

**May 1997**

**SIGNATURE PAGE**

THIS PARTNERSHIP AGREEMENT IS ENTERED INTO BY AND BETWEEN THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE STATE OF ALASKA, DULY EXECUTED BY THE PARTIES SHOWN BELOW:

STATE OF ALASKA  
Office of the Governor  
Office of Management and Budget  
Division of Governmental Coordination

DEPARTMENT OF THE ARMY  
U.S. Army Engineer District,  
Alaska

\_\_\_\_\_  
Diane Mayer  
Director

\_\_\_\_\_  
Peter A. Topp  
Colonel, Corps of Engineers  
District Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

CONCURRENCE:

\_\_\_\_\_  
John T. Shively  
Commissioner, Alaska Department  
of Natural Resources

\_\_\_\_\_  
Date

\_\_\_\_\_  
Frank Rue  
Commissioner, Alaska Department  
of Fish and Game

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michele Brown  
Commissioner, Alaska Department  
of Environmental Conservation

\_\_\_\_\_  
Date

**Partnership Agreement**  
**Alaska Division of Governmental Coordination and U.S. Army Corps of Engineers**

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# **PARTNERSHIP AGREEMENT**

**between the  
Alaska Division of Governmental Coordination  
and the  
U.S. Army Corps of Engineers, Alaska District**

## **CHAPTER ONE: INTRODUCTION**

### **I. Purpose**

This Partnership Agreement (PA) serves to improve cooperation, coordination and communication between the Alaska Division of Governmental Coordination (DGC) and the U.S. Army Corps of Engineers (Corps). This PA describes the process both agencies agree to follow in making and reviewing consistency determinations for federal activities and in reviewing federal permitting actions that affect Alaska's coastal zone. The PA also identifies Corps activities not requiring a consistency determination because those activities either have no significant effect on coastal resources and, therefore, are not subject to the Alaska Coastal Management Program (ACMP), or are activities previously identified as being consistent with state and local coastal management programs (See Chapter Two: Federal Activities, § II B).

### **II. Authority**

The authority to enter into this agreement is based on Section 307 of the Coastal Zone Management Act (CZMA) of 1972, as amended, 16 U.S.C. § 1456; and 15 CFR §§ 930.10-930.145 (1996), the federal regulations implementing the Act.

The CZMA requires that all federally conducted or supported activities, including development projects, that affect the natural resources or uses of the coastal zone be undertaken in a manner consistent to the maximum extent practicable with approved state coastal management programs. The Act also requires that federally licensed or permitted activities affecting the coastal zone be conducted in a manner consistent with approved state coastal management programs.

Nothing in this agreement shall be construed as altering, or in any way limiting, either party's ability or responsibility to act in accordance with all applicable federal, state, and local laws and

regulations. Further, implementation of any part or all of this agreement is subject to availability of funds.

### **III. Termination, Alteration, and Severability**

This PA expires ten years after the date of final concurrence but may be renewed by mutual agreement.

Either party may terminate the PA, provided that party gives a 60-day notice. Either party may alter the PA by giving a 30-day notice and negotiating the changes with the other party so that the changes reflect a new agreement. The components of this PA are severable so that it remains a useable document even if a part of it becomes invalid.

**CHAPTER TWO: NON-REGULATORY FEDERAL ACTIVITIES**  
Conducted by the Engineering Division

**I. Coastal Zone Management Act § 307(c)(1) and (c)(2)**

Each federal activity or development project within or outside the coastal zone that affects the natural resources or uses of the coastal zone must be carried out in a manner "consistent to the maximum extent practicable" with the ACMP. See CZMA § 307(c), 16 U.S.C. § 1456(c); Appendix A, infra.

"Consistent to the maximum extent practicable" means that federal activities in or affecting the coastal zone must be consistent with state management programs to the fullest degree permitted by existing law. See CZMA § 307(c), 16 U.S.C. § 1456(c); 15 C.F.R. § 930.32 (1996). Based on the CZMA and implementing regulations, there are only three situations where a federal activity may deviate from full consistency with the a state's approved coastal management program:

1. if existing federal law prohibits an agency from full compliance per 15 CFR § 930.32(a) (1996);
2. when circumstances arise after the approval of a state coastal management program which were unforeseen at the time of program approval and these circumstances present a "substantial obstacle" preventing "complete adherence" by the agency, per 15 CFR § 930.32(b) (1996); or
3. through a presidential exemption authorized by CZMA § 307(c)(1)(B), 16 U.S.C. § 1456(c)(1)(B).

**II. Applicable Corps Activities**

**A. Activities Subject to this Partnership Agreement**

This agreement applies to Corps activities and development projects as defined by 15 CFR §930.31(a)-(b) (1996). The term "activity," used throughout the PA, means any function or development project as defined in 15 CFR § 930.31 (a)-(b) (1996).

This agreement also applies to the following actions:

1. Civil works projects and environmental clean-ups other than those conducted under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.
2. Quarry Site Evaluations, and



3. Activities performed by the Corps for other federal agencies.

B. Corps Activities Not Requiring an ACMP Consistency Review

The Corps and the State of Alaska agree that the activities listed below either have no significant effect on coastal uses or resources or have previously been found consistent with state and local coastal management programs and do not need further state coordinated review for ACMP consistency. Unless exempted by federal law, the Corps must still acquire applicable state and local authorizations for each activity. Activities that do not require a review for consistency with the ACMP include:

1. Corps activities allowed by a general permit under 33 C.F.R. §§ 322.2(f) or 323.2(h) (1995) or a nationwide permit under 33 C.F.R. § 330.1 (1995), if the state has already found the permit to be consistent with the ACMP.
2. Corps activities that are listed in the Classification of State Agency Approvals (the "ABC List"), as provided for in 6 Alaska Administrative Code (AAC) 50.050 (e), if DGC, upon receiving project information, determines that
  - a. all permits required for the project appear on the list of categorically approved permits ("A List"), as provided for in 6 AAC 50.050 (b); or
  - b. all permits required for the project appear under an activity included in the list of general concurrences ("B list"), as provided for in 6 AAC 50.050 (c), conform with the conditions of the applicable general concurrence, and require either no additional permits or only permits that appear on the "A List."

If DGC determines the project qualifies as an A or B List activity, the Corps may go directly to the state and local government agencies to obtain the necessary authorizations.

3. Routine operation and maintenance actions on Corps projects that were in place prior to enactment of the ACMP or which were found consistent with the ACMP if constructed after enactment of the ACMP. These may include repair, renovation, rehabilitation, or replacement of existing structures and facilities with the same footprint and similar design as the original structure. These actions only apply to lands owned or occupied by the Corps for its own use. For example, the Corps owns land in Dillingham and occupies offices at Elmendorf Air Force Base.

4. Disposal of existing asbestos-free buildings<sup>1</sup> and improvements in developed areas for off-site removal to (a) disposal areas approved by the Alaska Department of Environmental Conservation (DEC); (b) licensed recycling centers; (c) Corps-approved vendors; or (d) a site outside Alaska. Disposal may include removal of underground storage tanks.<sup>2</sup>
5. Use of an existing quarry site as identified in the Letter of Agreement for quarry site evaluation between the Division of Governmental Coordination and the U.S. Army Corps of Engineers, Alaska District, dated June 25, 1990 (See Appendix B).<sup>3</sup>

### **III. Corps Consistency Determination Procedure**

The National Environmental Policy Act (NEPA) process is the backbone of the Alaska District's environmental compliance process for construction. The environmental assessment (EA) or environmental impact statement (EIS) prepared during the NEPA

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<sup>1</sup> Disposal of buildings containing asbestos must comply with applicable Alaska Department of Environmental Conservation regulations.

<sup>2</sup> This exception applies to non-leaking underground storage tanks and does not include soil remediation. When removing a non-leaking underground storage tank, the Corps agrees to notify the Alaska Department of Environmental Conservation (DEC).

<sup>3</sup> According to the Letter of Agreement, no ACMP consistency review is required if 1) a contractor purchases the rock necessary for a project from an operating commercial quarry site; or 2) the quarry site from which the contractor proposes to obtain the necessary rock is located out of state, outside of the coastal zone, or does not directly affect the coastal zone. In addition, DGC will require not more than 15 days to review and comment on the selection and operation if a contractor proposes to use, without modifications, a quarry site, which has previously been found consistent with the ACMP.

process is used to develop issues, provide information, and document coordination and compliance requirements for most projects in Alaska.

The NEPA process can be used to ensure that coastal issues are identified and that coastal resources are considered in the NEPA decision. To do so, the process must also accommodate any requirements specific to the CZMA program, and provide information needed for the coastal consistency review. The NEPA document also usually contains the District's consistency determination regarding the status of the proposed action in relation to the ACMP and applicable coastal district management plans. In the NEPA document, the District may provide a consistency determination (supported by a specific reference to state standards and enforceable policies), a formal negative determination [for actions listed in 15 CFR 930.35 (d)], or an informal statement that the action is outside, and/or will not cause an effect on resources or uses of the coastal zone.

The Corps agrees to use the following procedure for making a consistency determination for activities conducted by or on behalf of the Corps.

A. Determining if an Activity Affects the Coastal Zone

The Corps agrees to review each of its activities to determine whether they may affect any land or water use or natural resource of Alaska's coastal zone. The Corps agrees to use the following to help determine if an activity affects the coastal zone.<sup>4</sup>

1. Guidance in CZMA § 307(c)(1)(A), 16 U.S.C. § 1456(c)(1)(A) and 15 C.F.R. § 930.33(b)-(c) (1996).
2. Consideration of other applicable factors, including but not limited to whether:
  - a. the action causes a change in the manner in which land, water or other coastal zone natural resources are used;
  - b. the action causes a limitation on the range of uses of coastal zone natural resources;

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<sup>4</sup> Comment to 15 CFR § 930.33 encourages federal agencies to "construe liberally" an effect in borderline cases "so as to favor inclusion of Federal Activities subject to consistency review."

- c. the action causes changes in the quality or quantity of coastal zone natural resources; or
  - d. the action is a subject use as described in 6 AAC 85.070 and identified in an applicable coastal district program.
3. Consideration of cumulative and secondary effects. In its 1990 report reauthorizing the CZMA, Congress stated its intent that cumulative and secondary effects be considered when a federal agency makes a determination on whether a specific federal agency activity affects any natural resource, land use, or water use in the coastal zone.<sup>5</sup>

Accordingly, the Corps agrees to consider reasonably foreseeable direct and cumulative effects which the activity causes or contributes to, and indirect effects which the activity may cause or contribute to and are later in time or farther removed in distance but still reasonably foreseeable.

4. Negative Determinations
- a. Pursuant to 15 CFR § 930.35(d) (1996), the Corps agrees to provide a negative determination to DGC if the Corps determines an activity listed in 15 CFR § 930.35(d) does not affect the natural resources or uses of the coastal zone and does not require a consistency determination. Pursuant to 15 CFR § 930.35(d) (1996), the Corps agrees to provide a brief description of the project and the reasons a consistency determination is not required, at least 90 days before final approval of the activity unless the Corps and DGC agree to an alternative notification schedule.<sup>6</sup> The Corps will generally prepare a negative determination only for actions listed in 15 CFR § 930.35(d), but may elect to do so for borderline cases after consultation with DGC.
  - b. Upon receipt of a negative determination, DGC will distribute a copy of the determination and any supporting information to

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<sup>5</sup> See H.R. CONF. REP. NO. 964, 101st Cong., 2nd Sess. 970 (1990), reprinted in 1990 U.S.C.C.A.N. 2374, 2675 (reproduced here at Appendix D). While legislative history is not legally binding, it is persuasive evidence of Congressional intent.

<sup>6</sup> DGC and the Corps may agree that a project is sufficiently major or minor as to merit a longer or shorter notification schedule.

reviewers for a 30-day review<sup>7</sup> by state agencies and affected coastal districts. The purpose of this review is to determine whether the state agrees with the negative determination.

- c. In those instances where the state concurs with the negative determination prior to the 90-day response period allowed in 15 C.F.R. § 930.35(d), the project may proceed after required state and local authorizations, if any, are obtained.
- d. In the event the state does not agree with a Corps negative determination and the disagreement cannot be resolved through informal negotiations, 15 CFR § 930.36 (1996) authorizes the Corps and the state to follow the mediation procedures described in Subpart G of the federal consistency regulations (15 CFR §§ 930.110 - 930.116 (1996)), or either party may seek judicial review.

B. Determining if an Activity is Consistent with the Enforceable Policies of the ACMP

If an activity affects the coastal zone, the Corps agrees to determine whether the activity is consistent to the maximum extent practicable with the enforceable policies of the ACMP. The Corps agrees to use the following to help determine if an activity is consistent with the ACMP.

- 1. ACMP standards identified in Title 6, Alaska Administrative Code, Chapter 80, as amended. The state "Guide to Preparing an ACMP Consistency Determination for Federal Activities" is recommended for use to evaluate the planned activity's consistency with state coastal standards.

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<sup>7</sup> The review is not a consistency review and no public notice is required.

2. Approved district coastal management program<sup>8</sup> enforceable policies and definitions.
3. Information made available through the National Environmental Policy Act (NEPA) process, such as in an environmental impact statement or environmental analysis.

Before making a consistency determination, the Corps will analyze secondary and cumulative impacts by:

1. coordinating with federal, state, regional, and local agencies, as well as certain private citizens who may be affected; and
2. examining available management plans such as for areas adjacent to or within the project area that may be affected by the proposed project.

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<sup>8</sup> Includes cities, boroughs, and coastal resource service areas.

C. Providing a Consistency Determination to the State<sup>9</sup>

1. Timing: Pursuant to 15 CFR §930.34(b) and §930.35(d) (1996), the Corps agrees to provide a consistency determination to DGC at least 90 days before the Corps' final approval of the activity, unless both the Corps and DGC agree to an alternative notification schedule. The state's review period begins upon DGC's receipt of the Corps' complete determination as described in Chapter Two, § III C 3 below. The project can proceed sooner than 90 days if the final consistency finding is issued by the state and other necessary approvals are obtained.
2. Format:
  - a. Pursuant to 15 CFR § 930.39(a) (1996), the Corps agrees that their consistency determination shall include a brief statement based on an evaluation of the relevant provisions of the ACMP of whether the proposed activity will comply with the management program "to the maximum extent practicable."
  - b. The following may also serve as the consistency determination for activities and development projects conducted or authorized by the Corps.
    - (1) A completed "Guide to Preparing an ACMP Consistency Determination for Federal Activities" or
    - (2) A separate letter; or
    - (3) A consistency determination may be provided to the state in NEPA documents.<sup>10</sup>

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<sup>9</sup> For projects in southeast Alaska, determinations shall be sent to the Project Review Coordinators in the Juneau DGC office. For projects in southcentral and northern Alaska, determinations shall be sent to the Anchorage DGC office.

<sup>10</sup> Comment to 15 CFR § 930.34(a), federal agencies are "strongly encouraged to provide consistency determinations to state agencies through use of existing notification procedures," such as NEPA documents, so long as such procedures are modified to comply with 15 CFR § 930 et seq. 44 Fed. Reg. 37, 147 (1979).

3. Content: The Corps agrees to include with the consistency determination a description of the project, associated facilities and effects, and any other necessary supplemental information including design drawings, a completed Coastal Project Questionnaire (CPQ) and copies of state and federal permit applications, sufficient to support the Corps' consistency determination.

D. Issuing a Public Notice

The Corps agrees to issue a public notice advising of its proposed federal activities in or affecting the coastal zone. DGC cannot start its review until the Corps issues its public notice and DGC receives a complete consistency determination. The language noted in 1 and 2 below will address this requirement.

The Corps agrees to mail or transmit by facsimile or other means, a copy of the public notice, necessary supporting information, the consistency determination, and upon request, the distribution list to DGC. If the Corps does not intend to issue a public notice, the Corps will notify DGC so appropriate ACMP notice requirements can be met.

1. Newspaper public notices will use the following:

Notice is hereby given that a consistency determination is being provided to the Division of Governmental Coordination as provided in Section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended [16 U.S.C. 1456(c)(3)], that the project described in the Corps of Engineers Public Notice No. \_\_\_\_\_, will comply with the Alaska Coastal Management Program and will be conducted in a manner consistent to the maximum extent practicable with that program.

[Brief description of project, including a statement that the Corps is the proponent agency.]

The Division of Governmental Coordination requests your comments on the proposed project's consistency with the Alaska Coastal Management Program. Your comments are required to preserve your rights to file a petition under Alaska Statute 46.40.100 asking the Coastal Policy Council to review the development of the state's consistency certification. For more information on the consistency review process, comment deadlines, and affected coastal district status, or to submit written comments, please contact the Division of Governmental Coordination, [select one: P.O. Box



110030, Juneau, AK 99811-0030, (907) 465-3562; 3601 C Street, Suite 370, Anchorage, AK 99503-5939, (907) 269-7470; or Joint Pipeline Office, 411 W. 4th Ave., Ste 2-C, Anchorage, AK 99501-2342 (907) 271-4317].

The State of Alaska, Division of Governmental Coordination, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may contact the number above.

2. Public notices by letter will use the following:

Notice is hereby given that a consistency determination is being provided to the Division of Governmental Coordination as provided in Section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended [16 U.S.C. 1456(c)(3)], that the project described in the Corps of Engineers Public Notice No. \_\_\_\_\_, will comply with the Alaska Coastal Management Program and will be conducted in a manner consistent to the maximum extent practicable with that program.

The Division of Governmental Coordination requests your comments on the proposed project's consistency with the Alaska Coastal Management Program. Your comments are required to preserve your rights to file a petition under Alaska Statute 46.40.100 asking the Coastal Policy Council to review the development of the state's consistency certification. For more information on the consistency review process, comment deadlines, and affected coastal district status, or to submit written comments, please contact the Division of Governmental Coordination, [select one: P.O. Box 110030, Juneau, AK 99811-0030, (907) 465-3562, 3601 C Street, Suite 370, Anchorage, AK 99503-5939, (907) 269-7470, or Joint Pipeline Office, 411 W. 4th Ave., Ste 2-C, Anchorage, AK 99501-2342 (907) 271-4317].

E. Responding to State Agency Action

The Corps may presume DGC's concurrence if DGC fails to respond within 60 days. (See § IV. C., *infra*). The Corps agrees to not presume DGC's concurrence when DGC has requested an extension of time and will contact DGC before assuming DGC's concurrence. The Corps may not take final action sooner than 90 days from the issuance of its consistency determination unless a state consistency finding is issued and necessary permits are acquired per Chapter Two § III.C. above. See 15 CFR § 930.41 (1996).

#### **IV. State Consistency Review Procedure**

The State of Alaska agrees to use the following procedure for reviewing a consistency determination submitted to the state by the Corps:<sup>11</sup>

- A. DGC agrees to coordinate the State of Alaska's review of the Corps' consistency determination under procedures contained in Title 6, Alaska Administrative Code, Chapter 50, as amended and in the manner provided in 15 CFR §§ 930.10-930.145 (1996).
- B. DGC agrees to notify the Corps of the state's agreement or disagreement with the consistency determination at the earliest practicable time, not to exceed 60 days after the start of the state's review. Due to the state's review schedule specified in 6 AAC 50.110(a), DGC automatically requests a 15-day extension to the 45-day review period.<sup>12</sup> Extensions past 60 days are subject to the Corps' approval. See 15 CFR § 930.41(a)-(b) (1996).
  1. Requests for Information: DGC may request additional information from the Corps if DGC, a commenting agency, or an affected coastal district determines that the information provided by the Corps is inadequate for the state to determine agreement or disagreement with the Corps' consistency determination. The request will identify the information needed and why the information is necessary to determine the consistency of the federal activity with the ACMP. See 15 CFR § 930.42(b) (1996).
  2. State Disagreement with Corps Consistency Determination: In the event the state does not agree with the Corps' consistency determination, DGC agrees to explain the reasons why the proposed activity is inconsistent with the ACMP and describe alternative measures, if any, that would allow the activity to proceed in a consistent manner.
  3. Alternative Measures: If the Corps accepts the state's alternative measures, the alternative measures will be incorporated into the project. If

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<sup>11</sup> Review procedures for negative determinations are outlined in Chapter Two § III A 4.

<sup>12</sup> See 15 C.F.R. § 930.41(b) (1996). 6 AAC 50.110(a) directs DGC to complete its review by the end of 50 days when a public notice is required.

the Corps does not accept the state's alternative measures, DGC and the Corps agree to attempt to resolve the disagreement through the 6 AAC 50.070(j) and (k) elevation process.

4. Disagreement Resolution: In the event the disagreement cannot be resolved through the 6 AAC 50 process, the state and the Corps may follow the mediation procedures described in Subpart G of the federal consistency regulations (15 CFR §§ 930.110 - 930.116 (1996)), or seek judicial review.

C. Modifications.

If the Corps or contractors wish to modify a proposed or existing project in any way, the Corps must determine whether the modification may affect coastal resources or uses and whether a consistency determination must be provided to the state. The Corps agrees to interact with DGC as described below when determining if further consistency review is needed.

The state must have adequate information to evaluate the likely effects of the modification on coastal resources and uses and the need for further consistency review. The Corps or the contractor should provide (1) the previous state review ID number; (2) a brief but complete description of the proposed modification; and (3) an identification of any additional permits that will be required.

1. Minor Modifications:
  - a. The Corps agrees to determine a modification to be minor only
    - i. for modifications to projects that have already been authorized and found consistent with the ACMP; and
    - ii. if the Corps determines the modification will not significantly affect coastal resources or uses and does not require other state or federal authorizations which are subject to ACMP review; or
    - iii. the modification qualifies for a categorically approved permit on the A List or general concurrence activity on the B List as described in Chapter Two, § II B.
  - b. For minor modifications, the Corps agrees to send the information described in Chapter Two § IV C (Modifications) above to DGC, the affected coastal district(s), and the appropriate offices of the Departments of Environmental Conservation, Fish and Game, and Natural Resources. The state agencies will determine whether the modification requires consistency review or if additional permits

or public notice are required before the Corps proceeds with the modification.

- c. DGC will consult with appropriate state agencies and coastal districts and will determine whether the state agrees that the effects of the modification are not significant enough to warrant further review.

Within ten days, DGC will notify the Corps that the state either agrees or disagrees that the modification is minor. If the state agrees, the Corps may proceed with the activity. If the state disagrees, DGC will provide the Corps with its reasons for disagreement and request a consistency determination from the Corps per 15 CFR §§ 930.33 and 930.34 (1996) and Chapter Two § III, Corps Consistency Determination Procedure.

2. Modifications Subject to Review: If the Corps determines a proposed modification will affect coastal resources or uses to a greater extent or in a manner different from the initial consistency determination, the Corps must submit a consistency determination to DGC for review. DGC agrees to start the review as soon as the Corps provides its consistency determination as outlined in Chapter Two § III. C, Corps Consistency Determination Procedure. DGC understands the need for rapid response when modifications are necessary during construction.

**V. Coordinating a Consistency Determination with the Corps' National Environmental Policy Act (NEPA) Process**

Recognizing that it is difficult for the Corps to respond to state and local coastal district consistency concerns after issuance of a final NEPA document, the Corps agrees to use the following procedure to coordinate CZMA requirements and NEPA requirements.

- A. The Corps agrees to notify DGC of all opportunities to comment on proposed development projects during the project development phase of the Corps' NEPA review. DGC agrees to inform state review participants and other interested parties of the opportunities to comment on the proposed action. The Corps agrees to contact responsible resource and regulatory agencies to identify scoping issues, areas of responsibility, and permit requirements. To encourage early substantive participation, the Corps may ask DGC to identify responsible agencies and to coordinate an informal NEPA scoping review to obtain early input on possible consistency issues. State agencies and local coastal districts will participate to the degree other priorities allow.

- B. Following its NEPA procedures, the Corps agrees to prepare a NEPA document (i.e., an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or draft and final Environmental Impact Statement (EIS)) for public comment. DGC agrees to coordinate the review by the state, including potentially affected coastal districts, of the draft to the extent adequate information is presented and agency priorities allow.<sup>13</sup>
- C. The Corps has the following options for providing a consistency determination to DGC.
1. After the close of the NEPA public comment period, but before issuance of the final NEPA document, the Corps may submit a consistency determination based on its preferred alternative to DGC for state consistency review. DGC agrees to coordinate the state review of the consistency determination pursuant to the process and timelines specified in this agreement. If the state agrees with the Corps consistency determination, the Corps agrees to issue a final NEPA document provided that the document only includes all changes required from conditions in the state's consistency finding. Any and all modifications to the project in the final NEPA document that were not previously reviewed for consistency or that do not fully conform to the conditions in the state consistency finding shall be provided to DGC and commenting state agencies to determine if further review is necessary; or
  2. The Corps may provide its consistency determination to DGC as a part of its final NEPA document [i.e., the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS)], including the Record of Decision (ROD); or
  3. Any other options that are mutually acceptable.

## **VI. Letter of Agreement for a Quarry Site Evaluation**

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<sup>13</sup> The purpose of DGC's review is to participate in the NEPA process and to identify preliminary ACMP issues.

On June 25, 1990, the Corps and DGC signed a Letter of Agreement (LOA)<sup>14</sup> that provides guidance and establishes procedures for ensuring the consistency with the ACMP of quarry sites for Civil Works Projects administered by the Corps that are located within or affect the state's coastal zone. This LOA remains in effect and both agencies agree to follow the procedures contained therein.

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<sup>14</sup> The LOA is reprinted in Appendix D.

## **CHAPTER THREE: PERMITTING ACTIONS**

### **Conducted by the Regulatory Branch**

#### **I. Coastal Zone Management Act § 307(c)(3)**

An applicant for a federal license or permit required to conduct an activity affecting the natural resources or uses of the coastal zone must provide a certification that the proposed activity complies with and will be conducted in a manner consistent with the ACMP. See CZMA § 307(c), 16 U.S.C. § 1456(c). The statute then requires DGC to establish procedures for public notice and, where the state deems them necessary, to establish procedures for public hearings, and finally to notify the Corps that the state concurs with or objects to the applicant's certification. Once the state has actually or presumably concurred with the consistency certification, or the Secretary of Commerce has found the activity consistent with CZMA objectives or otherwise necessary in the interest of national security<sup>15</sup>, the Corps may grant the license or permit. See *Id.*

#### **II. Applicable Permits**

This agreement applies to the following permits and permit modifications.

1. Permits issued pursuant to Section 10 of the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. § 403, authorizing certain structures or work in or affecting navigable waters of the United States.
2. Permits issued pursuant to Section 4(f) of the Outer Continental Shelf (OCS) Lands Act, as amended, 43 U.S.C. § 1333(e), authorizing artificial islands or fixed structures on the OCS.
3. Permits issued pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. § 1413, authorizing the transportation of dredged material by vessel or other vehicle for the purpose of dumping the material in ocean waters at designated dumping sites.<sup>16</sup>

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<sup>15</sup> Instances when the Secretary of Commerce becomes involved in the consistency determination process are extremely rare.

<sup>16</sup> Section 103 permits for disposal of dredge spoils apply outside the territorial sea and are approved

4. Permits issued pursuant to Section 404 of the Clean Water Act (CWA), as amended, 33 U.S.C. § 1344, authorizing the discharge of dredged or fill material into waters of the United States at specific disposal sites (also subject to a state certificate of reasonable assurance, CWA § 401, 33 U.S.C. § 1341).

### **III. Corps Standard Permit Reviews**

#### **A. Document Distribution and Forwarding for Early Coordination**

The Corps will distribute the State's CPQ to potential applicants along with their permit applications. When the Corps receives an original CPQ, the Corps agrees to send the CPQ to DGC. Similarly, when DGC receives an original Corps permit application, DGC agrees to send it to the Corps. When possible, the Corps agrees to send the CPQ or notify DGC as early as possible so that start-up review packet preparation can begin. This early action will help ensure a timely start to the State's consistency review. Once the Corps has determined the application is complete, the Corps agrees to send a complete application package and a copy of the public notice to DGC.

#### **B. Public Notice**

1. When issuing a public notice for applications for permits listed in Chapter Three § II above, the Corps agrees to include a statement outlining the applicant's responsibility to certify that the project is consistent with the ACMP.
2. Within 15 days of receipt of a complete Corps permit application from the applicant, the Corps is required by federal law to issue a public notice advising the public of the proposed activity. The Corps agrees to mail a copy of the public notice, application, necessary information, and consistency certification to DGC. Upon request, the Corps agrees to send DGC a copy of the distribution list of those that received the public notice.
3. For projects within or affecting the natural resources or uses of the coastal zone, the Corps agrees to include in its public notice a statement that in accordance with federal law, the project must be reviewed for compliance with the ACMP, and that the state is also seeking comments from the

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by the Environmental Protection Agency. See 33 U.S.C. §§ 1402(b), 1413(c).



public. The following language or future amended language will address this requirement.

For newspaper public notices:

A request has been received by the Division of Governmental Coordination for a consistency determination, as provided in Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended [16 U.S.C. 1456(c)(3)].

Applicant:

Activity/Purpose:

Location:

The consistency determination is required because the applicant has applied for [identify Corp of Engineers application number and waterway]. The consistency certification is a statement of assurance that the federally permitted activity which will affect the coastal zone, will be conducted in a manner consistent with the enforceable policies and standards of the Alaska Coastal Management Program (ACMP).

The Division of Governmental Coordination requests your comments on the proposed project's consistency with the ACMP. Your comments are required to preserve your rights to file a petition under Alaska Statute 46.40.100 asking the Coastal Policy Council to review the development of a proposed consistency determination. For more information on the consistency review process, comment deadlines, and affected coastal district status, or to submit written comments, please contact the Division of Governmental Coordination, [select one: P.O. Box 110030, Juneau, AK 99811-0030, (907) 465-3562, 3601 C Street, Suite 370, Anchorage, AK 99503-5939, (907) 269-7470, or Joint Pipeline Office, 411 W. 4th Ave., Ste 2-C, Anchorage, AK 99501-2342 (907) 271-4317].

The State of Alaska, Division of Governmental Coordination, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids,

services, or special modifications to participate in this review may contact the numbers above.<sup>17</sup>

For public notices by letter:

Notice is hereby given that a request is being filed with the Division of Governmental Coordination for a consistency determination, as provided in Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended [16 U.S.C. 1456(c)(3)], that the project described in the Corps of Engineers Public Notice No. \_\_\_\_\_, will comply with the Alaska Coastal Management Program and that the project will be conducted in a manner consistent with that program.

The Division of Governmental Coordination requests your comments on the proposed project's consistency with the Alaska Coastal Management Program. Your comments are required to preserve your rights to file a petition under Alaska Statute 46.40.100 asking the Coastal Policy Council to review the development of a proposed consistency determination. For more information on the consistency review process, comment deadlines, and affected coastal district status, or to submit written comments, please contact the Division of Governmental Coordination at [select one: P.O. Box 110030, Juneau, AK 99811-0030, (907) 465-3562, 3601 C Street, Suite 370, Anchorage, AK 99503-5939, (907) 269-7470, or Joint Pipeline Office, 411 W. 4th Ave., Ste 2-C, Anchorage, AK 99501-2342 (907) 271-4317].

C. Granting a Permit

1. Pursuant to CZMA § 307(c)(3), the Corps agrees to not issue a permit until:
  - a. DGC concurs with the applicant's certification; or

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<sup>17</sup> The public notice may also include the notice requirements of the Department of Environmental Conservation for issuing a certification of reasonable assurance under the Clean Water Act § 401.

- b. the state's concurrence is conclusively presumed by the Corps in accordance with 33 CFR § 325.2 (b)(2)(ii)<sup>18</sup>; or
  - c. the Secretary of Commerce on his own initiative or on appeal by the applicant, finds the activity is consistent with the objectives of the CZMA or is necessary in the interest of national security.
2. Provisional Permits: Under certain conditions<sup>19</sup>, the Corps may issue an applicant a provisional permit per guidance in Corps Regulatory Guidance Letter # 93-1. Before transmitting a provisional permit, the Corps agrees to contact DGC to verify the status of the state consistency review. The

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<sup>18</sup> 33 CFR § 325.2 (b)(2)(ii) provides for the Corps to presume concurrence if DGC fails to concur or object within six months of DGC's receipt of the certification statement. However, mutually agreed to language in the Coastal Project Questionnaire Certification Statement states that "This certification statement will not be complete until all required State and federal authorization requests have been submitted to the appropriate agencies." As such, if DGC receives an incomplete application, they will notify the Corps as soon as possible (normally within two weeks). The Corps and DGC will work together, when appropriate, to obtain a complete application/certification. Examples of when it may not be appropriate to work together include: property disputes involving ADNR lease applications, untimely notifications, associated operational licenses or certifications such as FAA, FERC, NASA, USCG Spill Prevention and Containment Plans, and actions/activities considered by the Corps to be too remotely associated with the Corps application. If circumstances require the state consistency review to take longer than six months, DGC will send a letter to the Corps objecting to the certification statement with the reasons for the objection.

<sup>19</sup> See also section § VIII B, page 28, on the use of Provisional Permits during resolution of a consistency dispute.

Corps also agrees to send a copy of the provisional permit transmittal letter to DGC. During the state consistency review, DGC agrees to notify the Corps of any time extension.

#### **IV. State Consistency Review Procedure**

##### **A. Start-up for State Consistency Review**

1. The first day of the State of Alaska's consistency review begins when a public notice for the project has been issued and DGC has received the following from the applicant:
  - a. a completed CPQ, including a Coastal Project Consistency Certification;
  - b. copies of all necessary state permit applications and supporting material;
  - c. copies of all necessary federal permit applications and supporting material;
  - d. necessary data and information including but not limited to:
    - (i) a detailed description of the proposed activity and its associated facilities that is adequate to permit an assessment of the probable coastal zone effects;
    - (ii) maps, diagrams, technical data and other relevant material to supplement a written description; and
    - (iii) a brief assessment evaluating the project for consistency with the enforceable policies of the ACMP. See 15 CFR §§ 930.58 and 930.60.

DGC will notify the Corps if any of the above items are not received.

2. The state agrees to notify the Corps of the state's review schedule and deadlines. DGC and the Corps agree to consult on a proposed activity which has a substantial environmental impact, is considered controversial, is an emergency as defined in 33 CFR § 325.2(e)(4) and discussed in 6 AAC 50.090, or raises other unusual circumstances that may warrant an altered review schedule.

3. The schedule for the state consistency review will be determined on a case-by-case basis, contingent on the need for other state permits, federal permits, or the need for a broader public notice as required under AS 46.40.096(c). Most consistency reviews require public notice which results in a 50-day review schedule.
4. Pursuant to 15 CFR §930.63(a), the state has up to six months after start-up of the state consistency review to notify the Corps whether the state concurs with or objects to the consistency certification. If the state does not object within six months, concurrence shall be presumed.

The start-up date for the Corps review process and the state consistency review process may not always coincide due to different requirements for a complete application packet. Since Corps and state review start-up times may differ, the Corps will notify DGC when it intends to conclusively presume concurrence. DGC agrees to keep the Corps informed of a project's review status and will make every effort to obtain a complete packet and initiate review start-up in a timely manner.

B. State Response

1. DGC agrees to render the State of Alaska's consistency determination according to the time frames specified in 6 AAC 50, as amended. The consistency determination may be a concurrence with a project, concurrence with stipulations<sup>20</sup>, or objection to a consistency certification. DGC may lengthen its review schedule as necessary for extensions as outlined in 6 AAC 50.110.<sup>21</sup>
2. The state may also need to extend the review schedule for petitions. AS 46.40.096 (e)(1) and (g) and AS 46.40.100(b) allows an affected coastal resource district, a state agency, the project applicant, or a citizen of an affected coastal resource district to file a petition with the Alaska Coastal Policy Council showing that a district coastal management program is not being implemented, enforced, or complied with. AS 46.40.100(b)(1) outlines the procedure the Alaska Coastal Policy Council will follow to

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<sup>20</sup> If DGC concurs the project is consistent with stipulations, this action does not obligate the Corps to carry the stipulations on their authorization.

<sup>21</sup> Extension of the State review schedule by DGC does not change the federal regulatory time of six months for conclusive presumption of state concurrence. See 15 CFR 930.63(a).

determine whether DGC has fairly considered public comments in developing its proposed consistency determination.

C. Public Hearings

If DGC and the Corps decide to hold a public hearing on a proposed activity, they will hold a joint hearing when practicable. DGC and the Corps agree to share equally the common costs of a joint hearing.

V. **Letters of Permission (LOP)**

A. The Corps may conduct a 15-day comment period for certain new projects that require a Section 10 permit which the Corps determines are "minor" in nature, will not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. See 33 CFR 325.2(e)(1)(i).

B. At present, the State of Alaska does not have the discretion to conduct anything other than 30- or 50-day reviews.<sup>22</sup> Accordingly, DGC and the Corps agree that to ensure the consistency review begins promptly, the Corps transmittal to the state should include the information described in § IVA.(excluding the public notice), and a cover letter containing the Corps' determination. DGC agrees to conduct its consistency review pursuant to § IV.A. Pursuant to 15 CFR § 930.63(c), if the state finds the project consistent, or if consistency is presumed in accordance with 15 CFR § 930.63, the Corps may approve the letter of permission.

VI. **Modifications**

A. When the Corps receives a proposal for a modification to a previously reviewed and approved project or an applicable permit (See page 17, § II.), the Corps agrees to notify DGC of its determination of the significance of the proposed modification. Except for an In-house Approval as described in Chapter Three § VI.B.3. below, the State of Alaska agrees to review a modification according to procedures in 6 AAC 50, as amended.

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<sup>22</sup> These review times may change when DGC revises the applicable regulations.

To ensure the consistency review begins promptly for a modification where the Corps is soliciting comments from state and federal agencies and affected coastal districts, the Corps' transmittal<sup>23</sup> to the state will include:

1. a completed CPQ, including a Coastal Project Consistency Certification;
  2. other necessary supporting information (i.e. plans, narrative, etc.); and
  3. a Corps cover letter containing the basis for the Corps' determination.
- B. The Corps agrees to process a modification by one of the following procedures:
1. Corps Public Notice: If the Corps determines that a proposed modification is such that a public notice is warranted, the Corps agrees to issue a public notice with either a 15- or 30-day comment period.
    - a. DGC agrees to conduct a 50-day review for:
      - (i) 30-day Corps public notices; and
      - (ii) 15-day Corps public notices with an associated 30-day public notice period for a 401 certification.
      - (iii) other permits which require a 50-day review period.
    - b. DGC agrees to conduct a 30-day review for a Corps 15-day public notice if there are no state or federal permits which require a 50-day review.

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<sup>23</sup> The information requirements for an In-house Approval in Section B. 3 are different than those noted here.

2. Corps Comment Letter: The Corps agrees to issue a 15-day comment letter to DGC and other parties pursuant to the Fish and Wildlife Coordination Act<sup>24</sup> if the Corps determines the modification to a previous authorization is not substantial enough to warrant a full public interest review. The Corps agrees that the comment letter will contain the Corps' determination. The state agrees to determine whether the modification is significant enough to warrant consistency review and if other state or federal authorizations are required which are subject to ACMP review. This determination may be based upon consultation with appropriate state agencies and coastal districts. If a consistency review is required, DGC will inform the Corps, issue a public notice, and conduct a 30-day consistency review (if a 50-day review is not needed), and notify the Corps of the consistency determination.
3. In-house Approval: The Corps can only issue an in-house approval for modifications to projects that have previously been authorized.
  - a. The Corps agrees to issue an In-house Approval only

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Notification is sent to the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Alaska Department of Fish and Game. See 16 U.S.C. §§ 661-666c; 33 C.F.R. § 320(e) (1996).



- i. if the Corps informally determines the effects of the modification are minor and will not affect coastal resources<sup>25</sup>; and
  - ii. if the Corps notifies the applicants of their responsibility to acquire other necessary federal, state, and local government authorizations before proceeding.
- b. The Corps agrees to send a copy of an In-house Approval for modification to DGC (who will send it to the affected coastal district), and the appropriate offices of the Departments of Environmental Conservation, Fish and Game, and Natural Resources. The state will determine whether the modification needs state review or if additional State permits or public notice are required for state approvals.
- c. Upon receipt of an In-house Approval, DGC agrees to consult with appropriate state agencies and coastal districts to determine whether the state concurs that the effects of the modification are not significant enough to warrant review and if other state or federal authorizations are required which are subject to ACMP review. DGC will notify the Corps on actions where they initiate further review. DGC will also notify the Corps if additional conditions are added to the State consistency finding or the 401 water quality certification.

## **VII. General or Nationwide Permits**

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<sup>25</sup> 15 CFR § 930.51 defines "Federal license or permit." The term includes major amendments of Federal license and permit activities not previously reviewed by the State, major amendments previously reviewed by the State which are filed after and are subject to management program amendments not in existence at the time of original State review, and major amendments previously reviewed by the State which will cause coastal zone effects substantially different than those originally reviewed by the State.

- A. When the Corps proposes issuing a general or nationwide permit (GP or NWP) for an activity which affects land or water uses or natural resources of the State of Alaska's coastal zone, the Corps agrees to issue a consistency determination.<sup>26</sup> The state will either concur, request that alternative measures (Regional Conditions) be attached to the GP or NWP, or disagree with the Corps' consistency determination. If the state requests alternative measures, mutually agreeable conditions may be incorporated to resolve concerns or objections.
1. If the state disagrees with the Corps consistency determination, the Corps may deny, without prejudice, authorization for the activities that affect the state's coastal zone. The permit is denied until the permittee:
    - a. furnishes the Corps with an individual consistency certification pursuant to CZMA §307(c)(3) and a Section 401 water quality certification or waiver; and
    - b. demonstrates that the state has concurred in the consistency certification; or
    - c. demonstrates that concurrence should be presumed based on the state's failure to act within six months after receipt of the permittee's consistency certification by the state.
  2. If the GP or NWP is found consistent, DGC agrees to place the activity covered under the permit on Section II of the General Concurrence list of the Classification of State Agency Approvals (the "ABC" list), the next time the list is revised. See 6 AAC 50.050.
- B. After consulting with state agencies and coastal districts, DGC agrees to furnish the Corps with a list, in the consistency determination, denoting the nationwide permits requiring a pre-construction notification (PCN) for which they wish to participate in the review process. The Corps and DGC agree to follow the PCN procedures contained in 33 CFR § 330 for nationwide permits requiring a PCN, as modified by any agreed upon Regional Conditions, and for which the State of Alaska has requested to participate in a PCN review. In addition, the State will notify the Corps of any additional nationwide permits where they believe a PCN

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<sup>26</sup> The consistency determination may be included in the public notice as described in Chapter Three § III. B, Public Notice.

is appropriate and, if mutually agreeable, these nationwide permits will also be subject to the same PCN procedures.

- C. Generally, no Corps permit application is required from an applicant who conducts his project under the authorization of a nationwide permit. However, applicants frequently request verification from the Corps that their proposed work is authorized by a nationwide permit. In cases where the Corps verifies that an applicant's project is authorized by a nationwide permit, the Corps agrees to remind the applicant that although a state consistency determination has been issued for the nationwide permit, there may be other state or local authorizations necessary before work can begin. For nationwide permits denied without prejudice, the Corps agrees to remind the applicant to submit a CPQ to DGC in order to obtain the required consistency review.

### **VIII. Resolution of a Consistency Dispute**

#### **A. DGC Objection to Applicant's Consistency Certification**

1. If DGC objects to an applicant's consistency certification, DGC agrees to notify the applicant and the Corps of the objection.
2. DGC agrees to explain how the project could become consistent with specific enforceable standards and policies of the ACMP and describe stipulations, if any, that would allow the project to proceed in a manner consistent with the program.
3. If DGC's objection is based on a lack of sufficient information, DGC agrees to notify the applicant of the information needed to make a final decision on the consistency certification. See Chapter Three § IV.A.1., supra, Startup for State Consistency Review and § IV.B.2, State Response.
4. If a disagreement between DGC and the applicant regarding the consistency certification continues, an attempt will be made to reach an agreement through informal discussions with the applicant and other state review parties. See also, Chapter Three § III C., supra, Granting a Permit and § IV.B.2, State Response.
5. DGC agrees to notify the applicant of appeal rights under AS 46.40.100, 6 AAC 50.070(j)-(k), and 6 AAC 50.110(b)(7) at the time DGC objects to the applicant's consistency certification. See also, Chapter Three § IV.B.2, State Response.

B. Corps Response

1. Although the Corps may issue a provisional permit<sup>27</sup> to an applicant for an activity for which an applicant has not received the State of Alaska's final consistency concurrence, the Corps agrees not to issue final authorization for the proposed work until the state's consistency concurrence has been granted or presumed. If the state finds the project inconsistent with the ACMP, and notifies the Corps, the Corps agrees to deny the permit's authorization without prejudice.
2. Pursuant to 15 CFR § 930 (Subpart H), an activity which is inconsistent with the ACMP may be approved if the Secretary of Commerce finds the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security.

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A provisional permit is a notification to an applicant that Corps requirements have been met and the Corps is ready to issue its authorization when the ACMP consistency review is completed. The provisional permit is not an authorization for work.

## APPENDIX A

### I. CZMA Statutory Language and Implementing Regulations

This list includes excerpts from the federal statute and regulations<sup>28</sup> applicable to federal activities and federally permitted activities.

#### A. Federal Activities

##### 1. Coastal Zone Management Act § 307(c)(1) and (c)(2), regarding federal activities:

**(c)(1)(A):** Each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

**(c)(2):** Any federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved State management programs.

##### 2. Federal CZMA Implementing Regulations Regarding Federal Activities:

**15 CFR § 930.31(a):** The term “federal activity” means any functions performed by or on behalf of a federal agency in exercise of its statutory responsibility.

**15 CFR § 930.31(b):** A federal development project is a federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

**15 CFR § 930.33(b):** Federal agencies shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to federal agency review to determine whether they directly affect the coastal zone.

**15 CFR § 930.34(b):** Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of

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<sup>28</sup> The federal regulations may conflict with the Coastal Zone Management Act because the CZMA was substantially amended when it was reauthorized in 1990. The regulations, however, have not been updated. Where the regulations conflict with the statute, they are superseded by the statute.

sufficient information to determine reasonably the consistency of the activity with the State's management program, but before the federal agency reaches a significant point of decision making in its review process. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal activity unless both the federal agency and the State agency agree to an alternative notification schedule.

**15 CFR § 930.41:**

(a) A State agency shall inform the federal agency of its agreement or disagreement with the federal agency's consistency determination at the earliest practicable time. If a final response has not been developed and issued within 45 days from receipt of the federal agency notification, the State agency should at that time inform the federal agency of the status of the matter and the basis for further delay. The federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the federal agency notification.

(b) State agency agreement shall not be presumed in cases where the State agency, with the 45 day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final federal agency action may not be taken sooner than 90 days from the issuance of the consistency determination to the State agency unless both the federal agency and the State agency agree to an alternative period. (see § 930.34(b)).

**15 CFR § 930.42(b):** If the State agency's disagreement is based upon a finding that the agency has failed to supply sufficient information (see § 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the federal activity with the management program.

**B. Federally Permitted Activities**

**1. Coastal Zone Management Act § 307(c)(3)(A), Regarding Federally Permitted Activities**

After final approval by the Secretary of a state's management program, any applicant for a required federal permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program

and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data.

Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith.

At the earliest practicable time, the state or its designated agency shall notify the federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed.

No license or permit shall be granted by the federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

## **2. Federal CZMA Implementing Regulations Regarding Federally Permitted Activities**

### **15 CFR § 930.58:**

**(a)** The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

- (1) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. Maps, diagrams, technical data and other relevant material must be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the federal agency should also be submitted to the State agency).
- (2) Information required by the State agency pursuant to § 930.58(b).
- (3) A brief assessment relating the probable coastal zone effects of the proposal and its associated effects of the proposal and its associated facilities to the relevant elements of the management program.

(4) A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air, water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the applicant shall give appropriate weight to the various types of provisions within the management program. While applicants must be consistent with the enforceable, mandatory policies of the management program, they need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal zone effects for which the management program does not contain mandatory or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by subparagraphs (a) (1) and (2) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by (a)(3) and (4) of this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

**15 CFR § 930.60:**

(a) Except as provided in § 930.54(e), State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

**II. Corps of Engineers Regulations**

**A. 33 CFR § 330.4(d): Coastal zone management consistency determination.**

(1) Section 307(c)(1) of the Coastal Zone Management Act (CZMA) requires the Corps to provide a consistency determination and receive state agreement prior to the issuance, reissuance, or expansion of activities authorized by an NWP that authorizes activities within a state with a federally-approved Coastal Management Program when activities that would occur within, or outside, that state's coastal zone will affect land or water uses or natural resources of the state's coastal zone.



(2) If, prior to the issuance, reissuance, or expansion of activities authorized by an NWP, a state indicates that additional conditions are necessary for the state to agree with the Corps consistency determination, the division engineer will make such conditions regional conditions for the NWP in that state, unless he determines that the conditions do not comply with the provisions of 33 CFR 325.4 or believes for some other specific reason it would be inappropriate to include the conditions. In this case, the state's failure to agree with the Corps consistency determination without the conditions will be considered to be a disagreement with the Corps consistency determination.

(3) When a state has disagreed with the Corps consistency determination, authorization for all such activities occurring within or outside the state's coastal zone that affect land or water uses or natural resources of the state's coastal zone is denied without prejudice until the prospective permittee furnishes the DE an individual consistency certification pursuant to section 307(c)(3) of the CZMA and demonstrates that the state has concurred in it (either on an individual or generic basis), or that concurrence should be presumed (see paragraph (d)(6) of this section).

(6) In instances where a state has disagreed with the Corps consistency determination for activities under a particular NWP, permittees must furnish the DE with an individual consistency concurrence or a copy of the consistency certification provided to the state for concurrence. If a state fails to act on a permittee's consistency certification within six months after receipt by the state, concurrence will be presumed. Upon receipt of an individual consistency concurrence or upon presumed consistency, the proposed work is authorized if it complies with all terms and conditions of the NWP. For NWPs requiring a 30-day pre-discharge notification the DE will immediately begin, and may complete, his review prior to the state action on the individual consistency certification. If a state indicates that individual conditions are necessary for consistency with the state's federally-approved coastal management program for that individual activity, the DE will include those conditions as activity-specific conditions of the NWP unless he determines that such conditions do not comply with the provisions of 33 CFR 325.4. In the latter case the DE will consider the conditioned concurrence as a nonconcurrence unless the permittee chooses to comply voluntarily with all the conditions in the conditioned concurrence.

(8) Federal activities must be consistent with a state's federally-approved coastal management program to the maximum extent practicable. Federal agencies should follow their own procedures and the Department of Commerce regulations appearing at 15 CFR part 930 to meet the requirements of the CZMA. Therefore, the provisions of 33 CFR 330.4(d)(1)-(7) do not apply to federal activities. Indian tribes doing work on Indian Reservation lands shall be treated in the same manner as Federal applicants.

- B. **33 CFR § 325.2(b)(2):** If the proposed activity is to be undertaken in a State operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management Act (see 33 CFR 320.3(b)), the district engineer shall proceed as follows.

(ii) If the applicant is not a federal agency and the application involves an activity affecting the coastal zone, the district engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. Upon receipt of the certification, the district engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the state coastal zone agency and request its concurrence or objection. If the state agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the district engineer shall not issue the permit until the state concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the Coastal Zone Management Act or is necessary in the interest of national security. If the state agency fails to concur or object to a certification statement within six months of the state agency's receipt of the certification statement, state agency concurrence with the certification statement shall be conclusively presumed. District engineers will seek agreements with state CZM agencies that the agencies failure to provide comment during the public notice comment period will be considered a concurrence with the certification or waiver of the right to concur or non-concur.

- C. **33 CFR § 325.2(e)(1): Letters of Permission.** Letters of permission are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. The letter of permission will not be used to authorize the transportation of dredged material for the purpose of dumping in ocean waters. Letters of permission may be used: (i) In those cases subject to section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. (ii) In those cases subject to section 404 of the Clean Water Act after: (A) The district engineer, through consultation with Federal and state fish and wildlife agencies, the Regional Administrator, Environmental Protection Agency, the state water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures; (B) The district engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public

hearing; and (C) A 401 certification has been issued or waived and, if appropriate, CZM consistency concurrence obtained or presumed either on a generic or individual basis.

- D. **33 CFR § 325.2(e)(4): Emergency procedures.** Division engineers are authorized to approve special processing procedures in emergency situations. An "emergency" is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. In emergency situations, the district engineer will explain the circumstances and recommend special procedures to the division engineer who will instruct the district engineer as to further processing of the application. Even in an emergency situation, reasonable efforts will be made to receive comments from interested federal, state, and local agencies and the affected public. Also, notice of any special procedures authorized and their rationale is to be appropriately published as soon as practicable.

### **III. State Statutes and Regulations**

This list includes, in part, the State of Alaska statutes and regulations applicable to the consistency review of federal activities and federally permitted activities.

#### **A. ACMP Statutes**

1. **AS 46.40.096(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.
2. **AS 46.40.096(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 . . .

3. **AS 46.40.096(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).

4. **AS 46.40.100(b)(1):** 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 46.096(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;

**B. ACMP Regulations**

1. **6 AAC 50.050:** Expedited Review By Categorical Approval and General Concurrence Determinations.
  - (a) The consistency review of a project will be expedited as provided in (b) or (c) of this section if the project meets the requirements of one of those subsections.
  - (b) A project which requires one or more state or federal permits, each of which appears on the list published under (e) of this section listing permits which have been categorically approved by DGC as being consistent with the ACMP, is considered to have been conclusively determined by DGC to be consistent with the ACMP. A permit will be categorically approved if DGC determines that the activity authorized by the permit will have no significant impact in the coastal zone.
  - (c) A project which requires one or more state or federal permits not categorically approved as provided in (b) of this section will be considered consistent without further review, if it meets the requirements of a general concurrence determination contained on the list published under (e) of this section. A "general concurrence determination" is a consistency determination for a type of project which includes only routine activities, and which can be effectively made consistent with the ACMP by imposing standard stipulations on the applicable permit. If a subsequent project of any applicant fits the description in a general concurrence determination, the project will be considered consistent with the ACMP if it complies with the stated standard stipulations.

- (d) A project which requires one or more state or federal permits, and which is not within the categories described in (b) or (c) of this section, is subject to review as an individual project as provided in this chapter.
  - (e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations, and will identify on each list those permits or projects for which a coastal project questionnaire is not necessary. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including cumulative impacts. Before publishing or amending these lists, DGC will distribute the proposed lists or amendments for comment in the manner provided in 6 AAC 50.070 for a project consistency review.
2. **6 AAC 50.070(j):** If a resource agency, an affected coastal resource district with an approved program, or the applicant does not concur with the proposed consistency determination, it may request elevation of the review by submitting a written statement which describes its concerns and includes a proposed alternative consistency determination which would meet its concerns. That party shall distribute this statement so that all review participants, the applicant, other commenting parties, and DGC will receive a copy on or before Day 49, or Day 29 in a 30-day review period, or within five days after receiving notice of the proposed determination, whichever is later. This requirement may be satisfied by transmitting the substance by telephone or other telecommunication device and sending written confirmation to all parties by mail or courier on or before the deadline under this subsection.

#### **IV. Definitions and Clarifications**

**Coastal Resource District:** As defined in AS 46.40.210 (2). Includes unified municipalities, organized boroughs, home rule and first class cities, and second class cities all which have planning and zoning powers. In addition, coastal resource service areas (CRSA) established under AS 29.03.020 and AS 46.40.110-180.

**Coastal District Enforceable Policies:** Each approved district program must include the policies that will be applied to land and water uses and activities subject to the district program, and the process which will be used to determine whether specific land and water uses and activities will be allowed. These policies are enforceable, so as to insure implementation of and adherence to the district program. All policies or enforceable rules of the district program must be clearly identified and located in a single section of the program document. The identified

policies or enforceable rules will provide the basis for all determinations of consistency with the approved district program. 6 AAC 85.090.

**Emergency:** A situation which would result in an unacceptable hazard to life, a significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. 33 CFR § 325.2(e)(4). Where an emergency necessitates an expedited agency review, the head of DGC may modify the review process as necessary to meet the emergency and as authorized in 6 AAC 50. Any modifications must be made in writing by the head of DGC, based upon clear and convincing evidence of a need for the modification. 6 AAC 50.090.

**Federal Activity:** Any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities. 15 CFR § 930.31(a). The term does not include the issuance of a federal license or permit to a non-federal applicant or the granting of federal assistance to an applicant agency. 15 CFR § 930.31(c).

**Federal Consistency Determination:** A brief statement of whether the proposed activity will comply with the management program "to the maximum extent practicable." The consistency determination should include a description of the project, associated facilities and effects, and any other necessary supplemental information such as design drawings or copies of permit application. 15 CFR § 930.39(a).

**Federal Development Project:** A federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources. Federal agencies shall consider all development projects within the coastal zone to be activities affecting the coastal zone. 15 CFR § 930.31(b).

**Federal License or Permit:** Issuance of a federal license or permit to an applicant or permit or the granting of federal assistance to an applicant agency does not constitute a federal Activity. 15 CFR § 930.31(c). The term also includes permit renewals and modifications. 15 CFR § 930.51.

**Negative Determination:** The negative determination procedures apply where the Corps decides that its activity will not affect the coastal zone. 15 CFR §§ 930.35(d) and 930.36.

**State Permit Consistency Determination:** DGC coordinates the review of projects which require the permits of two or more state agencies or a federal permit. 6 AAC 50.030.

**APPENDIX B**

Attached are:

- 1) a copy of H.R. REP. NO. 964, 101st Cong., 2nd Sess. (1990), reauthorizing the Coastal Zone Management Act, and
- 2) a copy of the Letter of Agreement (LOA) of June 25, 1990, between the Corps and DGC regarding Quarry Site Evaluation



**H.R. REP. NO. 964**

**Letter of Agreement  
Quarry Site Evaluation**

**MEMORANDUM OF UNDERSTANDING**

**between the**

**State of Alaska**

**and**

**USDA Forest Service, Alaska Region**

**on**

**Coastal Zone Management Act/  
Alaska Coastal Management Program**

**Consistency Reviews**



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**MEMORANDUM OF UNDERSTANDING**  
**between the**  
**State of Alaska**  
**and**  
**USDA Forest Service, Alaska Region**  
**on**  
**Coastal Zone Management Act/ Alaska Coastal Management Program**  
**Consistency Reviews**

**TITLE I -- INTRODUCTION**

**Section 101. Purpose**

A. This MOU is entered into solely for the purposes stated below and is not a contract or other agreement with obligations enforceable at law, and no third-party beneficiary rights are created. Accordingly, this MOU shall not be evidence, cited or otherwise relied on in any administrative adjudication or judicial proceeding.

B. This Memorandum of Understanding (MOU) serves the following purposes:

1. Improve cooperation, coordination, and communication between the Alaska Division of Governmental Coordination (DGC) and the Alaska Region of the USDA Forest Service (FS).
2. Describe the process both agencies will follow in making and reviewing consistency determinations for FS initiated "Federal Agency" activities.
3. Describe the process both agencies will follow to synchronize consistency reviews with the process used by the FS to analyze and display the environmental effects of its activities and development projects under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4346) and its implementing regulations (40 CFR 1500-1508).
4. Describe the process both agencies will follow for review of applicant-initiated activities that affect the coastal zone of Alaska and require FS permits.
5. Define the types or categories of FS activities that will not require an individual Alaska Coastal Management Program (ACMP) consistency determination.
6. Facilitate, refine, simplify, and expedite State review of Federal activities, development projects, and permitted activities on National Forest System lands.
7. Facilitate, refine, simplify, and expedite resolution of disagreements over FS consistency determinations.

**Section 102. Authority**

The authority to enter into this MOU is based on Executive Order 12372. Additional authority is found at section 319 of the Clean Water Act and in the "Alaska Nonpoint Source Pollution Control Strategy."

### **Section 103. Boundaries of the Coastal Zone**

A. The boundaries of the "Coastal Zone" are identified in the Federally approved ACMP. Boundary maps are available from DGC.

B. Excluded lands (15 CFR Part 923.33)

Lands, the use of which is by law subject solely to the discretion of, or which is held in trust by, the Federal government -- In the context of this MOU, FS lands -- are excluded from the coastal zone. The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the CZMA when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a State's management program.<sup>1</sup>

### **Section 104. Coordination of Changes in District Coastal Management Plans and the ACMP**

DGC will ensure that the FS has an opportunity to provide comments on any proposed modification to the ACMP that may affect the FS under this MOU, including proposed changes to district coastal management plans, the "Classification of State Agency Approvals", known as the "ABC" list, regulatory changes, and changes in standards of review. Notice of such changes and associated comment schedules will be provided to the Regional Forester.

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<sup>1</sup> See CZMA Section 304 (1), 16 U.S.C. 1453.(1)



## TITLE II -- FEDERAL AGENCY ACTIVITIES

### Section 201. Applicable Federal Law

#### A. Coastal Zone Management Act Section 307(c)(1) and (c)(2)

*(c)(1)(A): Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.*

*(c)(2): Any Federal agency which shall undertake any development project in the coastal zone of a State shall insure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved State management programs.*

#### B. Clean Water Act Section 319(k) (In Part)

"...each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.<sup>2</sup>"

#### C. Executive Order 12372 (In Part)

"2. ...Federal agencies shall, to the extent permitted by law:

*(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.*

*(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner. "*

### Section 202. Applicable FS Activities

#### Definition of "Federal Activity"

The term *Federal Activity* does not include the issuance of a Federal license or permit to an applicant or person or the granting of Federal assistance to an applicant agency. Such activities are addressed in Title III of this MOU.

This Section of the MOU applies to FS activities and development projects as defined by 15 CFR 930.31:

(a) The term *Federal Activity* means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities.

(b) A Federal development project is a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

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<sup>2</sup> The State's nonpoint source pollution management program is established and described by the Alaska Nonpoint Source Pollution Control Strategy. This Strategy includes policies and procedures for the conduct of S319 Federal consistency reviews.

**B. Guidelines For Determining Whether Proposed FS Activities Require a Consistency Determination**

1. DGC and the FS recognize that the activities listed below, which may affect the coastal zone, will normally be considered to require a consistency determination:

- a. Proposed timber sales (including harvest units and associated roads, logging camps, and other planned facilities) requiring an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).
- b. Activities such as construction and reconstruction of roads, administrative sites, fish passes, and large-scale campgrounds, trails, recreation sites and facilities that require an EA or an EIS.

2. Pursuant to 15 CFR 930.35(c), the listing of activities under this section does not eliminate the FS' responsibility to provide consistency determinations for development projects in the coastal zone and other Federal activities that affect the coastal zone.

3. Negative Determinations: Pursuant to 15 CFR 930.35(d), the FS will provide a negative determination to DGC if the FS determines an activity listed in subsection 202 (B) (1) does not affect the coastal zone. The FS will provide a brief description of the project and the reasons it will not affect the coastal zone. Disagreements between the FS and DGC about a FS negative determination may be resolved using the methods outlined in Section 208.

**C. Guidelines for, and Examples of, FS Activities That Do Not Normally Require A Consistency Determination**

For the purposes of this MOU only, DGC and the FS recognize that the activities that do not normally require documentation in an EA or EIS (e.g. Categorical Exclusions) are "de minimus", normally do not affect the coastal zone and therefore normally do not require a consistency determination. This does not relieve the FS of the responsibility to determine whether there are affects to the coastal zone.

Examples include, but are not limited to, the following:

1. Closure orders issued pursuant to 36 CFR 261 - to provide resource protection or to protect public health and safety.
2. Reconstruction or maintenance (i.e. to return a site to its original design level) of:
  - a. Administrative sites.
  - b. Roads, trails, and landline boundaries.
  - c. Recreation sites and facilities.
3. Acquisition of land or interest in land.
4. Minor construction and reconstruction of trails, recreation sites and facilities.
5. Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides, or result in vegetation type conversion.
6. Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or road construction.

7. Reconstruction or maintenance activities for stream or lake aquatic habitat or fish improvement structures that do not involve coordination under the *Supplemental MOU 1 between the Alaska Department of Fish and Game and the USDA Forest Service, Alaska Region Regarding Fish Habitat and Passage* (FS-DFG Title 16 MOU.)

8. Construction and reconstruction of small, temporary field camps.

9. Construction, reconstruction, operations, or maintenance of administrative sites located on NFS lands within areas that are subject to local zoning regulations.

10. Timber sales of small volumes<sup>3</sup> and without extraordinary circumstances<sup>4</sup> that:

- a. are not primarily located in beach fringe, riparian buffers, or old growth reserves, and
- b. remove 250,000 board feet or less of merchantable wood products; or
- c. for merchantable salvage<sup>5</sup> wood products:
  - i. on the Tongass, remove 1,000,000 board feet or less;
  - ii. on the Chugach, remove 40 acres or less that do not include timber lands within 90 meters of anadromous and high value resident fish waters<sup>6</sup>.

11. Regeneration of harvested or salvaged areas, where required.

12. Other minor activities, such as aircraft landings, shore ties, etc.

#### D. Activities That Do Not Require an Individual Consistency Determination

1. Pursuant to 15 CFR 930.37(b) the FS may develop a "general" consistency determination for a class of substantially similar, repetitive, or periodic actions other than a development project. The State will then initiate a general consistency review for the class of actions. The FS must thereafter periodically consult with the State.

2. All activities that are found to be generally consistent will be listed on Attachment 4 to this MOU. As of the effective date of this MOU, no activities have been found generally consistent. Attachment 4 will be updated as needed.

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<sup>3</sup> See also the "A-List" Department of Natural Resources Division of Forestry section of the *Classification of State Agency Approvals* published by DGC.

<sup>4</sup> Forest Service Handbook FSH 1909.15 - ENVIRONMENTAL POLICY AND PROCEDURES HANDBOOK WO AMENDMENT 1909.15-92-1 EFFECTIVE 9/21/92 CHAPTER 30.3 - Policy.

2. Extraordinary circumstances include, but are not limited to, the presence of the following:

- a. Steep slopes or highly erosive soils.
- b. Threatened and endangered species or their critical habitat.
- c. Flood plains, wetlands, or municipal watersheds.
- d. Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas.
- e. Inventoried roadless areas.
- f. Research Natural Areas.
- g. Native American religious or cultural sites, archaeological sites, or historic properties or areas.

30.5 - Definitions.

Extraordinary Circumstances. Conditions associated with a normally excluded action that are identified during scoping as potentially having effects which may significantly affect the environment (sec. 05).

<sup>5</sup> *Salvage harvest*: Shall be defined by the applicable Forest Plan.

<sup>6</sup> "ABC List" at A-list P. 8

E. State Tracking of FS Activities (includes SOPA)

1. Each FS Responsible Official will review all FS projects or activities for which the official is responsible on a quarterly basis to determine whether new information about an individual activity indicates an activity may affect any land or water use or natural resource of Alaska's coastal zone. FS responsible officials will use the following to help determine if an activity or project affects the coastal zone:

- a. The list of generally consistent activities found as Attachment 4 to this MOU.
- b. Consideration of applicable factors, including but not limited to whether:
  - i. The action causes a change in the manner in which land, water, or other coastal zone natural resources are used.
  - ii. The action causes a limitation on the range of uses of coastal zone natural resources.
  - iii. The action causes changes in the quality or quantity of coastal zone natural resources.
- c. Consideration of cumulative and secondary effects.

2. The procedure below specifies how the State will track FS activities:

- a. The Schedules of Proposed Actions (SOPA) (see Attachment 6) will be used by the State to monitor FS activities. Each Forest Supervisor shall provide to DGC and to each State resource agency a copy of the current Forest SOPA quarterly. Each SOPA will clearly indicate those proposed activities not previously listed in previous SOPAs. Each project will also be identified as either a 'Federal activity' or a 'Federal license or permit' (see section 202 A of this MOU for the definitions of these terms).
- b. For each project identified as a Federal activity, the SOPA will also classify the project as belonging to one of the following four categories:
  - i. The FS will provide the State with either a consistency determination or a negative determination (i.e., the project is listed as normally requiring a consistency determination in section 202 B of this MOU).
  - ii. The project is listed on Attachment 4 as categorically consistent (i.e., the FS will not provide either an individual consistency determination or negative determination).
  - iii. The FS does not expect to provide either a consistency determination or a negative determination (i.e., neither i nor ii apply, and the project is not expected to affect the coastal zone).
  - iv. The FS has not yet decided whether it intends to provide a consistency determination (i.e., i and ii do not apply and the FS has not yet determined whether the project will affect the coastal zone).
- c. DGC will notify the appropriate Forest Supervisor within 45 days of receipt of the SOPA if the State believes any activity listed as category iii or iv above does in fact require a consistency determination.
- d. After receipt of a request from DGC for a consistency determination under the preceding paragraph, the FS will either provide a consistency determination to DGC or, if the FS decides

that the activity does not affect the coastal zone, per 15 CFR 930.35(d) the FS will provide a negative determination to DGC at least 90 days before final approval of the activity.

e. If DGC disagrees with a FS negative determination, it will notify the FS within 30 days of receipt of the negative determination, or agreement will be presumed.

f. Disagreements between the FS and DGC about a FS negative determination may be resolved using any of the methods outlined in Section 208.

#### F. Emergency Actions

FS actions taken in an emergency will not require standard procedures for advance review for consistency with the ACMP. An "emergency" is a situation that would result in an unacceptable hazard to life, a significant loss of property, or immediate, unforeseen, and unacceptable resource damage if corrective action is not undertaken within a time period less than the normal time needed to complete CZMA review. Reasonable efforts will be made to receive comments from the State. Nothing in this section relieves the FS of responsibility to comply with the CZMA. The FS responsible official authorizing the action will ensure, if the action affects uses or resources within the coastal zone, that consultation with DGC is accomplished as soon as possible. Post-action review and analysis will be conducted if requested by DGC as a result of such consultation. Inadequate planning will not constitute an emergency.

### Section 203. FS Consistency Determination Procedure

#### A. Determination

If an activity or project affects the coastal zone, the FS will determine whether the activity is consistent to the maximum extent practicable with the enforceable policies of the ACMP.

The State and FS disagree over some aspects of the CZMA's application to FS activities. However, in order to achieve the purposes of this MOU, the FS will use the following references to help make this determination:

1. Alaska Forest Resources and Practices Act and Regulations - AS 41.17 & 11 AAC 95. These provisions apply as follows:

a. AS 41.17.900(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<sup>7</sup> with the Alaska coastal

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<sup>7</sup> "Consistent to the maximum extent practicable" is defined in 15 CFR Part 930.32. The term "consistent to the maximum extent practicable" describes the "requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program. *Coastal Zone Management Act Regulations 15 CFR 930.32 (a) (In Part)* Based on the CZMA and implementing regulations, there are three situations in which a Federal activity may deviate from full consistency with a State's approved coastal management program:

- (1) if existing Federal law prohibits an agency from full consistency ;
- (2) when circumstances arise after the approval of a State coastal

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.<sup>8</sup>; 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.

b. The State and FS recognize that AS 41.17.119 and AS 41.17.900 identify the relevant standards, but disagree over the further relevance of AS 41.17.118 for the 100'-300' portion of the riparian zone. The FS will, however, provide the State with the information specified in Attachment 1.

c. AS 41.17.900(b)(2)(B): If Federal timber harvest projects and plans include an associated activity that requires State or Federal permits or authorizations (e.g., construction or operation of a log transfer facility), the consistency determination for that associated activity is based on ACMP standards found at 6 AAC 80 and the enforceable policies of approved district coastal management plans of affected coastal districts.

2. ACMP Standards (6 AAC 80) and District Coastal Management Plan Enforceable Policies will be considered to be the applicable review standards for non-timber projects that are in or that affect the coastal zone (See Attachment 7).

3. Information generated through NEPA analysis (e.g., contained in an Environmental Impact Statement (EIS) or an Environmental Assessment (EA)).

4. Applicable FS plans, standards and guidelines.

5. State of Alaska Water Quality Standards.

6. Applicable MOU's - e.g. FS-DFG title 16 MOU.

7. The list of generally consistent activities found as Attachment 4 to this MOU.

#### B. Initiating ACMP Consistency Reviews

1. Content - A consistency determination will contain sufficient information to describe the expected activity and its coastal zone effects, and a detailed project description. FS consistency determinations will include:

a. A statement that the proposed activity will affect the coastal zone.

b. A statement indicating whether or not the proposed activity is consistent, to the maximum extent practicable, with the enforceable policies of the ACMP.

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management program which were unforeseen at the time of program approval and these circumstances present a "substantial obstacle" preventing "complete adherence" by the agency; or

(3) through a presidential exemption authorized by CZMA Section 307(c)(1)(B).

<sup>8</sup> Harvest of timber may not occur within 100 feet from the shore or bank of an anadromous or high value resident fish water body

c. A description of the project, associated facilities and coastal zone effects, and any other comprehensive data and information sufficient to support the FS consistency determination.

i. Section 205 and Attachment 1 of this MOU contain the information needed for timber harvest activities requiring an EIS or EA.

ii. Attachment 3 describes the information the FS will provide for other types of FS activities.

d. Any completed applications for required authorizations submitted to other Federal agencies and associated required State authorizations (e.g. Clean Water Act 402 or 404 permits and associated State CWA Sec. 401 certifications See Attachment 3.)

## 2. Timing

a. Consistency Determination - At that point in the NEPA process when the FS is ready to submit a detailed project description for formal CZM review, and can provide the information set forth in this MOU, the FS may provide the State with a consistency determination. The FS will provide an adequate consistency or negative determination, if required, to DGC as early as practicable in the project planning process, and no less than 90 days prior to final Federal approval.

i. For EIS's, the State and FS agree that the appropriate point in the process for a consistency determination is usually at the issuance of a DEIS.

ii. At the same time, the FS will provide a copy of the consistency determination to each State resource agency. A mailing list of State resource agency contacts to whom the NEPA and consistency correspondence should be sent is included in Attachment 2, which may be updated as needed by the State.

iii. After preparing responses to DEIS comments and prior to publishing a FEIS/ROD or, after the FEIS but before issuing the ROD, if the two are separate, the FS will transmit to the State a project clarification, at which point, the State per 15 CFR 930.41(b) will have up to 60 days to agree or disagree with the FS consistency determination (see Sec. 206).

iv. For EA's, see Sec. 207.

## Section 204. State Consistency Review Procedure

The State will use the following procedure for reviewing a consistency determination submitted to the State by the FS. DGC will coordinate the State's review of FS consistency determinations under procedures contained in Title 6, Alaska Administrative Code, Chapter 50, as amended, and 15 CFR 930.

### A. Review Schedule

#### 1. EIS's

- a. The State and FS will employ concurrent public comment periods for EIS/CZM reviews. The ACMP comment period will run within the NEPA comment period. The NEPA comment period will run for at least 45 days.
- b. Following the State public comment period, the State will respond to the FS with NEPA, and/or preliminary ACMP comments, per Section 206 (D) (3) of this MOU, within the NEPA public comment period.
- c. The State comment period may be extended if the FS extends the NEPA public comment period, in which case the review period will be extended for the duration of the extended NEPA public comment period.
- d. After consideration of all comments received on the DEIS and refinement of the preferred alternative, and prior to publishing a FEIS/ROD, the FS will describe any proposed changes to the DEIS Preferred Alternative in a document called the "Project Clarification" and provide the description to DGC and concurrently to the State resource agencies by hand delivery or certified mail. Refer to Attachment 1 for identified information that will be provided with the project clarification of a FS timber sale.
- e. Subsequent to receipt of the above, the State per 15 CFR 930.41(b) will have 60 days to agree or disagree with the FS consistency determination.
- f. This MOU constitutes a blanket request for, and approval of, an additional fifteen (15) days to the 45-day review timeline provided in 15 CFR 930.41(b).
- g. An extension for State review beyond the 60-day period specified above must be approved by the FS.

#### 2. EA's and other minor consistency reviews

- a. The State will conduct a 30-day review. The normal milestones for this type of review will be as follows:
  - i. The comment deadline will be at close of business on Day 17 of the review.
  - ii. The State will issue a proposed consistency response on Day 24 of the review.
  - iii. Absent a mutually agreed upon alternative schedule or an elevation, the State will conclude its review within 30 days.
- b. The State comment period may be extended if the FS extends the NEPA public comment period, in which case the review period will be extended for the duration of the extended NEPA public comment period.
- c. The State and FS may agree to extend the timeline (e.g. the 30-day review timeline set out in 1 above).



## B. Requests for Information

### 1. Review of Timber Harvest Activities

a. If information identified in Sec. 205 and Attachment 1 of this MOU is not available at the time of the consistency determination, the State and the FS may agree to one or more of the following:

- i. An extended review schedule (new milestones to be negotiated per agreement)
- ii. A phased review <sup>9</sup>
- iii. General consistency
- iv. Later re-submission of a consistency determination with sufficient information. *(Starts a new review - usually associated with significant project changes)*
- v. DGC, after consultation with State agencies who receive due deference under the ACMP, may agree to waive provision of specific information where warranted by conditions pertaining to the specific activity and site.

b. The information identified in Attachment 1 will be sufficient for State review of consistency determinations associated with these activities unless unusual or unique circumstances raise site-specific information needs. In such cases, the State will identify the information requested and the reason the information is necessary to determine the consistency of the Federal activity with the enforceable standards of the ACMP. The FS may either answer information requests, state that the information is unavailable, and/or extend the review timelines per mutual agreement.

### 2. Due Date

Any request by the State for additional information beyond that supplied by the FS along with its consistency determination or Project Clarification must be received by the FS within 25 days of receipt by the State of the consistency determination or Project Clarification.

## C. State Response

DGC will notify the FS of the State's agreement or disagreement with the consistency determination at the earliest practicable time. DGC's response will be presented as a consolidated State position.

1. For EIS reviews, the State response period will not exceed 60 days after receipt of the Project Clarification (*See Sec. 204 (A)(1)(d)*) unless both the FS and the State agree to an alternative schedule. The FS may presume the State's agreement with the FS consistency determination if DGC does not provide a response within 60 days from receipt of the Project Clarification unless both the FS and the State agree to an alternative schedule. The FS will contact DGC, however, before making this presumption.

2. For EA reviews, the State response period will not exceed the timelines established in Sec. 204 (A)(2) of this MOU, unless both the FS and the State agree to an alternative schedule. The FS may presume the State's agreement with the FS consistency determination if DGC does not

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<sup>9</sup> Phasing must meet the requirements of 15 CFR 930.37(c)

provide a response within 30 days from receipt of a FS consistency determination, unless both the FS and the State agree to an alternative schedule. The FS will contact DGC, however, before making this presumption.

#### D. Implementation

Agreement by DGC with a FS consistency or negative determination or resolution of any dispute under any process listed in Section 208 will be considered to be agreement by the State that implementation of the proposed activity that is subject to ACMP/CZMA may proceed immediately, whether or not the 90-day period referred to in 15 CFR 930.34(b) has expired. This does not exempt the FS from timelines associated with other applicable State or Federal law or regulation.

### **Section 205. Timber Harvest Reviews**

#### A. Information

The FS and State concur that the information identified in Attachment 1 contains information sufficient to conduct State review of a consistency determination for a timber harvest project requiring an EIS or EA.

The identified information will be sufficient for State review of consistency determinations associated with these activities unless unusual or unique circumstances raise site-specific information needs. In the case of unusual or unique circumstances that raise site-specific information needs, the FS will endeavor to either answer information requests, state that the information is unavailable, and/or extend the review timelines per mutual agreement. Providing the identified information does not indicate that the FS considers the material to be relevant to analysis of a project or commit the FS to address the material in a project's analysis or decision document.

Chugach National Forest information: For timber sales on the Chugach National Forest requiring an EA or EIS, the FS will provide as much of the information identified in Attachment 1 as possible, recognizing that some of these information items are not available from the Chugach. In such cases, the FS will identify as early in the planning process as possible which items are not available and consult with the State on an alternative form of information, if any, that will be provided in lieu of any unavailable item.

### **Section 206. Coordinating a Consistency Determination with an EIS.**

Recognizing that CZM consistency coincides with the NEPA process, and that it is difficult for the FS to respond to State consistency concerns after issuance of a final EIS (FEIS), the following procedure will be used to coordinate CZMA requirements and NEPA requirements when an EIS must be prepared:

#### A. State of Alaska Communications

In order to avoid confusion, official communications from the State of Alaska to the FS regarding CZMA/ACMP will be addressed to the FS, reference the specific project, and be signed by the responsible State official.

## B. Pre-Scoping

The FS will solicit early collaboration, cooperation, and coordination, including participation in the conceptual packaging and delineation of the project. Field visits by FS and State staff to proposed project areas are encouraged.

## C. Scoping

1. The FS will issue a Notice of Intent (NOI) to prepare an EIS, and provide it, along with a project location map, to DGC and State resource agencies.
2. On a routine basis any State agency, at its discretion, may provide scoping comments directly to the FS at the project scoping stage, with a copy to DGC. Agency comments will include a clear indication of potential problem and opportunity areas within the proposed project area. In addition, State comments shall endeavor to include a separate "Preliminary ACMP Comments" section that will consist of ACMP comments and related applicable ACMP standards and policies. DGC may consolidate scoping comments. The State will supply the above scoping response within the public scoping deadlines specified for the project, unless the FS and State agree to an alternate schedule.

## D. DEIS

1. In preparing the DEIS, the FS will consult with DGC and State resource agencies for any clarification that may be needed regarding the applicable State enforceable policies, the information requested by DGC or State agencies (e.g. information in Sec. 205), or on alternative types of information that may fulfill the State's objectives if the FS finds it difficult to provide the information requested.
2. The FS will promptly provide DEIS copies to DGC and concurrently to all State resource agency contacts on a mailing list that will be supplied and updated by DGC. (Attachment 2)
3. At the DEIS stage, the State will provide comments to the FS within the NEPA comment period. State comments will include a clear distinction between NEPA, and preliminary ACMP comments.
4. Within a 60-day period following receipt of the Project Clarification (See Sec. 204 (A)(1)(c)) DGC, on behalf of the State, will submit a consolidated position in proposed and final consistency letters to the FS.
5. Whenever a State agency or a coastal district, through DGC, comments that the proposed project is inconsistent with the enforceable policies of the ACMP, it shall describe the specific standard(s) or enforceable policies with which it believes the project is inconsistent, and provide alternative measures that DGC believes are necessary to make the project consistent to the maximum extent practicable with the enforceable policies of the ACMP. Whenever State resource agencies recommend conflicting alternative measures, or have differing opinions on consistency, DGC will work with the State agencies to resolve the conflict.

## E. FEIS

1. In the process of preparing the FEIS, the FS is encouraged to consult with DGC on any alternative measures recommended by the State to make the project consistent with the ACMP. State resource agencies may be represented at these negotiations.
2. Upon completion of the State's ACMP review, the FS will issue a FEIS and ROD (or only a ROD if the FEIS was published when the consistency determination was provided to the State).

In either case, the FEIS and/or ROD shall include an explanation of any changes made in the project since the Project Clarification was provided to the State.

3. The FS may provide a consistency determination to the State at the same time the FEIS and ROD is published. In that case, the consistency determination is subject to all the information requirements specified elsewhere in this MOU. The consistency determination will be reviewed by the State as if it were a Project Clarification, except that the ACMP public comment process will be conducted separately, after the NEPA public comment period, on the FEIS/ROD/consistency determination instead of on the DEIS/consistency determination.

#### F. Modifications

1. If project changes at the FEIS and/or ROD stage may result in significantly greater or different effects to the coastal zone, beyond effects from any changes requested by the State, the following procedures will apply:

(a) In open (not completed) reviews, a consistency determination will be prepared, the file on the previous review will be closed, and DGC will initiate a new 60-day consistency review.

(b) In closed (completed) reviews, DGC will coordinate a consistency review for those activities and effects not previously found consistent.

2. Any change in standard of review of the Federally approved Coastal Management Program that may have occurred since the initial review will be applied in any consistency reviews as in 1(b) above.

#### **Section 207. Coordinating a Consistency Determination with an Environmental Assessment (EA)**

For projects requiring an EA and a consistency determination, the following procedure will be used:

##### A. Scoping

The FS will provide to the State a scoping letter and location map that describes the project, including the purpose and need for the proposed project.

##### B. State Response

DGC will respond to the FS according to the timelines set out in Section 204 of this MOU. The State response will identify issues, concerns, and any other information that the State would like to see addressed during project analysis. The response will clearly delineate between NEPA and ACMP comments. ACMP comments will include reference to Standards and enforceable policies specific to the State's issues and concerns.

##### C. Consultation

In preparing the EA, the FS is encouraged to consult with DGC for any clarification that may be needed regarding the applicable State enforceable policies, the information requested by DGC, or on alternative types of information that may meet the State's objectives if the FS finds it difficult to provide the information requested.

##### D. Consistency Determination

At that point in the EA process when the FS has determined that the project will affect the coastal zone, and has sufficient information to describe the proposed activity and its coastal zone effects, per Sec. 203(B) of this MOU, the FS will provide a determination on project consistency with the enforceable policies of the ACMP, either as part of the EA or as a separate document. The State and FS agree that the appropriate point in the process for a consistency determination or a negative determination, if required, is usually at the issuance of an EA.

#### E. State Response

Whenever DGC believes a project is inconsistent with the enforceable policies of the ACMP, it shall describe the specific standard(s) and/or enforceable policies with which it believes the project is inconsistent, and provide alternative measures that the State believes are necessary to make the project consistent to the maximum extent practicable with the enforceable policies of the ACMP. Whenever State resource agencies recommend conflicting alternative measures, or have differing opinions on consistency, DGC will work with the State agencies to resolve the conflict.

#### F. FS Response

In the process of preparing the Decision Notice and the appendix to the EA that responds to public comments, the FS is encouraged to consult with DGC on any alternative measures that may have been recommended by the State in its consistency finding described above. The FS will issue a Decision Notice/Finding of No Significant Impact and an appendix to the EA that explains how the FS responded to public comments, including DGC's consistency finding.

### **Section 208. State Disagreement with a FS Consistency Determination**

#### A. State Response

If the State disagrees with a FS consistency determination, DGC will explain the reasons why the State believes the proposed activity is inconsistent with specific State standards and describe alternative measures, if any exist, that would allow the activity to proceed in a consistent manner.

#### B. Dispute Resolution

Disagreement over a consistency determination may be resolved, where possible, through timeline extension and discussion. Resolution methods may include, but are not limited to:

1. Reiterating and clarifying common points of agreement and mutual interests to help frame the context for the dispute.
2. Reconciling data and/or information interpretation and differences through competent mutually agreeable third party reviews.

When disputes cannot be resolved at the initial staff review level, the disputes may be informally referred to the next higher organizational level at the FS and State. Referral must be done in a timely manner, and shall be accompanied with a briefing paper that sets out the disagreements/issues in the format and context of applicable standards of the ACMP, proposed alternative solutions to resolve the differences, and the rationale for proposing each potential solution. In the event of inability to reach concurrence, the parties may employ the formal methods below.

#### C. Mediation

If a disagreement cannot be resolved through direct negotiations between the State and FS, either the State or the FS may seek informal negotiations through the Office of Coastal Resource Management of

NOAA (OCRM), or mediation by the United States Secretary of Commerce as described in Subpart G of the Federal consistency regulations (15 CFR 930.110-116).

D. Administrative Resolution

The FS retains its existing authority subject to the CZMA to proceed with implementation of a project, on NFS lands only, that it has determined to be "consistent to the maximum extent practicable", and over which a serious disagreement exists.

E. Judicial Review

The State and the FS will not seek judicial review until after informal negotiations and mediation have failed to resolve the disagreement.

## TITLE III -- PERMITTING ACTIONS

### Section 301. Individual Permits

Anyone proposing to conduct an activity affecting any natural resource or use of the coastal zone under a FS license or permit may be required to provide a certification that the proposed activity complies with and will be conducted in a manner consistent with the ACMP (CZMA Sec 307(c)). Any FS licenses or permits listed or referred to in Sec. 302(B) of this Title that are required for the project will be included in the State project review. Per 15 CFR 930.51(a) the term *Federal license or permit* means any authorization, certification, approval, or other form of permission that any Federal agency is empowered to issue to an applicant. This MOU uses the term "permit" to refer to all types of FS authorizations that meet this definition, including permits, term permits, leases, licenses, mining plans of operation, special use authorizations or easements.

The CZMA requires DGC to establish procedures for public notice and notification to all review participants, including the Federal permitting agencies, that the State concurs with or objects to the applicant's certification. Once the State has rendered a final consistency decision, or the Secretary of Commerce has found the activity consistent with CZMA objectives or otherwise necessary in the interest of national security, agencies, including the FS, may grant the permit.

### Section 302. Permits

#### A. Referring Applications to the State

When the FS receives applications for any of the permits listed below, it will inform the applicant that a consistency review may be necessary and that a DGC Coastal Project Questionnaire (CPQ) will need to be completed if the project is in or affects the coastal zone and that DGC is the appropriate State contact. The FS will refer the applicant to DGC for further information (907-465-3562; [www.gov.state.ak.us/dgc/](http://www.gov.state.ak.us/dgc/)), and will endeavor to provide the applicant with a CPQ if available.

#### B. Applicable Permits

1. The following activities that involve FS permits are reasonably expected to affect the coastal zone and will, upon adoption of this MOU as an amendment to the ACMP, be subject to coordinated ACMP project reviews, unless
  - a. they are included in the "A" or "B" list of the "Classification of State Agency Approvals" published by DGC; or
  - b. the coordinating agency determines that the proposed activity is not expected to result in significant effects to the coastal zone.

#### 2. Permit List

Outfitter/guide permits for freshwater boat trips that include a designated area for exclusive commercial use by the permit holder (e.g., as a put-in, take-out, or rest stop).

Mining Plans of Operation requiring an EA or EIS

Mineral material sales and sites that are greater than 5 ac. or not previously reviewed

Hotel, Motel

Resort

Service Station

Fish Hatchery

Mariculture

Liquid Waste Disposal Area  
Sewage Transmission Line  
Hydroelectric Projects  
Oil and Gas Pipelines  
Airport, Heliport  
Dam, Reservoirs  
Water Transmission  
Fish Ladder  
Power Lines  
Telephone Lines  
Permits for water easements

Permits for ground-disturbing construction (which excludes tent platforms, for example) that require an EA or EIS, or that require one or more of the following types of non-FS permits: permits from the Environmental Protection Agency (EPA) under Section 402 of the Clean Water Act; permits from the Corps of Engineers (COE) under Section 404 of the Clean Water Act; Alaska Department of Environmental Conservation (DEC) wastewater, solid waste or air discharge permits; Department of Fish and Game (DFG) Title 16 authorizations; or Department of Natural Resources water rights and tidelands authorizations.

### C. SOPA

1. For each project listed on the SOPA (see Attachment 6) that requires a FS permit, the SOPA will indicate whether the permit activity is a type listed in Section 302(b) as requiring State review. For proposed FS permits on the ACMP list, except for those that may be exempted through the State's ABC list procedures or found by the State to have no effect on the coastal zone, it is the responsibility of the applicant to provide DGC with a copy of the permit application and a Coastal Project Questionnaire (CPQ) with consistency certification. The FS may not issue a signed permit until the State concurs with the applicant's certification or is deemed by law to have concurred (see Section 303 below).

2. Pursuant to 15 CFR 930.54, DGC will notify the appropriate Forest Supervisor, the applicant, and NOAA within 30 days of receipt of the SOPA if the State believes any proposed permit activity not listed as normally requiring consistency review does in fact require an ACMP review. If NOAA approves the State's request, the proposed permit will be subject to ACMP review.

### Section 303. FS Procedure for Granting a Permit

#### A. Normal Process

The FS will not issue a signed permit listed in subsection 302 (b) until:

1. the State concurs with the applicant's consistency certification,
2. the State's concurrence is conclusively presumed by the State's failure to act within six (6) months of State review start-up pursuant to 15 CFR 930.60, or
3. the Secretary of Commerce finds the activity is consistent with the objectives of the CZMA or is necessary in the interest of national security.



## B. Draft Permits

Whenever the FS completes its processing of an application for a permit that requires State consistency review before the State finishes its review, the FS may send the applicant a draft (unsigned) permit. The FS may send a draft permit to an applicant as notification that FS requirements have been met and the FS is ready to issue its permit when the ACMP consistency review is completed. The draft permit is not an authorization for work. In such cases, the draft permit will state that the project or activity cannot begin until the State concurs in the applicant's consistency certification—or concurrence is presumed—and the FS issues a signed permit. Before transmitting a draft permit, the FS will contact DGC to verify the status of the State consistency review. The FS will also send a copy of the draft permit transmittal letter to DGC. During the State consistency review, DGC will notify the FS of any time extension. The FS will not issue a signed permit for the proposed activity until the State's consistency concurrence has been granted or presumed (see section 304 C below).

## Section 304. State Consistency Review Procedure

### A. Timing/Review Schedule

The start-up date for the FS review process and the State consistency review process may not always coincide due to different requirements for a complete application. Since agency review start-up times may differ, the FS will not presume the State is waiving consistency review without first contacting DGC. DGC will keep the FS informed of a project's review status and will make every effort to obtain a complete packet in a timely manner.

#### 1. Length of review

DGC and the FS will consult on a proposed permit activity that has a substantial environmental impact, is considered controversial, is an emergency as defined in Subsection 2 below, or raises other unusual circumstances that may warrant an altered review schedule.

#### 2. Emergencies

FS permits issued in an emergency will not require standard procedures for advance review for consistency with the ACMP. An "emergency" is a situation that would result in an unacceptable hazard to life, a significant loss of property, or immediate, unforeseen, and unacceptable resource damage if corrective action is not undertaken within a time period less than the normal time needed to complete CZMA review. Reasonable efforts will be made to receive comments from the State. Nothing in this section relieves the FS of responsibility to comply with the CZMA. If the permit activity requires a CZM review per section 302 of this MOU, the responsible FS official will ensure that consultation with DGC is accomplished as soon as possible. Post-action review and analysis will be conducted if requested by DGC as a result of such consultation. Inadequate planning will not constitute an emergency.

### B. State Response

The State will either concur with a consistency certification for a project, concur with stipulations, or object to a consistency certification. A State objection to a consistency certification must meet the requirements of 15 CFR 930.64. Concurrence with stipulations does not obligate the FS to carry the stipulations on its permit.

### C. FS Response

1. Upon receipt of a State objection to a consistency certification, the FS shall not issue a Federal permit unless an agreement is reached between the State, the applicant and the FS (if changes to the FS permit are involved), or as otherwise provided in 15 CFR 930 Subpart H (Secretarial Review).
2. Pursuant to 15 CFR 930, Subpart H, an activity that is inconsistent with the State's management program may be approved if the Secretary of Commerce finds the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security.

### **Section 305. Modifications**

#### A. Modifications to an Ongoing Review

Design changes or changes in the proposed activity received by either DGC or the FS while a consistency review is in process will be immediately forwarded to the other agency.

## TITLE IV -- MISCELLANEOUS PROVISIONS

### Section 401. Applicability to Ongoing Projects

A. This Memorandum of Understanding will not automatically apply in its entirety to FS activities for which, on the date the MOU becomes effective,

1. a draft EIS or an EA has been released to the public; or
2. a Decision Memorandum has been signed for an activity that is exempted by a categorical exclusion from review under NEPA.

B. DGC and the FS will consult one another to determine the extent to which the provisions of this MOU can be applied to ongoing FS projects listed above on a case-by-case basis.

### Section 402. FS-ADF&G Supplemental MOU No.1 Regarding Fish Habitat and Passage

In addition to the procedural and information exchange requirements specified under this MOU, *The FS-ADF&G Supplemental MOU No.1 Regarding Fish Habitat and Passage* (T16 MOU) applies to all instream activities associated with projects reviewed under this MOU. After completion of a CZMA/ACMP consistency review for a project involving instream activities, the FS will proceed with fulfilling the procedural requirements of the T16 MOU prior to conducting any instream activities.

### Section 403. General Requirements

A. This Memorandum of Understanding is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this Memorandum of Understanding will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This Memorandum of Understanding does not establish authority for noncompetitive award to DGC of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

B. Principal contacts for this Memorandum of Understanding are:

Forest Projects Analyst	ACMP Coordinator
Division of Governmental Coordination	USDA Forest Service
State of Alaska	Alaska Region
P.O. Box 110030	P.O. Box 21628
Juneau, Alaska 99811	Juneau, Alaska 99802-1628
(907) 465-8791	(907) 586-8814

C. Applicable provisions of this MOU will be adopted as an amendment to the ACMP. Such amendment will supersede all previous MOU's between the FS and State that may have amended the ACMP in the past.

D. Either of the parties may terminate this Memorandum of Understanding by providing notice in writing. Such termination will have the effect of deleting the MOU from the ACMP.

E. This Memorandum of Understanding shall be effective as of the last date shown below and shall not expire unless terminated as provided above. This Memorandum of Understanding shall be subject to review at any time.

F. Modifications within the scope of this Memorandum of Understanding may be made, but only by the issuance of a modification executed by both parties.

G. The State and FS will regularly re-assess this MOU for amendment every five years.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last date written below.

\_\_\_\_\_  
RICK CABLES                      Date  
Regional Forester  
Alaska Region, USDA Forest Service

\_\_\_\_\_  
PAT GALVIN                      Date  
Director  
Division of Governmental Coordination

\_\_\_\_\_  
JOHN SHIVELY                      Date  
Commissioner  
Alaska Department of Natural Resources

\_\_\_\_\_  
MICHELE BROWN                      Date  
Commissioner  
Alaska Department of Environmental Conservation

\_\_\_\_\_  
FRANK RUE                      Date  
Commissioner  
Alaska Department of Fish and Game

## **ATTACHMENT 1**

### **Information Needs for Timber Sale Reviews**

For the purposes of this MOU, and in order to ensure that the State has adequate project information to review the FS consistency determination, the FS will provide the following information for applicable timber harvest projects as defined in the MOU. Any of these items that change as a result of the Project Clarification, will be updated and provided to the State.

A. Project area maps at least as detailed as 1:63,360 (1 in./mi.) will be provided at scoping where available, and updated or completed not later than with a consistency determination, that display the following information:

1. Project area
2. Township and range
3. Boundaries of past harvest units, with the year harvested
4. All existing roads, with FS identification number, where known and status regarding motorized public access
5. Location of existing sortyards and LTF's.
6. VCU and/or watershed boundaries with identifying name or number
7. Contour lines at least as detailed as 500' interval
8. AHMU stream classifications
9. Channel-type process group designations
10. Any known unstable or slide-prone slopes (MMI 3 or 4)
11. Existing forest condition, including productive forest condition class (e.g. high, medium, low, for Tongass), where known.
12. Indications of avalanche slopes based on forest cover, slope, and alpine areas
13. Adjacent land ownership, where known

B. Wildlife habitat map(s), at least as detailed as 1:63,360 (1 in./mi.) will be provided at scoping where available, and updated or completed at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, that display the following information:

1. 800' elevation contour line
2. Vegetative condition class or classes that best identify high quality old growth habitat
3. Land use allocations where commercial timber harvesting is not permitted
4. Areas field-documented as being important brown bear foraging sites along fish streams using the Tongass Plan Implementation Team (TPIT) protocol, the brown bear cumulative effects protocol developed for the Kenai Peninsula, or a subsequent mutually agreeable protocol
5. All deer winter range in project area (that scores above 0 in most recent interagency approved version of deer HSI model) distinguished by quartile (i.e. by 25% of acres)
6. Estuary buffers
7. For the Chugach, known moose over wintering areas

C. On light paper or electronic GIS coverage at the same scale and registration as the existing project area and habitat map, provide the following project proposal elements at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process:

1. Location of proposed LTF's, sortyards, and material sites where known
2. Proposed unit boundaries and identification numbers, where known
3. All proposed roads and management intent regarding motorized public access including vehicles

D. Unit cards will be provided at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, that display the following information:

1. Proposed roads.
2. Boundaries of proposed harvest units.
3. Proposed silvicultural treatments, harvest systems, and estimated location of landings.
4. The location of known surface waters that abut or are within harvest units.
5. Channel types as defined in the forest plan.
6. The area and proposed harvest of any known slopes with slope gradient greater than 72 percent.
7. Any measures to be taken to ensure wind firmness.
8. Applicable unit-specific BMP's.
9. Proposed reforestation and site preparation treatments.
10. Any existing harvest units or portions thereof in the area displayed on the unit card map, with year of harvest, where known.
11. AHMU stream classifications.
12. Contour lines, where known.
13. A line 300 ft from the bank of anadromous and high-value resident fish streams.

E. Road cards will be provided at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, that display the following information:

1. The location of all roads, with FS identification number or arrow to nearest numbered FS road, where known.
2. Road and landing location on slopes that are greater than 67%, unstable, or slide-prone.
3. Where known, site-specific erosion prevention measures to address slope instability due to road construction.
4. Road management objectives, traffic management strategies (including the status regarding motorized public access) and FPA equivalent status (active, inactive, closed) (See State-FS comparison below) for all roads in the project area.
5. BMP's applicable to the specific road segment.
6. A line 300 ft from the bank of anadromous and high-value resident fish streams.

F. A Road Location Report will be provided not later than with the consistency determination (see Attachment 5). This describes locations and types of stream crossings, control points, discussions of incursions into riparian areas and wetlands.

G. General Information will be furnished at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, including:

1. The latest road condition survey for existing roads.
2. Density and mileage of all existing and proposed system roads, whether or not open to public access (by Wildlife Analysis Area or VCU) by two elevation categories -below 800' and above 800'.
3. The year that timber harvest and associated forest development is expected to begin and end.
4. A description and the anticipated location of temporary housing, fuel storage sites, and associated wastewater and solid waste disposal facilities.
5. Most recent dive report submitted to EPA, if any, for each existing LTF and storage site intended for use in the project and the estimated past timber volume transferred at each facility, where known.

6. Fish species composition, and the type of fish habitat (i.e. spawning, rearing, over wintering, or migratory) above and below proposed fish stream crossings where known.
7. Location of known wolf dens will be communicated to DFG separately.
8. Field data or reports, if any, that are the basis for location of brown bear stream buffers.
9. Analysis of cumulative watershed effects as described in FS BMP 12.1.
10. Notification if the project area includes any VCU's on the State lists of VCU's with highest, second highest, and third highest community use values (from State TLMP Revision comments).
11. The most recent five-year average harvest data for marten, deer, moose, bear, goats, and wolves by WAA, where available.
12. Project documentation will include a description of any provision for BMP effectiveness monitoring required by the BMP effectiveness monitoring strategy.
13. A quantitative, objective, repeatable, and consistent estimate of changes to habitat productivity for deer, bears, marten, and wolf within the project area over the rotation.
14. An evaluation of the sustainability of historic harvest levels by the affected communities for marten, deer, moose, bear, goats, and wolves, in light of the estimated habitat changes created by the project and pertinent changes in public access.

H. Road Management Definitions Applicable to A (4), C (3), E (4), and G (1) Above:

*Active:* provide frequent cleanout of ditches and catch basins to assure controlled drainage. Control roadside brush to maintain sight distance. Grade as needed to maintain crown and running surface. These roads are assigned Maintenance Level 3. The active maintenance strategy will also at times be applied to roads intended for use only by high clearance vehicles, or Maintenance Level 2 roads. This will usually be the case when log haul is expected in the near future.

This level of maintenance is synonymous with Alaska Forest Resources and Practices Act (FRPA) active roads.

*Storm Proof:* Provide water bars, rolling dips, out sloping, etc., to assure controlled runoff until any needed maintenance can be performed on the primary drainage system. Control roadside brush to maintain passage. This strategy will provide roadway features such as drivable water bars, and out sloping to control runoff in case the primary drainage system of culverts and ditches is overwhelmed during a storm event. Each culvert will be evaluated as to where the water would go if the culvert were to fail to carry the high flow. A water bar or out slope at this location will minimize the potential of erosion of long stretches of ditch line or roadway. This is intended to be the primary maintenance strategy applied to roads assigned Maintenance Level 2. Storm proofing may also be a useful management tool to discourage or slow travel.

This level of maintenance is synonymous with FRPA inactive roads.

*Storage:* Remove or bypass all drainage structures to restore natural drainage patterns, add water bars as needed to control runoff, revegetate. This is intended to be the primary maintenance strategy applied on intermittent use roads during their closure cycle. In this strategy, bridges and culverts on live streams are completely removed to restore natural drainage patterns. Cross drains and ditch relief culverts will be bypassed with deep water bars but left in place to minimize the cost of reusing these roads in the future. Due to the isolated nature of the road system, which makes maintenance costly and difficult, and their infrequency of use, storage is the most appropriate strategy for these roads. Maintenance Level 1,

closure and basic custodial maintenance, is assigned. Storage eliminates car and truck use, and discourages use by other motor vehicles.

This level of maintenance is synonymous with FRPA closed roads.

*Existing road* (applicable to A (4), E (1), and G (1) above): Existing roads do not include temporary roads, if those temporary roads are in a status synonymous with FRPA closed roads.



## ATTACHMENT 2 State Agency Contact Information

### Alaska Department of Environmental Conservation (DEC):

Program Manager, DEC Non-Point Source Water Pollution Control  
410 Willoughby Ave.  
Juneau, Alaska 99801

### Alaska Department of Fish and Game (DFG):

Please send a copy of all projects to the Regional Supervisor.

TITLE	PHONE	FAX	E-MAIL
Regional Supervisor PO Box 240020 Douglas, AK 99824	(907) 465-428(907)	465-4272	lana_flanders@adfg.state.ak.us

Please send the following contacts a copy of any projects within their areas.

DOUGLAS Douglas Area Biologist PO Box 240020 Douglas, AK 99824	(907) 465-428(907)	465-4272	ben_kirkpatrick@adfg.state.ak.us
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SITKA Sitka Area Biologist 304 Lake Street, Room 103 Sitka, AK 99835	(907) 747-268(907)	747-6239	phil_mooney@adfg.state.ak.us
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CRAIG Craig Area Biologist PO Box 668 Craig, AK 99921-0668	(907) 826-256(907)	826-2562	moira_ingle@adfg.state.ak.us
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KETCHIKAN Ketchikan Area Biologist 2030 Sea Level Drive, Suite 205 Ketchikan, AK 99901	(907) 225-202(907)	225-2676	jack_gustafson@adfg.state.ak.us
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PETERSBURG Petersburg Biologist PO Box 667 Petersburg, AK 99833-0667	(907) 772-522	772-9336	jim_cariello@adfg.state.ak.us
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Please send a copy of all Chugach National Forest projects to the Regional Supervisor in Anchorage.

Regional Supervisor (907) 267-2335 (907) 267-2464 lance\_trasky@fishgame.state.ak.us  
333 Raspberry Road  
Anchorage, AK 99518

**Alaska Department of Natural Resources (DNR)**

Southeast Regional Manager  
Division of Mining, Land and Water  
400 Willoughby Avenue, 4th floor  
Juneau, Alaska 99801  
465-3400

Coastal Regional Forester  
Division of Forestry  
400 Willoughby Avenue, 3rd floor  
Juneau, Alaska 99801  
465-5401

Southcentral Regional Manager  
Division of Mining, Land and Water  
550 W. 7<sup>th</sup> Ave. Suite 900  
Anchorage, Alaska 99501  
269-8503

### **ATTACHMENT 3**

#### **Information Provided for Non-Timber Projects**

For the purposes of this MOU, and in order to ensure that the State has adequate project information to review a FS consistency determination, the FS will provide the following information for non-timber projects requiring an EA or EIS. In fulfilling these requirements, reference may be made to the specific location of the information within a project-specific NEPA document.

#### **1. General Information**

- A. Agency contact, phone number, fax number, and electronic mail address.
- B. Is the project a new project, modification to an existing project, modification of a previously approved but not existing/not constructed project, or reactivation of a previously approved project (e.g. old COE approvals)?
- C. If a modification or reactivation, has the project previously been reviewed by the State of Alaska pursuant to the ACMP? If so, what was the previous project name and previous state I.D. Number?
- D. What local, state, or federal permits are required for this project, if any?
- E. What is the proposed starting date and ending date of construction, proposed starting date and ending date of operation?

#### **2. A Project area map at least as detailed as 1:63,360 (1 in./mi.) will be provided containing the following information:**

- A. Location (nearest community and name of nearest land feature or body of water) to project, a copy of the topographical map with the project location marked on it, a legal description (Township and Range or Latitude and Longitude), and land ownership, including Federal State, Municipal, and Private Land.
- B. A detailed description of the project and all associated facilities, noting whether facilities are existing or proposed and whether facilities will be modified.



## **ATTACHMENT 4 GENERAL CONSISTENCIES**

Pursuant to 15 CFR 930.37(b) the FS may develop a "general" consistency determination for a class of substantially similar, repetitive, or periodic actions other than a development project. The State will then initiate a general consistency review for the class of actions. The FS must thereafter periodically consult with the State. All activities found to be generally consistent will be listed on this attachment. As of the effective date of this MOU, no activities have been found generally consistent. This attachment will be updated as needed.



**ATTACHMENT 5  
Sample Road Location and Management Information**

<b>Project</b> Cholmondely		<b>System</b> Prince of Wales	<b>Land Use Designation</b> TP, ML
<b>Route No</b> 2710000-1	<b>Route Name</b> Lybrandberry Lane	<b>Begin Terminus</b> MP 0.00 Sunny Cove LTF	<b>End Terminus</b> MP 4.4
<b>Begin MP</b> 0.0	<b>Length</b> 1.75	<b>Status</b> Opportunity	<b>Map Quarter Quad</b> Craig A1 NE
			<b>Photo year, roll, photos</b> 1989, 2284 113-117 & 145-149

**General Design Criteria and Elements**

<b>Functional Class</b> Local	<b>Service Life</b> LI	<b>Surface</b> Shot rock	<b>Width</b> 14'	<b>Design Speed</b> 10	<b>Critical Vehicle</b> Logging truck	<b>Design Vehicle</b> Logging Truck
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**Intended Purpose/Future Use**

Possible second entry in 5-10 years, depending on salvage opportunities. Roads to be constructed solely to accommodate silvicultural uses.

**Maintenance Criteria**

<b>Bmp</b> 0.00	<b>Emp</b> 1.75	<b>Operational Maintenance Level (Current/Initial Condition)</b> 2	<b>Objective Maintenance Level (Desired Future Condition)</b> 1 (storage)	<b>Alaska Forest Practices Act Class</b> Closed after use
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**Maintenance Narrative**

Storage: Remove culverts from live streams, bypass ditch relief culverts with waterbury leaving culverts in place for future use. Provide additional waterbury as necessary on steep grades to control runoff.

**Operation Criteria**

<b>Highway Safety Act:</b>	No	<b>Jurisdiction:</b>	National Forest ownership
<b>Traffic Management Strategies</b>	<b>Encourage:</b>	N/A	
	<b>Accept:</b>	Hikers, bicycles	
	<b>Discourage:</b>	ORV's, motorcycles	
	<b>Prohibit:</b>	N/A	
	<b>Eliminate:</b>	Standard passenger cars, high clearance vehicles	

**Travel Management Narrative**

This road system is not connected to any public or community road systems or to any ferry system terminal. Extensive water barring and removal of drainage structures on live streams will discourage ORV use. It is expected that vehicle use post sale will be minimal.

**Approved** \_\_\_\_\_ **Date** \_\_\_\_\_  
District Ranger

## ATTACHMENT 5 (Continued) - Site Specific Design Criteria

### Road 2700000-1

**ROAD LOCATION:** Road access units 675-027 & 028, road construction should be moderate to easy over. LTF will require sortyard area +/- 1000 feet from LTF, numerous non-wetland areas available. Grades are favorable to 12%; construction difficulty is easy to moderate. Location controlled by stream crossing along route and avoidance of impacts on private water system.

**WETLANDS:** Road location was completed to avoid wetlands wherever practicable. Wetlands were unavoidable on some portions of the location due to safety, engineering design constraints and considerations for other resources. Alternatives to the location on wetlands would mean longer higher cost roads that may have impacted similar areas of wetlands. High value wetlands (fens) were particularly avoided wherever practicable. Area in forested wetlands m.p. 0.3 to 0.5 is unavoidable due to stream crossing location and to reduce road miles. Other wetland areas crossed from m.p. 0.9 to m.p. 1.75 are controlled by topography and grade restrictions and other resource concerns.

**EROSION CONTROL:** An erosion control plan for construction and maintenance will be developed by the contractor and approved by the Contracting Officer (BMP 14.5). All areas of organic or mineral soil exposed during construction shall be grass seeded and fertilized (BMP 12.17, 14.8).

**ROCK PITS:** During periods of high rainfall (as defined in current Regional specifications), blasting operations will be suspended at quarries near potentially unstable sites where ground vibration may induce mass movement (BMP 14.6). Borrow for initial construction will come from a proposed rock pit at the LTF site that is planned as part of the LTF development.

#### STREAM CROSSINGS:

<b>A) MP 0.45</b>	<b>AHMU Class II</b>	<b>Channel Type MC1</b>	<b>Incision 1m</b>
<b>Max. Width 1.3 m</b>	<b>Max. Depth 0.3 m</b>	<b>Gradient 5% up, 3% down</b>	<b>Substrate cobbles, gravel</b>
<b>Structure 1500mm CMP</b>	<b>Passage YES</b>	<b>Timing dates 6/1-9/15</b>	

**Narrative:** Crossing on relatively flat area, overlay construction. Oversize cmp to accommodate burying ~.5m.

<b>B) MP 0.75</b>	<b>AHMU Class III</b>	<b>Channel Type HC5</b>	<b>Incision 2m</b>
<b>Max. Width 0.6 m</b>	<b>Max. Depth 0.1 m</b>	<b>Gradient 10%</b>	<b>Substrate bedrock</b>
<b>Structure 600mm CMP</b>	<b>Passage NO</b>	<b>Timing dates none</b>	

**Narrative:** Small side channel to mainstream is part of water system for private landowners. Stream empties into small lake before proceeding downstream.

#### OTHER RESOURCE INFORMATION (if applicable)

TIMBER/LOGGING SYSTEMS:

WILDLIFE:

VISUAL/RECREATION:

CULTURAL:

LANDS/MINERALS/GEOLOGY/KARST:

SOILS/WATER:



**Tongass National Forest  
Schedule of NEPA Proposed Actions (SAMPLE)  
October, 1999**

SITKA RANGER DISTRICT  
Ranger  
201 Katlian, Suite 109

JAMES S. FRANZEL, District  
(907) 747-

PROJECT TITLE & TYPE	LOCATION	PROJECT DESCRIPTION	SCOPING STATUS	ANALYSIS STATUS & CZMA CATEGORY *	DECISION DATE & DECISIONMAKER	CONTACT PERSON
ADF&G Nakwasina tent platform CE	Nakwa. River, about 6 miles N of Sitka	Special use permit for a tent platform for 2000-2004	Began 9/1999	Began 9/1999 CZMA – FL/P (2)	12/1999; Sitka District Ranger**	Mike Johnson 747-6671
Recreation Cabin Construction EA	Sitka RD, local Sitka area	Build 4-5 recreation cabins in the Sitka area	Began 10/1999	Began 10/1999 CZMA – FAA (1)	Fall 2000; Sitka District Ranger	Hans von Rekowski (907) 747-6671
Indian River Timber Sale(s) EIS	E side of Chichagof Island, between Tenakee Springs & Hoonah	Harvest 25-45 MMBF of timber and construct 12 miles of roads in VCU's 204, 216, 220-222	NOI 10/95 Scoping ended 12/95	DEIS issued 11/1997; Comment period closed 1/98; FEIS due 12/1999 CZMA – FAA (1)	12/1999; Sitka Asst. Forest Supervisor	Linn Shipley (907) 747-6671
Small Salvage Timber Sales EA	Chichagof & Baranof Islands	Harvest of salvage timber; under 1 MMBF total in multiple sales under 500 MBF	Will begin fall 1999	Will begin fall 1999 CZMA – FAA (3)	Fall 2000, Sitka District Ranger	Greg Overturf (907) 747-4220
Shoreline based Outfitter/Guiding EA	Hoonah, Juneau, Sitka Districts and Admiralty NM	Recreation carrying capacity analysis done; proposal being developed to allocate a portion of that capacity to outfitter/guides.	Will begin fall 1999 (45-day comment)	Will begin fall 1999 CZMA – FAA (3)	Fall 2000; Sitka Asst Forest Supervisor	Marti Marshall (907) 747-6671
Permit for construction of Make-believe Aquaculture Association fish ladder EA	Wonderful Creek on Fantastic Island, about 10 miles N of the village of Paradise	Special Use Permit for construction of a fish ladder over a 20-ft waterfall near the mouth of Wonderful Creek.	Will begin fall 1999 (45- day comment)	Will begin fall 1999 CZMA – FL/P (1)	Fall 2000; Woodsy Owl District Ranger	Joe Planner (907) 747-1234

**\*Coastal Zone Management Act (CZMA) Categories  
FL/P = Federal License or Permit (15 CFR 930.50):**

- (1) Applicant must provide a consistency certification to the Alaska Division of Governmental Coordination (DGC) and obtain DGC approval before FS can issue permit determination  
(2) ACMP consistency certification normally not required

**FAA = Federal Agency Activity (15 CFR 930.30):**

- (1) FS will provide either a consistency determination or negative determination to  
(2) The project is generally consistent with the Alaska Coastal Mgt. Program (ACMP)  
(3) FS does not expect to provide a consistency determination or a negative  
(4) FS has not decided whether it intends to provide a consistency determination



## ATTACHMENT 7

### ACMP Standards For Non-Timber Harvest Projects That Affect The Coastal Zone

**6 AAC 80.040. COASTAL DEVELOPMENT.** (a) In planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to:

- (1) water-dependent uses and activities;
- (2) water-related uses and activities; and

(3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations (Vol. 42 of the Federal Register, pp. 37133 - 47 (July 19, 1977)). (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.050. GEOPHYSICAL HAZARD AREAS.** (a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided. (Eff. 7/18/78, Register 67)

**6 AAC 80.060. RECREATION.** (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.070. ENERGY FACILITIES.** (a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

(1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;

(2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;

(3) consolidate facilities;

(4) consider the concurrent use of facilities for public or economic reasons;

(5) cooperate with landowners, developers, and federal agencies in the development of facilities;

(6) select sites with sufficient acreage to allow for reasonable expansion of facilities;

(7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;

(8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;

(9) encourage the use of vessel traffic control and collision avoidance systems;

(10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;

(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.080. TRANSPORTATION AND UTILITIES.** (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs.

(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.090. FISH AND SEAFOOD PROCESSING.** Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. (Eff. 7/18/78, Register 67)

**6 AAC 80.110. MINING AND MINERAL PROCESSING.** (a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.120. SUBSISTENCE.** (a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Register 67)

**6 AAC 80.130. HABITATS.** (a) Habitats in the coastal area which are subject to the Alaska coastal management program include

- (1) offshore areas;
- (2) estuaries;
- (3) wetlands and tideflats;
- (4) rocky islands and seacliffs;
- (5) barrier islands and lagoons;
- (6) exposed high energy coasts;

(7) rivers, streams, and lakes; and

(8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources,

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat;

(3) wetlands and tideflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in 6 AAC 80.030(b). (Eff. 7/18/78, Register 67)

**6 AAC 80.140. AIR, LAND, AND WATER QUALITY.** Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality, in effect on August 18, 1992, are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Register 67; am 5/20/93, Register 126)

**6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES.** Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Register 67)

**DISTRICT POLICIES** must also be considered when the project is located in or affects a coastal district with an approved management plan. Please refer to the applicable coastal district plan or discuss with the coastal district to determine whether the activity is consistent with the district standard. You may request a copy of the district plan from the coastal district or the Division of Governmental Coordination.

**CLASSIFICATION OF STATE AGENCY APPROVALS:**

**A-B-C LIST**

*Volume I*

Division of Governmental Coordination  
May 1995

List of Categorical Approvals  
and  
General Concurrence Determinations  
under 6 AAC 50.050

Project Consistency with the Alaska Coastal Management Program

Revisions approved on: May 12, 1995  
Date

By: \_\_\_\_\_  
Diane Mayer  
Director  
Division of Governmental Coordination

6 AAC 50.050(e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations, and will identify on each list those permits or projects for which a coastal project questionnaire is not necessary. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including cumulative impacts. Before publishing or amending these lists DGC will distribute the proposed lists or amendments for comment in the manner provided in 6 AAC 50.070 for a project consistency review.  
(Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16, and 24, Alaska Constitution  
AS 44.19.145(a) (11)

List revised: 12/31/84  
04/01/85  
10/17/90  
07/21/92  
03/16/93  
03/01/94  
05/12/95  
03/30/99

STATE OF ALASKA  
DIVISION OF GOVERNMENTAL COORDINATION  
ALASKA COASTAL MANAGEMENT PROGRAM

List of categorically consistent approvals (A-List), general concurrence determinations (B-List), and State permits for projects that require individual consistency review (C-List).

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GC-44	New and Expanded Material Sites in the North Slope Borough (this GC is not effective until approval of COE/DEC General Permits) (Tentatively Approved 5/95)
GC-45	Storage of Materials at Existing Pads in North Slope Borough (Approved 5/95)
GC-46	Installation of Permanent Snowfences, Power Transmission Lines and Light Poles (Approved 5/95)
GC-47	Construction of Pipelines and New VSMs and Installation of PIG Launcher and Receiving Pads (Approved 5/95)
GC-48	Gravel Additions of .33 Acres or Less in the North Slope Borough (Approved 5/95)
GC-49	Removal of Uncontaminated Gravel Structures (Approved 5/95)
GC-50	Personal Use Material Sales on State Land (Approved 5/95)

SECTION II - GENERAL CONCURRENCE FOR NATIONWIDE PERMITS,  
GENERAL PERMITS, GENERAL NPDES PERMITS

**Nationwide Permits**

Introduction to U.S. Army Corps of Engineers Nationwide Permits (NWP) 1-23,  
25, 27, 28, 32-38, and 40 (Rev. 3/94)

NWP-1	Aids to Navigation (Rev. 7/92)
NWP-2	Structures in Artificial Canals (Rev. 7/92)
NWP-3	Maintenance (Rev. 7/92)
NWP-4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities (Rev. 7/92)
NWP-5	Scientific Measurement Devices (Rev. 7/92)
NWP-6	Survey Activities (Rev. 7/92)
NWP-7	Outfall Structures (Rev. 7/92)
NWP-8	Oil and Gas Structures (Rev. 7/92)
NWP-9	Structures in Fleeting and Anchorage Areas (Rev. 7/92)
NWP-10	Mooring Buoys (Rev. 7/92)
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NWP-14	Road Crossing (Rev. 7/92)
NWP-15	U.S. Coast Guard Approved Bridges (Rev. 7/92)
NWP-16	Return Water from Contained Disposal Areas (Rev. 7/92)
NWP-17	Hydropower Projects (Rev. 7/92)
NWP-18	Minor Discharges (Rev. 7/92)
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NWP-20	Oil Spill Cleanup (Rev. 7/92)
NWP-21	Surface Coal Mining Activities (Rev. 7/92)
NWP-22	Removal of Vessels (Rev. 7/92)
NWP-23	Approved Categorical Exclusions (Rev. 7/92)
NWP-25	Structural Discharge (Rev. 7/92)
NWP-27	Wetland and Riparian Restoration and Creation Activities (Rev. 7/92)
NWP-28	Modifications of Existing Marinas (Rev. 7/92)
NWP-32	Completed Enforcement Actions (Rev. 7/92)
NWP-33	Temporary Construction, Access and Dewatering (Rev. 7/92)
NWP-34	Cranberry Production Activities (Rev. 7/92)
NWP-35	Maintenance Dredging of Existing Basins (Rev. 7/92)
NWP-36	Boat Ramps (Rev. 7/92)
NWP-37	Emergency Watershed Protection and Rehabilitation (Rev. 7/92)
NWP-38	Cleanup of Hazardous and Toxic Waste (Rev. 7/92)
NWP-40	Farm Buildings (Rev. 7/92)

## General Permits - Statewide or More Than One Region

COE APP 93-1	Discharge of Material for Water, Wastewater, and Sanitation Facilities (Rev. 6/95)
COE GP 88-02M	Placer Mining (Rev. 7/92) (Currently under revision)
COE GP 88-9M	Mooring Buoys (Rev. 5/95)
COE GP 89-4	Moorage of Float Houses (Rev. 7/92)
COE GP 91-7M	Aquatic Farm Structures (Rev. 5/95)
EPA NPDES GP AKG-37-0000	Placer Mining (Rev. 5/95)
EPA NPDES GP AKG-52-0000	Seafood Processor Discharge (Rev. 7/92) (Currently under revision)
EPA NPDES GP AKR-00-0000	Stormwater Discharge Associated with Industrial Activity (Rev. 3/93)
EPA NPDES GP AKR-10-0000	Stormwater Discharge from Construction Activities that are Classified as "Associated with Industrial Activity" (Rev. 3/93)
DEC GP 9340-BA001	Disposal of Mining Camp Solid Waste (Rev. 3/93)
DEC GP 9340-BA002	Disposal of Large Wood Waste in SE Alaska (Rev. 3/93)
DEC GP 9340-BA003	Disposal of Solid Waste Associated with Log Transfer Facilities (Rev. 3/93)
DEC GP 9340-BA004	Disposal of Domestic Camp Solid Waste (Rev. 3/93)
DEC GP 9440-BA001	Disposal of Asbestos Waste Less Than 250 Cubic Yards (Rev. 5/95)
DEC GP 9440-BA002	Disposal of Small Volumes of Resort-Lodge Household Waste (Rev. 5/95)
DEC GP 9440-BA003	Disposal of Abandoned Mining Operation Waste for Volumes of 500 Cubic Yards or Less
DEC GP 9240-DB002	Disposal of Wastewater by Injection Through the Outer Annulus of Oil and Gas Wells (Rev. 7/92)
DEC GP 9240-DB003	

	Disposal of Wastewater Produced from the Treatment of Hydrocarbon-Contaminated Groundwater by Surface Discharge or Subsurface Injection (Rev. 5/95)
DEC GP 9240-DB004	
	Disposal of Wastewater Produced from the Treatment of Hydrocarbon-Contaminated Groundwater by Reinjection (Rev. 5/95)
DEC GP 9240-DB005	
	Disposal of Wastewater Produced from the Treatment of Hydrocarbon-Contaminated Groundwater by Discharge to Marine Waters (Rev. 5/95)
DEC GP 9240-DB006	
	Disposal of Wastewater Produced from Fish Hatcheries (Rev. 3/93)
DEC GP 9440-DB001	
	Disposal of Less than 15,000 Gallons per Day of Treated Domestic Wastewater to the Land or Waters of the State (Rev. 5/95)
DEC GP 9440-DB002	
	Disposal of Wastewater from Excavations (Rev. 5/95)
DEC GP 9440-DB003	
	Disposal of Less than 1,500,000 Gallons of Wastewater Used for Hydrostatic Testing within the Department of Environmental Conservation's Northern and Southcentral Regions (Rev. 5/95)
DEC GP 9440-DB004	
	Disposal of Secondary Treated Domestic Wastewater from Community Operated Facilities that Serve less than 1,000 Residents and Discharge less than 250,000 Gallons/Day of Wastewater (Rev. 5/95)
DEC GP 9440-DB005	
	Disposal of Treated Domestic Wastewater for Coastal Community Operated Facilities that Serve less than 1,000 Residents and Discharge less than 250,000 Gallons/Day of Wastewater (Rev. 5/95)
DEC GP 9440-DB006	
	Disposal of Contained Hydrocarbon Contaminated Water (Rev. 5/95)

**Southeast Region**

COE GP 81-17N	Floating Docks and Mooring Pilings in Sitka (Rev. 7/92)
COE GP 81-20N	Placement of Materials for the Construction of Sanitary Sewer Outfall Lines in Sitka (Rev. 5/92)

- COE GP 81-21N Placement of Materials for Bank Stabilization in Sitka  
(Rev. 7/92)
- DEC GP 9410-DB000  
Disposal of Domestic Wastewater from Temporary Camps  
(Rev. 3/94)

### Southcentral Region

- COE GP 83-4N Wetlands Fill for Infrastructure Development in Bethel  
(Rev. 5/95)
- COE GP 87-3N Mooring Buoys on the Kasilof River (Rev. 3/94)
- COE GP 88-6M Wetlands Fill in Homer (Rev. 7/92)
- COE GP 90-6 Certain Activities in the Kenai River Special  
Management Area (Rev. 3/93)
- COE GP 90-7 Placement of Ladders and Steps within the Kenai River Special  
Management Area (Rev. 3/93)
- COE GP 93-10 Anchorage Wetlands Management Plan (AWMP) -  
Residential Fill Pads, Site Preparation and  
Driveways (Rev. 5/95)
- COE GP 93-11 AWMP - Roads and other Linear Developments  
(Rev. 5/95)
- COE GP 93-12 AWMP - Commercial, Institutional, and Community  
Development and Parking Lots (Rev. 5/95)
- COE GP 93-13 AWMP - Industrial Developments (Rev. 5/95)
- COE GP 93-14 AWMP - Wetland, Habitat, and Water Quality  
Enhancement (Rev. 5/95)

### Northern Region

- COE GP 83-80 Wetlands Fill for Housing Development in the ASHA  
Region (Rev. 7/92) (Currently under revision)
- COE GP 90-1 Wetlands Fill for Residential, Public or Commercial  
Development within certain Areas of the City of  
Nome (Rev. 3/93)
- COE GP 92-08 Discharge of Dredged and/or Fill Material into Wetlands  
at Deadhorse, Alaska (Rev. 3/93)
- EPA NPDES GP AKG284200  
Discharges for Oil and Gas Exploratory Facilities on the  
Outer Continental Shelf and Contiguous State  
Waters (Rev. 6/95)

### C-LIST - INDIVIDUAL PROJECT CONSISTENCY REVIEWS

Introduction and Permit Processing Procedures (Rev. 5/95)

Department of Environmental Conservation (Rev. 5/95)  
Department of Fish and Game (Rev. 5/95)  
Department of Natural Resources (Rev. 5/95)

## ***VOLUME II***

### **APPENDIX A - Copies of Nationwide Permits, General Permits, and General NPDES Permits**

#### **Statewide**

COE Special Public Notice 92-1 (NWP) - (expires 2/97)  
COE APP 93-1 - (expires 3/31/99)  
COE GP 88-02M - (expires 9/1/97) (Currently under revision)  
COE GP 88-9M - (expires 11/28/99)  
COE GP 89-4 - (expires 8/27/95)  
COE GP 91-7M - (expires 11/29/99)  
EPA NPDES AKG-37-0000 - (expires 6/30/99)  
EPA NPDES AKG-52-0000 - (expired, under renewal)  
EPA NPDES AKR-00-0000 - (expires 10/01/97)  
EPA NPDES AKR-10-0000 - (expires 9/9/97)  
DEC GP 9340-BA001 - (expires 12/31/98)  
DEC GP 9340-BA002 - (expires 12/31/98)  
DEC GP 9340-BA003 - (expires 12/31/98)  
DEC GP 9340-BA004 - (expires 12/31/98)  
DEC GP 9440-BA001 - (expires 7/10/99)  
DEC GP 9440-BA002 - (expires 7/10/99)  
DEC GP 9440-BA003 - (expires 7/10/99)  
DEC GP 9240-DB002 - (expires 4/30/97)  
DEC GP 9240-DB003 - (expires 1/1/97)  
DEC GP 9240-DB004 - (expires 1/1/97)  
DEC GP 9240-DB005 - (expires 1/1/97)  
DEC GP 9240-DB006 - (expires 7/1/97)  
DEC GP 9440-DB001 - (expires 5/1/99)  
DEC GP 9440-DB002 - (expires 5/1/99)  
DEC GP 9440-DB003 - (expires 5/1/99)  
DEC GP 9440-DB004 - (expires 5/1/99)  
DEC GP 9440-DB005 - (expires 5/1/99)  
DEC GP 9440-DB006 - (expires 5/1/99)

#### **Southeast Region**

COE APP 94-6 - (to be replaced by general permit)  
COE GP 81-17N - (expires 6/19/97)  
COE GP 81-20N - (expires 6/19/97)  
COE GP 81-21N - (expires 6/19/97)  
DEC GP 9410-DB000 - (expires 12/31 annually)

#### **Southcentral Region**

COE GP 83-4N - (expires 12/16/99)  
COE GP 87-3N - (expires 5/16/98)



COE GP 88-6M - (expires 3/17/97)  
COE GP 90-6 - (expires 7/17/95)  
COE GP 90-7 - (expires 10/25/95)  
COE GP 93-10 to 93-14 (expires 10/20/99)

**Northern Region**

COE GP 83-8O - (expired, under renewal)  
COE GP 90-1 - (expires 7/6/95)  
COE GP 92-08 - (expires 2/19/98)  
EPA NPDES AKG284200 - (expires 6/23/00)

**APPENDIX B - Coastal Project Questionnaire and Coastal District Contacts**

**APPENDIX C - ABC List Summary Tables**

Quick Reference Guide to the A List  
B List - Section I General Concurrences by Type of Activity  
Summary of State Agency Permits in the A and B Lists  
Supplemental Guidance to Reviewers: Combining A and B List Approvals  
Quick Reference Guide to the C List

## OVERVIEW

**Background.** In April 1984, the State adopted regulations entitled "Project Consistency with the Alaska Coastal Management Program (ACMP)" (6 AAC 50). The regulations direct State resource agencies (the Departments of Environmental Conservation, Fish and Game, and Natural Resources) and the Division of Governmental Coordination (DGC) to implement the ACMP by rendering conclusive consistency determinations according to the procedures and time frames specified in the regulations.

The State implements the ACMP by reviewing proposed projects to ensure they are consistent with State standards and approved district programs. The Federal Coastal Zone Management Act authorizes the State to review most federal activities and federally permitted activities within or affecting the coastal zone. The Alaska Coastal Management Act also requires that State-permitted activities be consistent with the ACMP.

**Projects** which must be consistent with the ACMP are defined in 6 AAC 50.190(14) as follows:

**"Project"** means an activity or use which will be located in or may affect the coastal zone of Alaska and which is subject to consistency review under Sec. 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. S. 1456), or which requires the issuance of one or more State permits; when a land or water activity is developed or authorized in discrete phases, and each phase requires agency decisions regarding permits, each phase is considered a "project."

The **Coastal Project Questionnaire (CPQ)** (see Appendix B in Volume II) is used to determine which, if any, State or federal resource-related approvals (permits, leases and other authorizations) are required for proposed projects in or affecting Alaska's coastal areas. Unless it is specifically noted that a CPQ is not required, project applicants must complete the CPQ when applying for State or federal permits in the coastal zone. Only those projects that require State or federal permits identified in the completed CPQ are subject to a State consistency review.

**Expedited review.** Under 6 AAC 50.050, the State's review of a project for consistency with the ACMP will be expedited if the project meets the requirements for "categorical approval" or "general concurrence determination." This document describes the requirements for categorical approvals (A List) and general concurrence determinations (B List).

Briefly, when a project is only authorized by a permit on the **A List**, the State has determined that it will not have a significant impact on coastal resources and it is categorically consistent with the ACMP.

The **B List** of general concurrences describes routine projects which the State has determined are consistent with the ACMP, provided standard conditions are included on State permits for the project. General and nationwide permits issued by state and federal agencies are also included on the B List once they are found to be consistent with the ACMP. In order to make this

document more useable as a reference, we have included a brief description of these permits in Section II of the B List, as well as complete copies of the nationwide and general permits in Appendix A in Volume II.

Projects which meet the requirements of the A List or B List and do not require any C List permits or individual federal authorizations, are not reviewed under the 30- or 50-day review time frames provided for under 6 AAC 50. These projects have already been determined consistent with the ACMP. The expedited review for these projects allows agencies to issue permits without delay. See the B List *Introduction and Review Procedures* for more information.

When a project requires a State permit(s) on the **C List** or an individual federal permit, it is likely to have a direct and significant impact on coastal resources and the project must be reviewed for consistency with the ACMP. Except for disposals of interest in State lands, Resource Conservation and Recovery Act hazardous waste permits, or air quality Prevention of Significant Deterioration (PSD) permits, individual consistency reviews on the C-List are conducted within 30 or 50 days.

## DEFINITION OF ACRONYMS

AAC	Alaska Administrative Code
ACMP	Alaska Coastal Management Program
AMSA	Area Meriting Special Attention
APMA	Alaska Placer Mining Application
APP	Alternative Permit Processing Procedure
AS	Alaska Statute
CFR	Code of Federal Regulations
CPQ	Coastal Project Questionnaire
CRSA	Coastal Resource Service Area
DE	District Engineer
DEC	Department of Environmental Conservation
DFG	Department of Fish and Game
DGC	Division of Governmental Coordination
DNR	Department of Natural Resources
DOT/PF	Department of Transportation and Public Facilities
DPOR	Division of Parks and Outdoor Recreation
EPA	Environmental Protection Agency
FLPMA	Federal Land Planning Management Act
FSH	Forest Service Handbook
GC	General Concurrence
GP	General Permit
gpd	gallons per day
JPO	Joint Pipeline Office
MHW	mean high water
mg/L	milligrams per liter
ml	milliliter
NMFS	National Marine Fisheries Service
NMRRMP	Nushagak and Mulchatna Rivers Recreation Management Plan
NPDES	National Pollutant Discharge Elimination System
NWP	Nationwide Permit
OHW	ordinary high water
PCB	Polychlorinated biphenyls
PDN	Pre-Discharge Notification
PSD	Prevention of Significant Deterioration
RCRA	Resource Conservation and Recovery Act
SHPO	State Historic Preservation Office
SRA	State Recreation Area
ug/L	micrograms per liter
USC	U.S. Code
USFWS	U.S. Fish and Wildlife Service

# **A LIST - CATEGORICALLY CONSISTENT APPROVALS**

## **Introduction and Review Procedures**

The A List contains permits that are categorically consistent with the Alaska Coastal Management Program (ACMP) per 6 AAC 50.050. These permits authorize activities that have no significant impact in, nor significant affect on, the coastal zone, as defined by the Alaska Coastal Management Act and in regulation (AS 46.40.210 and 6 AAC 50). Individual ACMP consistency reviews are not necessary for activities that require only permits on the A List or B List.

An applicant for a permit on the A List must complete the appropriate permit application and a Coastal Project Questionnaire (CPQ). This allows the State resource agency issuing the permit to ensure that the proposed project (as defined in 6 AAC 50.190 (14); see *Overview* in introductory pages of ABC List) qualifies for an A List permit(s), does not have significant impacts, and requires no additional permits. If, during the initial review of the CPQ, it is discovered that a permit(s) not included on the A List or either section of the B List is required (e.g., a C-List permit or individual federal authorization), the entire project must undergo an individual ACMP consistency review. See B List *Introduction and Review Procedures* for exceptions and more information.

State resource agency staff issuing the permits will, when requested in writing, send a copy of the permit to the affected coastal district after the A List permit(s) is issued to the applicant. This allows coastal districts to track and monitor activities that are occurring within the boundaries of their coastal district.

Applicants are reminded to consult with the local government staff to see if any local development permits or approvals are required for the proposed project.

**A LIST - CATEGORICALLY CONSISTENT APPROVALS**

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

*Air Quality Permit* to open burn materials not specifically prohibited by 18 AAC 50.030

AS 46.03.020  
AS 46.03.710  
18 AAC 15  
18 AAC 50  
18 AAC 60  
18 AAC 75

**DEPARTMENT OF FISH AND GAME**

*Fish Habitat Permit* for:

1. *water withdrawals* from anadromous fish waters of quantities less than 5000 gallons in a single day or less than 1000 gallons per day for more than one day, except from known fish overwintering areas

AS 16.05.870

2. *minor work* below the ordinary high water line of fish bearing waters to improve or restore fish habitat.

AS 16.05.840  
AS 16.05.870

*Special Area Permit* for:

1. Renewal of *Personal Use Cabin Permits* in State Game Refuges and Critical Habitat Areas

AS 16.20  
5 AAC 95

2. Use of the *Potter Marsh Parking Area* for Public Access Parking for Lawful Day Use of Anchorage Coastal Wildlife Refuge Between 6:00 A.M. and 10:00 P.M.

AS 16.20  
5 AAC 95

3. Organized Group Assembly - *Susitna Flats State Game Refuge Public Use Facility*

AS 16.20  
5 AAC 95

Use of *Shore Fishery Leases* for operating set gill nets for fishing pursuant to a limited entry permit on coastline lying within the boundaries of legislatively designated state game refuges, sanctuaries, and critical habitat areas.

AS 16.20  
5 AAC 95.770

*Scientific and Educational Collecting Permit*, except for aquatic farming operations

AS 16.05.930

**DEPARTMENT OF NATURAL RESOURCES**

**Division of Agriculture**

*Land Use Permits* which authorize agricultural uses (e.g., planting of crops, keeping of bees, grazing of livestock) on tracts that have been previously offered for agricultural sale, provided there are no significant changes to boundaries, terms, or conditions.

AS 38.05.850

**Division of Forestry**

*State timber sale* and personal use contract of 10 acres or less in spruce-hemlock coastal forests (DGC southeastern region and Prince William Sound), and 40 acres or less in interior forests south of the Alaska Range (DGC Southcentral region excluding Prince William Sound) which do not include timber lands within 90 meters of anadromous and high value resident fish waters

AS 38.05.110-120  
11 AAC 71.005-910

*State timber sale* and personal use contract of 160 acres or less north of the Alaska Range (DGC northern region) which do not include timber lands within 30 meters of anadromous and high value resident fish waters

AS 38.05.110-120  
11 AAC 71.005-910

***Burning Permit***

AS 41.15.060  
11 AAC 95.400-.490

**Division of Land**

***Land Disposal***

This approval authorizes land disposal to a state agency or a municipality when existing land uses are not proposed for changes, for 1) a project with a prior ACMP approval, or 2) an existing public facility. This disposal may include a school site transfer, a lease to a state agency, an interagency land management assignment, a grant or lease for public and charitable use, or a tideland grant to a municipality. Applies statewide, except state game refuges, critical habitat areas, and game sanctuaries.

AS 14.08.151  
AS 36.30.080  
AS 38.04.060(b)  
AS 38.05.030  
AS 38.05.035(e)  
AS 38.05.810  
AS 38.05.820  
AS 38.05.825

This approval authorizes state land disposal to another state agency or a municipality when no specific use or activity is proposed or a use or activity is approved by the municipality. This disposal may include a grant of municipal entitlement land, a grant that will be counted against a municipality's remaining entitlement, or a tideland grant to a municipality. Applies statewide, except state game refuges, critical habitat areas, and game sanctuaries.

AS 29.65  
AS 38.05.810  
AS 38.05.820  
AS 38.05.825



***Land Conveyance to the Mental Health Trust***, under Secs. 54-55, Ch. 66, SLA 1991, to restore land originally granted as Mental Health Trust Land, or to replace land no longer available for restoration.

AS 38.04  
AS 38.05  
Ch. 66, SLA 1991

***Land Lease and Sale***

This approval applies to state properties when existing land uses are not proposed for changes, generally to private individuals, and authorizes: 1) a land lease; 2) a land sale less than 10 acres; or 3) a conveyance greater than 10 acres associated with a project having a prior ACMP approval. Applies statewide, except state game refuges, critical habitat areas, and game sanctuaries. Land sales apply only within organized boroughs.

AS 38.05.035 (b) & (f)  
AS 38.05.075(b)  
AS 38.05.087  
AS 38.05.068  
AS 38.05.102

***Land Use Permit for***

Temporary *storage of vehicles* at locations not in river flood plains or wetlands

AS 38.05.035

Temporary *weather and water stations* operated by State and federal agencies and educational institutions

AS 38.05.035

Installation of temporary (one year or less) *snow fences*

AS 38.05.020  
AS 38.05.035

Installation and operation of *meteorological sites* and weather stations for the collection of data on sites no larger than .33 acres

AS 38.05.850

*Material sales* from previously approved sites where no changes are proposed to the previously approved site boundaries, terms, or conditions

AS 38.05.110-120  
11 AAC 71

*Shore Fisheries Lease*

AS 38.05.082  
11 AAC 64.010-570

Renewal of *Personal Use Cabin Permit* which contains no modifications to original permit stipulations

AS 38.05.020  
11 AAC 65

*Tideland Permit or Lease* for mooring of *fish buying scows*

AS 38.05.035

Conversion of existing permitted sites to add the land to a *Right-of-Way Lease* for a common carrier pipeline. The use must meet the definition of "Related Facilities" as defined in the common carrier pipeline lease.

AS 38.35

Approval in the **North Slope Borough** for the following activities:

1. *Land Use Permit or Right-of-Way* for winter-season *cable trenchments* when the vegetative mat is replaced.
2. *Land Use Permit* for:
  - a. Temporary placement of *camps or equipment* at existing pads.
  - b. Non-destructive *scientific sampling* and the placement of scientific research equipment.
  - c. *Clean-up activities* on existing pads

AS 38.05.850  
11 AAC 96

**Division of Mining and Water**

Alaska Surface Coal Mining Control and Reclamation Act *Notice of Intent to Explore*

AS 27.21.030  
AS 27.21.200  
11 AAC 90.161

*Production license* to authorize commercial production from mining claims

AS 38.05.207  
11 AAC 86.700-750

*Water use permit, Certificate of Appropriation and Temporary Water Use Permit* for:

1. Permanent and temporary water withdrawals of *5000 gallons/day or less* from all surface and subsurface sources, except from known fish overwintering areas.
2. Permanent and temporary water withdrawals from wells on the *North Slope*.
3. Permanent and temporary water withdrawals from pothole lakes located *between the Colville and Canning Rivers* on the North Slope which are less than six feet in depth and have no inlet or outlet.
4. Permanent and temporary water withdrawals from *excavated gravel pits* now used as water reservoirs that do not support fish.
5. Extensions to *Permits to Appropriate Water* and *Temporary Water Use Permits* pursuant to 11 AAC 93.120 (b) and (f), when no changes are proposed to the existing project, and the permittee has demonstrated compliance with all previously required consistency stipulations.

AS 46.15  
11 AAC 93

*Dam Safety Permit*

AS 46.17.080

AS 46.17.100

AS 46.17.180

11 AAC 93

**Division of Oil and Gas**

***Lease Operation Approval*** in the **North Slope Borough** for the following activities:

1. Winter-season *cable trenchments* when the vegetative mat is replaced.
2. Pipelines installed on *existing vertical support members*.
3. *Gravel placements* within the inside perimeter of pads.
4. Temporary (one year or less) *placements of camps* or equipment at existing pads.
5. Installation and winter-season placement of *temporary snow fences*.
6. *Installation of liners* inside the berm of existing, previously utilized reserve pits.
7. *Clean-up activities* on existing pads.
8. On-pad placement of light poles, railings, electrical towers/poles, modules and associated oil and gas buildings.

AS 38.05.140

**Division of Parks and Outdoor Recreation**

***Special Park Use Permit:***

For *Special events* in a State park

AS 41.20.040  
11 AAC 18.010  
11 AAC 12.245

To assemble over 20 people in a State park

AS 41.20.040  
11 AAC 18.010  
11 AAC 12.245

To use *fireworks* in a State park.

AS 41.20.040  
11 AAC 18.010

***Archaeological Permit*** for the investigation or survey of historic or archeological resources.

AS 41.35.040  
AS 41.35.080  
11 AAC 16.030-080

# **B LIST - GENERAL CONCURRENCE DETERMINATIONS**

## **Introduction and Review Procedures**

### **Introduction**

The B List describes activities that are routine and can be consistent with the Alaska Coastal Management Program (ACMP) with the standard conditions per 6 AAC 50.050. If a project (as defined in 6 AAC 50.190 (14) - see Overview at beginning of ABC List) meets the terms of a B List general concurrence determination (i.e., the Description of the Activity and Standard Conditions), it is a routine activity that is consistent with the ACMP. Individual ACMP consistency reviews are not necessary for activities fully described on the B List.

Unless specifically exempted, an applicant for an activity on the B List must complete the appropriate permit application(s) and a Coastal Project Questionnaire (CPQ) (see Appendix B). This allows the State resource agencies issuing permits to ensure that the proposed project qualifies, and that no other permits are required for the project. See individual general concurrences to determine if the CPQ exemption applies.

If, during the initial review of the CPQ, it is discovered that a permit(s) not included on the A List or either section of the B List is required (e.g., a C List permit or individual federal authorization), the entire project must undergo an individual ACMP consistency review. See *Review Procedures* below for exceptions and more information.

### **Sections I and II of the B List**

The B List includes two separate sections of general concurrences:

**Section I** (B1) of the B List describes activities that, with standard conditions, are consistent by general concurrence with the ACMP. The agency reviewer will check the CPQ to ensure that it and other applications are complete and that the project meets the requirements of the B List general concurrence, including the description of activity and the standard conditions. The reviewer will go over the standard conditions and any applicable procedures with the applicant to ensure that they will be met. If the project qualifies for a B List general concurrence, the State resource agency(s) will include all standard conditions on the permit(s) issued to the applicant.

**Section II** (B2) is a list of "general permits" that have been reviewed and found consistent with the ACMP also by general concurrence. Section II includes the U.S. Army Corps of Engineers (COE) Nationwide Permits (NWP), single State or federal agency General Permits, and Environmental Protection Agency (EPA) general National Pollutant Discharge Elimination System (NPDES) permits. Copies of the actual Section II permits are located in Appendix A.

Procedures for Section II permits vary. A procedures section is included in general concurrences

that describes the application process, where a special procedure exists. A few Nationwide Permits require pre-discharge notifications (PDN) to the COE. DGC coordinates the State review of specific PDNs.

### **Review Procedures for the "A or B1 + B2 + C = C - B2" Rule**

The above equation defies the rules of algebra. It does, however, symbolize the procedures for individual project reviews when part of a project requires a permit on the C List or an individual federal authorization. The bulleted statements below summarize how the A and B Lists are used. A theoretical example is provided to illustrate each statement.

In the equations, "A" indicates the A List, "B" indicates either section of the B List, "B1" and "B2" signify a specific section of the B List, and "C" represents either a State authorization on the C List or an individual federal authorization.

The right side of the "=" represents the type of ACMP review that applies. A "B" indicates that the general concurrence(s) apply and no individual ACMP review is required. A "C" indicates an individual ACMP consistency review is necessary for the project.

- X To use a general concurrence, a project must only require permits either listed in the general concurrence or elsewhere on the A or B Lists. ("B + A or B = B")

For instance, if an applicant owned land within a State park and required access through the park to reach the private parcel, general concurrence GC-14 in Section I of the B List, Access Across State Park Lands, may apply. If, after reviewing the Coastal Project Questionnaire for the project, State agencies determined the only permit required is a Special Park Use Permit from DNR and if the applicant agreed to comply with all the Standard Conditions, GC-14 could be used for the ACMP consistency determination. No ACMP review or public notice would be required. ("B1 = B")

If the applicant also needed to cross an anadromous fish stream to access his property, a Fish Habitat Permit from DFG would be required. GC-14 does not include the Fish Habitat Permit on the list of applicable permits. However, GC-5, Equipment Crossing of Streams, might apply. If 1) the project fits the Description of Activity for both general concurrences; 2) no other permits are necessary; and 3) the applicant agrees to comply with the standard conditions for both general concurrences, the project is considered a routine activity and an individual ACMP review is not required. ("B1 + B1 = B")

- X If a project requires a C List permit or individual federal authorization, the entire project is individually reviewed for consistency with the ACMP. ("A or B1 + C = C")

Stated differently, individual ACMP consistency reviews are necessary for projects that require a State or federal authorization not included on the A or B Lists. If, in our example, the access

project required the use of explosives to clear a route to the private land, the general concurrences would not apply because the applicable explosives authorization is not listed in any applicable A or B List projects. In this case, an individual ACMP review would be required for the entire project. The review would apply to the Special Park Use Permit, the Fish Habitat Permit, and the authorization to use explosives. Because more than one agency permit is involved, the review would be coordinated by DGC. ("B1 + B1 + C = C")

X However, permits included in Section II of the B List are not subject to individual project reviews. ("A or B + B2 + C = C - B2")

To take the example one step further, if the applicant also needed to build a small boat ramp, Section 10 and Section 404 permits from the COE may be required plus a Certificate of Reasonable Assurance from DEC. However, boat ramps are addressed in Nationwide Permit 36 in Section II of the B List and include these additional authorizations. Assuming the explosives authorization were also required, the individual ACMP review would only consider the Special Park Use Permit, the Fish Habitat Permit, and the explosives authorization as described above. The Nationwide Permit would not be considered during the review. ("B1 + B1 + B2 + C = C - B2")

If the explosives authorization were not required, then GC-14 could be combined with GC-5 and NWP 36 to avoid the need for an individual review as long as all standard conditions on the general concurrences were complied with. ("B1 + B1 + B2 = B")

### **Coastal District Notification**

State agency staff will, if requested in writing, send a copy of its permit to the affected coastal district after the B List permit(s) is issued to the applicant. This allows coastal districts to track and monitor activities that are occurring within the boundaries of their coastal district. If desired, the coastal district should review the various B List permits to determine which ones they want a record of, and then send written requests to the appropriate regional agency staff (e.g., a letter to DFG Southcentral Habitat Division advising the district wants a copy of all Fish Habitat Permits issued for small scale Placer Mining, GC-1). The agency can then place the coastal district on their "cc" list. For assistance in names and addresses of appropriate agency programs, please refer to pages 5-7 of the CPQ (see Appendix B).

Applicants are reminded to consult with local government staff to see if any local development permits or approvals are required for the proposed project.

## **B LIST SECTION I**



## GENERAL CONCURRENCE GC-1

### SMALL-SCALE PLACER MINING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

For activities subject to this general concurrence, the applicant is not automatically required to complete a Coastal Project Questionnaire (CPQ). DFG may require a CPQ for project proposals when it is uncertain whether other State or federal authorizations may be required.

### DESCRIPTION OF THE ACTIVITY

Small-scale placer mining using hand tools or suction dredge placer mining using dredges with nozzle intakes and suction hoses six inches or less in diameter, powered by a 18 horsepower or less engine in waterbodies, including anadromous fish streams.

*Authority:* AS 16.05.840  
AS 16.05.870  
AS 16.20  
AS 46.15  
5 AAC 95  
11 AAC 93

*Permits:* Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
Temporary Water Use Permit (DNR)  
Permit to Appropriate Water (DNR)

*Region:* Statewide

### PROCEDURE

**Advisory:** Authorization by the U.S. Army Corps of Engineers (COE) to conduct placer mining on State and federal lands may also be required. Currently, COE General Permit (GP) 88-02M (see Section 2 of the B-List) addresses placer mining for suction dredges up to four inches in diameter and up to 16 horsepower. All miners, whether planning to do work under COE GP 88-02M or not, must submit an application to the U. S. Army Corps of Engineers. The U. S. Army Corps of Engineers may

be contacted at (800) 478-2712.

Any placer mining activity with a non-consumptive use of more than 30,000 gallons of water per day (0.5 cubic-feet per second) will require a water use permit from DNR.

## **STANDARD CONDITIONS**

1. Stream banks shall not be mined or otherwise disturbed. All dredging shall be conducted within the limits of the existing wetted perimeter (water level).
2. Suction dredges shall not be used as hydraulic monitors to wash soils or other materials from above the water surface.
3. Winches shall not be used instream to move boulders, logs, and other natural obstructions and which are too large to be moved by hand.
4. No wheeled or tracked equipment shall be used instream.
5. No damming or diversion of waters is permitted unless specifically authorized by DNR. No damming or diversion of fish bearing waters are permitted unless specifically authorized by DFG.
6. Mining activities shall avoid sensitive fish life stages. (NOTE: DFG may restrict or prohibit activities during certain sensitive time periods as necessary.)
7. DFG may require additional timing, equipment, or other limitations as necessary to prevent cumulative impacts to anadromous fish or their habitats that could result from an excessive number of suction dredges operating in a limited area.
8. Any discharge to State waters shall comply with the Alaska Water Quality Standards. This may require the installation and maintenance of settling ponds or similar systems to reduce turbidity and settleable solids in the discharges.
9. Tailings shall be left in a stable configuration so as not to contribute to erosion or sedimentation problems in State waters.
10. Adequate flow must remain to support indigenous aquatic life and the watercourse must not be blocked to the passage of fish.
11. Where suction dredging occurs, the hydraulic hose will not be used for stripping nor dredging in posted or observed fish spawning areas.

12. Water used for the purpose of mining will be used within a zero discharge recycling system and returned to the stream within the mining claim.

CD S:\DGC\ABC\LIST.

## GENERAL CONCURRENCE GC-1A

### SMALL PLACER MINING OPERATIONS ON STATE LAND

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below.

This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Placer mining activity where less than five acres are mined at one location in any year, there is a cumulative unreclaimed mined area of less than five acres at one location, and the activity will not result in the blockage or bypass of fish-bearing waters. Water use is limited to non-consumptive use.

*Authority:* AS 38.05.035  
AS 46.15  
11 AAC 96  
11 AAC 93  
11 AAC 86

*Permit:* Mining and Reclamation Permit (DNR)  
Temporary Water Use Permit (DNR)  
Permit to Appropriate Water (DNR)

*Region:* Statewide, except in the Kenai Peninsula Borough coastal district

### PROCEDURE

Applications for mining permits are received on the Annual Placer Mining Application rather than the Coastal Project Questionnaire. Division of Mining adjudicates applications as to the size of the operation, and land status. Small mines, less than five acres, must complete the notice of intent to do reclamation and agree to comply with the eight stipulations as part of their application. Any placer mining activity with a non-consumptive use of more than 30,000 gallons of water per day (0.5 cubic-foot per second) will require a water use permit from DNR.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that

known historic, archaeological and paleontological sites may be avoided.

## **STANDARD CONDITIONS**

1. Topsoil and overburden muck, not promptly redistributed to an area being reclaimed, shall be separated and stockpiled for future use. This material shall be protected from erosion and contamination by acidic or toxic materials and shall not be buried by tailings.
2. The area reclaimed shall be reshaped to blend with surrounding physiography using tailings, strippings, and overburden, and be stabilized to a condition that shall retain sufficient moisture to allow for natural revegetation.
3. Stockpiled topsoil, overburden muck, and, if necessary, settling pond silts, shall be spread over the contoured mine workings to promote natural plant growth.
4. Settling ponds located within the active flood plain and necessary for continued use during the next mining season shall be protected from erosion or the fines removed.
5. In the Mat-Su Borough coastal district, within 75 feet of the ordinary high water line of rivers, its tributaries, sloughs, backwaters, and adjacent wetlands, all disturbed areas not being actively mined shall be revegetated by August 1 of each year to minimize adverse impacts to water quality and fish and wildlife resources and habitats. No camps, structures, vehicle storage or repair areas, or other activity not specifically authorized shall be located within 75 feet of ordinary high water.
6. Stream channel diversion of non-fish bearing waters shall be relocated to a stable location in the valley flood plain and abandoned diversion channels shall be reclaimed along with the rest of the mine workings.
7. The flood plain shall be established wide enough to accommodate seasonal high water flood events and prevent undue erosional degradation.
8. Exploration trenches shall be backfilled and the surface stabilized to prevent erosion. Brush piles, stumps, topsoil, and other organics shall be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
9. All buildings and structures constructed, used or improved shall be removed, dismantled, or otherwise properly disposed of at the completion of mining. The campsite shall be cleaned up and left free of debris.

10. The Alaskan Historic Preservation Act (AS 41.35.000 prohibits the appropriation, excavation, removal, injury, or destruction of any historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
11. Any discharge to State waters shall comply with the Alaska Water Quality Standards. This may require the installation and maintenance of settling ponds or similar systems to reduce turbidity and settleable solids in the discharges.
12. Tailings shall be left in a stable configuration so as not to contribute to erosion or sedimentation problems in State waters.
13. Adequate flow must remain to support indigenous aquatic life and the watercourse Must not be blocked to the passage of fish.
14. Where suction dredging occurs, the hydraulic hose will not be used for stripping nor dredging in posted or observed fish spawning areas.
15. Water used for the purpose of mining will be used within a zero discharge recycling system and returned to the stream within the mining claim.

CD S:\DGC\ABCLIST.

## GENERAL CONCURRENCE GC-2

### TEMPORARY LOADING AND OFFLOADING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the standard conditions listed below.

This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Temporary (1 year or less) loading and offloading of equipment and supplies on State tidelands or shorelands, not requiring fill or construction of facilities.

*Authority:* AS 38.05.850  
AS 16.05.870  
AS 16.20  
5 AAC 95

*Permits:* Tideland Permit (DNR)  
Land Use Permit (DNR)  
Special Area Permit (DFG)  
Fish Habitat Permit (DFG)

*Region:* Statewide, except in AMSAs or Important Use Areas designated in the Bering Straits CRSA.

### STANDARD CONDITIONS

1. Groundings, if necessitated, shall be limited to periods of high water so as to minimize disturbance to the tidelands or shorelands.
2. Erosion, compaction or alteration to streambanks or shorelands shall be avoided.
3. Should disturbance occur, the area shall be restored to its natural contours.
4. All activities shall be conducted in a manner that will minimize disturbance to fish and wildlife resources.
5. Refueling of equipment and the storage of petroleum products on tidelands or wetlands

are **prohibited**.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC..

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is (800) 478-9300.

CD S:\DGC\ABC\LIST.



## GENERAL CONCURRENCE GC-3

### TEMPORARY NAVIGATION SITE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF ACTIVITY

Construction and maintenance of temporary navigation sites (less than one year). Typical operation is the placement of radio or microwave towers and repeaters. Site preparation may include some brushing or timber removal. Towers are normally secured using stakes as anchors. Power is usually supplied by propane in combination with storage batteries. Maintenance consists of refueling every two or three months or electronic adjustment or repair as needed.

*Authority:* AS 38.05.850

*Permits:* Land Use Permit (DNR)

*Region:* Statewide, except in critical habitat areas, refuges, sanctuaries, and AMSAs or Important Use Areas designated in the Bering Straits CRSA.

### STANDARD CONDITIONS

1. Operations shall be conducted in such a manner that the vegetative mat is not disturbed. Clearing of brush and timber must be kept to the minimum necessary to utilize the site.
2. Transportation of fuel and hazardous substances must be consistent with 49 CFR 172 (EPA hazardous material regulations and 18 AAC 62).
3. Fuel storage facilities shall not be placed within 100 feet (500 feet in the Bering Straits CRSA) of waterbodies and must be within an impermeable diked area or portable impermeable containment structure capable of containing 110 percent capacity of the largest independent fuel container. Manifoldd tanks or bladders must be considered as containers.
4. All hazardous material containers and fuel drums shall be marked with the contents, permittee's name, and date using paint or a permanent label.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is (800) 478-9300.

5. All refuse generated must be removed from the site after completion of the activity.

## GENERAL CONCURRENCE GC-4

### STREAM GAGES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Placement and maintenance of stream gages.

*Authority:* AS 38.05.850  
AS 16.05.870  
AS 16.05.840  
AS 16.20  
5 AAC 95

*Permits:* Land Use Permit (DNR)  
Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
  
Nationwide Permit 5 (COE)

*Region:* Statewide

### STANDARD CONDITIONS

1. Alteration of the banks or channels of a watercourse is **prohibited**.
2. Operations shall not create a barrier or hindrance to fish movement.

CD S:\DGC\ABC\LIST.

## GENERAL CONCURRENCE GC-5 EQUIPMENT CROSSING OF STREAMS

### ACTIVITY DESCRIPTION

Winter ice crossings of resident fish streams in the North Slope Borough, Northwest Arctic Borough, and Bering Straits CRSA, and short term or transitory crossings of anadromous fish streams by wheeled or tracked vehicles or equipment statewide.

*Authority:* AS 16.05.840  
AS 16.05.870  
AS 16.20  
AS 38.05.850  
5 AAC 95

*Permits:* Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
Land Use Permit (DNR)

*Region:* Statewide for crossing of anadromous fish streams; winter ice crossings of resident fish streams in the North Slope Borough, Northwest Arctic Borough, and Bering Straits CRSA.

### PROCEDURE

This activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the conditions listed below. The applicant must still obtain the required permits and approvals from local, state and federal agencies.

For activities subject to GC-5, the applicant is not automatically required to complete a coastal project questionnaire (CPQ). For example, a CPQ may not be required for short-term or transitory crossings associated with timber harvest activities on state and federal lands. DFG may require a CPQ for project proposals where it is uncertain whether other state or federal authorizations are required. In all cases, a CPQ is not required for the activities described below on private lands and non-navigable waters reviewed in accordance with AS 41.17, the Alaska Forest Resources and Practices Act.

Prior to crossing any stream, river or lake specified as being important for the spawning, rearing or migration of anadromous fish, the applicant shall obtain a DFG Fish Habitat Permit pursuant to AS 16.05.840 and

.870. In addition, construction of an ice bridge across such water bodies in the North Slope Borough, Northwest Arctic Borough, or Bering Straits CRSA coastal districts requires a Fish Habitat Permit pursuant to AS 16.05.840. DFG will determine in advance of permit issuance if the activity can be accomplished in a manner that ensures protection of fish habitat.

The standard conditions listed under DNR Land Use Permits apply only when a DNR Land Use Permit is issued under this general concurrence. All other conditions apply when a DFG Fish Habitat or Special Areas Permit is issued.

## **STANDARD CONDITIONS**

### **Summer In-water Crossings**

1. Stream crossings shall be made from bank to bank in a direction substantially perpendicular to the direction of stream flow.
2. Stream crossings shall be made only at locations with gradually sloping banks. There shall be no crossings at locations with sheer or cut banks.
3. Stream crossing activities shall be sited and timed to avoid spawning areas and sensitive fish life stages and habitats. DFG may restrict or prohibit activities during certain sensitive time periods as necessary.
4. Streambanks and streambeds shall not be altered or disturbed in any way to facilitate crossings. DFG and DNR, or the applicable land manager, shall be notified within three working days of any disturbances. Corrective action may be stipulated as applicable and necessary.
5. Movement of equipment through willow (*Salix*) stands shall be avoided to the extent possible. (North Slope Borough, Northwest Arctic Borough, and Bering Straits CRSA)

### **Ice Bridge Construction or Crossing Frozen Waterbodies**

6. Equipment, other than vessels, must not enter open water areas of a watercourse during winter. Ice or snow bridges and approach ramps constructed at stream crossings must be substantially free of extraneous material (i.e., soil, rock, wood, or vegetation) and, if requested by DFG, must be removed or breached before spring breakup. Alterations of the banks of a watercourse are prohibited.
7. To avoid additional freeze-down of deep-water pools harboring overwintering fish, watercourses shall be crossed at shallow riffle areas from point bar to point bar. Compaction or removal of the

insulating snowcover from the deep-water pool areas of rivers must be avoided. Exceptions to this stipulation may be authorized by DFG on a case-by-case basis if it determines the pool is deep enough to prevent complete freeze-down.

### **DNR Land Use Permits**

8. Vehicle maintenance, refueling of equipment, campsites, or storage and stockpiling of hazardous substances on the surface ice of lakes, ponds, or rivers is prohibited. The storage of non-hazardous material on the surface ice of lakes, ponds, or rivers is allowed with consent from DNR or the applicable land manager.
9. Snow ramps or other mitigating measures will be used to avoid unsafe obstacles to snow machiners or others using the riverway for travel.
10. Equipment shall not operate in flowing water without written authorization from DNR, Division of Land.

### **Wildlife Avoidance**

11. Operations must avoid grizzly bear dens by one-half mile. Known bear den locations shall be obtained from DFG, Division of Habitat and Restoration at (907) 459-7289 prior to starting operations. Occupied dens encountered in the field must be reported to the above, and subsequently avoided. (North Slope Borough, Bering Straits CRSA, and Northwest Arctic Borough)
12. Operations shall avoid known polar bear dens by one mile. Known den locations shall be obtained from the U.S. Fish and Wildlife Service at (907) 786-3424 prior to starting operations. New dens encountered in the field must be reported to the above, and subsequently avoided by one mile. (North Slope Borough, Bering Straits CRSA, and Northwest Arctic Borough)

### **Spill Notification**

13. The lessee or permittee shall immediately notify DEC by telephone, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail, informing DEC of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the lessee or permittee shall report the discharge within 48 hours, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one

gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC 75.305 shall be met. Scope and Duration of Initial Response Actions (18 AAC 75.310) and reporting requirements of 18 AAC 75, Article 3 also apply.

The lessee or permittee shall supply DEC with all follow-up incident reports. Notification of a discharge must be made to the nearest DEC Area Response Team during working hours: Anchorage (907) 269-7500, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The DEC oil spill report number outside normal business hours is (800) 478-9300.

## **ADVISORIES**

1. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site shall cease and the Office of History and Archaeology in the DNR, Division of Parks and Outdoor Recreation at (907) 269-8721 and the appropriate coastal district shall be notified immediately.

## GENERAL CONCURRENCE GC-5A

### LOW WATER CROSSINGS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the conditions listed below. A fish habitat permit may not be required for this activity, however, this does not relieve the applicant from obtaining the required permits and approvals from local, State, and federal individual agencies.

For activities subject to this GC, the applicant is not automatically required to complete a coastal project questionnaire (CPQ). DFG may require a CPQ for project proposals where it is uncertain whether other State or federal authorizations may be required.

### DESCRIPTION OF THE ACTIVITY

The installation, replacement or modification of low water crossings, excluding known fish spawning areas.

*Authority:* AS 16.05.840  
AS 16.05.870

*Permit:* Fish Habitat Permit (DFG)

*Region:* Trans-Alaska Pipeline System (TAPS) Corridor

### PROCEDURE

Under its own AS 16 authorities, DFG may modify the following conditions or add additional conditions based on site-specific concerns such as soil conditions and stream morphology provided that the modified or additional conditions meet or exceed the minimum requirements of GC-5A. DFG may also require mitigation if 1) stream currents or 2) upstream and downstream erosions and depositional patterns are altered substantially; or 3) fish habitat is not adequately maintained.

### STANDARD CONDITIONS

1. The structure shall be designed, installed and maintained to accommodate the efficient passage and movement of fish, both upstream and downstream, at all flows up to and including a mean annual flood design discharge with a two-day duration.



2. Alteration of streambanks shall be minimized and restricted to that necessary for the stream crossing. Disturbed streambanks shall be immediately stabilized to prevent erosion and sedimentation of the stream.
3. Authorized activities shall avoid sensitive fish life stages. (Note: DFG may restrict or prohibit activities during certain sensitive time periods as necessary.)
4. The installation, replacement or modification shall be conducted in a manner that maintains fish and wildlife and their habitats.
5. The permittee shall survey a representative elevation of the natural stream (the deepest portion of the channel) both upstream and downstream, and shall use this information to determine the natural grade of the stream. The low water crossing shall be installed so that this natural grade is not exceeded at the top surface of material placed in the bottom of the crossing.
6. Only material which resists rutting, prevents erosion and downstream sedimentation and precludes "French-draining" shall be placed in low water crossings.
7. Low water crossings shall be constructed to match the existing stream geometry (width, depth) as closely as possible. The bottom profile shall be V-notched or sufficiently narrow at the thalweg (deepest part of the stream channel) to confine the water to a depth that will ensure fish passage during low flows.

## GENERAL CONCURRENCE GC-6

### TEMPORARY FISH RESEARCH AND MANAGEMENT FACILITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

For activities subject to this general concurrence, the applicant is not automatically required to complete a CPQ. DFG may require a CPQ for project proposals where it is uncertain whether other State and federal authorizations may be required.

### DESCRIPTION OF THE ACTIVITY

Seasonal construction, maintenance, operation and removal of temporary fish weirs, counting towers, sonar arrays, holding pens and other sampling or research facilities for the purpose of fisheries research, management, or enhancement. Camp facilities are excluded from this general concurrence but may qualify for approval under General Concurrence GC-23.

*Authority:* AS 16.05.840  
AS 16.05.870  
AS 16.20  
AS 38.05.850  
5 AAC 95

*Permits:* Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
Land Use Permit (DNR)

*Region:* Statewide

### STANDARD CONDITIONS

1. Streambanks shall not be disturbed. If streambanks are inadvertently disturbed by activities attributable to this project, they shall be immediately stabilized to prevent erosion and the resultant sedimentation of streams which could occur both during and after operations.
2. Facilities shall be operated and maintained as required by DFG to prevent unnecessary sampling mortality and ensure that fish mortality caused by delays in migration do not occur.

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## GENERAL CONCURRENCE GC-7

### CULVERT AND BRIDGE INSTALLATION

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

For activities subject to this general concurrence, the applicant is not automatically required to complete a coastal project questionnaire (CPQ). DFG may require a CPQ for project proposals where it is uncertain whether other State or federal authorizations may be required. For example, a CPQ may not be required for the replacement or modification of culverts or bridges associated with timber harvest activities on State and federal lands. In all cases, a CPQ is not required for the activities described below on private lands and non-navigable waters reviewed in accordance with AS 41.17, the Alaska Forest Resources and Practices Act.

### DESCRIPTION OF THE ACTIVITY

The installation, maintenance, repair, replacement or modification of culverts or bridges..

*Authority:* AS 16.05.840  
AS 16.05.870  
AS 16.20  
5 AAC 95  
AS 38.05.850

Section 10 of Rivers and Harbors Act  
Section 401 and 404 of Clean Water Act (for NWP's only)

*Permit:* Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
Land Use Permit or Right-of-Way (DNR)

Federal Temporary Use Permit (BLM)  
NWP's 3, 13-15, 18, 23, 25, 32, 33 (COE)

*Region:* Statewide

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

## **STANDARD CONDITIONS**

1. The structure shall be designed, installed, and maintained to accommodate the efficient passage and movement of fish, both upstream and downstream, at all flows up to and including a mean annual seasonal flood design discharge with a two-day duration for the specific time of the year that the weakest swimming fish (design fish) present in the waterbody must be assured passage.<sup>1</sup>
2. Alteration of streambanks shall be minimized and restricted to that necessary for the stream crossing. Disturbed streambanks shall be immediately stabilized to prevent erosion and sedimentation of the stream.
3. Authorized activities shall avoid sensitive fish life stages. (Note: DFG may restrict or prohibit activities during certain sensitive time periods as necessary.)
4. The installation, replacement or modification shall be conducted in a manner that maintains fish and wildlife and their habitats.
5. If the structure crosses a fresh water body, it shall not be constructed of any wood treated with a preservative containing creosote or pentachlorophenol.
6. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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<sup>1</sup> Fish passage design flow is not the same as the culvert design or flood flow. The flood flow is the maximum anticipated stream discharge that the structure must safely accommodate during its design life. The fish passage design flood is the maximum stream discharge at which fish passage must be assured. The DFG has defined the fish passage design flood as the mean annual, two-day duration flood for the specific time of year that the design fish is migrating upstream. The DFG is responsible for identifying the design fish and the seasonal period for calculation of the fish passage design flood.

## GENERAL CONCURRENCE GC-8

### TEMPORARY USE OF WATER

### PERMANENT USE OF WATER (100,000 GALLONS/DAY OR LESS)

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050(c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies, including access permits (before water use begins).

For activities subject to this general concurrence, the applicant is not automatically required to complete a coastal project questionnaire (CPQ). DNR may require a CPQ for project proposals where it is uncertain whether other State or federal authorizations may be required. For example, a CPQ may not be required for road reconstruction activities since the temporary water use permit is usually the last required permit in an approved and consistent Alaska Department of Transportation and Public Facilities project. Also, a CPQ may not be required for public supply when the water system is existing and the water right application is an after-the-fact filing.

### DESCRIPTION OF THE ACTIVITY

Temporary and permanent water withdrawals, including amendments to existing water withdrawal authorizations, from surface and subsurface water where all water withdrawals cumulatively do not reduce the instream flow below the level necessary to support anadromous and resident fish. (Under AS 46.15, DNR is still required to give notice to DFG and DEC of the proposed withdrawal to determine the necessary instream flow levels.)

Temporary water use may be for an undetermined quantity of water for up to five years. Permanent water use authorizations subject to this general concurrence are limited to 100,000 gallons per day. Applications for permanent water uses greater than 100,000 gallons are subject to individual project review. Amendments to existing authorizations must remain within the scope of this general concurrence.

Routine uses include:

- X public, commercial, and domestic water supplies;
- X industrial uses including seafood processing, logging activities, road construction, oil and gas exploration outside environmentally sensitive areas, sand and gravel washing, industrial air cooling, and chemical refining;
- X public and commercial uses including recreation fields, golf courses, cemeteries, snow making, trailer and recreational vehicle parks, campgrounds, public facilities, ice hockey rinks, commercial malls, car washes, laundries, and washaterias;

- X agricultural uses including crop irrigation, livestock watering, nurseries and greenhouses;
- X hydroelectric power generation;
- X fish hatcheries.
- X hydrostatic testing; and
- X bottled water.

*Authority:* AS 46.15  
AS 16.05.870  
AS 16.20  
5 AAC 95  
11 AAC 93

*Permits:* Temporary Water Use Permit (DNR)  
Permit to Appropriate Water (DNR)  
Fish Habitat Permit (DFG)  
Special Area Permit (DFG)

*Region:* Statewide, except AMSAs or Important Use Areas identified in the Bering Straits CRSA plan.

## **PROCEDURE**

This general concurrence does not apply to an operation that must undergo an individual project review because of other State or federal permit requirements. Water withdrawal authorizations connected to commercial mining are reviewed as part of the Alaska Placer Mining Application.

## **STANDARD CONDITIONS**

### **Conditions pertaining to Surface and Subsurface Withdrawals**

1. Water discharged (including runoff) shall not be discharged at a rate resulting in sedimentation, erosion, or other disruptions to the bed or banks of the above waters, causing water quality degradation.
2. Water trucks will not be fueled or serviced within 100 feet of a water body. Gas fueled pumps will not be fueled or serviced within 100 feet of a water body **unless** the pumps are situated within a catch basin designed to contain any spills. Equipment shall not be stored or serviced within 100 feet of any of the subject waterbodies.

### Conditions pertaining only to Surface Withdrawals

3. Any water intake structure in fish bearing waters, including a screened enclosure, well-point, sump, or infiltration gallery, must be designed, operated, and maintained to prevent fish entrapment, entrainment, or injury, unless specifically exempted by DFG.
4. Each water intake directly accessible by fish shall be designed to prevent intake, impingement, or entrapment of fish. Preferred methods of water intake include well points, sumps, or infiltration galleries. As an alternative, the water intake structure must be enclosed and centered within a screened box with a maximum screen-mesh size of 0.04-inches. To reduce fish impingement at the screen/water interface, water velocity may not exceed 0.5 feet per second when the pump is operating (AS 16.05.870). Slower water velocities may be stipulated by DFG if more sensitive anadromous fish life stages (e.g. juvenile whitefish) are present at the water intake source during the period of pumping. DFG can properly determine the size of the screened box from the pump intake size and capacity to be used. Screens aligned parallel to the stream current will require the least maintenance and will be least likely to impinge fish.
5. Waterbodies shall not be altered to facilitate water appropriation or disturbed in any way. If banks, shores, or beds, are inadvertently disturbed, excavated, compacted, or filled, by activities attributable to this project, they shall be immediately stabilized to prevent erosion and the resultant sedimentation of waterbody which could occur both during and after operations. Any disturbed areas shall be recontoured and revegetated.
6. Adequate flow must remain to support indigenous aquatic life and the watercourse must not be blocked to the passage of fishes. The water appropriation shall not adversely affect any anadromous fish stream.
7. Prior to withdrawing water from fish bearing streams, the DFG and DNR may require current and expected flow data for the period of proposed water use. DNR may set a maximum rate of diversion and/or a minimum instream flow.
8. Inwater activity will be limited to placement and removal of the intake structure only. No other in-water activities will occur.
9. There shall be no wheeled, tracked, excavating, or other machinery or equipment (with the exception of the non-motorized screened intake box) operated below the ordinary high water line.
10. Permittee must employ pumping operations in such a way as to prevent any petroleum products or hazardous substances contaminating surface or ground water. In case of accidental spills, absorbent pads will be readily available at the water collection point. All spills must be reported to DEC (800) 478-9300 and to DNR at (907) 451-2678.



11. The suction hose at the water extraction site must be clean and free from contamination at all times to prevent introduction of contamination to the waterbodies, and should be in water of a sufficient depth so that the stream sediments are not disturbed during the extraction process.
12. During the constructional or operational phases of this project, any discharge to state waters made subsequent to this appropriation shall comply with Alaska Water Quality Standards.

## GENERAL CONCURRENCE GC-9 PESTICIDE APPLICATION RENEWAL

### ACTIVITY DESCRIPTION

This activity covers the following types of application of EPA-registered pesticides (insecticide, herbicide, rodenticide, fungicide) to private or public lands consistent with the general conditions below. Requirements for DEC public notice and/or public hearings are not affected by this general concurrence. Pesticide, EPA registration number, formulation, active ingredient percentage, adjuvant, target pest, date and time of application, location and size of treated area, method and rate of application, storage conditions, disposal procedures, special precautions taken to protect public health, and safety and environment are required to be stated in the application to DEC. This activity is restricted to renewals of pesticide permits for the same projects conducted by the same applicants and applies to applicants who have fully complied with their previous permit and who are currently in compliance. Pesticide permits are eligible for renewal one time. Pesticide permits must undergo individual consistency review on alternate years following single renewals. This general concurrence applies to the following:

1. Surface application of pesticides conducted or participated in by the state, borough, city of any class or another government entity which requires a DEC permit to apply pesticides.
2. Mosquito and black fly control.
3. Aerial application on privately owned farms.

**Authority:** AS 46.03.320  
18 AAC 15  
18 AAC 90.010

**Permit:** Permit to Apply Pesticides (DEC)

**Region:** Statewide, except in the Kenai Peninsula Borough

### PROCEDURE

This activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. The applicant must still obtain the required permits and approvals from local, state and federal agencies.

## STANDARD CONDITIONS

1. The pesticide label will be complied with at all times.
2. Pesticides shall not be applied within 100 feet of water bodies or wetlands.
3. Pesticides shall not be applied outdoors when wind speed exceeds the maximum wind speed stated in the labeling, or 7 miles per hour if no wind speed is stated in the labeling.
4. Pesticides shall be applied only by or under the direct supervision of a person with the appropriate certification.
5. Records shall be maintained and made available to DEC. These records shall contain the target pest; product name and EPA registration number; method and time of application; weather conditions; amount of pesticide used, location and size of treatment area; and names of applicators, purchase, storage and disposal information.
6. All pesticide containers will be disposed of in accordance with label directions, except that burning must be done in compliance with 18 AAC 50.
7. The permittee will adhere to all safety requirements specified by the product label and contained in the standard conditions.
8. When insecticides are used, beekeepers of record shall be notified by the best means available at least 24 hours before application. The permittee or the certified applicator must notify the beekeeper, by telephone if possible. Beekeepers of record are those who belong to the Cook Inlet Beekeepers Association and the South Central Beekeepers Association.
9. The permittee shall report any spill or accident, alleged accident or complaint to the DEC Pesticide Program as soon as that person has knowledge of the occurrence.
10. Pesticides shall be applied using properly calibrated equipment.
11. DEC will notify the affected coastal district of pesticide permit applications in their district.

## GENERAL CONCURRENCE GC-10

### ABANDONED TIMBER SALVAGE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Salvage of abandoned commercial timber property (beach logs) from the waters and tidelands of the State.

*Authority:* AS 45.50.235 (b)  
11 AAC 71.400

*Permit:* Log Salvage License (DNR)

*Region:* Statewide

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. Salvage operations under this license must be conducted so as to avoid damage to streams or other water areas and adjacent uplands. Timber may not be skidded in or across anadromous fish streams. All operations shall be conducted in compliance with AS 16.05.870 so as to avoid stream silting, interference with the passage of fish, or injury to the spawning grounds.
2. During actual operations on the waters, beaches, and tidelands of the State, the purchaser will not:
  - (a) drag or skid logs across estuarine tidal flats;
  - (b) allow logs to ground at any tidal stage during storage;
  - (c) be allowed to salvage logs within 200 feet of the mouth of a DFG designated anadromous

- fish stream;
  - (d) salvage logs from tidal flats which border on tidal marshes or tidal meadows; or,
  - (e) be allowed to operate within the navigable portions of any streams or rivers.
3. No A-frames, skidders, or other beached equipment shall be used in conjunction with the license without first being authorized in writing by the Forester-in-charge, and properly bonded.
  4. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622), the appropriate coastal district, and the State Forester shall be notified immediately. The operator will not log across canoe landings, fish weirs, petroglyphs, or other historic or archaeological sites in the intertidal zone.
  5. No salvage is permitted within 330 feet of eagle nest trees delineated on the sale area map.
  6. This permit does not authorize the construction of log transfer facilities, or the salvage of logs within portions of streams containing anadromous fish.

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## GENERAL CONCURRENCE GC-11

### SURFACE OILING OF ROADS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

This activity includes only the limited application of oil, asphalt, bitumen or a residuary product of petroleum on the road system of the State for dust control during summer periods. Storage of petroleum products is not covered under this general concurrence. A surface oiling permit is required from DEC. The permit is issued on an annual basis. The application for the DEC permit must include analytical testing results of the oil to ensure no contaminants will be applied.

*Authority:* AS 46.03.020  
AS 46.03.740  
18 AAC 15  
18 AAC 75  
18 AAC 62

*Permits:* Surface Oiling Permit (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

1. Permittee shall observe the general stipulations and constraints in Surface Oiling regulation 18 AAC 75.700-.730.
2. The applicant will have conducted all required chemical analyses outlined in the DEC Surface Oiling Permit Application.
3. Application will not result in any pooling or run-off of oil.
4. The amount of oil applied to the areas described shall be consistent with the application, and a single application shall not exceed 0.15 gallons of oil per square yard. The maximum total amount of oil applied under this permit (including initial and subsequent applications) shall not exceed 0.3 gallons

of oil per square yard. Note: Application rate of 0.15 gallons per square yard is equivalent to 2500 gallons per mile, assuming a 28-foot wide road.

5. In some cases, oil must be graded or scarified into the road. DEC will notify the applicant if this requirement applies.
6. The permittee shall not apply oil to the road surface within 3 feet of the edge of either side of the road and all oil shall be deposited at least 100 feet from any waters unless a greater distance is required by DEC to protect water quality.
7. The applicant is required to use best available technology to ensure the discharge is properly contained. Proper clean-up equipment and absorbents must be readily available.
8. Records of surface oiling must be kept on the form provided by DEC and must be provided to the issuing DEC office within 14 days after the expiration of this permit. These records shall include: source of the oil used, length and width of surface actually oiled, location and date of oiling, oil volume used, and road miles oiled.
9. Dust retardants allowed for application under the terms of this permit are asphalt, asphalt emulsions, cutback asphalts, asphaltic oils, bituminous treatments, and the following petroleum products: crude oil, hydraulic fluids, waste lubricating oil, and emulsified oil mixtures containing these products.
10. The application of dust retardants containing any detectable concentration of polychlorinated biphenyls (PCBs), 5 parts per million (by weight) or more of lead, or any hazardous waste regulated under the State of Alaska's Hazardous Waste Regulation (18 AAC 62) is **prohibited**.
11. Nothing in this general concurrence should be construed to allow the permittee to apply hazardous waste as a dust suppressant. The use of hazardous waste as a dust suppressant is **prohibited** by law.
12. The applicant may be required to submit the results of chemical analyses in addition to lead and PCBs as specified by DEC. In addition, the permittee will be expected to allow a representative of DEC to sample, at any time, the dust retardant to be used from their storage, transport, or applicator facilities.

## GENERAL CONCURRENCE GC-12

### OIL DISCHARGE FOR SCIENTIFIC PURPOSES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The controlled application of less than 100 gallons of oil onto waters and lands of the State for experimental purposes has occasionally been permitted by DEC. Only small quantities are authorized with rigid containment requirements. Applications to tundra vegetation and ponds are examples. Knowledge gained from small scale field studies is used to design more effective response actions in the event of a large oil spill, including rehabilitation techniques.

*Authority:* AS 38.05.850  
AS 46.03.020  
AS 46.03.740  
18 AAC 15  
18 AAC 75

*Permit:* Land Use Permit (DNR)  
Oil Discharge Permit for Scientific Purposes (DEC)

*Region:* Statewide, except in critical habitat areas, game refuges, game sanctuaries, wetlands, anadromous fish streams, and AMSAs and Important Use Areas designated in the Bering Straits CRSA.

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. An accurate accounting of the amounts of oil not recaptured during the testing and a final synopsis of the results of the test shall be reported to DEC.



2. The applicant is required to use best available technology to ensure the discharge is properly contained.
3. Upon completion of the project, the applicant must restore the environment affected by the project to a condition as nearly approximating the original condition as is feasible.
4. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-13

### EXISTING AIR QUALITY EMISSIONS

The following activity is consistent with the Alaska Coastal Management Program as per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Renewal or amendment of existing air quality control permits for air quality emissions.

Any stationary facility described in 18 AAC 50.300 (a) emitting air contaminants in the State of Alaska must obtain a permit from DEC authorizing the location, design and operation of air contaminant sources at a facility; the control of emissions; the concentration and total quantity of emissions; and any change in the quantity of emissions. Permits are issued for up to 5 years on a case-by-case basis.

This general concurrence covers only renewals or amendments of existing air quality control permits and only existing facilities are covered. Permits for new facilities, and for modifications of existing facilities which increase emissions and require a Prevention of Significant Deterioration (PSD) review, will require an individual consistency review (i.e., they are not covered under this general concurrence designation). Furthermore, any modifications of a source or facility which results in the generation of a new solid waste or wastewater stream is not covered by this general concurrence.

*Authority:* AS 46.03.010-170  
18 AAC 15  
18 AAC 50

*Permit:* Air Quality Control Permit to Operate (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

1. Permittee shall comply with the State Ambient Air Quality Standards and increments established in State Air Quality Control Regulations 18 AAC 50.020.
2. Permittee shall comply with the most stringent of applicable emission standards, limits and specifications set out in the State Air Quality Control Regulations 18 AAC 50.(040, 050, 060) and

the permit.

3. Permittee shall maintain and operate, in accordance with manufacturer's specifications, all fuel burning equipment, emission control devices, process equipment, testing equipment and monitoring equipment to provide optimum control of air contaminant emissions during all operating periods.
4. Other source specific operating, testing, monitoring or reporting requirements may be specified in the permit and exhibits, such as:
  - a. Permittee shall control the following sources of fugitive dust to prevent release of materials off the property line of the facility: aggregate piles, aggregate and product conveyors, asphalt loadout hopper, pugmills, baghouse fine handling systems, and others specific to the design of the facility.
  - b. Permittee shall conduct source tests of *<specific source>* to ascertain the concentration and mass emission rate of *<specific air contaminant>* within *<specified time period or date>*.
  - c. Tests required by Condition *<no.>* of this permit shall be conducted at a maximum design rate *<or other specified rate>*.
  - d. Prior approval by DEC and 30 days notification of each test required by Condition *<no.>* of this permit is required. Additional tests may be required if deemed necessary to ascertain compliance with applicable standards and emission limits.
  - e. Results of the tests required by Condition *<no.>*, in the format set out in Appendix III Section IV.3 of the State Air Quality Control Plan (and any other required information), shall be reported to DEC's appropriate regional office, within 30 days following completion of each individual test.
  - f. Permittee shall install, calibrate, operate and maintain continuous monitors as described in the permit.
  - g. If any continuous monitor is malfunctioning or non-operable for three or more consecutive days, permittee shall notify DEC's appropriate district office by telephone and appropriate regional office in writing on the fourth day, indicating the cause of failure and anticipated time required to repair or replace the instrument.

*List of exhibits, one or more of which may be included in the permit if required to elaborate on conditions 4 (a-g):*

- A. *Source inventory*
- B. *Air contaminant emission limits, standards, fuel specifications, and operating limits*
  
- C. *Emission testing requirements*
  
- D. *Continuous monitoring requirements*
  
- E. *Facility Operating report*
  
- F. *Permit application documentation*

5. Permittee shall notify DEC's appropriate district office by telephone promptly, but no later than within 12 hours, of any equipment failure which increases air contaminant emission beyond normal levels, or of any change in operating conditions. The notification shall include the nature of the occurrence, the expected duration, a general description of the weather and, if applicable, the steps taken to minimize emissions and avoid a recurrence. A written report shall be submitted to the district manager office within five working days of the incident.
  
6. Permittee shall provide access to the facility at any reasonable time to DEC's representative, and any other person authorized or contracted by DEC, in order to conduct an inspection or tests to determine compliance with this permit and State environmental laws and regulations. DEC representatives will abide by all health- and safety-related rules or procedures prescribed by the permittee while within the permitted facility.
  
7. Permittee shall submit a Facility Operating Report as described in Exhibit D of this permit to the DEC's appropriate regional office, *<quarterly, semi-annually, or annually>* by the 30th of *<DEC assigned month(s)>* each year.
  
8. Permittee shall maintain test results, monitoring instrument recorder charts and other applicable data in an active file for not less than one year, and have them accessible on request for the DEC for not less than three years.
  
9. A copy of the permit shall be clearly displayed and the state Air Quality Control Regulations 18 AAC 50 kept on file at the permitted facility location.

## GENERAL CONCURRENCE GC-13A

### AIR QUALITY EMISSIONS FROM FLARING

The following activity is consistent with the Alaska Coastal Management Program as per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Air quality emissions from facilities utilizing flaring. A flare is a new temporary fuel burning facility used during oil and gas exploratory drilling which does not clearly fall under GC-13. The entire facility must not require a Prevention of Significant Deterioration (PSD) permit to be eligible for this general concurrence.

*Authority:* AS 46.03  
18 AAC.50

*Permit:* Air Quality Control Permit to Operate--Flaring (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

1. Permittee shall comply with the applicable emissions standards specified in Air Quality Control Regulations 18 AAC 50.050. The smoke should not exceed 20 percent opacity for more than three minutes in any one hour. Any black smoke exceeding the 20 percent opacity, three-minute limit shall be reported immediately by telephoning the DEC regional office, and also reporting in writing as required in Condition #5.
2. Within 30 days of the burn, the operator shall report the actual or estimated amount and type of hydrocarbons burned, the combustion rate, and type of combustion.
3. For well tests, a head or manifold choke shall be sized and installed to limit fluid flows to no more than the design capacity of the phase separator.
4. Burning of produced liquids is **prohibited** unless failure or seasonal constraints preclude flowing to tankage for storage, backhauling, or reinjection. Liquids shall be burned utilizing a smokeless burner.

5. Open burning of produced fluids is **prohibited** except in emergency conditions. Emergency burning of produced liquids shall be limited to 100 barrels or 10 minutes, whichever is less. Every case of emergency open burning must be followed within 30 days with a report listing time and location, type and amount of hydrocarbons burned, duration of burn, reason for emergency, and how it will be prevented in the future.
6. DEC representatives shall be allowed access to permittee's facilities to conduct scheduled or unscheduled inspections or tests to determine compliance with this permit, State laws and regulations.
7. A copy of this permit shall be posted in the office/laboratory trailer or the separator trailer at each well, and the State Air Quality Control Regulation 18 AAC 50 kept on file at the permitted location.

## GENERAL CONCURRENCE GC-13B

### STATE OPERATING PERMIT

The following activity is consistent with the Alaska Coastal Management Program as per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Issuance of a State Operating Permit, as required by Title V of the Federal Clean Air Act as amended November 1990, to an existing facility with regulated air contaminant emissions.

This general concurrence covers only issuances of State Operating Permits to existing facilities. Permits for new facilities and for modifications of existing facilities which increase emissions and require preconstruction review under the prevention of significant deterioration or new source review provisions of the State Air Quality Control Program will require an individual consistency review (i.e., they are not covered under this general concurrence designation.) Further, any modification of a source or facility which results in the generation of a new solid waste or wastewater stream is not covered by this general concurrence.

*Authority:* AS 46.03  
18 AAC 15  
18 AAC 50

*Permit:* State Operating Permit (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

1. Permittee shall comply with the State Ambient Air Quality Standards and Increments established in State Air Quality Control Regulations 18 AAC 50.020.
2. Permittee shall comply with the most stringent of applicable emission standards, limits and specifications set out in the State Air Quality Control Regulations 18 AAC 50.(040, 050, 060) and the permit.
3. Permittee shall install, maintain and operate, in accordance with the manufacturer's procedures the

- fuel burning equipment, process equipment, emission control devices, testing equipment and monitoring equipment to provide optimum control of air contaminant emissions during all operating periods, including startup and shutdown.
4. Other source specific operating, testing, monitoring or reporting requirements may be specified in the permit and exhibits\*, such as:
    - a. Permittee shall control the following sources of fugitive dust to prevent release of materials off the property line of the facility: aggregate piles, aggregate and product conveyors, asphalt loadout hopper, pugmills, baghouse fine handling systems, and others specific to the design of the facility.
    - b. Permittee shall perform source tests of *<specific source>*, within 90 calendar days of the request, to ascertain the concentration and mass emission rate of *<specific air contaminant>* within *<specified time period or date>*.
    - c. Permittee shall conduct a source test while *<specific source>* is running at the maximum operating capacity, unless otherwise approved by DEC.
    - d. Permittee shall submit a complete testing plan to the *<appropriate regional office and address>* 30 days prior to the scheduled date of any requested test.
    - e. Permittee shall submit two copies of a complete source test report for any test results required by Condition No. *<>* of this permit, in the format set out in Volume III Appendix IV-3 of the State air Quality Control Plan to DEC's *<appropriate regional office>* within 30 days following completion of the test.
    - f. Permittee shall install, calibrate, and maintain continuous monitors as described in the permit.
    - g. If any continuous monitor is malfunctioning or non-operable for three or more consecutive days, permittee shall notify *<the appropriate district office>* by telephone and DEC's *<appropriate regional office>* in writing on the fourth day, indicating the cause of failure and anticipated time required to repair or replace the instrument.
  5. Permittee shall notify DEC's *<appropriate district office>* by telephone at *<appropriate phone number>* promptly, but not later than within 12 hours, of any equipment failure which increases air contaminant emissions beyond normal levels, or of any change in operating conditions or of any other circumstance which may result in emissions which exceed the limits or standards specified in the permit or regulations. The notification shall include the nature of the occurrence, the expected duration, a general description of the weather and, if applicable, the steps taken to minimize



emissions and avoid a recurrence.

Permittee shall submit a written report to DEC's *<appropriate regional office and address>* within five working days of the incident.

6. Permittee shall provide access to the facility at any reasonable time to the DEC representative, and any other person authorized or contracted by DEC, in order to conduct an inspection or tests to determine compliance with this permit and State environmental laws and regulations. The DEC representative will abide by all health- and safety-related rules or procedures prescribed by the permittee while within the permitted facility.
7. Permittee shall submit a Facility Operating Report as described in Exhibit  $\diamond$  of this permit to DEC's *<appropriate regional office>* by the 30th day of *<the appropriate month(s)>* each year.
8. Permittee shall maintain test results, monitoring instrument recorder charts and other applicable data necessary to determine compliance with this permit in an active file for not less than one year, and have them accessible to DEC's representative, on request, for not less than five years.
9. Permittee shall clearly display a copy of this permit at *<the appropriate location on-site>* and a copy of the state Air Quality Control Regulations 18 AAC 50 on file at the permitted facility location.

\*List of exhibits, one or more of which may be included in the permit if required to elaborate on conditions 4 (a-g):

- A. Source inventory
- B. Air contaminant emission limits, standards, fuel specifications, and operating limits
- C. Emission testing requirements
- D. Continuous monitoring requirements
- E. Facility Operating report
- F. Permit application documentation

## GENERAL CONCURRENCE GC-14

### ACCESS ACROSS STATE PARK LANDS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Access by individuals or organizations by foot, vehicle or boat to a privately-owned parcel wholly or partially within a State park unit, when there is no reasonable alternative route. This concurrence does not cover vehicle or equipment crossings of wetlands or fish streams.

*Authority:* AS 41.20.040  
11 AAC 18.020

*Permit:* Special Park Use Permit for Access (DNR/DPOR)

*Region:* Statewide

### STANDARD CONDITIONS

1. The permittee shall exercise diligence in protecting from damage to the land, property and resources of the State of Alaska in the area covered by and used in connection with this general concurrence. All activities shall be conducted in a manner that will avoid or minimize disturbance of park resources, including natural drainage systems. Cuts, fills or other activities causing any disturbances, if not repaired immediately, are subject to any corrective action required by DNR.
2. The permittee, employees, agents or clients shall not interfere with free public use of roads and trails in the area of their activities, unless authorized by special stipulation in the DNR permit.
3. Activities employing wheeled or tracked vehicles, when specifically allowed under the description of activities of the general concurrence, shall be conducted in such a manner as to minimize surface damage to park lands and resources.
4. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during

the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

## GENERAL CONCURRENCE GC-15

### STATE PARK-RELATED FACILITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Construction and maintenance of docks, cabins, signs or buildings that are developed on State park lands; and are related to public use and enjoyment of, or management and protection of, park resources. Projects under this general concurrence cannot exceed \$250,000 in cost, require wetlands to be filled, include work in fish streams, or require a solid waste or wastewater discharge permit.

*Authority:* AS 41.20.040  
11 AAC 12.140  
11 AAC 12.150

*Permit:* Special Park Use Permit to Construct and Maintain Structures in a State Park (DNR/DPOR)

*Region:* Statewide

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. The permittee shall exercise diligence in protecting from damage to the land, property and resources of the State of Alaska in the area covered by and used in connection with this general concurrence. All activities shall be conducted in a manner that will avoid or minimize disturbance of park resources, including natural drainage systems. Cuts, fills or other activities causing any disturbance, if not repaired immediately, are subject to any corrective action required by DNR.
2. The permittee, employees, agents or clients shall not interfere with free public use of roads and trails in the area of their activities, unless authorized by a special stipulation in the DNR permit.

3. Activities employing wheeled or tracked vehicles, when specifically allowed under the description of activities of the general concurrence, shall be conducted in a manner that minimizes surface damage to park lands and resources.
  
4. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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**GENERAL CONCURRENCE GC-15A  
CONSTRUCTION, USE, AND MAINTENANCE OF DOCKS  
IN RIVERS, LAKES, AND STREAMS**

**ACTIVITY DESCRIPTION**

Construction, use, and maintenance of private non-commercial docks (including boardwalks and pedestrian access ramps) on rivers, lakes, and streams. Covered docks, boat houses, and boat launch ramps are not authorized under this general concurrence. Cantilevered walkways and platforms are not covered by this general concurrence but may be considered under General Concurrence GC-39 (Cantilevered Walkways and Platforms).

**Authority:** AS 16.05.870  
AS 16.20  
AS 38.05.850  
AS 41.21.040  
5 AAC 95  
11 AAC 12.140  
11 AAC 12.150  
11 AAC 18.010  
Section 10 River and Harbors Act (COE)  
General Permit 90-6 (COE)

**Permits:** Land Use Permit or Right-of-Way (DNR)  
Lease (DNR)  
Special Park Use Permit (DNR/DPOR)  
Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
Section 10 Permit (COE)  
Nationwide Permit 11 (COE)  
General Permit 90-6 (COE)  
Letter of Permission (COE)

**Region:** Statewide, except primitive management units in the Nushagak Mulchatna Rivers Recreation Management Plan or to permanent docks in management units designated as semi-primitive in the plan.

**PROCEDURE**

This activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. The applicant must still obtain the required permits and approvals from local, state and federal agencies.

## **STANDARD CONDITIONS**

1. In rivers and streams, only floating docks are allowed. Docks, not including access ramps or gangways, ladders or steps (see GC-38 and GC-39), may not exceed 400 square feet in size (except on the Kenai River where docks may not exceed 80 square feet in size). Docks shall be removed seasonally, and shall not extend more than 50 feet or 25 percent of the width of the waterbody, whichever is less (except on the Kenai River where the maximum distance is 10 feet at any water level).
2. In lakes, pile supported or floating docks may be allowed. They may not exceed 400 square feet in size, and may not extend more than 40 feet beyond the ordinary high water mark (OHW), except on Big Lake in the Matanuska-Susitna Borough, where they may be 450 square feet and extend 50 beyond the OHW.
3. Piling installation shall be timed and sited to avoid sensitive fish life stages and habitats. DFG may restrict or prohibit piling installation during certain sensitive fish time periods or areas as necessary.
4. Fuel, oil, or any other petrochemical products shall not be stored within 100 feet of the OHW in conjunction with the construction, use, or maintenance of an authorized dock.
5. The wooden portions of docks, access ramps, abutments, or piling shall not be treated with any preservative containing pentachlorophenol or creosote. Wood preservatives must be applied using pressure treatment rather than painted on or allowed to soak into the wood.”
6. On all new docks, flotation shall be of materials which will not become waterlogged or sink when punctured. Closed cell (extruded) expanded polystyrene or equivalent material of good quality and manufactured for marine use is required. Lesser quality foam bead flotation may be authorized if it is encased in a protective coating to prevent deterioration with resultant loss of beads. Existing foam flotation will be authorized until it is severely deteriorated and is no longer serviceable or capable of supporting the structure, at which time it no longer complies with this standard condition.
7. The permittee shall protect from damage the land and waters, property and resources of the State of Alaska in the area covered by and used in connection with this permit. The permittee shall be liable to the state for any damage resulting from negligence or from the violation of the terms of this permit or any law or regulation applicable to the use of state parks or other state lands by the

permittee or by his/her agents, and employees, contractors, and sub-contractors when acting within the scope of their employment.

8. Neither the construction of this project nor the use of the proposed facility shall interfere with free public use of public roads, trails, waters or public access easements in the area of their activities.
9. No wheeled or tracked vehicles shall be operated in conjunction with dock construction, use, and maintenance.
10. Banks shall not be altered or disturbed in any way, and no fill material shall be placed in waters or wetlands. DFG and DNR, or the applicable land manager, shall be notified within three working days of any disturbance. Any inadvertent bank cuts, slopes, fill or other exposed earthwork attributable to the project shall be immediately stabilized, returned to pre-project contours, and revegetated with natural vegetation to prevent erosion which may occur both during and after the project. Additional corrective action may be stipulated as applicable and necessary.
11. Docks shall not restrict access to public land, water, or rights-of-way.
12. The existing bank vegetation shall not be removed or altered to facilitate the installation and removal of the floating dock.
13. Floatation materials shall be contained in some manner to prevent breakup and release into waters.
14. Installation and removal of docks and associated pedestrian access ramps (not boat launches) shall be conducted in such a manner that prevents damage, removal, or alteration of naturally occurring vegetation. Minimum setbacks may be required by coastal districts or by agencies in areas where winter ice movement is known to exist and could damage the docks. In areas where winter ice movement is known, minimum setbacks from ordinary high water may be required by agencies or coastal districts between a waterway and docks and access ramps stored on adjacent uplands. The setback is necessary to avoid damage to bank and riparian vegetation.
15. Walkways or ladders extending beyond the OHW for the purpose of connecting floating docks with the shoreline shall not exceed six (6) feet in width.
16. Structures and buoys placed in navigable waters shall be visibly marked and placed in a manner to minimize navigation hazards or obstructions to other uses of coastal habitats.
17. Anchoring methods must be appropriate for the location and able to weather high winds and extreme tides.



18. When facilities are no longer being properly maintained, they must be promptly removed and disposed of in an approved manner.
19. For docks placed over or near beds of seagrasses in estuarine habitats, design elements will be included to minimize shading effects such as height, width, and length, north-south orientation and light permeable surfaces.

### **Spill Notification**

20. The lessee or permittee shall immediately notify DEC by telephone, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail, informing DEC of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the lessee or permittee shall report the discharge within 48 hours, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC75.305 shall be met. Scope and Duration of Initial Response Actions (18 AAC 75.310) and reporting requirements of 18 AAC 75, Article 3 also apply.

The lessee or permittee shall supply DEC with all follow-up incident reports. Notification of a discharge must be made to the nearest DEC Area Response Team during working hours: Anchorage (907) 269-7500, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The DEC oil spill report number outside normal business hours is (800) 478-9300.

### **ADVISORIES**

1. For activities proposed within 50 feet of the Kenai River, the applicant shall contact the Kenai River Center to determine permit requirements.
2. For activities proposed outside the municipal boundaries of the City of Kenai and the City of Soldotna, the applicant shall contact the Kenai Peninsula Borough Floodplain Administrator to determine permit requirements.
3. For activities proposed in the City of Soldotna within 600 feet of the Kenai River, the applicant shall contact the City of Soldotna to determine permit requirements.

4. For activities located in the Coastal Zone Management area of the Matanuska-Susitna Borough, the applicant shall contact the Borough Floodplain administrator regarding the possible need for a Flood Damage Prevention permit.
5. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site shall cease and the Office of History and Archaeology in the DNR, Division of Parks and Outdoor Recreation at (907) 269-8721 and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-16

### INCOMPATIBLE STATE PARK USE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Activities which are inherently incompatible with State park purposes, such as utility corridors, communication sites, buildings or other facilities or uses, but which have a benefit to the public at large. Projects under this general concurrence cannot exceed \$250,000 in cost, require wetlands to be filled, include work in fish streams, or require a solid waste or wastewater discharge permit.

*Authority:* AS 41.20.040  
11 AAC 18.010

*Permit:* State Park Incompatible Use Permit (DNR)

*Region:* Statewide

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. The permittee shall exercise diligence in protecting from damage to the land, property and resources of the State of Alaska in the area covered by and used in connection with this permit. All activities shall be conducted in a manner that will avoid or minimize disturbance of park resources, including natural drainage systems. Cuts, fills, or other activities causing any disturbance, if not repaired immediately, are subject to any corrective action required by DNR.
2. The permittee, employees, agents or clients shall not interfere with free public use of roads and trails in the area of their activities unless authorized by special stipulation in the DNR permit.
3. Activities employing wheeled or tracked vehicles, when specifically allowed under the description

of activities of the general concurrence, shall be conducted in a manner that minimizes surface damage to park lands and resources.

4. Garbage and food will be stored in a way that does not attract wildlife.
5. Existing borrow pits, if used, shall be regularly smoothed and revegetated to the satisfaction of the State.
6. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-17

### TEMPORARY GRAZING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Temporary grazing of not more than 10 health-certified domestic animals on State-owned lands for a period not exceeding one (1) year. No temporary or permanent improvements are allowed.

*Authority:* AS 38.05.850

*Permit:* Grazing (DNR)

*Region:* Statewide, except on legislatively designated State critical habitats, game refuges and sanctuaries, and candidate or designated AMSAs and Important Use Areas designated in the Bering Straits CRSA.

### STANDARD CONDITIONS

1. The permittee shall take all reasonable precautions to prevent and suppress forest, brush and grass fires and to prevent the pollution of waters on, or in the vicinity of, the premises.
2. The permittee shall not cut live timber on the premises.
3. The permittee shall not close roads or trails, or otherwise prevent overland access commonly used by the public, within the premises.
4. Fuel storage facilities shall not be placed within 100 feet (500 feet in the Bering Straits CRSA) of waterbodies and must be within an impermeable diked area or portable impermeable containment structure capable of containing 110 percent capacity of the largest independent fuel container. Manifolded tanks or bladders must be considered as containers. Vehicle refueling shall not occur within the annual floodplain, wetlands or tidelands.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of

hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is (800) 478-9300.

5. No permanent or temporary structures including fences shall be erected or improvements made.
6. Evidence of overgrazing, excessive soil compaction, erosion and deteriorating site condition shall cause the permit to be revoked or suspended until mitigation is ensured.
7. The permittee shall clean and restore the area to the satisfaction of DNR.
8. The animals that are grazed under this permit shall not be allowed to become feral. It is the permittee's responsibility to remove all the animals from State land when the permit expires.

**GC-18 DELETED 3/94**

## GENERAL CONCURRENCE GC-19

### CROSS COUNTRY MOVEMENT OF EQUIPMENT IN WINTER/SUMMER

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Winter and summer cross country movement of dozers, sleighs, tracked vehicles and rubber-tired equipment. Associated activities may include temporary camps (GC-23), equipment crossings of streams (GC-5), and water withdrawals (GC-8). Ice roads and ice pads are restricted to those allowed in Standard Condition 16. All other ice road or ice pad activities should be considered under GC-34.

*Authority:* AS 16.20  
AS 38.05.850  
5 AAC 95  
11 AAC 93  
11 AAC 96

*Permits:* Miscellaneous Land Use Permit (DNR)  
Land Use Permit (DNR)  
Special Area Permit (DFG)

*Region:* Northern and Southcentral including the Susitna Basin Recreation Rivers, but excepting other legislatively designated areas managed by DNR

### PROCEDURE

DNR will consult with DFG in determination of compliance with Standard Conditions 7 and 18. Activities may be restricted or prohibited during sensitive time periods as determined necessary by DFG.

A permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic and archaeological sites may be avoided.

The provisions of the federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that no activity will be permitted that jeopardizes the continued existence of an endangered species or results in the destruction



or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office ((907) 786-3542), for additional information on endangered species.

The Marine Mammal Protection Act provides that there will be no intentional disturbance, harassment, catching, or killing of marine mammals. However, a 1981 amendment to the Marine Mammals Protection Act authorizes the Secretary, U.S. Department of Interior, or the Secretary, U.S. Department of Commerce, under certain conditions, to allow U.S. citizens to take small numbers of marine mammals from non-depleted stock incidentally, but not intentionally, in specified areas. DNR recommends that this authorization be obtained by the permittee before conducting any operations in or near coastal areas. For further information, the applicant is urged to contact the Anchorage office of the U.S. Fish and Wildlife Service ((907) 786-3542) and National Marine Fisheries Service ((907) 271-5006).

To proceed in areas other than originally requested, the applicant must have authorization from DNR or the applicable land manager. The applicant shall obtain a DFG Fish Habitat Permit for any modifications that entail crossing or working in any stream, river or lake specified as being important for the spawning, rearing or migration of anadromous fish or that entail placement of culverts or other inwater obstructions in streams or rivers supporting resident fish. The applicant must provide the following information when requesting authorization:

- a. location and anticipated schedule of operations,
- b. a list of the type and number of vehicles that will be used in the operations (summer travel only for DNR authorizations; summer and winter for DFG authorizations), and
- c. name and telephone number of a person familiar with the daily location of the permit activities and easily contacted by DNR or the applicable land manager.

Operations within or crossing the Trans-Alaska pipeline corridor will require prior authorization from Alyeska, coordinated through the State Pipeline Coordinator's Office, DNR (907) 278-9594.

## **STANDARD CONDITIONS**

1. Trails, campsites, and work areas must be kept clean. All solid waste including incinerator residue shall be backhauled to a solid waste disposal site approved by DEC.
2. Trash, survey lath, roadway markers, and other debris that has accumulated along roads or cross country routes shall be picked up and properly disposed of prior to freeze-up the following winter.

3. **Fuel and hazardous substances.** Secondary containment<sup>1</sup> shall be provided for fuel or hazardous substances<sup>2</sup>.

a. **Container<sup>3</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)

b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>4</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands.

c. **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.

d. **Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.

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<sup>1</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West CRSA) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>2</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>3</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifolder tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>4</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

- e. **C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is (800) 478-9300. For spills resulting from operation of the Trans Alaska Pipeline, spill notification information shall be provided to appropriate agencies at the Joint Pipeline Office.

- 4. All rehabilitation shall be completed to the satisfaction of DNR or the applicable land manager.
- 5. Existing roads and trails shall be used wherever possible. Trail width shall be kept to the minimum necessary. Trail surface may be cleared of timber, brush, stumps, and snags.

In the **Kenai Peninsula Borough**, the following specific requirements apply:

For large trees, unless released by the DNR Authorized Officer in writing, logs greater than 4" in diameter which are not removed, because of unmerchantability or for any other reason, shall be disposed of as follows:

- a. Spruce: Logs shall be cut into 24 inch maximum length sections. Sections shall be scattered (not piled) in open areas of the right-of-way to permit rapid drying to prevent bark beetle outbreak. Sections shall not be covered by slash, brush, or other residue.
- b. All other tree species: Logs shall be cut into 10-15 foot lengths and placed so they cannot roll. Sections shall not be piled on top of each other.

Removal of brush, slash, and immature trees will be accomplished by any of the following three methods: (1) spreading and scattering in the adjacent brush area without damaging other trees, (2) chipping and scattering in such a way as to preclude their being washed into

any watercourse, or (3) piling and burning in accordance with procedures and practices established by the DNR, Division of Forestry and the air quality regulations of the DEC.

6. A completion report shall be submitted to DNR or the applicable land manager within sixty days of termination of permit activities. This report shall contain the following information:
  - a. actual routes of travel and location of all camps depicted on a USGS topographic map,
  - b. a list of vehicles used for any off-road travel which may have taken place,
  - c. a statement of cleanup activities and methods of debris disposal, and
  - d. a report covering any known incidents of damage to the tundra or existing vegetation cover and follow-up corrective actions that may have taken place while operating under this authorization.

Any report that includes the above noted information may be sent in lieu of the completion report. The information in a-d should be highlighted or otherwise marked for easy reference. Cross country travel requiring a DNR land use authorization for activity related to the Trans Alaska Pipeline shall be reported to the Joint Pipeline Office consistent with the terms of the lease with DNR.<sup>5</sup>

7. In the Bristol Bay CRSA and Lake and Peninsula Borough, operations shall avoid caribou calving habitat, caribou migration corridors, and caribou and moose overwintering areas during sensitive periods of use.
8. Vehicles shall be operated without disturbing the vegetative mat. Blading or removal of the vegetation is **prohibited** except as approved by DNR or the applicable land manager.
9. Movement of equipment through willow (*Salix*) stands shall be avoided where possible.
10. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and

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<sup>5</sup> This general concurrence does not apply to generally allowed uses identified by regulation. Section 2.9 of the lease agreement for the Trans Alaska Pipeline requires authorization from DNR for generally allowed uses and an activity report. For cross country travel that is not generally allowed, a DNR land use authorization is required. If this general concurrence is used, the completion report must include the information required in Standard Condition 6.

the appropriate coastal district shall be notified immediately.

11. Abandonment of vehicles is **prohibited**

### **Summer Travel**

12. Summer travel by heavy equipment and all cross country travel in the North Slope Borough shall require specific approval from DNR or the applicable land manager and shall be limited to vehicle types, time periods, and locations approved by DNR or the applicable land manager.

### **Winter Travel**

13. Equipment, other than vessels, must not enter the open water areas of a watercourse during winter. Filling of low spots and smoothing by the use of snow and ice is allowed. Ice or snow bridges and approach ramps constructed at stream, river, or slough crossings shall not contain extraneous material (i.e., soil, rock, brush or vegetation). In Southcentral region, ice or snow bridges shall be removed immediately after use or prior to breakup or breached to facilitate water flow during breakup.
14. DNR or the applicable land manager will determine cross country travel opening and closure based on snow cover and frost depth conditions. Cross country travel must be completed within 72 hours of notification of travel closure from the land manager.
15. The winter operation of ground contact vehicles for off-road travel must be limited to areas with adequate ground frost and snow cover.
16. Ice roads and ice pads may be constructed only within the limited work areas as long as they are thick enough to prevent damage to the tundra and underlying substrate. No other ice roads are authorized under this General Concurrence. Ice roads and ice pads may be considered under General Concurrence GC-34 (Ice Road and Ice Pad Construction in the North Slope Borough).
17. Vehicle maintenance, campsites, and storage or stockpiling of material on the surface ice of lakes, ponds or rivers is **prohibited**
18. Operations must avoid grizzly bear dens by one-half mile unless alternative mitigative measures to minimize disturbance are authorized by DNR after consultation with DFG. Known bear den locations shall be obtained from the (DFG) Division of Wildlife Conservation (Fairbanks (907) 459-7213; Anchorage (907) 267-2179) prior to starting operations. Occupied dens encountered in the field must be reported to the above, and avoided. (North Slope and Northwest Arctic

Boroughs, Bering Straits CRSA)

19. Operations must avoid known polar bear dens by one mile. Known den locations shall be obtained from the U.S. Fish and Wildlife Service ((907) 786-3800 or (800) 362-5145) prior to starting operations. New dens encountered in the field must be reported to the above, and subsequently avoided by one mile. (North Slope and Northwest Arctic Boroughs, Bering Straits CRSA)

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## GENERAL CONCURRENCE GC-20

### TRAPPING CABINS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Construction and limited use of trapping cabins on state lands.

*Authority:* AS 38.95.075  
AS 38.95.080

*Permit:* Permit for Use of Trapping Cabins (DNR)  
Trapping Cabin Construction Permit (DNR)

*Region:* Statewide, except in the Northwest Arctic Borough, Bering Straits CRSA and Nushagak/Mulchatna AMSA

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. All garbage and foreign debris brought into, or placed on the cabin site must be removed by the permittee unless otherwise authorized by DNR.
2. Unless otherwise allowed under applicable DNR area plans, trapping cabins must be located a minimum of 100 feet away from the banks of anadromous waterbodies.
3. No restriction or interference with public access to or across State land is allowed.
4. The cabin may not be used for a commercial activity or as a permanent residence.
5. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or

archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

6. Wastewater disposal from kitchen greywater, privies, or outhouses must satisfy the requirements of DEC. On-site privies must be located at least 100 feet from any surface waterbody.
7. **Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC.

The DNR 24-hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. The DEC oil spill report number is (800) 478-9300. All fires and explosions must also be reported. DNR or the appropriate land manager shall be supplied with all follow-up incident reports.

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## GENERAL CONCURRENCE GC-21

### PERSONAL USE CABINS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Personal use cabins. Limited use of existing cabins on State land.

*Authority:* 11 AAC 65.050

*Permit:* Personal Use Cabin Permit (DNR)

*Region:* Statewide

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. No additions to or enlargements of the cabin are allowed, except for routine maintenance.
2. All garbage and foreign debris brought into or placed on the cabin site must be removed by the permittee unless otherwise authorized by DNR.
3. The cabin may not be used for a commercial activity or as a permanent residence.
4. No new road or trail across State land is authorized under this general concurrence.
5. No restriction or interference with public access to or across State land is allowed.
6. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of

History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

## GENERAL CONCURRENCE GC-22

### CONSTRUCTION OF PEDESTRIAN OR SMALL ATV TRAILS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Construction of pedestrian or small all terrain vehicle (ATV) trails for summer and winter use (examples are: dog mushing, traplines, ski trails). This does not include the use of any heavy equipment either for construction of the trail or for use on the trail.

*Authority:* AS 38.05.850  
AS 16.05.870  
AS 16.05.840  
AS 16.20  
5 AAC 95

*Permit:* Land Use Permit or Right-of-Way (DNR)  
Special Area Permit (DFG)  
Fish Habitat Permit (DFG)

*Region:* Statewide, except in legislatively designated parks, AMSAs or Important Use Areas designated in the Bering Straits CRSA, or other areas of high scenic or recreational value identified by DNR.

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. Existing trails and roads shall be used wherever possible. Trail widths shall be kept to a maximum of 10 feet. Trail surface may be cleared of timber, brush, stumps and snags.
2. Activities employing wheeled or tracked vehicles shall be conducted in such a manner as to minimize

surface damage to lands and resources.

3. All activities shall be conducted in a manner that will avoid or minimize disturbance of resources, including natural drainage systems. Cuts, fills and other activities causing disturbance, if not repaired immediately, are subject to any corrective action as may be required by the State.
4. Alteration of banks or water courses is **prohibited**.
5. There shall be no cutting or removal of any trees six inches in diameter or larger at breast height.
6. All trees, brush and other overburden material shall be removed or disposed of on-site in a manner which will not create berm piles.
7. Fill is not authorized.
8. Abandonment of vehicles is **prohibited**.
9. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-23

### TEMPORARY CAMPS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The establishment of temporary camps (excluding floating facilities). Temporary camps do not require permanent improvement and can be established on one acre or less. Temporary camps consist of personal property and structures that can readily be dismantled and removed from the site by the expiration date of the permit. Any wastewater discharge must be less than 500 gallons per day.

Temporary camps for commercial recreational activities shall be limited to a period of use of less than eight months per year. Resource exploration activities, except for winter seismic activities, shall be limited to less than a maximum of 200 person-days in the North Slope Borough and 100 person-days elsewhere.

*Authority:* AS 16.20  
AS 38.05.850  
5 AAC 95

43 CFR 2920  
43 CFR 8372

*Permit:* Land Use Permit (DNR)  
Special Area Permit (DFG)

FLPMA Minimum Impact Permit (BLM)  
Special Recreation Permit (BLM)

*Region:* Statewide, except AMSAs, Important Use Areas designated in the Bering Straits CRSA, the planning area for the Nushagak-Mulchatna Recreation Rivers Management Plan (GC-28 applies in this area), and commercial recreational or other outfitting activities in the Northwest Arctic Borough and the Bering Straits CRSA.

## PROCEDURE

DNR will also consult with DFG and affected coastal districts in the identification of important use areas under Standard Condition 2. DNR will consult with DFG in the determination of compliance with Standard Condition 9.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

NOTE: As a general rule, the vegetation line on the streambank adjacent to a waterbody is considered the ordinary high water mark.

## STANDARD CONDITIONS

1. Expiration and effective dates of use authorized by a permit shall not extend beyond the seasonal use necessary to support the activity.
2. Temporary camps will not be sited within one-half mile of important shore recreational fishing sites, high use public camping sites, or on identified traditional public access trails as identified in DNR area plans or during review.
3. All structures (e.g., tent frames, caches, outhouses) will be sited to minimize evidence of human use and will be located with a vegetated (if naturally occurring) minimum setback of 100 feet (200 feet is recommended) landward of ordinary high water mark.
4. Site disturbance shall be kept to a minimum to protect local habitats. All activities at this site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Additionally, any ground disturbances which may have occurred shall be contoured to blend with the natural topography to protect human and wildlife health and safety. Particular attention must be paid to prevent pollution and siltation of streams, lakes, ponds, waterholes, seeps and marshes, and to disturbances of fish and wildlife populations and habitats.
5. The permittee shall not close landing areas or trails or otherwise prevent overland access used by the public. The ability of all users to use or access state land or public waters shall not be restricted in any way.
6. Wastewater disposal, from kitchen gray water, privies, or outhouses, must satisfy the requirements of DEC. Sewage (black and gray water) design plan approval must be obtained from DEC prior to construction. On-site privies must be located at least 100 feet from any surface waterbodies. Upon expiration of the permit, lime shall be applied to the wastes in the privy pit prior to back filling. For additional information, contact the local DEC district office.

7. All solid waste and foreign debris must be eliminated by removal to a DEC- approved site or by burning (if a paper product). In the Bering Straits CRSA, disposal sites for burnable materials shall be located in upland sites a minimum of 1500 feet from fish bearing water and 200 feet from surface waters. Hazardous waste must not be disposed of on site, but instead must be hauled out for disposal in an approved disposal site.
8. Prior to removal, all garbage and debris will be stored so it does not attract wildlife. Food and refuse will be stored in bear-proof containers. Sites will be kept clean.
9. Temporary camps may be allowed in caribou calving habitat if the camp can be sited and operated in a manner that is not likely to cause significant impact to caribou calving.
10. Fuel storage containers, including flow test holding tanks and hazardous substances, with a total combined capacity larger than 55 gallons shall not be placed within 100 feet (500 feet in the Bering Straits CRSA) from the ordinary high water mark of waterbodies. Containers which exceed a total combined capacity of 110 gallons must be stored within an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115 percent in the Aleutians West CRSA) capacity of the largest independent container (plus 12 inches freeboard in the Kenai Peninsula Coastal District and Aleutians West CRSA). All containers must be clearly marked with the contents and the permittee's name. Drip pans and materials, such as sorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel. All fuel storage containers and associated materials must be removed by the permit expiration date.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC.

All fires and explosions must also be reported. The DEC oil spill report number is (800) 478-9300. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports.

11. The permittee shall take all reasonable precautions to prevent, and all reasonable actions to suppress, forest, brush and grass fires.

12. The permittee may use dead and down timber but shall not cut standing timber on the premises unless specifically authorized by the Division of Forestry, DNR. Brush clearing is allowed but should be kept to the minimum necessary to set up the camp.
13. All structures, personal property (e.g., equipment, gear, fuel storage containers), and improvements, must be removed from the site, and the site restored to its natural state by the expiration date of the permit. The permittee shall restore the site at his/her own expense.
14. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-23A

### COMMERCIAL RECREATION ENTRY AND USE OF SHORT-TERM (PORTABLE) CAMPS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Entry and use of short-term (portable) camps in conjunction with commercial recreation activities on State lands located in permit defined game management units, guide use areas, river drainages, lakes, geographic areas, etc. A short-term (portable) camp may remain in one specific location for a maximum of 14 days, except as provided below (see Exception to 14 Day Limit). On or before the 14th day, a short-term (portable) camp must be relocated at least 2 miles. Relocation starts a new 14-day period.

**Exception to 14 Day Limit:** In Game Management Sub-Units where the "spring bear hunting season" is 21 days or less, short-term (portable) camps are allowed to remain at the same site for the term of the hunting season. **Note:** This exception to the 14-day limit does not apply to State owned land managed in accordance with guidelines set forth in the Nushagak & Mulchatna Rivers Recreation Management Plan (refer to GC-28) nor does it apply to legislatively designated critical habitat areas, State wildlife refuges, or game sanctuaries (refer to GC-23B), or other areas where 14 day or less limits have been specifically established. Shorter than 14 day limits are applicable in the following areas:

On State owned shorelands in the Togiak National Wildlife Refuge and the lower Goodnews River, the limit is three days.

On State owned land subject to the Susitna Basin Recreation Rivers Management Plan, the limit is 4 days May 15th through August 31st.

In Public Use Sites #6, #9 and #21, identified in the Nushagak & Mulchatna Rivers Recreation Management Plan, the duration is limited to 7 days (see also GC-28).

*Authority:* AS 38.05.850

*Permits:* Land Use Permit (DNR)

*Region:* Statewide, except on legislatively designated critical habitats, game refuges or game sanctuaries, and in the Bering Straits CRSA

## **PROCEDURE**

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

## **STANDARD CONDITIONS**

1. Pit privies or any self-containment system for waste (i.e. greywater, human waste, etc.) must be located a minimum of 100 feet from the ordinary high water mark (a 200 foot setback is recommended).
2. Site disturbance shall be kept to a minimum to protect local habitats. All activities at this site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Particular attention must be paid to prevent pollution and siltation of streams, lakes, ponds, waterholes, seeps and marshes, and to disturbances to fish and wildlife populations and habitats.
3. Landing areas or trails shall not be closed nor shall the permittee prevent overland access used by the public. The ability of the general public to use or access State land or public water must not be restricted in any manner.
4. Prior to removal, all garbage and debris will be stored so it does not attract wildlife. All solid/hazardous waste and foreign debris must be eliminated by removal to a DEC approved site. Sites will be kept clean.
5. All greywater or human waste must be disposed of in a pit, or containment which can easily be transported and disposed of at a DEC-approved disposal site. If a pit is used, it will be limed and backfilled prior to leaving the site. For additional information, contact the local DEC District Office.
6. The total combined fuel stored on a short-term (portable) camp site shall not exceed 50 gallons. All containers must be clearly marked with the contents and the permittee's name. The permittee is responsible for preventing spillage and contamination of contiguous land and water as well as cleaning up any oil or other pollutants that results from activities associated with this permit. Drip pans and sorbent pads must be available to contain and clean up spills from any transfer or handling of fuel.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land

manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC.

The DNR 24-hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. The DEC oil spill report number is (800) 478-9300. All fires and explosions must also be reported.

DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports.

7. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any State-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
8. All short-term (portable) camp structures, personal property (i.e. camp gear, fuel storage containers), hazardous substances and solid waste must be removed from State-owned land on or before the expiration of the permit.

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## GENERAL CONCURRENCE GC-23B

### CAMPING IN LEGISLATIVELY DESIGNATED SPECIAL AREAS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

This general concurrence applies to non-commercial recreational camping on state lands in legislatively designated special areas (refuges, sanctuaries, and critical habitat areas) for a period of up to 14 consecutive days. The maximum authorized stay of 14 days under this General Concurrence is intended to provide for the greatest opportunity for use by the general public, and to be consistent with camping requirements on other state lands. The maximum length of stay may be reduced, but not extended, under this General Concurrence.

*Authority:* AS 16.20  
5 AAC 95

*Permits:* General or Individual Special Area Permit (DFG)

*Region:* Statewide in Legislatively Designated Special Areas

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. All camps shall be sited to avoid loss or adverse impact to riparian vegetation. Depending on site-specific conditions, setbacks for camps may be required to avoid loss of important upland and aquatic habitats including riparian vegetation, and to prevent bank erosion and sedimentation of salmon spawning and rearing habitat. Setbacks up to 100 feet from ordinary high water may be required.
2. No temporary or permanent structures, including tent platforms are allowed. Pole tents, or other portable shelters are allowed provided they do not include platforms or other amenities that require

construction techniques beyond simple assembly.

3. All persons shall exit and all personal property shall be removed from the Special Area no later than the end of the 14th day after arrival, unless a shorter period is mandated by DFG.
4. All garbage and litter generated by those persons using the Special Area or in the vicinity of camps shall be collected and burned to ash onsite on a daily basis, or temporarily stored in air tight predator-proof containers and physically removed to an approved disposal site as soon as practical and no later than upon completion of the allowed stay. All food shall be similarly stored and handled.
5. All campers shall take all reasonable precautions to prevent, make diligent efforts to suppress, and promptly report all fires on or endangering state lands ((907) 762-2133). No tree cutting is authorized and only down and dead trees may be used for firewood. No cutting of down and dead trees is allowed within 100 feet of any river, lake, stream, or wetland.
6. There shall be no interference with free public use of state lands and waters in Special Areas.
7. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-23C

### SEASONAL COMMERCIAL RECREATION CAMPS (KAMISHAK COMMERCIAL RECREATION USE AREA), MC NEIL RIVER STATE GAME SANCTUARY.

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Temporary camps within the Kamishak Commercial Recreation Use Area located within the McNeil River State Game Sanctuary on a seasonal basis beginning no earlier than July 1st and no later than September 30 of any given year. Permitted camps are only to accommodate guests on a day use basis only and to provide overnight quarters for one sportfishing guide per authorized camp.

To meet the 100 foot setback requirement for improvements, the standards for privy locations and considering the topography and vegetation of the area, all camps must be located on top of the low bluff west of the Kamishak River. All camps must share use of no more than two community caches and two community pit privies.

*Authority:* AS 16.20  
AS 38.05.850  
5 AAC 95  
5 AAC 93

*Permits:* Special Area Permit (DFG)  
Sanctuary Areas Permit (DFG)  
Land Use Permit (DNR)

*Region:* Southcentral

#### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

## STANDARD CONDITIONS

1. Permanent structures or foundations other than the authorized bear proof community cache(s) are **prohibited** under this permit. Temporary structures are allowed. Each authorized temporary structure shall be constructed in a manner which allows for disassembly and removal from the site upon permit expiration or within 48 hours. Cabins on skids are not allowed.
2. All structures (e.g., tent frames, caches, outhouses) shall be located a minimum of 100 feet from ordinary high water and within a vegetated area, if available.
3. Site disturbance shall be kept to a minimum to protect local habitats. All activities at this site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Particular attention must be paid to prevent pollution and siltation of streams, lakes, ponds, waterholes, seeps and marshes, and to disturbances to fish and wildlife populations and habitats.
4. Landing areas or trails shall not be closed nor shall the permittee prevent overland access used by the public. The ability of all users to use or access state land or public water must not be restricted in any manner.
5. Food, fish and refuse in camp and on board boats shall be stored in bear-proof containers. Refuse shall be removed from the area on a daily basis. Prior to removal, all garbage and debris shall be stored so it does not attract wildlife. Refuse shall not be burned. Campsites and boat storage areas shall be kept clean.
6. All solid waste and foreign debris, including incinerated remains, must be eliminated by removal to an ADEC approved site.
7. Wastewater disposal, from kitchen grey water, privies, or outhouses, must satisfy the requirements of the Alaska Department of Environmental Conservation (DEC), including sewage plan approvals, prior to construction. Specifically, the camp must have an on-site pit or self-contained pit privy, located at least 100 feet from any surface waterbodies. Upon expiration of the permit, lime shall be applied to the wastes in the privy pit prior to back filling. Solid waste from self-contained systems must be disposed of an DEC approved site. For additional information, contact the local DEC District Office.
8. Hazardous waste must be removed and disposed of in an DEC approved disposal site.
9. Fuel storage containers, including flow test holding tanks and hazardous substances, with a total combined capacity larger than 55 gallons shall not be placed within 100 feet of the ordinary high water mark of waterbodies. Containers which exceed a total combined capacity of 110 gallons

must be stored within an impermeable diked area or portable containment structures capable of containing 110 percent capacity of the largest independent container plus 12 inches freeboard. All containers must be clearly marked with the contents and the permittee's name. Drip pans and materials, such as sorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel. All fuel storage containers and associated materials must be removed by the permit's expiration date.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC.

The DNR 24-hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. The DEC oil spill report number is (800) 478-9300. All fires and explosions must also be reported.

DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports.

10. All structures, personal property (e.g. equipment, gear, fuel storage containers), hazardous substances and solid waste must be removed from the site, and the site restored to its natural state, by the expiration date of the permit.
11. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-23D

### OFF-SEASON STORAGE FOR SEASONALLY PERMITTED TEMPORARY CAMPS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Off season storage of dismantled wall tent or weatherport frames, platforms, large, and other large and difficult to transport items associated with seasonally permitted camps on State lands. The authorization may include limited storage of miscellaneous camp gear.

*Authority:* AS 16.05  
AS 38.05.850  
5 AAC 95

*Permits:* Land Use Permit (DNR)  
Special Area Permit (DFG)

*Region:* Statewide

#### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

#### STANDARD CONDITIONS

1. Tent and weatherport frames must be disassembled.
2. Disassembled tent/weatherport frames, platforms and other approved items must be consolidated in one area, stored in a manner requiring minimal space and securely covered. The material used to cover the items should visually blend in with the natural surroundings.
3. Small miscellaneous camp gear if authorized, must be stored in durable containers. Camp gear used in the preparation of food must be stored in bear resistant containers (i.e. lock top barrels). (Within

Kamishak Commercial Recreation Use Area, all misc. camp gear must be stored in bear resistant containers.)

4. Off-season storage of solid waste, foodstuffs, or hazardous substances (including fuel) is **prohibited**
5. The storage site shall be above the flood plain and at least 100 feet from waterbodies, and in a location that is visually unobtrusive (out of sight).
6. All stored items must be removed and the site restored to its natural state by the expiration date of the storage permit, unless the permittee has secured a temporary camp permit for the following season. Any stored items that are not utilized in support of authorized activities during the subsequent season must also be removed from the site.
7. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-23E

### OFF-SEASON STORAGE OF SMALL COMMERCIAL RECREATION BOATS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The storage of small boats used in conjunction with commercial recreation activities on State-owned uplands adjacent to waterbodies.

*Authority:* AS 16.05  
AS 38.05.850

*Permits:* Special Area Permit (DFG)  
Land Use Permit (DNR)

*Region:* Statewide

#### STANDARD CONDITIONS

1. Stream banks shall not be altered to facilitate boat launching or removal.
2. Boats shall be stored above the flood plain and in a location that is visually unobtrusive (out of sight).
3. Storage of other items including boat motors, fuel and other hazardous substances is **prohibited**

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## GENERAL CONCURRENCE GC-24

### EXPLORATION SAMPLING, GEOLOGIC RECONNAISSANCE AND/OR SMALL SCALE DRILLING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Projects involving exploration sampling, surface geology reconnaissance by the use of helicopters or small tracked vehicles, and/or small scale exploration drilling using portable drills on State or federal lands, excluding State tidelands and marine submerged lands.

*Authority:* AS 16.05.870  
AS 16.15.840  
AS 16.20  
AS 38  
AS 46.15  
5 AAC 95  
11 AAC 93 and 96  
  
43 CFR 3045.3

*Permits:* Miscellaneous Land Use Permit (DNR)  
Temporary Water Use Permit (DNR)  
Special Area Permit (DFG)  
Fish Habitat Permit (DFG)  
  
Geophysical Exploration Permit (BLM)  
Nationwide Permit 19 (COE)

*Region:* Statewide, except in legislatively designated marine parks, the Bering Straits CRSA, Northwest Arctic Borough, and Kenai Peninsula Borough.

#### PROCEDURE

DNR will consult with DFG in the determination of compliance with Standard Condition 17.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

## **STANDARD CONDITIONS**

1. Access is limited to low ground pressure vehicles (3 psi or less) with mounted drills that do not require road access.
2. Drills are limited to portable nodwell, backpack or those that can be transported with a helicopter.
3. Any drilling compounds used must be disposed of at a DEC-approved facility.
4. Drilling is less than 1500 feet per hole.
5. Total surface samples collected and removed for offsite testing is limited to 15 cubic yards of material.
6. On-site testing of material is limited to 100 cubic yards.
7. The entire activity must occur in one field season.
8. Trenches and pits will be backfilled and leveled.
9. Topsoil shall be saved and protected from erosion. No topsoil shall be disposed of in natural water bodies. The graded tailings may provide good areas to dispose of topsoil, thereby encouraging natural revegetation.
10. All activities below the ordinary high water line shall avoid sensitive fish life stages and their habitats. DFG may attach timing and location restrictions for sensitive fish time periods, including periods for spawning, rearing, migration, and overwintering.
11. A minimum undisturbed 330-foot radius area shall be maintained around each bald eagle nest tree at all times. The applicant shall contact the U.S. Fish and Wildlife Service to identify bald eagle nests.
12. An average distance of 1,500 feet shall be maintained between helicopters and active bald eagle nest trees.
13. Helicopter trips into areas with observable mountain goats and Dall sheep, or areas known to be frequented by goats or sheep, should be scheduled for the months of July, August, and September.

Intermittent trips during other months should be avoided. The distance between goats, sheep and helicopters should be 2000 feet, except where deviations are necessary for human safety.

14. Before water use begins, permittee shall possess a valid right of entry to the above points of water withdrawal and use.
15. Water use shall be limited to less than 30,000 gallons per day.
16. The provisions of the federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Acts provide that there will be no activity permitted that jeopardizes the continued existence of the endangered species or results in the destruction or adverse modification of habitat of such species.
17. If in-water work with mechanized equipment occurs, the work area must be isolated from the flowing waters of streams (e.g., copper damming or silt curtains).
18. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

**Standard Condition Specific to Bristol Bay CRSA and Lake and Peninsula Borough**

19. Exploration activities that require access through caribou calving habitat areas may be restricted during the calving period so as not to cause impacts to caribou. (Note: DNR will determine whether timing restrictions are necessary for specific locations after consulting with DFG) (Bristol Bay CRSA and Lake and Peninsula Borough only).

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## GENERAL CONCURRENCE GC-25

### WINTER SEISMIC SURVEYS FOR OIL AND GAS IN THE NORTH SLOPE BOROUGH

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State and federal individual agencies. **Advisory:** Approvals from the North Slope Borough such as the Administrative Approval/Development Permit must be obtained prior to commencing activities.

#### DESCRIPTION OF THE ACTIVITY

Winter vibroseis seismic surveys associated with oil and gas exploration in the North Slope Borough.

*Authority:* AS 16.05.840 and .870  
AS 38.05.850  
AS 46.15  
18 AAC 72.015 & 910  
11 AAC 93  
11 AAC 96

43 CFR 3045.3

*Permits:* DEC General Permit (8940-DB001 as amended)  
Geophysical Exploration Permit (DNR)  
Fish Habitat Permit (DFG)  
Temporary Water Use Permit (DNR)

Geophysical Exploration Permit (BLM)

*Region:* North Slope Borough

#### PROCEDURE

Prior to crossing or working in any stream, river or lake specified as being important for the migration, spawning or rearing of anadromous fish, the applicant shall obtain a DFG Fish Habitat permit pursuant to AS 16.05.870. Any structure (e.g., culverts, dams) placed in any stream containing fish requires a DFG Fish Habitat permit under AS 16.05.840. Operations conducted within lands designated as State Game Refuges, State Critical Habitat Areas, and State Game Sanctuaries also require permits from

DFG. For information regarding these areas and their permitting requirements, the applicant should contact the Habitat Division, DFG, at (907) 452-1531 Fairbanks/North Slope and Interior.

Permittees shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic and archaeological sites may be avoided.

The permittee remains responsible for obtaining the approval of other surface or subsurface interest holders, individuals, companies, and agencies as may also be required. For example, operations within or crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the State Pipeline Coordinators Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

The provisions of the federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that there will be no activity permitted that jeopardizes the continued existence of an endangered species or results in the destruction or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office ((907) 786-3542), for additional information on endangered species.

The Marine Mammal Protection Act provides that there will be no intentional disturbance, harassment, catching or killing of marine mammals. However, a 1981 amendment to the Marine Mammal Protection Act authorizes the Secretary, U.S. Department of Interior, or the Secretary, U.S. Department of Commerce, under certain conditions, to allow U.S. citizens to take small numbers of marine mammals from non-depleted stock incidentally, but not intentionally, in specified areas. DNR recommends that this authorization be obtained by the permittee before conducting any operations in or near coastal areas. For further information, the applicant is urged to contact the Anchorage office of the U.S. Fish and Wildlife Service ((907) 789-3542) and the National Marine Fisheries Service ((907) 271-5006).

## STANDARD CONDITIONS

1. The use of ground contact vehicles for off-road travel must be limited to those areas which have adequate ground frost and snow cover to prevent damage to the ground surface.
2. The use of ground contact vehicles for off-road travel is subject to regional openings and closure notices issued by DNR. Operations are restricted to the winter seasonal opening. After April 15, the use of ground contact vehicles is subject to termination within 72 hours of written notification from DNR.
3. Vehicles shall be operated in a manner such that the vegetative mat is not disturbed, and blading or removal of vegetative cover is **prohibited** except as approved by DNR. Filling of low spots and smoothing using snow and ice is allowed.



4. Movement of equipment through willow (*Salix*) stands must be avoided wherever possible.
5. Equipment, other than vessels, must not enter open water areas of a watercourse during winter. Ice or snow bridges and approach ramps constructed at river, slough, or stream crossings must be substantially free of extraneous material (i.e., soil, rock, wood, or vegetation) and must be removed or breached before spring breakup. Alterations of the banks of a watercourse are **prohibited**

The structures must be breached or fractured prior to breakup so that their breakup rate coincide with those of naturally occurring ice formations in the area. This should be accomplished in a manner which does not damage or disturb the vegetation of the terrain nor introduce dirt or debris into the waterways.

6. **Fuel and hazardous substances.** Secondary containment<sup>1</sup> shall be provided for fuel or hazardous substances<sup>2</sup>.
  - a. **Container<sup>3</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)
  - b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>4</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances

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<sup>1</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>2</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>3</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifoldded tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>4</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands.

- c. Storing containers within 100 feet of waterbodies.** Containers with a total combined capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
  - d. Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
7. **Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax.
- All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is (800) 478-9300.
8. Trails, campsites and work areas must be kept clean. Trash, survey lath, markers, and other debris that accumulates in camps, along seismic lines, and travel routes, that is not recovered during the initial cleanup, shall be picked up and properly disposed of prior to freeze-up the following winter. All solid wastes, including incinerator residue, shall be backhauled to a solid waste disposal site approved by DEC.
9. Operations must avoid occupied grizzly bear dens by one-half mile unless alternative mitigative measures to minimize disturbance are authorized by DNR after consultation with DFG. Known den locations shall be obtained from the (DFG) Division of Wildlife Conservation, (Fairbanks (907) 459-7213; Anchorage (907) 267-2179) prior to starting operations. Occupied dens encountered in the field must be reported to the above, and subsequently avoided.
10. Operations must avoid known polar bear dens by one mile. Known den locations shall be obtained

from the U.S. Fish and Wildlife Service ((907) 786-3800 or (800) 362-5145) prior to starting operations. New dens encountered in the field must be reported to the above, and subsequently avoided by one mile.

11. Vehicle maintenance, campsites and/or storage and stockpiling of material on surface ice of lakes, ponds, or rivers is **prohibited**
12. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
13. To avoid additional freeze-down of deep-water pools harboring overwintering fish, watercourses shall be crossed at shallow riffle areas from point bar to point bar. Compaction or removal of the insulating snowcover from the deep-water pool areas of rivers must be avoided.
14. All aircraft shall maintain an altitude of 1,500 feet (457 meters) or a lateral distance of one mile (1.6 kilometers), excluding takeoffs and landings, from caribou and muskoxen concentrations. Human safety will take precedence over aircraft restrictions.

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## GENERAL CONCURRENCE GC-26

### AIR QUALITY PERMIT FOR MANUFACTURE OF ASPHALT MATERIAL

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Any stationary facility described in 18 AAC 50.300 (a) that emits air contaminants in the State of Alaska must obtain a permit from DEC. This permit authorizes the operation of air contaminant sources at certain asphalt cement paving facilities. The control of emissions, the concentration and total quantity of emissions, and the responsibilities for any change in the quantity of emissions are addressed. Permits are issued for up to five years on a case-by-case basis.

This general concurrence only applies to the issuance of an Air Quality Control Permit to Operate for a transportable facility which consists of air contaminant sources used for the manufacture of asphalt cement paving material.

This general concurrence is not applicable to those facilities which require review under the Prevention of Significant Deterioration (PSD) provisions of the Air Quality Control Regulations 18 AAC 50.300 (a) (5)-(6) or non-attainment provisions under 18 AAC 50.300 (a) (7).

#### PROCEDURE

This general concurrence is to be treated like the general permits that appear in Section II of the B List. That is, if a project requires permits from the C-List, in addition to the Air Quality Control Permit, the other permits undergo an individual consistency review but the Air Quality Control Permit does not.

*Authority:* AS 46.03.010-170  
18 AAC 15  
18 AAC 50

*Permit:* Air Quality Control Permit to Operate (DEC)

*Region:* Statewide

#### STANDARD CONDITIONS

List of exhibits, one or more of which will be included in the permit, if required to elaborate on conditions #2, 4 and 7 (a-d):

- A. *Source Inventory*
  - B. *Air Contaminant Emission Limits, Standards, Fuel Specifications, and Operating Limits.*
  - C. *Emission Testing Requirements*
  - D. *Continuous Monitoring Requirements*
  - E. *Relocation/Operation Notification (attached to the DEC permit)*
  - F. *Facility Operating Report*
  - G. *Permit Application Documentation*
1. Permittee shall comply with the State Ambient Air Quality Standards and Increments established in State Air Quality Control Regulation 18 AAC 50.020.
  2. Permittee shall comply with the most stringent of applicable emissions standards, limits and specifications set out in State Air Quality Control Regulation 18 AAC 50.050 and Exhibit B of this permit (see above).
  3. Permittee shall install, maintain and operate, in accordance with manufacturer's procedures, fuel burning equipment, process equipment, emission control devices, testing equipment and monitoring equipment to provide optimum control of air contaminant emissions during all operating periods.
  4. Permittee shall notify in writing and obtain approval from the appropriate regional office 15 days prior to initial operation, relocation, or initiation of a new paving project, by submitting two (2) copies of the Relocation/Operation Notification form, provided in Exhibit E (see above). The applicant shall send a copy of the Relocation/Operation form to DGC and any affected coastal districts.
  5. This permit authorizes air contaminant emissions associated only with manufacture of asphalt cement paving material.
  6. Permittee shall control the following sources of fugitive dust to prevent release of particulate matter beyond the facility boundary:

- a. Material piles
  - b. Material and product conveyors
  - c. Pugmill (if applicable)
  - d. Control device dust handling system
  - e. Roadways under the control of the permittee
7. Other source specific operating, testing, monitoring, or reporting requirements may be specified in the permit and exhibits (see above), such as:
- a. Permittee shall conduct source tests of *<specific source>* to ascertain the concentration and mass emission rate of *<specific air contaminant>* within *<specified time period or date>*.
  - b. Permittee shall conduct tests required by condition *<no.>* of this permit at maximum design rate, or maximum anticipated operating rate. Permittee shall operate the *<specific source>* at a rate no greater than that at which compliance was demonstrated during the required source tests.
  - c. Permittee shall submit for approval to DEC's regional office a complete plan for conducting the source tests required by this permit, 30 days prior to each test.
  - d. Permittee shall submit the results of the tests required by Condition *<no.>* of this permit, in the format set out in Appendix III Section IV.3 of the State Air Quality Control Plan *<and any other required information>* to DEC's appropriate regional office, within 45 days following completion of the individual tests. Additional tests may be required if deemed necessary to ascertain compliance with applicable standards and emissions limits.
8. Permittee shall notify DEC's appropriate district office by telephone promptly, but not later than 12 hours, of any equipment failure which increases air contaminant emissions beyond normal levels, or of any change in operating conditions or any other circumstance which may result in emissions which exceed the limits or standards specified in the permit or regulations. The notification shall include the nature of occurrence, the expected duration, and a general description of the weather, and if applicable, the steps taken to minimize emissions and avoid recurrence. A written report shall be submitted to the appropriate district office manager within five working days of the incident.
9. Permittee shall provide access to the facility promptly, at any reasonable time, to DEC's

representative, and any other person authorized or contracted by the department, in order to conduct an inspection or tests to determine compliance with this permit and State environmental laws and regulations. DEC representatives will abide by all health- and safety-related rules or procedures prescribed by the permittee while within the permitted facility.

10. Permittee shall submit a Facility Operating Report as described in Exhibit F of this permit to DEC's appropriate regional office, *<quarterly, semi-annually, or annually>* by the 30th of the *<DEC-assigned Month(s)>*.
11. Permittee shall maintain test results, monitoring instrument recorder charts and other applicable data necessary to determine compliance with this permit in an active file for not less than one year, and have them accessible on request to the department for not less than three years.
12. Permittee shall clearly display a copy of this permit at *<the location designated at the discretion of the department>* and keep a copy of the State Air Quality Control Regulations 18 AAC 50 on file at the permitted facility location.
13. Within the Aleutians West CRSA (AWCRSA), the permittee shall contact local municipal or tribal officials, landowners, and the AWCRSA prior to commencing operations, to obtain necessary local permits or approvals and to consult regarding a preferred site for operations.
14. Within the Aleutians West CRSA (AWCRSA), storage of fuel, if greater than 5,000 gallons, will require compliance with stipulations of AWCRSA policies C-10 (Storage of Petroleum and Petroleum Products) and C-11 (Spill Containment and Clean-up Equipment).

## GENERAL CONCURRENCE GC-27

### AIR QUALITY PERMIT FOR TREATMENT OF PETROLEUM CONTAMINATED SOILS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Any stationary facility described in 18 AAC 50.300 (a) that emits air contaminants in the State of Alaska must obtain a permit from DEC. This permit authorizes the operation of air contaminant sources at certain contaminated soil treatment facilities. The control of emissions, the concentration and total quantity of emissions, and the responsibilities for any change in the quantity of emissions are addressed. Permits are issued for up to five years on a case-by-case basis.

This general concurrence only applies to issuance of an Air Quality Control Permit to Operate for a transportable facility which consists of air contaminant sources used only for projects to thermally treat petroleum contaminated soils. The general concurrence does not apply to any facility which requires DEC approval under 18 AAC 62 or 63 for a hazardous waste management facility, or a federal approval under 40 CFR 260-265, or 761.

This general concurrence would not be applicable to those facilities which require review under the prevention of significant deterioration provisions of the Air Quality Control Regulations 18 AAC 50.300(a)(5)-(6), or non-attainment provisions under 18 AAC 50.300(a)(7).

#### PROCEDURE

This general concurrence is to be treated like the general permits that appear in Section II of the B List. That is, if a project requires permits from the C-List, in addition to the air quality control permit, the other permits undergo an individual consistency review but the Air Quality Control permit does not.

*Authority:* AS 46.03.010-170  
18 AAC 15  
18 AAC 50

*Permit:* Air Quality Control Permit to Operate (DEC)



Region: Statewide

## STANDARD CONDITIONS

List of exhibits, one or more of which will be included below in the permit, if required to elaborate on conditions #2, 4, 8 and 9 (a-d):

- A. *Source Inventory*
  - B. *Air Contaminant Emission Limits, Standards, Fuel Specifications, and Operating Limits*
  - C. *Emission Testing Requirements*
  - D. *Continuous Monitoring Requirements*
  - E. *Relocation/Operation Notification (attached to DEC permit)*
  - F. *Facility Operating Report*
  - G. *Permit Application Documentation*
1. Permittee shall comply with the State Ambient Air Quality Standards and Increments established in State Air Quality Control Regulation 18 AAC 50.020.
  2. Permittee shall comply with the most stringent of applicable emissions standards, limits and specifications set out in State Air Quality Control Regulation 18 AAC 50.050 and Exhibit B (see above) of this permit.
  3. Permittee shall install, maintain and operate, in accordance with manufacturer's procedures, fuel burning equipment, process equipment, emission control devices, testing equipment and monitoring equipment to provide optimum control of air contaminant emissions during all operating periods.
  4. Permittee shall notify in writing and obtain approval from the appropriate regional office 15 days prior to initial operation, relocation, or initiation of a new remediation project, by submitting two (2) copies of the Relocation/Operation Notification form, provided in Exhibit E (see above). The applicant shall send a copy of the Relocation/Operation form to DGC and any affected coastal districts.
  5. This permit only authorizes treatment of soils which have been contaminated with crude oil, natural gas condensate, fuel oil or gasoline. No material that meets the definition of a hazardous waste

under 18 AAC 62 or 40 CFR 261 or requires federal authorization for treatment under the Toxic Substances Control Act may be processed.

6. Permittee shall control the following sources of fugitive dust to prevent release of particulate matter beyond the facility boundary:
  - a. Material piles
  - b. Material and product conveyors
  - c. Pugmill (if applicable)
  - d. Control device dust handling system
  - e. Roadways under the control of the permittee
7. Permittee shall operate the soil remediation unit so the exhaust stack concentration of carbon monoxide does not exceed 100 parts per million dry corrected to 7 percent oxygen, based on 1-hour average measurements by the Continuous Emission Monitor System required by Condition #8.
8. Permittee shall install, calibrate, operate, and maintain a continuous emission monitoring system to measure and record the emissions of carbon monoxide and oxygen through the exhaust stack of the soil remediation unit *<and other facility-specific monitoring>* as specified in Exhibit D (see above).
9. Other source-specific operating, testing, monitoring, or reporting requirements may be specified in the permit and exhibits (see above), such as:
  - a. Permittee shall conduct source tests of *<specific source>* to ascertain the concentration and mass emission rate of *<specific air contaminant>* within *<specified time period or date>*.
  - b. Tests required by Condition *<no.>* of this permit shall be conducted at maximum design rate, or maximum anticipated operating rate. Permittee shall operate the *<specific source>* at a rate no greater than that at which compliance was demonstrated during the required source tests.
  - c. Permittee shall submit for approval a complete plan for conducting the source tests required by this permit to DEC's appropriate regional office, 30 days prior to each test.
  - d. Permittee shall submit the results of the tests required by Condition *<no.>* of this permit,

in the format set out in Appendix III Section IV.3 of the State Air Quality Control Plan *<and any other required information>* to DEC's appropriate regional office, within 45 days following completion of the individual tests. Additional tests may be required if deemed necessary to ascertain compliance with applicable standards and emission limits.

10. Permittee shall notify DEC's appropriate district office by telephone promptly, but not later than 12 hours, of any equipment failure which increases air contaminant emissions beyond normal levels, or of any change in operating conditions, or any other circumstance which may result in emissions which exceed the limits or standards specified in the permit or regulations. The notification shall include the nature of occurrence, the expected duration and a general description of the weather, and if applicable, the steps taken to minimize emissions and avoid recurrence. A written report shall be submitted to the appropriate district office manager within five working days of the incident.
11. Permittee shall provide access to the facility promptly, at any reasonable time, to DEC's representative, and any other person authorized or contracted by the department, in order to conduct an inspection or tests to determine compliance with this permit and State environmental laws and regulations. DEC representatives will abide by all health- and safety-related rules or procedures prescribed by the permittee while within the permitted facility.
12. Permittee shall submit a Facility Operating Report as described in Exhibit F of this permit, to the Department's appropriate Regional Office, *<quarterly, semi-annually, or annually>*, by the 30th day of the *<DEC assigned Month(s)>*.
13. Permittee shall maintain test results, monitoring instrument recorder charts and other applicable data necessary to determine compliance with this permit in an active file for not less than one year, and have them accessible on request to the department for not less than three years.
14. Permittee shall clearly display a copy of this permit at *<the location designated at the discretion of the department>* and keep a copy of State Air Quality Control Regulations 18 AAC 50 on file at the permitted facility location.
15. Permittee shall not commence operations if the specific operation will need a Contaminated Sites Project work plan as required by 18 AAC 75.327, until DEC has approved the work plan.
16. Within the Aleutians West CRSA (AWCRSA), the permittee shall contact local municipal or tribal officials, landowners, and the AWCRSA prior to commencing operation, to obtain necessary local permits or approvals and to consult regarding a preferred site for operations.
17. Within the Aleutians West CRSA, storage of fuel, if greater than 5000 gallons, will require compliance with stipulations of AWCRSA policies C-10 (Storage of Petroleum and Petroleum Products) and C-11 (Spill Containment and Clean-Up Equipment).



## GENERAL CONCURRENCE GC-28

### TEMPORARY CAMPS FOR LANDS COVERED BY THE NUSHAGAK & MULCHATNA RIVERS RECREATION MANAGEMENT PLAN

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The establishment of temporary (up to a maximum of eight months) camps to support commercial recreational activities. Temporary camps do not require permanent improvement and can be established on one acre or less. Temporary camps consist of personal property and structures that can readily be dismantled and removed from the site by the expiration date of the permit. Any wastewater discharge must be less than 500 gallons per day. Land use permits for floating facilities (floatlodges, floatcamps, and floathouses) are not covered by this general concurrence.

*Authority:* AS 38.05.850

*Permit:* Land Use Permit (DNR)

*Region:* Lands covered by Nushagak and Mulchatna Rivers Recreation Management Plan

#### PROCEDURE

DNR will consult with DFG in the determination of compliance with Standard Condition 10.

NOTE: The vegetation line on a streambank adjacent to a waterbody is considered the ordinary high water mark.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

#### STANDARD CONDITIONS

1. Expiration and effective dates of use authorized by a permit shall not extend beyond the seasonal use necessary to support the activity.

2. Improvements must be sited in a manner which impacts the least amount of ground consistent with the purpose of the facility, and shall be consolidated on no more than one acre of land unless additional acreage has been explicitly approved in writing.
3. Temporary facilities (e.g., structures or tents) are not allowed in primitive units and at designated public use sites. Temporary facilities in semi-primitive units must be sited to minimize evidence of human use. In semi-primitive management unit 10, temporary facilities must also be sited out of view from the main river channel.
4. All structures (e.g., tent frames, caches, and outhouses) must be located with a vegetated (if naturally occurring) minimum setback of 100 feet (200 feet is recommended) landward of ordinary high water.
5. Site disturbance shall be kept to a minimum to protect local habitats. All activities at this site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Additionally, any ground disturbances which may have occurred shall be contoured to blend with the natural topography.

Particular attention must be paid to prevent pollution and siltation of streams, lakes, ponds, waterholes, seeps and marshes, and to disturbances of fish and wildlife populations and habitats.

6. The permittee shall not close landing areas or trails or otherwise prevent overland access by the public. The ability of all users to use or access state land or public water must not be restricted in any way.
7. Wastewater disposal, from kitchen gray water, privies, or outhouses, must satisfy the requirements of DEC. Sewage (black and gray water) design plan approval must be obtained from DEC prior to construction. On-site privies must be located at least 100 feet from any surface waterbodies. Upon expiration of the permit, lime shall be applied to the wastes in the privy pit prior to back filling. For additional information, contact the local DEC district office ((907) 349-7755).
8. All solid waste and foreign debris must be eliminated by removal to a DEC approved site or by burning (if a paper product). Hazardous waste must not be disposed of on-site, but instead must be hauled out for disposal in an approved disposal site.
9. Prior to removal, all garbage and debris will be stored so it does not attract wildlife. Food and refuse will be stored in bear-proof containers. Sites will be kept clean.
10. Temporary camps may be allowed in caribou calving habitat if the camp can be sited and operated in a manner that is not likely to cause significant impact to caribou calving.

11. Fuel storage containers with a total combined capacity of larger than 55 gallons shall not be placed within 100 feet from the ordinary high water mark of waterbodies. Fuel containers which exceed a total combined capacity of 110 gallons must be stored within an impermeable diked area or portable impermeable containment structure capable of containing 110 percent capacity of the largest independent container. All fuel storage containers must be clearly marked with the contents and the permittee's name. Drip pans and materials, such as sorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel. All fuel storage containers and associated materials must be removed by the permit expiration date.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is (800) 478-9300.

12. The permittee shall take all reasonable precautions to prevent, and all reasonable actions to suppress, forest fires, brush and grass fires.
13. The permittee may use dead and down timber but shall not cut standing timber on the premises unless specifically authorized by the Department of Natural Resources, Division of Forestry. Brush clearing is allowed but should be kept to the minimum necessary to set up the camp.
14. All structures, personal property (e.g., equipment, gear, fuel storage containers), and improvements, must be removed from the site, and the site restored to its natural state, by the expiration date of the permit. The permittee shall restore the site at his/her own expense.
15. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately. Improvements shall not be sited within one-half mile of identified cultural sites.

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## GENERAL CONCURRENCE GC-29

### MINING RECLAMATION PLAN APPROVALS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Mining reclamation on State, federal, municipal, and private land for mining operations at any location where five or more acres are mined in any year, or 50,000 or more cubic yards of materials are removed in any year, or there is a cumulative unreclaimed mined area of five acres or more, or that is otherwise subject to a reclamation plan requirement. This general concurrence does not apply to an operation that must undergo an individual project review because of other State or federal permit requirements.

*Authority:* AS 27.19  
11 AAC 97 (Eff. 7/30/92)

*Permit:* Mining Reclamation Plan Approvals

*Region:* Statewide, except in the following coastal districts and Coastal Resource Service Areas (CRSA): Cenaliulriit, City and Borough of Juneau, Kenai Peninsula Borough, Kodiak Island Borough, Lake and Peninsula Borough, Aleutians West CRSA, Bering Straits CRSA, and Bristol Bay CRSA.

### STANDARD CONDITIONS

1. Methods used to test the acid producing potential and proposed neutralization of waste rock, if required for a specific reclamation site or if proposed by a private landowner, must be approved by DNR in consultation with DEC.
2. For projects located on State, federal, or municipal lands within a 100-year flood plain, DNR will consult with DFG regarding issues of stability, as defined in AS 27.19.

## GENERAL CONCURRENCE GC-30

### AQUATIC FARM SITE LEASES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Conversion of a Department of Natural Resources aquatic farm site permit to an aquatic farm site lease where no changes are proposed to the existing operation and the permittee has demonstrated compliance with all previously required consistency stipulations. This general concurrence does not apply to significant amendments that are proposed to the project after the permit has been converted to a lease.

*Authority:* AS 38.05.856  
AS 38.05.083  
11 AAC 63

*Permit:* Aquatic Farm Site Lease (DNR)

*Region:* Statewide Management Plan

### STANDARD CONDITIONS

1. The applicant must continue to abide by all previously required consistency stipulations.

## GENERAL CONCURRENCE GC-31

### FIELD ARCHAEOLOGY PERMIT

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Division of Parks and Outdoor Recreation Permit issued for investigation, survey or removal of historic or archaeological resources. Activities may involve digging test pits, generally one foot or less in diameter using 1" soil probes to examine subsurface soil development. Large archaeological excavations may involve excavation of several cubic yards of soil (40 cubic yards is considered a large dig).

*Authority:* AS 35.080  
11 AAC 16.020-090  
11 AAC 96 as referenced in 11 AAC 16.030(e)

*Permit:* Field Archaeology Permit (DPOR)

*Region:* Statewide on State land, excluding legislatively designated areas and the Aleutians West CRSA coastal district.

### STANDARD CONDITIONS

1. The permittee shall exercise due diligence in protecting from damage to the land, property and resources of the State of Alaska in the area covered by and used in connection with this general concurrence. All activities shall be conducted in a manner that will avoid or minimize disturbance of public resources, including natural drainage systems. Cuts, fills, or other activities causing any disturbance, if not repaired immediately, are subject to any corrective action required by DNR.
2. The permittee, agents, employees and clients shall not interfere with free public use of roads and trails in the area of their activities, unless authorized by a special stipulation in the DNR permit.
3. Activities employing wheeled or tracked vehicles, when specifically allowed under the description of activities of the general concurrence, shall be conducted in a manner that minimizes surface

damage to public land and resources.

4. A copy of the preliminary report, as required by 11 AAC 16.050, will be sent to the appropriate coastal district coordinator within six months of the completion of the excavation. The final report and a copy of any publication resulting from the excavations will also be sent when available.

## GENERAL CONCURRENCE GC-32

### MAINTENANCE AND REPAIR ACTIVITIES ALONG THE TRANS-ALASKA PIPELINE SYSTEM

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, state, and federal agencies.

#### DESCRIPTION OF THE ACTIVITY

Performance of maintenance and repair activities along the Trans-Alaska Pipeline System (TAPS). These activities include:

1. Excavation for:
  - a. corrosion investigations/pipe repair
  - b. anodes, cathodic protection system installation/repair
  - c. heat pipe, monitoring rod/equipment installation/repair
  - d. re-leveling and re-insulating existing pipelines
2. Placement of fill on:
  - a. existing pipeline work pads and access roads
  - b. existing river training structures
  - c. natural ground in the case of thermal/hydraulic erosion<sup>1</sup>
3. Use of temporary staging areas
4. Placement of temporary conexas (up to five years)

*Authority:* AS 16.05.840  
AS 16.05.870  
AS 38.05.850

Section 10 of Rivers and Harbors Act  
Section 401 and 404 of Clean Water Act (for NWP's only)  
33 USC 403  
33 USC 1344

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<sup>1</sup> For use in this General Concurrence, thermal/hydraulic erosion means the collapse of a soil mass (including settlement, slumping, and sometimes gullyng) caused by the thawing of ice within the soil.

*Permit:* Fish Habitat Permit (DFG)  
Land Use Permit (DNR)

Federal Temporary Use Permit (BLM)  
U.S. Army Corps of Engineers NWP 3  
U.S. Army Corps of Engineers NWP 18  
U.S. Army Corps of Engineers NWP 33

*Region:* Trans-Alaska Pipeline System (TAPS) Corridor

#### STANDARD CONDITIONS

1. Stabilization, erosion control, and revegetation shall be accomplished in accordance with Erosion Control Plan for Maintenance Operations (EP 106)<sup>2</sup> for all construction activity within 100 feet of anadromous or resident fish streams.

**Advisory:** Erosion control plan EP 106 has not received ACMP review. DGC recognizes the value of the erosion control plan and refers to it in this general concurrence. However, EP 106 is an agreement between the Joint Pipeline Office and subject to review and revision without ACMP participation. If significant revisions to EP 106 are contemplated, DGC requests notification to assure ACMP concerns reflected in this Standard Condition are addressed.

2. All construction is to be conducted within the confines of the original cleared zones of the State and federal rights-of-way for the pipeline and related facilities. The work area will be arranged to minimize the disturbance to existing vegetation and watercourses or ponds outside the right-of-way limits but within the original cleared zone.
3. The placement of fill subject to this General Concurrence may not be used for the purpose of stream diversion. Written approval from the State Pipeline Coordinator's Office is required before any discharges are made into anadromous or resident fish waters.
4. Maintenance is limited to the terms, conditions, and scope of the original or most recently modified authorization.

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<sup>2</sup> Erosion Control Plan for Maintenance Operations, First Edition, Revision 4, September 30, 1994. EP 106 is an approximately 60-page agreement between Alyeska Pipeline Service Company and State and federal representatives (DNR, DFG, and BLM) in the Joint Pipeline Office. The agreement provides specific stipulations for implementing erosion control and revegetation requirements in the State pipeline lease and federal grant. Copies of EP 106 are available by calling the Joint Pipeline Office (907) 271-4135.

5. Temporary staging is only allowed on unvegetated upland areas, unvegetated floodplain areas, or existing man-made graveled or brushed surfaces. Fill may not be used to create staging areas. Use of a staging area may not exceed one year.
6. Off right-of-way driveways that require multiple crossings of individual vehicles over open water side channels are allowed providing temporary culverts are installed unless DFG determines a low-water ford will cause less adverse impact.
7. Stream banks shall not be intentionally altered to facilitate crossings or disturbed in any way. However, if surface disturbances occur to stream banks or within the floodplain of streams that either adversely affect anadromous fish habitat or interrupt free passage of fish, DFG shall be notified and rehabilitation as requested by the DFG shall be undertaken.
8. Equipment movement within the floodplain shall be via the most direct route to the dig site that avoids disturbance of vegetation.
9. At the discretion of the DFG, a joint DFG/APSC pre-project inspection shall be required to evaluate site specific measures required to maintain fish passage or to protect anadromous fish habitat.
10. All terms, conditions, and stipulations of the State Right-of-Way Lease and Federal Grant of Right of Way for the Trans-Alaska Pipeline System (TAPS) which relate to consistency with the ACMP are to be complied with and remain in full force. They are reiterated below:

STIPULATIONS FOR THE RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE SYSTEM THAT APPLY TO CONSISTENCY WITH THE ACMP

2.3. Buffer Strips

2.3.1. Public Interest Areas

2.3.1.1. No construction activity in connection with the Pipeline shall be conducted within one-half (1/2) mile of any officially designated State or municipal park, wildlife refuge, research natural area, recreation area, or recreation site unless such activity is approved in writing by the Pipeline Coordinator.

2.3.2. Vegetative Screen

2.3.2.1. Lessees shall not cut or remove any vegetative cover within a minimum five hundred (500) foot strip between State highways and material sites unless such cutting or removal is approved in writing by the Pipeline Coordinator.

## 2.4. Erosion Control

### 2.4.1. General

2.4.1.1. Lessees shall perform all Pipeline construction, operation, maintenance and termination activities on State Land so as to avoid or minimize disturbance to vegetation.

2.4.1.3. The erosion control facilities shall be constructed to avoid induced and accelerated erosion and to lessen the possibility of forming new drainage channels resulting from Pipeline activities. The facilities shall be designed and operations conducted in such a way as to avoid or minimize disturbance to the thermal regime.

### 2.4.2. Stabilization

2.4.2.1. Surface materials taken from disturbed areas shall be stockpiled and utilized during restoration unless otherwise approved in writing by the Pipeline Coordinator. Stabilization practices, as determined by the needs for specific sites, shall include but shall not be limited to seeding, planting, mulching, and the placement of mat binders, soil binders, rock or gravel blankets or structures.

2.4.2.2. All disturbed areas on State land shall be left in a stabilized condition satisfactory to the Pipeline Coordinator. Such satisfaction shall be stated in writing by the Pipeline Coordinator.

### 2.4.4. Seeding and Planting

2.4.4.1. Seeding and planting of disturbed areas on State land shall be conducted as soon as practicable and, if necessary, shall be repeated until vegetation is successful, unless otherwise approved in writing by the Pipeline Coordinator. All other restoration shall be completed as soon as possible.

### 2.4.5. Excavated Material

2.4.5.1. Excavated material in excess of that required to backfill around any structure, including the pipe, shall be disposed of in a manner approved in writing by the Pipeline Coordinator.

## 2.7. Clearing

### 2.7.1. Boundaries

2.7.1.1. Lessees shall identify approved clearing boundaries on State land on the ground for each construction segment prior to beginning clearing operations. All timber and other vegetative material outside clearing boundaries and all blazed, painted or posted trees which are on or mark clearing boundaries are



reserved from cutting and removal with the exception of danger trees or snags designated as such by the Pipeline Coordinator.

## 2.7.2. Timber

2.7.2.2. All trees, snags, and other woody material cut in connection with clearing operations shall be cut so that the resulting stumps shall not be higher than six (6) inches measured from the ground on the uphill side.

2.7.2.3. All trees, snags and other woody material cut in connection with clearing operations shall be felled into the area within the clearing boundaries and away from water courses.

2.7.2.4. Hand clearing shall be used in areas on State land where the Pipeline Coordinator ~~determines~~ that use of heavy equipment would be detrimental to existing conditions.

2.7.2.8. All slash shall be disposed of in construction pads or access roads on State land unless otherwise directed in writing by the Pipeline Coordinator.

## 2.9. Off Right-of-Way Traffic

2.9.1. Lessees shall not operate mobile ground equipment off the designated construction zone in the right-of-way, access roads, State highways, or authorized areas, unless approved in writing by the Pipeline Coordinator or when necessary to prevent harm to any person.

## 2.12. Restoration

2.12.1. Areas on State land disturbed by Lessees shall be restored by Lessees to the satisfaction of the State Pipeline Coordinator as stated in writing.

2.12.2. All cut and fill slopes on State land shall be left in a stable condition.

2.12.3. Materials from access roads, haul ramps, berms, dikes and other earthen structures on State Land shall be disposed of as directed in writing by the Pipeline Coordinator.

2.12.4. Vegetation, overburden and other materials removed during cleaning operations shall be disposed of by Lessees in a manner approved in writing by the Pipeline Coordinator.

2.12.5. Upon completion of restoration on State land, Lessees shall immediately remove all equipment and supplies from the site.

## 3.5. Slope Stability

3.5.1. Areas subject to mudflows, landslides, avalanches rock falls and other types of mass solid movements shall be avoided where practicable in locating the Pipeline on State land. Where such avoidance is not practicable, the Pipeline design, based upon detailed field investigations and analysis, shall provide measures to prevent the occurrence of, or protect the Pipeline against, the effects of such mass movements.

### 3.6. Stream and Flood Plain Crossings and Erosion

3.6.1.1.1.5. In flood plains, appropriate construction procedures shall be used wherever there is potential channelization along the pipe.

### 3.6.2. Erosion

3.6.2.2. Slopes of cuts through stream banks shall be designed and constructed to minimize erosion and prevent slides.

3.6.2.3. Erosion control procedures shall accommodate and be based on the runoff produced by the maximum rainfall rate and snow melt rate combination reasonable characteristic of the region. The procedures shall also accommodate effects that result from thawing produced by flowing or ponded water on permafrost terrain.

## GENERAL CONCURRENCE GC-33

### PLACEMENT OF NEW RESIDENTIAL LINES AND MAINTENANCE AND REPAIR OF EXISTING UTILITY LINES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The placement, maintenance, repair, or upgrade of existing and future buried utility lines and the placement of new residential lines from existing trunk lines, including boring under waterways. This General Concurrence applies to activities conducted below ordinary high water or within existing upland right-of-ways. This General Concurrence does not apply to water, sewer, or petroleum pipelines.

Advisory: Where activities will occur on privately-owned uplands, the approval of the upland owner should be sought.

*Authority:* AS 16.05.870  
AS 38.05.810  
AS 38.05.850  
AS 41.21.020  
11 AAC 18.010  
11 AAC 96

Section 10 Rivers and Harbors Act

*Permits:* Fish Habitat Permit (DFG)  
Land Use Permit or Right-of-Way (DNR)  
Special State Park Use Permit (DNR/DPOR)  
Public and Charitable Use (DNR)

Section 10 (COE)

*Region:* Anchorage, Matanuska-Susitna, and Kenai Peninsula Borough Coastal Districts

### PROCEDURE

Permittees shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic and archaeological sites may be avoided.

## STANDARD CONDITIONS

1. The permittee, employees, agents, clients, or sub-contractors shall not interfere with free public use of roads and trails in the area of their activities, unless authorized by a road closure, or other special permit issued by DNR.
2. Activities, including personnel and vehicles, shall avoid sensitive fish life stages. (Note: the Department of Fish and Game may restrict or prohibit activities during certain sensitive time periods as necessary.)
3. Stream crossings shall be made directly from bank to bank in a direction substantially perpendicular to the stream flow.
4. No material of any type, including excavated material shall be placed, stockpiled, discharged, or otherwise disposed of in any anadromous fish stream. Any waste water generated in the excavated pits shall not be discharged into or allowed to pollute any anadromous fish bearing water.
5. All bank cuts, fills, slopes, or other exposed earthwork attributable to projects shall be stabilized and revegetated with native species beginning immediately after the stream, creek, river, or lake crossing to prevent erosion which may occur both during and after the project.
6. Refueling of equipment and the storage of petroleum products below the ordinary high water mark are **prohibited**

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. Any discharge of oil or hazardous substances to water must be reported immediately to DEC.

The DNR 24-hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. The DEC oil spill report number is (800) 478-9300. All fires and explosions must also be reported. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident

reports. .

7. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
8. Within units of the State Park system all activities shall be conducted in a manner that will avoid or minimize disturbance to park resources, including natural drainage systems.

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## GENERAL CONCURRENCE GC-34

### ICE ROAD AND ICE PAD CONSTRUCTION IN THE NORTH SLOPE BOROUGH

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Construction and use of ice or snow roads over State land, including ice airstrips and ice pads. This General Concurrence does not apply to crossings over fish bearing waters, including ice bridges. Another General Concurrence such as GC-5 (Stream Crossings) may apply when stream crossings are necessary.

*Authority:* AS 38.05.850  
11 AAC 83.158  
11 AAC 93  
11 AAC 96

*Permits:* Temporary Water Use Permit (DNR)  
Land Use Permit (DNR)  
Lease Plan of Operations (DNR)<sup>1</sup>

*Region:* North Slope Borough

#### PHASING

The construction of ice roads and ice pads as described above may be considered a discrete phase of exploratory drilling if the use or activity meets the legal requirements in AS 46.40.094. Specifically, AS 46.40.094 (a), specifies three conditions that must be met to allow an ACMP consistency review on only a portion, or phase, of a proposed activity. Further, AS 46.40.094(b) requires a subsequent ACMP consistency determination before a later phase may proceed. The justification below complies with requirements to allow ice roads to be considered a discrete phase of a larger exploratory drilling project and fulfills the coordinating agency requirement to make a finding that the phased project complies with AS 46.40.094

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<sup>1</sup>Applies only to the part of a Lease Plan of Operations authorizing ice pad construction.

Information on geological formations, hydrological and water sources, wildlife use areas, and archaeological sites gathered during ice road construction help to determine final exploratory well locations. Because this information can influence the location of subsequent activities, there is insufficient information to fully evaluate and render a consistency determination for the entire exploratory drilling project at the time the ice road is reviewed. AS 46.40.094(a)(1).

Ice road construction is a discrete part of an exploratory drilling project. Although road and well site locations are identified during project planning, the general information used as the basis for exploration project plans must be verified on the ground during ice road construction. Final road and site locations, including potential second and third wells, are dependent on more accurate information obtained during ice road construction. Exploratory drilling depends on ice roads to access well sites and to either verify or refute information used to identify road and well locations. AS 46.40.094(a)(2).

Construction of an ice road does not diminish the alternatives for subsequent phases. An exploratory drilling project could be denied or relocated based on information developed during ice road construction. If an ice road or part of an ice road were abandoned due to new information, the road would simply melt in the spring with few, if any, impacts on coastal resources. AS 46.40.094(a)(3).

Ice road construction may be considered a discrete phase of exploratory drilling only if prior to proceeding with subsequent phases, the subsequent phases are subject to a separate ACMP consistency determination. The Department of Natural Resources must condition its ice road construction authorization with the requirement that subsequent phases must be consistent with the ACMP. AS 46.40.094(b)(1).

The ACMP consistency determination this general concurrence represents is based upon the statutes and regulations in the *Authorities* section above and the consistency review regulations in 6 AAC 50. Only ice roads as described in the **Description of the Activity** that comply with the **Standard Conditions** may be considered a phase under this general concurrence. The **Standard Conditions** have been determined to provide sufficient assurance that ice roads are consistent with the ACMP. Because ice roads melt in the spring, they are not likely to cause significant effects on coastal resources. Exploratory drilling projects that use ice pads cause minimum impacts because no equipment, permanent facilities, or changes to the landscape remain at the end of the project. Drilling muds must be handled in compliance with DEC authorities. 46.40.094(b)(2).

Considering ice roads a distinct phase of exploratory drilling is justified for the following reasons: 1) an ice road is a discrete, stand-alone project that does not restrict the decision making options for subsequent phases; 2) new information is obtained during ice road construction that can influence the location or operation of subsequent phases; 3) separate review of an ice road from subsequent phases may actually reduce impacts by allowing development early enough in the season to allow all exploratory drilling dependent on the road to occur in one season, thus allowing equipment to be removed without damaging the tundra or underlying substrate and potentially eliminating the need to enter an area the following winter;

and 4) an ice road by itself causes little environmental impact since it melts during the spring thaw. AS 46.40.094(b)(3).

## PROCEDURE

DNR will consult with DFG in compliance with Standard Condition 16.

Permittees shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic and archaeological sites may be avoided.

The provisions of the federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that there will be no activity permitted that jeopardizes the continued existence of an endangered species or results in the destruction or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office ((907) 786-3542), for additional information on endangered species.

The Marine Mammal Protection Act provides that there will be no intentional disturbance, harassment, catching, or killing of marine mammals. However, a 1981 amendment to the Marine Mammals Protection Act authorizes the Secretary, U.S. Department of Interior, or the Secretary, U.S. Department of Commerce, under certain conditions, to allow U.S. citizens to take small numbers of marine mammals from non-depleted stock incidentally, but not intentionally, in specified areas. DNR recommends that this authorization be obtained by the permittee before conducting any operations in or near coastal areas. For further information, the applicant is urged to contact the Anchorage office of the U.S. Fish and Wildlife Service ((907) 786-3542) and National Marine Fisheries Service ((907) 271-5006).

Operations within or crossing the Trans-Alaska pipeline corridor will require prior authorization from Alyeska, coordinated through the State Pipeline Coordinator's Office, DNR (907) 278-9594.

## STANDARD CONDITIONS

1. Trails, campsites, and work areas must be kept clean. All solid waste including incinerator residue shall be backhauled to a solid waste disposal site approved by DEC.
2. Trash, survey lath, roadway markers, and other debris that has accumulated along the ice roads or cross country routes shall be picked up and properly disposed of prior to freeze-up the following winter.
3. **Fuel and hazardous substances.** Secondary containment<sup>2</sup> shall be provided for fuel or hazardous

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<sup>2</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify



substances<sup>3</sup>.

- a. **Container<sup>4</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)
- b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>5</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands.

- c. **Storing containers within 100 feet of waterbodies.** Containers with a capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. **Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
- e. **C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

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as secondary containment unless an exception is granted for a particular tank.

<sup>3</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>4</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

<sup>5</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. For spills resulting from operation of the Trans Alaska Pipeline, spill notification information shall be provided to appropriate agencies at the Joint Pipeline Office.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is (800) 478-9300.

4. All rehabilitation shall be completed to the satisfaction of DNR or the applicable land manager. Rehabilitation shall be completed with full consideration of technical guidance provided by the Division of Agriculture, Plant Material Center.
5. Existing roads and trails shall be used wherever possible. Trail width shall be kept to the minimum necessary. Trail surface may be cleared of timber, brush, stumps, and snags.
6. A completion report shall be submitted to DNR or the applicable land manager within sixty days of termination of permit activities. This report shall contain the following information:
  - a. actual routes of travel and location of all camps depicted on a USGS topographic map,
  - b. a list of vehicles used for any off-road travel which may have taken place,
  - c. a statement of cleanup activities and methods of debris disposal, and
  - d. a report covering any known incidents of damage to the tundra or existing vegetation cover and follow-up corrective actions that may have taken place while operating under this authorization.
7. Vehicles shall be operated without disturbing the vegetative mat. Blading or removal of the vegetation is **prohibited** except as approved by DNR or the applicable land manager.
8. Movement of equipment through willow (*Salix*) stands shall be avoided where possible.
9. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation,

removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

10. Abandonment of vehicles is **prohibited**.

### **Winter Travel**

11. Equipment, other than vessels, must not enter the open water areas of a watercourse during winter. Filling of low spots and smoothing by the use of snow and ice is allowed. Ice or snow bridges constructed at stream crossings shall not contain extraneous material (i.e., soil, rock, brush or vegetation).
12. DNR or the applicable land manager will determine travel opening and closure based on snow cover and frost depth conditions. Travel must be completed within 72 hours of notification of travel closure from DNR or the applicable land manager.
13. The winter operation of ground contact vehicles for off-road travel must be limited to areas with adequate ground frost and snow cover.
14. Ice roads and ice pads must be thick enough to prevent damage to the tundra and underlying substrate.
15. Vehicle maintenance, campsites, and storage or stockpiling of material on the surface ice of lakes, ponds or rivers is **prohibited**.
16. Operations must avoid grizzly bear dens by one-half mile unless alternative mitigative measures to minimize disturbance are authorized by DNR after consultation with DFG. Known bear den locations shall be obtained from the (DFG) Division of Wildlife Conservation (Fairbanks (907) 459-7213; Anchorage (907) 267-2179) prior to starting operations. Occupied dens encountered in the field must be reported to the above, and subsequently avoided. (North Slope Borough)
17. Operations must avoid known polar bear dens by one mile. Known den locations shall be obtained from the U.S. Fish and Wildlife Service ((907) 786-3800 or (800) 362-5145) prior to starting operations. New dens encountered in the field must be reported to the above, and subsequently avoided by one mile. North Slope Borough, Northwest Arctic Borough, Bering Straits CRSA)

## GENERAL CONCURRENCE GC-35

### WATER, WASTEWATER, AND SANITATION FACILITIES AUTHORIZED BY ALTERNATIVE PERMIT PROCESSING PROCEDURE (APP) 93-1

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Activities associated with construction and upgrade of individual and community sanitation systems, along with associated support facilities including roads to landfills, in communities throughout Alaska. This general concurrence is limited to those construction activities that are funded by the Public Health Service, the Village Safe Water Program, or any other municipal, State, or federal entity, where an associated discharge of dredged or fill material, or the placement of structures or other work is authorized by the Corps of Engineers (COE) Alternative Permit Processing Procedure (APP) 93-1.

APP 93-1 authorizes the placement of dredged and fill material into waters of the U.S., including wetlands, and the placement of structures in navigable waters, associated with the construction or upgrade of sanitation facilities throughout Alaska, primarily in rural areas. A sanitation facility is a facility that is designed to provide clean water or remove domestic waste from the local environment and consists principally of individual wells and septic systems, as well as community sewer, septic and water systems. See also Section II of the B List and Appendix A for a copy of APP 93-1.

This activity includes the discharge from individual and community wastewater and sanitation facilities. Solid waste landfills, soil remediation facilities, and industrial or commercial sanitation facilities are excluded.

*Authority:* AS 38.05.850  
AS 41.20.040  
AS 46.03  
AS 46.15  
11 AAC 93

*Permits:* Temporary Water Use Permit (DNR)  
Permit to Appropriate Water (DNR)  
Land Use Permit (DNR)  
Right-Of-Way Permit (DNR)

Special Park Use Permit for Access (DNR)

APP 93-1 (COE)

Sections 10 and 404 (COE)

Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

## **PROCEDURE**

The State must first verify that the proposed activity is authorized by APP 93-1 (see B-List Section II and Appendix A). If the activity is not authorized by APP 93-1, an individual consistency review will be required. Further, if the project requires a permit not included in this general concurrence, the entire project is subject to an individual project review and APP 93-1 does not apply.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

The provisions of the federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that there will be no activity permitted that jeopardizes the continued existence of an endangered species or results in the destruction or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office (786-3542), for additional information on endangered species.

The Marine Mammal Protection Act provides that there will be no intentional disturbance, harassment, catching, or killing of marine mammals. However, a 1981 amendment to the Marine Mammals Protection Act authorizes the Secretary, U.S. Department of Interior, or the Secretary, U.S. Department of Commerce, under certain conditions, to allow U.S. citizens to take small numbers of marine mammals from non-depleted stock incidentally, but not intentionally, in specified areas. DNR recommends that this authorization be obtained by the permittee before conducting any operations in or near coastal areas. For further information, the applicant is urged to contact the Anchorage office of the U.S. Fish and Wildlife Service ((907) 786-3542) and National Marine Fisheries Service ((907) 271-5006).

## **STANDARD CONDITIONS**

1. Pursuant to the Certificate of Reasonable Assurance for APP 93-1, the applicant must obtain either a Solid Waste permit or a Rural Solid Waste Policy letter of Non-objection from DEC for the operation of a landfill, prior to the construction of an access road in wetlands, as authorized by APP 93-1, to said landfill.

2. Pre-application coordination shall be required for proposed work that would be larger than the standard 20,000 square footprint and access roads exceeding 2,000 feet in length.
3. All requirements, special conditions, and pre-application procedures of APP 93-1 (See Statewide Section II of the B List and Appendix A) are incorporated as Standard Conditions of this general concurrence.
4. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

## GENERAL CONCURRENCE GC-36

### TRAINING AND TEMPORARY STAGING FOR OIL SPILL RESPONSE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Predeployment of oil spill response equipment and training activities. The activity includes the temporary (five years or less) staging of oil spill response and training equipment at strategic locations in preparation for emergency oil spill response.

Oil spill response training activities include the use of booms, barges, and other emergency response equipment on uplands, tidelands, submerged lands, and shorelands. Deployment of equipment for oil spill training includes the use of equipment and equipment anchors in streams, temporary blockages of culverts and streams, and launching of boats, oil skimmers and other floating equipment in waters.

Temporary staging includes pre-deployment storage or placement of booms, anchors, mobile floating docks, temporary boat launch ramps, communications shelters and gapfillers, and equipment storage containers (conexes). Oil spill containment equipment is located at strategic locations related to site-specific risk potential or changing seasonal conditions.

*Authority:* AS 16.05.840  
AS 16.05.870  
AS 38.05.850  
AS 46.03  
AS 46.09.020

*Permits:* Fish Habitat Permit (DFG)  
Land Use Permit (DNR)  
Tideland Permit (DNR)  
Field Archaeology Permit (DNR/DPOR)  
  
Temporary Use Permit (BLM)

*Region:* Statewide, except on State park land and waters

## **PROCEDURE**

Prior to accessing beaches or uplands for oil spill response training purposes, a responder must first identify the beaches or uplands required for access prior to being issued a land use permit for access. A land status review will be conducted to determine ownership and authorization received from the proper land owner.

If cross country travel is necessary to conduct this activity the applicant must have a valid, current cross-country travel permit. Refer to general concurrences GC-5 (Equipment Crossing of Streams), GC-5A (Low Water Crossings), GC-19 (Cross-country Movement of Equipment in Winter/Summer), and GC-34 (Ice Road and Ice Pad Construction in the North Slope Borough).

Temporary camps to support oil spill response and training must be authorized either through General Concurrence GC-23, Temporary Camps, or by an individual ACMP consistency determination.

A copy of the preliminary report, as required by 11 AAC 16.050, will be sent to the appropriate coastal district coordinator within six months of the completion of the activity. The final report and a copy of any publication resulting from the clearance will also be sent when available.

The permittee remains responsible for obtaining the approval of other surface or subsurface interest holders, individuals, companies, and agencies as may also be required. For example, operations within or crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the Joint Pipeline Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

Permittees shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic and archaeological sites may be avoided. An archaeological clearance may also be required from the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) Department of Natural Resources. GC-31 (Field Archaeology Permit) may apply for this purpose.

The provisions of the Federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that there will be no activity permitted that jeopardizes the continued existence of an endangered species or results in the destruction or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office ((907) 786-3520), for additional information on endangered species.

The Marine Mammal Protection Act provides that there will be no intentional disturbance, harassment, catching or killing of marine mammals. However, a 1981 amendment to the Marine Mammal Protection Act authorizes the Secretary, U.S. Department of Interior, or the Secretary, U.S. Department



of Commerce, under certain conditions, to allow U.S. citizens to take small numbers of marine mammals from non-depleted stock incidentally, but not intentionally, in specified areas. DNR recommends that this authorization be obtained by the permittee before conducting any operations in or near coastal areas. For further information, the applicant is urged to contact the U.S. Fish and Wildlife Service ((907) 786-3800 or 586-7240) and the National Marine Fisheries Service ((907) 271-5006 or 586-7225).

## STANDARD CONDITIONS

1. Operations shall be conducted in such a manner that the vegetative mat is not disturbed and surface damage to public land and resources is minimized.
2. Alteration of the banks or channels of a watercourse is **prohibited**. Stream banks shall not be altered to facilitate crossings or otherwise disturbed. If stream banks are inadvertently disturbed, rehabilitation as requested by the DFG shall be undertaken.
3. Temporary docks, booms, and other structures that have been placed within waterbodies shall be removed prior to freeze-up each year.
4. Equipment that is stored on the tundra or other vegetated areas shall be moved annually to minimize damage to the vegetation from long term compaction and lack of sunlight unless DNR and DFG determine in writing this stipulation is unnecessary or alternative mitigation measures will minimize damage.
5. Storage and training sites must be kept clean. All trash, survey lath, roadway markers, and other debris shall be cleared, picked up, and properly disposed of prior to freeze-up each year (for storage sites) or at the end of the training exercise (for training sites).
6. The permittee shall submit a plan of operations for any major spill response staging sites, spill drills or training exercises 30 days in advance of the activity to the appropriate regional offices of the DNR, Division of Land (or appropriate land manager), Department of Environmental Conservation, and DFG, Division of Habitat and Restoration. The plan of operations shall include: 1) the location of the proposed staging areas; 2) the date(s) and duration of the exercise; and 3) the types of equipment to be used in the exercise.

For operations that are not scheduled well in advance (such as unannounced drills), a map and scenario shall be faxed to these offices as soon as practicable.

7. Modifications to the training exercise or spill response staging activity may be required if a resource agency determines adverse impacts to land and water quality, fish and wildlife habitats or harvests, or recreation activities can be avoided or further minimized while still achieving the training or staging objectives.

8. Training exercises and equipment staging shall avoid discrete environmentally sensitive areas and areas of public concern identified in an approved Oil Discharge Prevention and Contingency Plan (C Plan) unless 1) the C Plan specifically allows the activity; or 2) no feasible and prudent alternative is available to achieve the objective of the activity and the resource agencies agree that the benefits derived from the activity outweigh the anticipated adverse impacts.
9. The deployment of oil spill containment boom, anchors, mobile floating docks, or temporary boat launch ramps is not allowed in streams or tidal areas that support fish unless authorized by DFG.
10. All materials used for oil spill response training that are not authorized under an approved staging or predeployment permit shall be removed upon completion of the training exercise.
11. The permittee shall not interfere with free public use of roads and trails in the area of their activities, unless authorized by a special stipulation in the DNR permit.
12. An annual report shall be submitted to DNR or the appropriate land manager prior to December 1 of each year. This report shall contain the following information:
  - a. Storage, predeployment, and training sites depicted on a USGS topographic map.
  - b. A statement of cleanup activities and methods of debris disposal.
  - c. A report covering any known incidents of damage to the vegetation mat and follow-up corrective actions that may have taken place while operating under this authorization.
14. Vehicle maintenance, campsites, and storage or stockpiling of material on the surface ice of lakes, ponds, or rivers is **prohibited**.
15. **Fuel and hazardous substances.** Secondary containment<sup>6</sup> shall be provided for fuel or hazardous substances<sup>7</sup>.
  - a. **Container<sup>8</sup> marking.** All independent fuel and hazardous substance containers shall be

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<sup>6</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West CRSA) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>7</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>8</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifoldded tanks must be considered as single independent

marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)

- b. Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>9</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times. Vehicle refueling shall not occur within the annual floodplain or tidelands.
- c. Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
- e. C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall

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containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>9</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

be supplied with all follow-up incident reports. The DEC oil spill report number is 1 (800) 478-9300. For spills resulting from operation of the Trans Alaska Pipeline, spill notification information shall be provided to the appropriate agencies at the Joint Pipeline Office.

## GENERAL CONCURRENCE GC-37

### BANK RESTORATION AND PROTECTION

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Construction and maintenance of bank restoration and protection projects when the project is designed, built, and maintained as a fish habitat improvement or restoration project. The project includes all associated development, including changes to natural vegetation, slope, buildings, or other construction activities below the ordinary high water line. This does not include projects that are mitigation for onsite or offsite habitat degradation, bank hardening, or other bank stabilization strategies that are not designed as habitat improvement projects.

*Authority:* AS 16.05.870  
AS 16.05.840  
AS 16.20  
AS 38.05.850  
AS 41.21  
AS 46.03  
5 AAC 95  
11 AAC 18.010

Section 10 River and Harbors Act  
33 USC

*Permits:* Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
Land Use Permit or Right-of-Way (DNR)  
Special Parks Use Permit (DNR/DPOR)

Corps General Permit 90-6 (COE)  
Nationwide Permit 13 (COE)

*Region:* Statewide

## PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

For those activities located within the Coastal Zone Management area of the **Matanuska-Susitna Borough**, the applicant shall contact the floodplain administrator regarding the conceivable need for a Flood Damage Prevention permit.

For those activities located outside the municipal boundaries of the **City of Kenai** and the **City of Soldotna**, the applicant shall contact the **Kenai Peninsula Borough** Floodplain administrator regarding the conceivable need for a Floodplain Development permit from the Kenai Peninsula Borough.

For those activities located within the **City of Soldotna** and within 600 feet of the Kenai River, the applicant shall contact the City of Soldotna regarding the conceivable need for a Kenai River Overlay District permit.

## STANDARD CONDITIONS

1. All bank cuts, slopes, fills, and other exposed earth work attributable to this project shall be stabilized and revegetated to prevent erosion which may occur both during and after the project.
2. Refueling of equipment and the storage of petroleum products within 100 feet of the ordinary high water mark are **prohibited**.
3. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
4. Trees or other woody vegetation for the project shall not be obtained within 25 feet of any specified anadromous waterbody.
5. If treated with wood preservatives, wood construction materials shall not be treated with products containing creosote or pentachlorophenol.
6. Excavation wastewater pumped from the construction area shall not be directly discharged into, or discharged in a manner that results in, erosion or sedimentation of marine waters, fresh waters, or

wetlands.

7. Prior to placement in the stream, armor stone shall be clean of silts, clays, and organic materials.
8. Only natural or biodegradable materials shall be installed below ordinary high water, unless approved in writing by the DFG Habitat and Restoration Division and, if appropriate, DNR.
9. All disturbed areas attributable to this project within 25 feet of ordinary high water shall be revegetated. If outside the scope of the bioengineering activity, revegetation shall be accomplished with woody and herbaceous plant species naturally found onsite. All revegetation shall be completed prior to the first June 30 after construction is completed. .

**Standard Conditions Specific to the Kenai River Special Management Area**

10. All bank restoration activities below the ordinary high water elevation shall occur at low water when the project site is de-watered. There shall be no tracked or wheeled equipment operated within the waters of the Kenai River.

No material shall be excavated from the Kenai River, beyond that necessary to establish an adequate toe-line within the staked area, unless approved in writing by DFG Habitat and Restoration Division and the DNR Division of Parks and Outdoor Recreation.

11. The toe of the final project slope shall be staked for the review and approval of the DFG habitat and restoration division prior to beginning work. The project shall follow the existing bank contours. No excavation or fill placement shall occur on the river side of the staked line. The DFG shall be contacted at (907) 267-2284 to arrange for the site inspection.

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## GENERAL CONCURRENCE GC-38

### LADDERS AND STEPS IN RIVERS, LAKES, AND STREAMS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The placement of ladders and steps below the ordinary high water elevation of streams and lakes in Southcentral Alaska.

*Authority:* AS 16.05.870  
AS 38.05  
AS41.21  
11 AAC 18.010

Section 10 Rivers and Harbors Act

*Permits:* Fish Habitat Permit (DFG)  
Land Use Permit and Right-of-Way (DNR)  
Lease (DNR)  
Interagency Land Management Assignment (DNR)  
Special Parks Use Permit (DNR/DPOR)

General Permit 90-7 (COE)  
Section 10 Permit (COE)

*Region:* Southcentral Alaska

#### PROCEDURE

DNR and DFG will consult with the applicable coastal district in the determination of compliance with Standard Conditions 2 and 6.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.



For those activities located outside the municipal boundaries of the **City of Kenai** and the **City of Soldotna**, the applicant shall contact the **Kenai Peninsula Borough** Floodplain administrator regarding the conceivable need for a Floodplain Development permit from the Kenai Peninsula Borough.

For those activities located within the **City of Soldotna** and within 600 feet of the Kenai River, the applicant shall contact the City of Soldotna regarding the conceivable need for a Kenai River Overlay District permit.

DNR and DFG will consult with the applicable coastal district, either **Lake and Peninsula Borough** or **Bristol Bay CRSA**, in the determination of compliance with Standard Conditions 2 and 6.

For those activities located within the Coastal Zone Management area of the **Matanuska-Susitna Borough**, the applicant shall contact the Borough Floodplain administrator regarding the conceivable need for a Flood Damage Prevention permit.

## **STANDARD CONDITIONS**

1. If treated with wood preservatives, stairways and dimensional lumber used for boardwalk construction shall not be treated with products containing either creosote or pentachlorophenol.
2. Installation and removal (if required by DFG, DNR or a coastal district) of ladders and steps shall be conditioned in such a manner that prevents damage, removal, or alteration of naturally occurring vegetation. Minimum setbacks for removal may be required by coastal districts or in areas where winter ice movement is known to exist and could damage ladders and steps.
3. Ladders and stairways below the ordinary high water elevation shall not exceed four feet in width to minimize erosion and shading that may destroy vegetation.
4. The ladders and stairways shall be designed, constructed and installed in a manner that prevents damage, removal, or alteration of naturally occurring vegetation.
5. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
6. In the **Nushagak and Mulchatna Rivers Recreation Management Plan** planning area, ladders and stairways shall be sited consistent with management intent and applicable guidelines for individual management units.

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## GENERAL CONCURRENCE GC-39

### CANTILEVERED WALKWAYS AND PLATFORMS IN KENAI RIVER SMA

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The construction and installation of cantilevered access platforms, including boardwalks, fishing platforms and boat docks (not floating docks) within the Kenai River Special Management Area.

*Authority:* AS 41.21.500  
AS 46.03  
11 AAC 18.010

33 USC

*Permits:* Special Park Use Permit (DNR/DPOR)

General Permits 90-6 and 90-7 (COE)

*Region:* Kenai River Special Management Area

#### ADVISORY

State agencies express a willingness for this general concurrence to apply statewide. However, this activity requires COE Section 404 and DEC Section 401 authorizations. These authorizations require individual ACMP review unless a general permit is issued for the activity. The COE general permits only apply to the Kenai River Special Management Area. Therefore, this general concurrence cannot apply to areas beyond the general permits. DGC encourages the COE and/or DEC to develop general permits for cantilevered platforms that apply to an area beyond the Kenai River Special Management Area. This general concurrence will be revised to include the new general permits when they are approved.

#### PROCEDURE

This general concurrence does not apply to floating docks. See GC-15A (Construction and Maintenance of Docks in Rivers, Lakes, and Streams) for non-commercial floating docks.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

For those activities located outside the municipal boundaries of the **City of Kenai** and the **City of Soldotna**, the applicant shall contact the **Kenai Peninsula Borough** Floodplain administrator regarding the conceivable need for a Floodplain Development permit from the Kenai Peninsula Borough.

For those activities located within the **City of Soldotna** and within 600 feet of the Kenai River, the applicant shall contact the City of Soldotna regarding the conceivable need for a Kenai River Overlay District permit.

### **STANDARD CONDITIONS**

1. The existing bank vegetation shall not be removed or altered to facilitate the installation of the walkway/platform.
2. If treated with wood preservatives, the wood construction materials shall not be treated with products containing creosote or pentachlorophenol.
3. Fuel, oil and other petrochemical products shall not be stored within 100 feet of the river.
4. Limits may be placed on how far a structure may extend over the waterbody to ensure safe navigation or the public's ability to fish or recreate.
5. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

## GENERAL CONCURRENCE GC-40

### MAINTENANCE DREDGING IN KENAI RIVER SPECIAL MANAGEMENT AREA

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Maintenance dredging of less than 20 cubic yards of material from previously permitted projects below the ordinary high water elevation of the Kenai River within the Kenai River Special Management Area.

*Authority:* AS 16.05.870  
AS 41.21  
AS 46.03  
11 AAC 18.010

33 USC

*Permits:* Fish Habitat Permit (DFG)  
Special Parks Use Permit (DNR/DPOR)

General Permit 90-6 (COE)  
Nationwide Permit 35 (COE)

*Region:* Kenai River Special Management Area

#### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

For those activities located outside the municipal boundaries of the **City of Kenai** and the **City of Soldotna**, the applicant shall contact the **Kenai Peninsula Borough** Floodplain administrator regarding the conceivable need for a Floodplain Development permit from the Kenai Peninsula Borough.

For those activities located within the **City of Soldotna** and within 600 feet of the Kenai River, the

applicant shall contact the City of Soldotna regarding the conceivable need for a Kenai River Overlay District permit.

### **STANDARD CONDITIONS**

1. There shall be no wheeled or tracked vehicles operated in the flowing waters of the Kenai River without specific, written approval from DFG and DNR/DPOR.
2. All material dredged shall be deposited in a manner and location sufficient to prevent reintroduction into the Kenai River.
3. The bottom of the area dredged shall be dredged no deeper than one-half foot above ordinary low water.
4. The bottom of the dredged area and entrance channel shall be sloped to drain to the Kenai River.
5. For any in-water work, silt fences shall be used to completely isolate the dredge area from the flowing water of the Kenai River. The silt fence must extend from the stream bottom to at least 18" above the water level and remain in place until the sediments have settled from the enclosed waters.
6. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-41

### DEBRIS REMOVAL

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The removal of debris, including beaver dams, from rivers, lakes, and streams when the removal will not adversely impact fish habitat, fish resources, or public access to or use of those resources..

*Authority:* AS 16.05.870  
AS 16.05.840  
AS 16.20  
AS 38.05.850  
AS 41.21  
AS 46.03  
AAC 95  
11 AAC 18.010

*Permits:* Fish Habitat Permit (DFG)  
Special Area Permit (DFG)  
Land Use Permit (DNR)  
Special Parks Use Permit (DNR - DPOR)  
  
Corps General Permit 90-6 (COE)

*Region:* Statewide

### PROCEDURE

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

### STANDARD CONDITIONS

1. All debris removed from coastal waters shall be deposited in an upland location to avoid

reintroduction to the stream or damage to riparian habitat. Debris shall not be disposed below the OHW line unless specifically authorized in writing by the DFG.

2. Stream banks, including stream bank vegetation, shall not be altered to facilitate debris removal.
3. Any intentional or unintentional bank cuts, slopes, fills, and other exposed earth work attributable to this project shall be stabilized and revegetated to prevent erosion which may occur both during and after the project.
4. Refueling of equipment or the storage of petroleum products within 100 feet of the OHW line is **prohibited**
5. Timing restrictions may be required to avoid sensitive fish life stages, including spawning and overwintering.
6. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

## GENERAL CONCURRENCE GC-42

### OPERATION OF MOTORIZED WHEELED OR TRACKED VEHICLES IN STATE GAME REFUGES, CRITICAL HABITAT AREAS, AND SANCTUARIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The off-road use of any wheeled or tracked motorized vehicle, less than or equal to 10,000 pounds gross vehicle weight, on legislatively designated Special Area uplands or tidelands (i.e. sanctuaries, game refuges, and critical habitat areas). This general concurrence does not apply to construction equipment such as bull dozers, backhoes, or loaders; camps; or other activities that disturb coastal resources or habitats.

*Authority:* AS 16.20  
5 AAC 95

*Permits:* Special Area Permit (DFG)

*Region:* Statewide in legislatively designated State Game Refuges, Critical Habitat Areas, and Sanctuaries

#### PROCEDURE

For related travel authorizations, refer to general concurrences GC-5 (Equipment Crossing of Streams), GC-5A (Low Water Crossings), GC-19 (Cross-country Movement of Equipment in Winter/Summer), and GC-34 (Ice Road and Ice Pad Construction in the North Slope Borough).

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

#### STANDARD CONDITIONS

1. Depending on site-specific conditions, DFG may attach vehicle weight or timing and location restrictions on season of use, duration of use, or location, to avoid disturbance to important habitats, including salmon spawning areas, waterfowl nesting, rearing and migratory staging areas,



concentrations of intertidal plants and animals; and winter concentrations of wildlife. Disturbance includes noise or activity that agitates or dislocates fish or wildlife, compacts vegetation, or otherwise reduces the capacity of the above-noted habitats to support living resources.

2. Vehicle use shall not restrict public access to and use of fish and wildlife resources.
3. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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## GENERAL CONCURRENCE GC-43

### PLACEMENT AND USE OF MOORING BUOYS AND RUNNING LINES WITHIN KACHEMAK BAY

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The placement of mooring buoys and running lines within the Kachemak Bay Critical Habitat Area and Kachemak Bay State Park.

*Authority:* AS 16.20  
AS 41.21  
5 AAC 95  
11 AAC 18.010  
  
Section 10 Rivers and Harbors Act  
33 USC

*Permits:* Special Area Permit (DFG)  
Special Park Use Permit (DNR)  
  
Section 10 Permit (COE)  
Nationwide Permit 10 (COE)  
General Permit 88-9M (COE)

*Region:* Kachemak Bay Critical Habitat Area  
Kachemak Bay State Park

#### PROCEDURE

In areas where a proliferation of buoys would have the potential to interfere with navigation for the purpose of public use and enjoyment of the critical habitat area, a site or sites may in the future be identified for the location of public and private mooring facilities.

## **STANDARD CONDITIONS**

1. Anchor systems shall be free of oil, grease and other pollutants.
2. DFG or DNR may attach specific conditions to ensure mooring buoys and running lines are sited, designed, and used in a manner which does not interfere with navigation for the purpose of public use and enjoyment, existing fisheries, or other authorized uses.

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## **PENDING GENERAL CONCURRENCE GC-44**

### **NEW AND EXPANDED MATERIAL SITES IN THE NORTH SLOPE BOROUGH**

#### **DESCRIPTION OF THE ACTIVITY**

The siting, development, and reclamation of new or expanded material sites when such activities are managed to protect and enhance the ability of the habitat to support living resources.

#### **ADVISORY**

This general concurrence is approved pending adoption of general permits by COE and/or DEC that facilitate its implementation. It will not appear on the "B List" until these other general permits are adopted.

When appropriate general permits are incorporated, this general concurrence will become effective. A copy of pending general concurrence GC-44 is available from DGC at ((907) 465-3562).

Nearly all material sites in the North Slope Borough require DEC Section 401 certifications and COE Section 404 permits. However, because of the review requirements for the COE/DEC permits, only general permits from these agencies can be included on ACMP general concurrences. Without a COE General Permit or Nationwide Permit for material sites, this general concurrence would rarely, if ever, apply and individual ACMP review would be necessary for each project.

An ongoing federally funded special project (Section 309) envisions expedited permitting for material sites in the North Slope Borough. This general concurrence will help achieve that objective. The limiting factor for implementation of this general concurrence is the inability to include individual COE Section 404 permits and the DEC Section 401 certifications. General permits will allow this general concurrence to be implemented.

## GENERAL CONCURRENCE GC-45

### STORAGE OF MATERIALS AT EXISTING PADS IN NORTH SLOPE BOROUGH

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Storage of construction materials, drilling materials, equipment, and temporary (interim holding) storage of clean-up materials from non-exempt, non-hazardous spills. Off pad travel and gravel placement on tundra and storage of drilling rigs are not part of this activity.

*Authority:* AS 38.05.035  
AS 46.04.020  
18 AAC 75.327  
11 AAC 83.158  
11 AAC 96  
North Slope Borough MC Title 19

*Permits:* Lease Operations Approval (DNR)  
Land Use Permit (DNR)  
Temporary Storage Permit of Oily Waste (DEC)

*Region:* North Slope Borough

### PROCEDURE

If cross country travel is necessary to conduct this activity the applicant must have a valid, current cross-country travel permit. Refer to GC-5 (Equipment Crossing of Streams), GC-5A (Low Water Crossings), GC-19 (Cross-country Movement of Equipment in Winter/Summer), and GC-34 (Ice Road and Ice Pad Construction in the North Slope Borough).

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

The permittee remains responsible for obtaining the approval of other surface or subsurface interest holders, individuals, companies, and agencies as may also be required. For example, operations within or

crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the State Pipeline Coordinators Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

## STANDARD CONDITIONS

1. Work areas must be kept clean. All solid waste shall be backhauled to a solid waste disposal site approved by the DEC.
2. Trash and other debris that has accumulated shall be picked up and properly disposed of.
3. All rehabilitation shall be completed to the satisfaction of DNR or the appropriate land manager.
4. **Fuel and hazardous substances.** Secondary containment<sup>10</sup> shall be provided for fuel or hazardous substances<sup>11</sup>.
  - a. **Container<sup>12</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)
  - b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>13</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous

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<sup>10</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West CRSA) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>11</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>12</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifolded tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>13</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands.

- c. **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. **Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
- e. **C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax. For spills resulting from operation of the Trans Alaska Pipeline, spill notification information shall be provided to the appropriate agencies at the Joint Pipeline Office.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is 1-800 478-9300.

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## GENERAL CONCURRENCE GC-46

### INSTALLATION OF PERMANENT SNOWFENCES, POWER TRANSMISSION LINES AND LIGHT POLES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies. For instance, the North Slope Borough Administrative Approval and Development Permit may be required.

### DESCRIPTION OF THE ACTIVITY

Installation of permanent snowfences, power transmission lines, railings, modules, and light and electrical towers and poles. Activities include the construction of ice roads and ice pads, augering holes in tundra, erecting pole structures, and anchoring these pole structures into permafrost with a slurry. Installation of permanent snow fences requires the augering of shallow holes for the placement of the poles (wooden or pipe) to support the fencing (synthetic material or wooden lath). The poles are held in place by an anchoring system, usually cables and staking.

*Authority:* AS 16.05.870  
AS 38.05.035  
AS 38.05.850  
11 AAC 83.158  
11 AAC 96

*Permits:* Lease Operations Approval (DNR)  
Fish Habitat Permit (DFG)  
Land Use Permit or Right-of-Way (DNR)

*Region:* North Slope Borough

### PROCEDURE

Access may be authorized by application of either GC-19, Cross-Country Travel of Equipment in Winter/Summer or GC-34, Ice Road and Ice Pad Construction in the North Slope Borough.

DNR will consult with DFG in the determination of compliance with Standard Condition 7.

The permittee remains responsible for obtaining the approval of other surface or subsurface interest



holders, individuals, companies, and agencies as may also be required. For example, operations within or crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the State Pipeline Coordinator's Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

The provisions of the Federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that there will be no activity permitted that jeopardizes the continued existence of an endangered species or results in the destruction or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office ((907) 786-3542), for additional information on endangered species.

The Marine Mammal Protection Act provides that there will be no intentional disturbance, harassment, catching or killing of marine mammals. However, a 1981 amendment to the Marine Mammal Protection Act authorizes the Secretary, U.S. Department of Interior, or the Secretary, U.S. Department of Commerce, under certain conditions, to allow U.S. citizens to take small numbers of marine mammals from non-depleted stock incidentally, but not intentionally, in specified areas. DNR recommends that this authorization be obtained by the permittee before conducting any operations in or near coastal areas. For further information, the applicant is urged to contact the Anchorage office of the U.S. Fish and Wildlife Service ((907) 789-5342) and the National Marine Fisheries Service ((907) 271-5006).

## **STANDARD CONDITIONS**

1. Trails, campsites, and work areas must be kept clean. All solid waste shall be backhauled to a solid waste disposal site approved by the DEC.
2. Trash, survey lath, roadway markers, and other debris that has accumulated shall be picked up and properly disposed of prior to freeze-up of the following winter.
3. The use of ground contact vehicles for off-road use must be limited to those areas which have adequate ground frost and snow cover to prevent damage to the ground surface.
4. The use of ground contact vehicles for off-road travel is subject to regional openings and closure notices issued by DNR. Operations are restricted to the winter seasonal opening. After April 15, the use of ground contact vehicles is subject to termination within 72 hours of written notification from DNR.
5. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation,

removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

6. Vehicle maintenance, campsites and/or storage and stockpiling of material on surface ice of lakes, ponds, or rivers is **prohibited**
7. Permanent snow fences shall be designed to minimize disruption to passage of caribou and other large ungulates. Permanent snow fences may not extend more than 1,000 contiguous feet without incorporation of minimum 300 foot linear or horizontal offset break to facilitate wildlife passage and movement around the snow fence, unless, after consultation with DFG, the offset is determined unnecessary or alternative mitigative measures will facilitate anticipated wildlife passage.
8. **Fuel and hazardous substances.** Secondary containment<sup>1</sup> shall be provided for fuel or hazardous substances<sup>2</sup>.
  - a. **Container<sup>3</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)
  - b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>4</sup>

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<sup>1</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West CRSA) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>2</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>3</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifoldded tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>4</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

- c. must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands.

- c. **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. **Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
- e. **C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is 1-800 478-9300. For spills resulting from operation of the Trans Alaska Pipeline, spill notification information shall be provided to the appropriate agencies at the Joint Pipeline Office.

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## GENERAL CONCURRENCE GC-47

### CONSTRUCTION OF PIPELINES ON NEW VSMs AND INSTALLATION OF PIG LAUNCHER AND RECEIVING PADS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies. For example, the North Slope Borough Administrative Approval/Development Permit may be required.

#### DESCRIPTION OF THE ACTIVITY

Installation of new pipelines on new Vertical Support Members (VSM's), and installation of new pig launching and receiver pads. Activities include pipeline culverting and placing gravel on tundra. The construction will include the use of water trucks, augers, dumptrucks, front-end loaders, graders, and backhoes. Access to project sites is not covered in this general concurrence.

VSM placement requires that holes be augered into the frozen ground or river, stream or lake bottom, placing a vertical pipe with an attached horizontal arm for supporting a pipeline(s), and backfilling the hole with a combined water/sand slurry for quick permanent freeze-back into the ground. This activity is intended for flowlines and other distribution pipelines within established operating unit boundaries but not intended for major cross-country lines associated with major projects or other non-routine projects.

*Authority:* AS 16.05.870  
AS 38.05.035  
AS 38.05.850  
11 AAC 83.158

*Permits:* Fish Habitat Permit (DFG)  
Lease Operations Approval (DNR)  
Land Use Permit or Right-of-Way (DNR)  
Pipeline Right-Of-Way Lease (DNR)

*Region:* North Slope Borough

#### PROCEDURE

Prior to installing new VSM=s, the applicant shall obtain a lease operations approval and/or a land use permit. Access to the project site must be approved outside this general concurrence. Another General

Concurrence such as GC-34 (ice road and ice pad construction in the North Slope Borough) may cover winter access via ice road, while GC-5 (Stream Crossings) may apply when stream or river crossings are required. GC-19 may apply for cross-country movement of equipment in winter/summer.

DNR will consult with DFG in the determination of compliance with Standard Condition 1.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

The permittee remains responsible for obtaining the approval of other surface or subsurface interest holders, individuals, companies, and agencies as may also be required. For example, operations within or crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the State Pipeline Coordinator's Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

Permittees shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic and archaeological sites may be avoided.

The permittee remains responsible for obtaining the approval of other surface or subsurface interest holders, individuals, companies, and agencies as may also be required. For example, operations within or crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the State Pipeline Coordinators Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

The provisions of the federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that there will be no activity permitted that jeopardizes the continued existence of an endangered species or results in the destruction or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office ((907) 786-3542), for additional information on endangered species.

## **STANDARD CONDITIONS**

1. Pipelines shall be designed and constructed to avoid significant alteration of caribou and other large ungulate movement and migration patterns. At a minimum, pipelines shall be elevated a minimum of five feet, as measured from the ground to the bottom of the pipe, except where the pipeline intersects a road, pad, or a ramp installed to facilitate wildlife passage. DNR may, after consultation with DFG, require additional measures to mitigate impacts to wildlife movement and migration.
2. During pig launching and receiving operations, pigging facilities must be contained within an area or

structure which has been rendered and maintained impermeable to any spilled substances.

3. Work areas must be kept clean. All solid waste shall be backhauled to a solid waste disposal site approved by the DEC.
4. Trash, survey lath, roadway markers, and other debris that has accumulated shall be picked up and properly disposed of prior to freeze-up of the following winter.
5. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
6. Vehicle maintenance, campsites and/or storage and stockpiling of material on surface ice of lakes, ponds, or rivers is **prohibited**.
7. **Fuel and hazardous substances.** Secondary containment<sup>1</sup> shall be provided for fuel or hazardous substances<sup>2</sup>.
  - a. **Container<sup>3</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)
  - b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>4</sup> must

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<sup>1</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West CRSA) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>2</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>3</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifoldded tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>4</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch

be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands.

- c. **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. **Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
- e. **C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is 1-800 478-9300.

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and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

## GENERAL CONCURRENCE GC-48

### GRAVEL ADDITIONS OF .33 ACRES OR LESS IN THE NORTH SLOPE BOROUGH

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies. For example, the North Slope Borough Administrative Approval/Development Permit may be required.

#### DESCRIPTION OF THE ACTIVITY

Placement of an unlimited volume of gravel along the exterior edge of existing gravel structures, including roads, where the extended footprint will be .33 acres or less at any one location. Activities include the use of dumptrucks, front-end loaders, graders, backhoes, or other heavy equipment, to place gravel on tundra for the support of, or access to, small facilities such as electrical switchgear, transformers, pipeline valves, pipeline monitoring equipment, pig launchers and receivers, and pipeline culverting.

This general concurrence does not apply to fill on wetlands unless the activity is covered by either Nationwide Permit (NWP) 14 or NWP 18.

Not more than three 0.33-acre additions under this general concurrence may be made to an existing gravel structure within any five year period unless an analysis of future fill requirements for the structure is reviewed and approved by the resource agencies .

*Authority:* AS 16.05.870  
AS 38.05.035  
AS 38.05.850  
AS 38.35  
11 AAC 83.158

Section 10, Rivers and Harbors Act of 1899  
Section 404, Clean Water Act

*Permits:* Fish Habitat Permit (DFG)  
Lease Operations Approval (DNR)  
Land Use Permit or Right-of-Way (DNR)  
Right-of-Way Lease (DNR)  
Lease (DNR)



Nationwide Permit 14 (COE)  
Nationwide Permit 18 (COE)

*Region:* North Slope Borough

## PROCEDURE

The applicant should check with the COE to determine if either Nationwide Permits (NWP) 14 or NWP 18 apply. If an individual COE Section 404 permit is required, the whole project must be individually reviewed for consistency with the ACMP and this general concurrence does not apply.

If cross-country travel is necessary to conduct this activity the applicant must have a valid, current cross-country travel permit. Refer to GC-5 (Equipment Crossing of Streams), GC-5A (Low Water Crossings), GC-19 (Cross-country Movement of Equipment in Winter/Summer), and GC-34 (Ice Road and Ice Pad Construction in the North Slope Borough).

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

The permittee remains responsible for obtaining the approval of other surface or subsurface interest holders, individuals, companies, and agencies as may also be required. For example, operations within or crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the State Pipeline Coordinator's Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

## STANDARD CONDITIONS

1. The use of ground contact vehicles for off-road travel must be limited to those areas which have adequate ground frost and snow cover to prevent damage to the ground surface.
2. The use of ground contact vehicles for off-road travel is subject to regional openings and closure notices issued by DNR. Operations are restricted to the winter seasonal opening. After April 15, the use of ground contact vehicles is subject to termination within 72 hours of written notification from DNR.
3. Equipment, other than vessels, must not enter open water areas of a watercourse during winter. Ice or snow bridges and approach ramps constructed at river, slough, or stream crossings must be substantially free of extraneous material (i.e., soil, rock, wood, or vegetation) and must be removed or breached before spring breakup. Alterations of the banks of a watercourse are **prohibited**.

4. Ice structures must be breached or fractured prior to breakup so that their breakup rate coincide with those of naturally occurring ice formations in the area. This should be accomplished in a manner which does not damage or disturb the vegetation of the terrain nor introduce dirt or debris into the waterways.
5. All solid waste shall be backhauled to a solid waste disposal site approved by the DEC.
6. Trash, survey lath, roadway markers, and other debris that has accumulated shall be picked up and properly disposed of prior to freeze-up of the following winter.
7. Vehicle maintenance, campsites and/or storage and stockpiling of material on surface ice of lakes, ponds, or rivers is **prohibited**.
8. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.
10. **Fuel and hazardous substances.** Secondary containment<sup>1</sup> shall be provided for fuel or hazardous substances<sup>2</sup>.
  - a. **Container<sup>3</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)

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<sup>1</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West CRSA) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>2</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

<sup>3</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifoldded tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

- b. Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>4</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands.

- c. Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
- e. C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is 1-800 478-9300. For spills resulting from operation of the Trans Alaska Pipeline, spill notification information shall be provided to the appropriate agencies at the Joint Pipeline Office.

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<sup>4</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

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## GENERAL CONCURRENCE GC-49

### REMOVAL OF UNCONTAMINATED GRAVEL STRUCTURES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies. For example, the North Slope Borough Administrative Approval and Development Permit may be required.

### DESCRIPTION OF THE ACTIVITY

Removal, in whole or in part, of uncontaminated gravel structures for the purpose of restoration or rehabilitation. Some gravel may be left in place to avoid ponding. The activity may include the use of dump trucks, front-end loaders, backhoes, graders, bulldozers, and conveyor belts. The quantity of gravel removed is unlimited.

*Authority:* AS 16.05.870  
AS 38.05.035  
AS 38.05.850  
11 AAC 96

*Permits:* Lease Operations Approval (DNR)  
Land Use Permit (DNR)  
Fish Habitat Permit (DFG)

*Region:* North Slope Borough

### PROCEDURE

If cross country travel is necessary to conduct this activity the applicant must have a valid, current cross-country travel permit. Refer to GC-5 (Equipment Crossing of Streams), GC-5A (Low Water Crossings), GC-19 (Cross-country Movement of Equipment in Winter/Summer), and GC-34 (Ice Road and Ice Pad Construction in the North Slope Borough).

The permittee remains responsible for obtaining the approval of other surface or subsurface interest holders, individuals, companies, and agencies as may also be required. For example, operations within or crossing the Trans-Alaska Pipeline corridor require prior authorization from Alyeska. Contact the State Pipeline Coordinator's Office at (DNR) (907) 278-8594 and Alyeska Pipeline Service Company at (907) 278-1611.

The provisions of the Federal and State Endangered Species Acts and the federal Marine Mammal Protection Act must be adhered to at all times. The Endangered Species Act provides that there will be no activity permitted that jeopardizes the continued existence of an endangered species or results in the destruction or adverse modification of habitat of such species. The applicant is advised to contact the Anchorage U.S. Fish and Wildlife Service, Endangered Species Office ((907) 786-3542), for additional information on endangered species.

The Marine Mammal Protection Act provides that there will be no intentional disturbance, harassment, catching or killing of marine mammals. However, a 1981 amendment to the Marine Mammal Protection Act authorizes the Secretary, U.S. Department of Interior, or the Secretary, U.S. Department of Commerce, under certain conditions, to allow U.S. citizens to take small numbers of marine mammals from non-depleted stock incidentally, but not intentionally, in specified areas. DNR recommends that this authorization be obtained by the permittee before conducting any operations in or near coastal areas. For further information, the applicant is urged to contact the Anchorage office of the U.S. Fish and Wildlife Service ((907) 789-5342) and the National Marine Fisheries Service ((907) 271-5006).

## STANDARD CONDITIONS

1. Vehicles shall be operated in a manner such that the vegetation of the tundra is not disturbed. Blading or removal of the vegetation is **prohibited** except as approved by the Director of the Division of Land or an authorized designee.
2. Work areas must be kept clean. All solid waste shall be backhauled to a solid waste disposal site approved by the DEC.
3. Trash, survey lath, roadway markers, and other debris that has accumulated shall be picked up and properly disposed of prior to freeze-up of the following winter.
4. **Fuel and hazardous substances.** Secondary containment<sup>1</sup> shall be provided for fuel or hazardous substances<sup>2</sup>.

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<sup>1</sup> Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent (115% in the Aleutians West CRSA) of the volume of the largest independent container (plus 12 inches freeboard in the Aleutians West CRSA and Kenai Peninsula Borough coastal districts). Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

<sup>2</sup> Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

- a. **Container<sup>3</sup> marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the permittee's or contractor's name using paint or a permanent label. (Note: The permittee is ultimately responsible for contractor's compliance with these Standard Conditions.)
- b. **Fuel or hazardous substance transfers.** Secondary containment or a surface liner<sup>4</sup> must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall always be attended by trained personnel. Vehicle refueling shall not occur within the annual floodplain or tidelands.
- c. **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- d. **Exceptions.** The review coordinating agency, after consultation with other resource agencies and affected coastal districts, may under unique or special circumstances grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the review coordinating agency.
- e. **C-Plans.** In cases of conflict between an approved Oil Discharge Prevention and Contingency Plan (C-Plan) and parts of this Standard Condition, the interpretation under the C-Plan shall control.

**Spill notification.** The lessee or permittee shall immediately notify DNR (or the appropriate land manager) and DEC by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. If an unauthorized

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<sup>3</sup> Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifoldded tanks must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

<sup>4</sup> Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume to contain the worst-case spill that is likely to occur.

discharge greater than 55 gallons is made to a secondary containment, it must be reported within 48 hours by phone or fax.

All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and DEC shall be supplied with all follow-up incident reports. The DEC oil spill report number is 1-800 478-9300. For spills resulting from operation of the Trans Alaska Pipeline, spill notification information shall be provided to the appropriate agencies at the Joint Pipeline Office.



## GENERAL CONCURRENCE GC-50

### PERSONAL USE MATERIAL SALES ON STATE LAND

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

For activities subject to this general concurrence, the applicant is not automatically required to complete a Coastal Project Questionnaire (CPQ). DNR may require a CPQ for project proposals where it is uncertain whether other state or federal authorizations may be required.

### DESCRIPTION OF THE ACTIVITY

Material excavation of 100 cubic yards or less for personal use at one location for no longer than 1 year; leaving a cumulative unreclaimed excavated area of 0.5 acre or less.

*Authority:* AS 16.05.870  
AS 38.05.020  
AS 38.05.115  
AS 46.03  
11 AAC 71.050

33 USC

*Permits:* Fish Habitat Permit (DFG)  
Personal Use Material Sale Contract (DNR)

Section 10 (COE)

*Region:* Statewide, except within legislatively designated critical habitat areas, refuges or sanctuaries

### PROCEDURE

Personal use material sales are typically applied for and issued on an over-the-counter basis using a personal use material sale contract form. Material sold for personal use may not be sold, bartered, or used for a commercial purpose. The following Standard Conditions are made a part of the personal use material sale contract form. Personal use sales can be from uplands or shorelands.

Permittee shall consult the Alaska Heritage Resources Survey ((907) 762-2622) so that known historic, archaeological and paleontological sites may be avoided.

## STANDARD CONDITIONS

1. Excavation in tidelands, rivers, lakes, or other waterbodies may occur only in unvegetated, dewatered areas. Material shall be removed in even, shallow lifts from the unvegetated de-watered areas to minimize environmental disturbances such as erosion or ponding and entrapment of fish. Excavation activities in such areas shall avoid sensitive fish and shellfish life stages.
2. Stockpiling material is **prohibited**
3. The cutting of trees and the removal of vegetation or overburden is **prohibited**
4. The site shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter. All solid waste shall be backhauled to a solid waste disposal site approved by DEC.
5. Damming, diversion or bridging of anadromous fish streams are not permitted unless specifically authorized by the Alaska Department of Fish and Game.
6. Excavation activities on state shorelands shall avoid sensitive fish and shellfish life stages. Excavation below ordinary high water may only occur in de-watered areas. In-water excavation is **prohibited**
8. Structures and storage of equipment, materials, fuel, or hazardous substances are **prohibited**
9. After completion, expiration, or termination, the site shall be vacated and left in a clean, safe condition, and reclaimed. Depressions must be backfilled and slopes shall be contoured so that they do not exceed 2:1. All rehabilitation shall be completed to the satisfaction of DNR or the applicable land manager.
10. If material washing is to occur, silts and sediments shall be removed from the wash water prior to its direct or indirect discharge into any natural body of water.
11. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of

History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 762-2622) and the appropriate coastal district shall be notified immediately.

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**SECTION II**

**GENERAL CONCURRENCE DETERMINATIONS  
FOR  
NATIONWIDE PERMITS,  
GENERAL PERMITS,  
AND  
GENERAL NPDES PERMITS**

**GENERAL CONCURRENCE DETERMINATIONS FOR NATIONAL PERMITS,  
GENERAL PERMITS, AND GENERAL NPDES PERMITS**

**B-LIST  
SECTION II  
NATIONWIDE  
PERMITS**

# INTRODUCTION TO U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMITS 1-23, 25, 27, 28, 32-38, AND 40

As of January 1992, the U.S. Army Corps of Engineers (COE) has promulgated 36 Nationwide Permits (NWP) for certain activities authorized by Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act, per COE regulations 33 CFR 330. Thirty-four of the NWPs (all except NWP-24 and 26) have been found generally consistent with the Alaska Coastal Management Program (ACMP) per 6 AAC 50.050. Thus, an individual ACMP consistency review is not needed for these activities. NWP-24 concerns state-administered Section 404 permit programs and is not applicable in Alaska. NWP-26 concerns discharges of dredged or fill material into headwaters and isolated waters. In reviewing this NWP, the State determined regional conditions were necessary to ensure that this activity was consistent with the ACMP and that a Section 401 Certificate could be issued. The COE disagreed with the suggested regional conditions and has denied NWP-26 without prejudice in Alaska. This means that before an applicant can operate under NWP-26 in the coastal zone in Alaska, he/she must obtain an individual consistency review and Section 401 Certificate of Reasonable Assurance.

All of the NWPs have 13 general conditions (stipulations) that must be complied with for the permit to be valid. In addition to the general conditions, there are nine conditions that apply to NWPs which authorize Section 404 activities. These general conditions and Section 404 Only conditions are listed below. Finally, the State of Alaska has added regional conditions to certain of the NWPs to ensure they are consistent with the ACMP.

Project applicants do not need to submit an application to the COE to obtain most NWPs. It is the applicant's responsibility to locate and design his/her project so that the NWP is complied with. However, a pre-discharge notification procedure is required for NWPs 5, 7, 13, 14, 17, 18, 21, 26, 33, 34, 37, and 38. A description of the activities authorized by NWPs 1-23, 25, 27, 28, and 32-40, including applicable regional conditions, follows this introduction.

## GENERAL CONDITIONS

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.
2. *Proper maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. *Erosion and siltation controls.* Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.

4. *Aquatic life movements.* No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. *Equipment.* Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
6. *Regional and case-by-case conditions.* The activity must comply with any regional conditions which may have been added by the District Engineer (DE) (see 33 CFR 330.4 (e)) and any case-specific conditions added by the Corps.
7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.
8. *Tribal rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. *Water quality certification.* In certain states, an individual state water quality certification must be obtained or waived (see 33 CFR 330.4(c)).
10. *Coastal zone management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).
11. *Endangered Species.* No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the DE if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the DE that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (see 33 CFR 330.4 (f)).
12. *Historic properties.* No activity which may affect historic properties listed, or eligible for listing in the National Register of Historic Places is authorized until the DE has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the DE if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of

Historic Places, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4 (g)).

13. *Notification.*

- (a) Where required by the terms of the NWP, the prospective permittee must notify the DE as early as possible and shall not begin the activity:
  - (1) Until notified by the DE that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
  - (2) If notified by the district or division engineer that an individual permit is required; or
  - (3) Unless 30 days have passed from the DE's receipt of the notification and the prospective permittee has not received notice from the district or division engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedures set forth in 33 CFR 330.5 (d)(2).
- (b) The notification must be in writing and include the following information and any required fees:
  - (1) Name, address and telephone number of the prospective permittee;
  - (2) Location of the proposed project;
  - (3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause any other NWP(s) regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity;
  - (4) Where required by the terms of the NWP, a delineation of affected special aquatic sites, including wetlands; and
  - (5) A statement that the prospective permittee has contacted:
    - (i) The USFWS/NMFS regarding the presence of any federally listed (or proposed for listing) endangered or threatened species or critical habitat



in the permit area that may be affected by the proposed project, and any available information provided by those agencies. (The prospective permittee may contact Corps District Offices for USFWS/NMFS agency contacts and lists of critical habitat.)

- (ii) The SHPO regarding the presence of any historic properties in the permit area that may be affected by the proposed project; and the available information, if any, provided by that agency.
- (c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PDN and must include all of the information required in (b)(1)-(5) of General Condition 13.
- (d) In reviewing an activity under the notification procedure, the District Engineer will first determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The prospective permittee may, at his option, submit a proposed mitigation plan with the pre-discharge notification to expedite the process and the DE will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. The DE will consider any comments from federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will, upon receipt of a notification, provide immediately (e.g., facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Fish and Wildlife Service, State Natural Resource or Water Quality agency, EPA and, if appropriate, the National Marine Fisheries Service. With the exception of NWP-37, these agencies will then have five calendar days from the date the material is transmitted to telephone the DE if they intend to provide substantive, site-specific comments. If so contacted by an agency, the DE will wait an additional ten calendar days before making a decision on the notification. The DE will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The DE will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification. If the DE determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, he will notify the permittee and include any conditions he deems necessary. If the DE determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to see authorization under an individual permit, or (2) that the project is authorized under the NWP subject to the applicant's submitting a mitigation proposal that

would reduce the adverse effects to the minimal level. This mitigation proposal must be approved by the DE prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the DE will expeditiously review the proposed mitigation plan, but will not commence a second 30-day notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the DE to be minimal, the DE will provide a timely written response to the applicant informing him that the project can proceed under the terms and conditions of the NWP.

- (e) **Wetlands Delineations:** Wetlands delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period will not start until the wetlands delineation has been completed.
- (f) **Mitigation:** Factors the DE will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:
  - (1) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of overall project purposes.
  - (2) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation, including contributions to wetlands trust funds, which contribute to the restoration, creation, replacement, enhancement or preservation of wetlands.

Furthermore, examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring and enhancing similar functions and values. In addition, mitigation must address impacts and cannot be used to offset the acreage of wetlands losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., five acres of wetlands cannot be created to change a six-acre loss of wetlands to a one-acre loss; however, the five created acres can be used to reduce the impacts of the six-acre loss).

#### **SECTION 404 ONLY CONDITIONS**

1. *Water supply intakes.* No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
2. *Shellfish production.* No discharge of dredged or fill material may occur in areas of concentrated

shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.

3. *Suitable material.* No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharge must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
4. *Mitigation.* Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the DE has approved a compensation mitigation plan for the specific regulated activity.
5. *Spawning areas.* Discharges in spawning areas during spawning season must be avoided to the maximum extent practicable.
6. *Obstruction of high flows.* To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).
7. *Adverse impacts from impoundments.* If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
8. *Waterfowl breeding areas.* Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
9. *Removal of temporary fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

## GENERAL CONCURRENCE NWP-1

### AIDS TO NAVIGATION

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard.

*Authority:* Section 10 of Rivers and Harbor Act  
33 USC 403  
33 CFR Part 66

*Permit:* U.S. Army Corps of Engineers NWP 1

*Region:* Statewide

### STANDARD CONDITIONS

General conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-2

### STRUCTURES IN ARTIFICIAL CANALS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized.

*Authority:* Section 10 of Rivers and Harbor Act  
33 USC 403  
33 CFR 322.5

*Permit:* U.S. Army Corps of Engineers NWP 2

*Region:* Statewide

### STANDARD CONDITIONS

General conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-3

### MAINTENANCE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The repair, rehabilitation or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3 provided such repair, rehabilitation or replacement does not result in a deviation from the plans of the original structure or fill, and further provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the environmental impacts resulting from such repair, rehabilitation or replacement are minimal. Currently serviceable means useable, as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation or replacement of those structures destroyed by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes, or tornados, this two-year limit may be waived by the District Engineer provided the permittee can demonstrate funding, contract or other similar delays. Maintenance dredging and beach restoration are not authorized by this NWP.

*Authority:* Section 10 of Rivers and Harbors Act  
Section 401 and 404 of Clean Water Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permits:* U.S. Army Corps of Engineers NWP 3  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

## **STANDARD CONDITIONS**

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWP's are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-4

### FISH AND WILDLIFE HARVESTING, ENHANCEMENT, AND ATTRACTION DEVICES AND ACTIVITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or vegetated shallows. This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of mobile species such as lobster.

*Authority:* Sections 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbor Act  
33 USC 403  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 4  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

#### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.



## GENERAL CONCURRENCE NWP-5

### SCIENTIFIC MEASUREMENT DEVICES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Staff gages, tide gages, water recording devices, water quality testing, and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the DE in accordance with "Notification" general conditions.

*Authority:* Sections 401 and 404 of the Clear Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 5  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

### REGIONAL CONDITIONS

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-6

### SURVEY ACTIVITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes. Drilling and the discharge of excavated material from test wells from oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The discharge of drilling muds and cuttings may require a permit under section 402 of the Clean Water Act.

*Authority:* Section 401 and 404 of the Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 6  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-7

### OUTFALL STRUCTURES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Outfall activities related to construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), provided that the nationwide permittee notifies the District Engineer in accordance with the "Notification" general condition. (Also see 33 CFR 330.1(e)). Intake structures per se are not included, only those directly associated with an outfall structure.

*Authority:* Section 401, 402 and 404 of the Clean Water Act  
Section 10 of Rivers and Harbors Act  
40 CFR - Part 122  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 7  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### PROCEDURE

A prospective applicant must submit a pre-discharge notification (PDN) per Nationwide Permit General Condition 13 (see Appendix A). The DGC will coordinate the State participation in the PDN procedure.

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWP's are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-8

### OIL AND GAS STRUCTURES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Structures for the exploration, production and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, district engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334; nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

*Authority:* Section 10 of Rivers and Harbors Act  
33 USC 403  
33 CFR 322.5

*Permit:* U.S. Army Corps of Engineers NWP 8

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-9

### STRUCTURES IN FLEETING AND ANCHORAGE AREAS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard.

*Authority:* Section 10 of Rivers and Harbors Act  
33 USC 403

*Permit:* U.S. Army Corps of Engineers NWP 9

*Region:* Statewide

### STANDARD CONDITIONS

General conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-10

### MOORING BUOYS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Non-commercial, single-boat, mooring buoys.

*Authority:* Section 10 of Rivers and Harbors Act  
33 USC 403

*Permit:* U.S. Army Corps of Engineers NWP 10

*Region:* Statewide

### STANDARD CONDITIONS

General conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-11

### TEMPORARY RECREATIONAL STRUCTURES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At COE reservoirs, the reservoir manager must approve each buoy or marker individually.

*Authority:* Section 10 of Rivers and Harbors Act  
33 USC 403

*Permit:* U.S. Army Corps of Engineers NWP 11

*Region:* Statewide

### STANDARD CONDITIONS

General conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

### REGIONAL CONDITIONS

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.
- B. (1) Small, seasonal docks authorized under NWP-11 shall:
  - (a) Not extend more than 50 feet waterward of the ordinary high water mark or mean high water mark, or exceed more than 25 percent of the width of the waterbody, whichever is less; and,



- (b) Waterward of the ordinary high water mark, have a total surface area no greater than 400 square feet.

The definition of a small, seasonal dock is superseded in the area covered by the Kenai River Comprehensive Management Plan, which specifies other, smaller sizes for floating docks.

- (2) Floating houses are specifically excluded from this NWP. A "floating house" is defined as a building constructed on top of a floating platform and includes floating camps and floating lodges. This term does not apply to vessels.

## GENERAL CONCURRENCE NWP-12

### UTILITY LINE BACKFILL AND BEDDING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Discharges of material for backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose; and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. The term "utility line" does not include activities which drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from another area. Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The DE may extend the period of temporary side-casting up to 180 days, where appropriate. The area of waters of the United States that is disturbed must be limited to the minimum necessary to construct the utility line. In wetlands, the top 6" to 12" of the trench should generally be backfilled with topsoil from the trench. Excess material must be removed to upland areas immediately upon completion of construction. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line. The utility line itself will require a Section 10 permit if in navigable waters of the United States.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
33 CFR Part 322  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 12  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWP's are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- C. Areas previously supporting vegetation must be revegetated with native vegetation occurring in the general vicinity.

## GENERAL CONCURRENCE NWP-13

### BANK STABILIZATION

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Bank stabilization activities necessary for erosion prevention provided:

- a. No material is placed in excess of the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;
- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type or is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the DE in accordance with the "Notification" general condition and the DE determines the activity complies with the other terms and conditions of the NWP, and the adverse environmental impacts are minimal both individually and cumulatively.

*Authority:* Section 10 of Rivers and Harbors Act  
Section 401 and 404 Clean Water Act  
33 USC 403  
33 USC 1344

AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 13  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

## **STANDARD CONDITIONS**

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWP's are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-14

### ROAD CROSSING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Fills for roads crossing waters of the United States (including wetlands and other special aquatic sites), provided:

- a. The width of the fill is limited to the minimum necessary for the actual crossing;
- b. The fill placed in waters of the United States is limited to a filled area of no more than 1/2 acre. Furthermore, no more than a total of 200 linear feet of the fill for the roadway can occur in special aquatic sites, including wetlands;
- c. The crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand expected high flows and tidal flows, and to prevent the restriction of low flows and the movement of aquatic organisms;
- d. The crossing including all attendant features, both temporary and permanent, is part of a single and complete project for crossing of a water of the United States; and,
- e. For fills in special aquatic sites, including wetlands, the permittee notifies the DE in accordance with the "Notification" general condition. The notification must also include a delineation of affected special aquatic sites, including wetlands.

Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.4). Also where local circumstances indicate the need, DEs will define the term "expected high flows" for the purpose of establishing applicability of this NWP.

*Authority:* Section 10 of Rivers and Harbors Act  
Section 401 and 404 Clean Water Act  
33 USC 403  
33 USC 1344

33 CFR 323.4  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 14  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

## **STANDARD CONDITIONS**

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-15

### U.S. COAST GUARD APPROVED BRIDGES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 15  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

### REGIONAL CONDITIONS

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.



## GENERAL CONCURRENCE NWP-16

### RETURN WATER FROM UPLAND CONTAINED DISPOSAL AREAS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Return water from an upland, contained dredged material disposal area. The dredging itself requires a Section 10 permit if located in navigable waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d) even though the disposal itself occurs on the upland and thus does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the State through Section 401 Certification procedures.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
33 CFR 323.2  
33 CFR 325.2  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 16  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-17

### HYDROPOWER PROJECTS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; and the permittee notifies the DE in accordance with the "Notification" general condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to section 408 of the Energy Security Act of 1960 (16 USC 2705 and 2708) and section 30 of the Federal Power Act, as amended; provided the permittee notifies the DE in accordance with the "Notification" general condition.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
18 CFR 4.61  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 17  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### PROCEDURE

A prospective applicant must submit a pre-discharge notification (PDN) per Nationwide Permit General Condition 13 (see Appendix A). The DGC will coordinate the State participation in the PDN procedure.

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

**REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-18

### MINOR DISCHARGES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Minor discharges of dredged or fill material into all waters of the United States, provided:

- a. The discharge does not exceed 25 cubic yards;
- b. The discharge will not cause the loss of more than 1/10 acre of a special aquatic site, including wetlands. For the purposes of the NWP, the acreage limitation includes the filled area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the United States as a result of the project;
- c. If the discharge exceeds 10 cubic yards or the discharge is in a special aquatic site, including wetlands, the permittee notifies the DE in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (Also see 33 CFR 330.1(e)); and
- d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of stream diversion.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 18  
Certificate of Reasonable Assurance (DEC)

*Region:*       Statewide

## **STANDARD CONDITIONS**

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWP's are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-19

### MINOR DREDGING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, submerged aquatic vegetation, anadromous fish spawning areas, or wetlands; or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)).

*Authority:* Section 10 of Rivers and Harbors Act  
33 USC 403  
33 CFR 322.5

*Permit:* U.S. Army Corps of Engineers NWP 19

*Region:* Statewide

### STANDARD CONDITIONS

General conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-20

### OIL SPILL CLEANUP

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing State contingency plan, and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action.

*Authority:* Section 10 of Rivers and Harbors Act  
Section 401 and 404 Clean Water Act  
33 USC 1344  
40 CFR 300  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 20  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-21

### SURFACE COAL MINING ACTIVITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Activities associated with surface coal mining activities, provided they are authorized by the Department of Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977, and provided the permittee notifies the DE in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also indicate a delineation of affected special aquatic sites, including wetlands.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
Surface Mining Control Reclamation Act - Title V  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 21  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### PROCEDURE

A prospective applicant must submit a pre-discharge notification (PDN) per Nationwide Permit General Condition 13 (see Appendix A). The DGC will coordinate the State participation in the PDN procedure.

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs



are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-22

### REMOVAL OF VESSELS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of manmade obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the DE is notified and indicates that there is compliance with the "Historic Properties" general condition. This NWP does not authorize maintenance dredging, shoal removal, or river bank snagging. Vessel disposal in waters of the United States may need a permit from EPA (see 40 CFR 229.3).

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 22  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-23

### APPROVED CATEGORICAL EXCLUSIONS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where that agency or department has determined pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of NEPA (40 CFR Part 1500 et. seq.) that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and the Office of the Chief of Engineers (Attention: CECW-OR) has been furnished notice of the agency or department's application for the categorical exclusion and concurs with the determination. Prior to approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
40 CFR Part 1500  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 23  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-25

### STRUCTURAL DISCHARGE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as piers and docks; and for linear projects, such as bridges, transmission line footings, and walkways. The NWP does not authorize filled structural members that would support buildings, homes, parking areas, storage areas and other such structures. Housepads or other building pads are also not included in this NWP. The structure itself may require a Section 10 permit if located in navigable waters of the United States.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 25  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

### REGIONAL CONDITIONS

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-27

### WETLAND AND RIPARIAN RESTORATION AND CREATION ACTIVITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Activities in waters of the United States associated with the restoration of altered and degraded non-tidal wetlands and creation of wetlands on private lands in accordance with the terms and conditions of a binding wetland restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service (USFWS) or the Soil Conservation Service (SCS); or activities associated with the restoration of altered and degraded non-tidal wetland, riparian areas and creation of wetlands and riparian areas on U.S. Forest Service and Bureau of Land Management lands, federal surplus lands (e.g., military lands proposed for disposal), Farmers Home Administration inventory properties, and Resolution Trust Corporation inventory properties that are under federal control prior to being transferred to the private sector. Such activities include, but are not limited to:

1. Installation and maintenance of small water control structures, dikes, and berms;
2. backfilling of existing drainage ditches;
3. removal of existing drainage structures;
4. construction of small nesting islands; and,
5. other related activities.

This NWP applies to restoration projects that serve the purpose of restoring "natural" wetland hydrology, vegetation, and function to altered and degraded non-tidal wetlands and "natural" functions of riparian areas. For agreement restoration and creation projects only, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its prior condition and use (i.e., prior to restoration under the agreement) within five years after expiration of the limited term wetland restoration or creation agreement, even if the discharge occurs after this NWP expires. The prior condition will be documented in the original agreement, and the determination of return to prior conditions will be made by the federal agency executing the agreement. Once an area is reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. This

NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 27  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

## **STANDARD CONDITIONS**

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-28

### MODIFICATIONS OF EXISTING MARINAS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Reconfigurations of existing docking facilities within an authorized marina area. No dredging, additional slips or dock spaces, or expansion of any kind within waters of the United States are authorized by this NWP.

*Authority:* Section 10 Rivers and Harbors Act  
33 USC 403

*Permit:* U.S. Army Corps of Engineers NWP 28

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.



## GENERAL CONCURRENCE NWP-32

### COMPLETED ENFORCEMENT ACTIONS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Any structure, work or discharge of dredged or fill material undertaken in accordance with, or remaining in place in compliance with, the terms of a final federal court decision, consent decree, or settlement agreement in an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 32  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-33

### TEMPORARY CONSTRUCTION, ACCESS AND DEWATERING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Temporary structures and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided the associated permanent activity was previously authorized by the Corps of Engineers or the U.S. Coast Guard, or for bridge construction activities not subject to federal regulation. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Temporary fill must be entirely removed to upland areas following completion of the construction activity and the affected areas restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the United States (see 33 CFR part 322). The permittee must notify the DE in accordance with the "Notification" general condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources. The DE will add special conditions, where necessary, to ensure that adverse environmental impacts are minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g., construction mats in wetlands where practicable). This NWP does not authorize temporary structures or fill associated with mining activities or the construction of marina basins which have not been authorized by the Corps.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 33  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

## **STANDARD CONDITIONS**

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWP's are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-34

### CRANBERRY PRODUCTION ACTIVITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion enhancement, or modification activities at existing cranberry production operations, provided:

- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the United States, including wetlands;
- b. The permittee notifies the DE in accordance with the notification procedures; and,
- c. The activity does not result in a net loss of wetland acreage.

This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP the cumulative total of 10 acres will be measured over the period that this NWP is valid.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 34  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-35

### MAINTENANCE DREDGING OF EXISTING BASINS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Excavation and removal of accumulated sediment for maintenance of existing marina basins, canals, and boat slips to previously authorized depths or controlling depths of ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used.

*Authority:* Section 10 Rivers and Harbors Act  
33 USC 403

*Permit:* U.S. Army Corps of Engineers NWP 35

*Region:* Statewide

### STANDARD CONDITIONS

General conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-36

### BOAT RAMPS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Activities required for the construction of boat ramps, provided:

- a. The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of precast concrete planks or slabs\*;
- b. The boat ramp does not exceed 20 feet in width;
- c. The base material is crushed stone, gravel or other suitable material;
- d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,
- e. No material is placed in special aquatic sites, including wetlands.

\*Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized.

Dredging to provide access to the boat ramp may be authorized by another NWP, regional general permit, or individual permit pursuant to Section 10 if located in navigable waters of the United States.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 36  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

## **STANDARD CONDITIONS**

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWP's are found at the beginning of this section.

## **REGIONAL CONDITIONS**

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.

## GENERAL CONCURRENCE NWP-37

### EMERGENCY WATERSHED PROTECTION AND REHABILITATION

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Work done by or funded by the Soil Conservation Service qualifying as an "exigency" situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR Part 624) and work done or funded by the Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13) provided the DE is notified in accordance with the "Notification" general condition.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 37  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

### REGIONAL CONDITIONS

- A. If the permitted activity includes a structure in fresh waters, any wooden construction materials shall not be treated with creosote. In marine waters, creosote treatment may be allowed if applied by pressure-injection. No pentachlorophenol preservatives are permitted for use in either fresh or marine water structures.



## GENERAL CONCURRENCE NWP-38

### CLEANUP OF HAZARDOUS AND TOXIC WASTE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Specific activities required to effect the containment, stabilization or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority, provided the permittee notifies the DE in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 38  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

## GENERAL CONCURRENCE NWP-40

### FARM BUILDINGS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Discharges of dredged or fill material into jurisdictional wetlands (but not including prairie potholes, playa lakes, or vernal pools) that were in agricultural crop production prior to December 23, 1985 (i.e., farmed wetlands) for foundations and building pads for buildings or agricultural related structures necessary for farming activities. The discharge will be limited to the minimum necessary but will in no case exceed one acre (see the "Minimization" Section 404 Only condition).

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* U.S. Army Corps of Engineers NWP 40  
State of Alaska Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

General conditions and Section 404 Only conditions for all U.S. Army Corps of Engineers NWPs are found at the beginning of this section.

**B-LIST  
SECTION II**

**STATEWIDE**

**GENERAL  
AND  
NPDES  
PERMITS**

## GENERAL CONCURRENCE APP 93-1

### DISCHARGE OF DREDGED AND/OR FILL MATERIAL FOR WATER, WASTEWATER, AND SANITATION FACILITIES IN ALASKAN VILLAGES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

See General Concurrence GC-35 in Section I of the B List for projects subject to Alternative Permit Processing Procedure 93-1.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 of Rivers and Harbors Act  
33 USC 403  
33 USC 1344  
AS 46.03

*Permits:* COE General 404 and Section 10 Permit (COE) (expires 3/31/99)  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

#### PROCEDURE

An application is submitted to the COE. Permit processing is expedited if all substantive issues can be resolved in an abbreviated time frame. See Appendix A for a copy of APP 93-1. See also General Concurrence GC-35 in Section I of the B List.

#### STANDARD CONDITIONS

See Appendix A for a copy of APP 93-1, including Special Conditions 1-21. See also General Concurrence GC-35 in Section I of the B List.

## **GENERAL CONCURRENCE GP-88-02N**

### **PLACER MINING**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### **DESCRIPTION OF THE ACTIVITY**

General Permit 88-02N authorizes activities associated with placer mining located on federal and State lands in Alaska.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
Section 10 Rivers & Harbors Act  
33 USC 403  
AS 46.03

*Permit:* COE General 404 and Section 10 Permit 88-02N (expires 6/12/00)  
Certificate of Reasonable Assurance (DEC)  
Miscellaneous Land Use Permit (DNR)

*Region:* Statewide

### **PROCEDURE**

Submit an application to the COE to receive confirmation that proposed work will be covered by GP.

### **STANDARD CONDITIONS**

See Appendix A for a copy of Permit 88-02N, including conditions 1-29, and reporting and monitoring requirements.

## GENERAL CONCURRENCE GP-88-9M

### MOORING BUOYS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

General Permit 88-9M authorizes the placement of mooring buoys into navigable waters of Alaska for the purpose of mooring single or multiple vessels.

*Authority:* Section 10 Rivers and Harbors Act  
33 USC 403  
33 CFR Part 320-330  
AS 46.03

*Permit:* COE Section 10 Permit (expires 11/28/99)  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### PROCEDURE

Contact the Department of Natural Resources, coastal districts, and/or the National Park Service before placing buoys in certain areas (see permit condition #2). Notification to the COE is required.

### STANDARD CONDITIONS

See Appendix A for a copy of Permit 88-9M, including conditions 1-17, including reporting and monitoring requirements.

## GENERAL CONCURRENCE GP-89-4

### MOORAGE OF FLOAT HOUSES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

General Permit 89-4 authorizes the moorage of floating houses in navigable waters of the United States within Alaska. GP authorization is granted only after a floating house and its proposed location have been found consistent with the standards of the ACMP by DGC on a case-by-case, site-specific basis through an authorization procedure described in the GP.

*Authority:* Section 10 Rivers and Harbors Act  
33 USC 403  
33 CFR Part 320-330

*Permit:* COE General Section 10 Permit 89-4 (expires 8/27/95)

*Region:* Statewide

### STANDARD CONDITIONS

See Appendix A for a copy of Permit 89-4, including conditions and the authorization procedure.

## GENERAL CONCURRENCE GP-91-7M

### AQUATIC FARM STRUCTURES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

General Permit 91-7M authorizes the placement of aquatic farm structures, including associated floathouses and mooring buoys in certain navigable waters, for the purpose of commercial and/or experimental aquatic plant and/or shellfish aquaculture.

*Authority:* Section 10 Rivers and Harbors Act  
33 USC 403

*Permit:* COE General Section 10 Permit 91-7M (expires 11/29/99)

*Region:* Statewide

### PROCEDURE

Any person who wishes to operate under this GP must submit an application for an Aquatic Farm site permit during the specified application period to the appropriate regional office or the Alaska Department of Natural Resources. See also Appendix A for a copy of General Permit 91-7M for further procedures and reporting requirements.

### STANDARD CONDITIONS

See Appendix A for a copy of Permit 91-7M, including conditions a-p.



## GENERAL CONCURRENCE GP-AKG-37-0000

### ALASKA PLACER MINING DISCHARGES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The mining and processing of gold placer ores using gravity separation methods to recover the gold metal contained in the ore, including a) open-cut gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season; and b) mechanical dredge gold placer mines (not suction dredges) except those dredges that remove less than 50,000 cubic yards of placer ore per mining season or dredge in open waters.

This activity also includes suction dredges with intake hoses of greater than four inches and operations utilizing hydraulic removal of overburden.

*Authority:* Section 401 and 402 Clean Water Act  
33 USC Section 1251

*Permits:* EPA General Permit AKG-37-0000 (expires 6/30/99)

*Region:* Statewide

### PROCEDURE

New facilities are required to complete an Environmental Assessment pursuant to the National Environmental Policy Act. A finding of no significant impact (FONSI) by EPA is necessary prior to receiving coverage under this general permit. See Part I of the general permit for additional procedural requirements.

The DEC waived Section 401 certification. The DGC did not provide a consistency determination for this General Permit. However, per 15 CFR 930.63(a), ACMP consistency shall be presumed if the State does not reply to a federal consistency review within six months of the comment deadline. An individual ACMP consistency determination is not required as indicated in the permit (AKG-37-0000) in Appendix A.

## **STANDARD CONDITIONS**

See Appendix A for a copy of EPA NPDES AKG-37-0000, including effluent limitation, management practices, monitoring and reporting requirements, compliance responsibilities, general requirements, and special conditions.

## GENERAL CONCURRENCE GP-AKR-00-0000

### STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

New and existing point source discharges of storm water associated with industrial activity to waters of the United States.

*Authority:* Section 401 and 402 Clean Water Act  
AS 46.03

*Permit:* EPA General NPDES Permit AKR-00-0000 (expires 10/1/97)  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

### STANDARD CONDITIONS

See Appendix A for a copy of General NPDES permit AKR-00-0000.

## GENERAL CONCURRENCE GP-AKR-10-0000

### STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES THAT ARE "ASSOCIATED WITH INDUSTRIAL ACTIVITY"

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Discharges of storm water associated with industrial activity from construction sites.

*Authority:* Section 401 and 402 Clean Water Act  
AS 46.03

*Permit:* EPA General NPDES Permit AKR-10-0000 (expires 9/9/97)  
Certificate of Reasonable Assurance (DEC)

*Region:* Statewide

#### STANDARD CONDITIONS

See Appendix A for a copy of General NPDES permit AKR-10-0000.

## GENERAL CONCURRENCE GP-9340-BA001

### DISPOSAL OF MINING CAMP WASTES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Solid waste disposal permit for the disposal of small volumes of camp wastes, less than 100 cubic yards annually, generated by temporary or seasonal mining operations. It is for facilities which utilize an incinerator, (e.g., a burn box, burn cage, or other form of enhanced burner) that will generate less than 50 cubic yards of combustion residue and ash from domestic camp wastes per year, and noncombustible, non-putrescible shop waste which may include scrap metal items and inert construction debris, that will generate less than 50 cubic yards per year.

*Authority:* 18 AAC 60.015-095  
18 AAC 60.230

*Permit:* DEC General Permit 9340-BA001 (expires 12/31/98)

*Region:* Statewide

### PROCEDURE

Written notification of intent to operate under this general concurrence and general permit must be submitted to DEC. Monitoring may also be required. Specific requirements, including the submission of reports, are discussed in Appendix A.IV of the general permit.

### STANDARD CONDITIONS

See Appendix A for a copy of the DEC General Permit 9340-BA001.

## GENERAL CONCURRENCE GP-9340-BA002

### DISPOSAL OF LARGE WOOD WASTE ASSOCIATED WITH LOG SORTYARDS OR LOG TRANSFER FACILITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Disposal of limited volumes of stumps, long butts, cull logs and other woodwaste measuring one cubic foot or greater generated at a log sortyard or log transfer facility. This general permit applies only to facilities that receive the above specified large woodwaste not to exceed a total area of one acre. This permit expires December 31 of the year of issuance. This permit, however, may be renewed each year up to a total of five consecutive years. Total solid waste disposal area cannot exceed those set out in this permit.

*Authority:* 18 AAC 62.230

*Permit:* DEC General Permit 9340-BA002 (expires 12/31/98)  
This GP is not transferable.

*Region:* Statewide

#### PROCEDURE

Written notification of intent to operate under this general concurrence is required and is subject to written approval from the Alaska Department of Environmental Conservation (DEC). Contact DEC for notification requirements. Eligibility for this general concurrence requires DEC approval of the permit application per 18 AAC 60.210.

Monitoring is also required. Specific requirements are included in Appendix B of the general permit.

#### STANDARD CONDITIONS

See Appendix A for a copy of DEC General Permit 9340-BA002.

## GENERAL CONCURRENCE GP-9340-BA003

### DISPOSAL OF SOLID WASTE ASSOCIATED WITH LOG SORTYARDS AND LOG TRANSFER FACILITIES

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Disposal of rock, mud, bark, and small woodwastes measuring less than one cubic foot generated at a log sortyard or log transfer facility. This permit applies only to facilities that will receive the above specified small woodwaste not to exceed a total volume of less than 1,000 cubic yards. This permit expires December 31 of the year of issuance. This permit, however, may be renewed each year up to a total of five consecutive years. Total volumes of solid waste disposal area cannot exceed those set out in this permit.

*Authority:* 18 AAC 62.230

*Permit:* DEC General Permit 9340-BA003 (expires 12/31/98)  
This GP is not transferable.

*Region:* Statewide

#### PROCEDURE

Written notification of intent to operate under this general concurrence is required and is subject to written approval from the Alaska Department of Environmental Conservation (DEC). Contact DEC for notification requirements. Eligibility for this general concurrence requires DEC approval of the permit application per 18 AAC 60.210.

Monitoring is also required. Specific requirements are included in Appendix B of the general permit.

#### STANDARD CONDITIONS

See Appendix A for a copy of DEC General Permit 9340-BA003.

## GENERAL CONCURRENCE GP-9340-BA004

### DISPOSAL OF DOMESTIC CAMP SOLID WASTE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Disposal of small volumes of domestic camp wastes generated by temporary construction, mining, and logging operations. This general permit applies only to facilities that will receive a total volume of not more than 100 cubic yards of residue per year from the combustion of domestic refuse, no greater than a total of 7,500 pounds over the life of the facility of wastes that are non-combustible and non-putrescible which include small metal items, inert construction debris, and white goods; and at which no more than a one-time disposal of 500 gallons of septage over a one-year period will occur.

*Authority:* 18 AAC 62.230

*Permit:* DEC General Permit 9340-BA004 (expires 12/31/98)  
This GP is not transferable.

*Region:* Statewide

### PROCEDURE

Written notification of intent to operate under this general concurrence is required and is subject to written approval from the Alaska Department of Environmental Conservation (DEC). Contact DEC for notification requirements. Eligibility for this general concurrence requires DEC approval of the permit application per 18 AAC 60.210.

Monitoring is also required. Specific requirements are discussed in Appendix B of the general permit.

### STANDARD CONDITIONS

See Appendix A for a copy of DEC General Permit 9340-BA004.



## **GENERAL CONCURRENCE GP-9440-BA001**

### **GENERAL SOLID WASTE PERMIT FOR ONE-TIME DISPOSAL OF ASBESTOS WASTE FOR VOLUMES LESS THAN 250 CUBIC YARDS**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### **DESCRIPTION OF THE ACTIVITY**

One-time disposal of asbestos abatement wastes generated on-site by a one-time asbestos removal operation of volumes less than 250 cubic yards.

*Authority:* AS 46.03

*Permits:* DEC General Permit 9440-BA001 (Expires 7/10/99)

*Region:* Statewide

#### **PROCEDURE**

A person who wishes to dispose of waste under the conditions of this general permit must send a plan and schedule for the disposal site to the appropriate regional office after the regional solid waste coordinator approves the plan and schedule. If the operation is not completed on schedule, DEC can order the work stopped until a new plan and schedule is submitted and approved.

#### **STANDARD CONDITIONS**

See Appendix A for a copy of DEC General Permit 9440-BA001.

## GENERAL CONCURRENCE GP-9440-BA002

### GENERAL SOLID WASTE PERMIT FOR DISPOSAL OF SMALL VOLUMES OF RESORT-LODGE HOUSEHOLD WASTE

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Disposal of small volumes of household wastes, generated by temporary or seasonal resort-lodge operations. This permit is also for the disposal of small volumes of domestic septage which is produced on-site. This permit is for facilities which utilize an incinerator (e.g., burn box, burn cage, or other forms of enhanced burners) that will generate less than 50 cubic yards of combustion residue and ash from household wastes per year, and less than 50 yards noncombustible, nonputrescible waste which may include scrap metal items and inert construction/demolition debris.

*Authority:* AS 46.03.120

*Permits:* DEC General Permit 9440-BA002 (Expires 7/10/99)

*Region:* Statewide

#### PROCEDURE

Plans for the disposal site must be sent to the appropriate DEC regional office. Waste may be placed in the disposal site only after the regional solid waste coordinator approves the plan.

#### STANDARD CONDITIONS

See Appendix A for a copy of DEC General Permit 9440-BA002

## GENERAL CONCURRENCE GP-9440-BA003

### GENERAL SOLID WASTE PERMIT FOR ONE-TIME DISPOSAL OF ABANDONED MINING OPERATION WASTE FOR VOLUMES OF 500 CUBIC YARDS OR LESS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

One-time disposal of abandoned mining operation wastes, consisting mainly of non-combustible and non-putrescible wastes which may include scrap metal items such as vehicle bodies, heavy equipment parts, empty drums, and other miscellaneous demolition and mining wastes, limited to 500 cubic yards volume or less. The disposal of waste resulting from processing or beneficiation of hard rock ores is not covered under this general permit.

*Authority:* AS 46.03

*Permits:* DEC General Permit 9440-BA002 (Expires 7/10/99)

*Region:* Statewide

#### PROCEDURE

A plan and schedule for the disposal site must be sent to the appropriate DEC regional office. Waste may be placed in the disposal site only after the regional solid waste coordinator approves the plan and schedule. If the permit applicant does not own the property where the waste is to be disposed, written approval for the project must be obtained from the property owner. If the operation is not completed on schedule, DEC can order the work stopped until a new plan and schedule is submitted and approved.

#### STANDARD CONDITIONS

See Appendix A for a copy of DEC General Permit 9440-BA003

## **GENERAL CONCURRENCE GP-9240-DB002**

### **DISPOSAL OF WASTEWATER BY INJECTION THROUGH THE OUTER ANNULUS OF OIL AND GAS WELLS**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### **DESCRIPTION OF THE ACTIVITY**

Wastewater disposal permit for the disposal of wastewater by injection through the outer annulus of oil and gas wells within the State of Alaska excluding the Department of Environmental Conservation's Southeast Region. This includes all activities located within the Department of Environmental Conservation's Pipeline Corridor Region, Southcentral Region, and Northern Region. Fluids disposed of through wells for which the primary purpose of the well is waste injection are not included under this permit. This permit applies to the disposal of fluids produced from the drilling, servicing, or testing of oil and gas exploratory, development, service and stratigraphic test wells, including, but not limited to, drilling fluids, rig washwaters, completion fluids, formation fluids, reserve pit fluids, cement contaminated drilling muds, suspended drilling solids, and domestic wastewaters. The disposal is to be into the lands of the State below the permafrost zone or other geologically suitable confining zones.

*Authority:* 18 AAC 72.210  
18 AAC 72.910

*Permit:* DEC General Permit 9240-DB002 (Expires 4/30/97)

*Region:* Statewide, excluding the Department of Environmental Conservation's Southeast Region.

#### **PROCEDURE**

Applicants wanting to conduct disposal activities under this general permit must notify the Department in writing at least two weeks prior to each disposal. Shorter notice and verbal notification followed by written confirmation may be used for emergency situations. Applicants must have written approval from the Regional Administrator of the Regional Office in which the injection is to occur prior to conducting disposal activities under this permit.

Specific requirements, including the submission of reports, are discussed in Appendix A of this general permit.

## **STANDARD CONDITIONS**

See Appendix A for a copy of DEC General Permit 9240-DB002.

## **GENERAL CONCURRENCE GP-9240-DB003**

### **DISPOSAL OF WASTEWATER PRODUCED FROM THE TREATMENT OF HYDROCARBON-CONTAMINATED GROUNDWATER BY SURFACE DISCHARGE OR SUBSTANCE INJECTION**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### **DESCRIPTION OF THE ACTIVITY**

Wastewater disposal permit for disposal of wastewater produced from the treatment of hydrocarbon-contaminated groundwater within the State of Alaska. This permit applies specifically to the disposal of the treated water through surface discharge or subsurface injection either onsite within the mapped limits of the contamination plume or offsite to uncontaminated areas. This general wastewater disposal permit does not apply to contaminant groundwaters where halogenated hydrocarbons are the contaminant of concern.

Wastewater discharge activities associated with well testing and waste characterization are authorized by this general permit as long as DEC's Contaminated Sites Program has approved the discharge in conjunction with overall site management. The operator need not submit an application to be covered by the general permit and the effluent limitation contained in this permit do not apply.

*Authority:* AS 46.03  
18 AAC 72.210  
18 AAC 72.910

*Permit:* DEC General Permit 9240-DB003 (Expires 1/1/97)

*Region:* Statewide

#### **PROCEDURE**

Applicants wishing to conduct disposal activities under this permit must submit a Notice of Disposal to the appropriate DEC regional office at least thirty (30) days prior to the disposal activity. This notification must be a written notice of intent to operate under this permit. Applicants must receive written approval from the Regional Administrator of the appropriate Regional Office before conducting disposal activities under this permit.

Monitoring is also required. Specific requirements, including the submission of reports, are discussed in Appendix A of this general permit.

**STANDARD CONDITIONS**

See Appendix A for a copy of DEC General Permit 9240-DB003, including Appendices A and B of the general permit.

## **GENERAL CONCURRENCE GP-9240-DB004**

### **DISPOSAL OF WASTEWATER PRODUCED FROM THE TREATMENT OF HYDROCARBON-CONTAMINATED GROUNDWATER BY REINJECTION**

The following activity is consistent with the Alaska Coastal Management program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### **DESCRIPTION OF THE ACTIVITY**

Wastewater disposal permit for disposal of wastewater produced from the treatment of hydrocarbon-contaminated groundwater within the State of Alaska. This permit applies specifically to the treatment and reinjection of the wastewater produced from the bioremediation of hydrocarbon-contaminated soils and groundwater. This general wastewater disposal permit does not apply to contaminated groundwater where halogenated hydrocarbons are the contaminant of concern.

Wastewater discharge activities associated with well testing and waste characterization are authorized by this general permit as long as DEC's Contaminated Sites Program has approved the discharge in conjunction with overall site management. The operator need not submit an application to be covered by the general permit and the effluent limitation contained in this permit do not apply.

*Authority:* AS 46.03  
18 AAC 72.210  
18 AAC 72.910

*Permit:* DEC General Permit 9240-DB004 (Expires 1/1/97)

*Region:* Statewide

#### **PROCEDURE**

Applicants wishing to conduct disposal activities under this permit must submit a Notice of Disposal to the appropriate DEC regional office at least thirty (30) days prior to the disposal activity. This notification must be a written notice of intent to operate under this permit. Applicants must receive written approval from the Regional Administrator of the appropriate Regional Office before conducting disposal activities under this permit.

Monitoring is also required. Specific requirements, including the submission of reports, are



discussed in Appendix A of this general permit.

## **STANDARD CONDITIONS**

See Appendix A for a copy of DEC General Permit 9240-DB004, including Appendices A and B of the general permit.

## **GENERAL CONCURRENCE GP-9240-DB005**

### **DISPOSAL OF WASTEWATER PRODUCED FROM THE TREATMENT OF HYDROCARBON-CONTAMINATED GROUNDWATER BY DISCHARGE TO MARINE WATERS**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### **DESCRIPTION OF THE ACTIVITY**

Wastewater disposal permit for the disposal of wastewater produced from the treatment of hydrocarbon-contaminated groundwater within the State of Alaska. This permit applies specifically to the discharge of treated wastewater to marine waters. This general wastewater disposal permit does not apply to contaminated groundwaters where halogenated hydrocarbons are the contaminant of concern.

Wastewater discharge activities associated with well testing and waste characterization are authorized by this general permit as long as DEC's Contaminated Sites Program has approved the discharge in conjunction with overall site management. The operator need not submit an application to be covered by the general permit and the effluent limitation contained in this permit do not apply.

*Authority:* AS 46.03  
18 AAC 72.210  
18 AAC 72.910

*Permit:* DEC General Permit 9240-DB005 (Expires 1/1/97)

*Region:* Statewide

#### **PROCEDURE**

Applicants wishing to conduct disposal activities under this permit must submit a Notice of Disposal to the appropriate DEC regional office at least thirty (30) days prior to the disposal activity. This notification must be a written notice of intent to operate under this permit. Applicants must receive written approval from the Regional Administrator of the appropriate Regional Office before conducting disposal activities under this permit.

Monitoring is also required. Specific requirements, including the submission of reports, are

discussed in Appendix A of this general permit.

## **STANDARD CONDITIONS**

See Appendix A for a copy of DEC General Permit 9240-DB005, including Appendices A, B, and C of the general permit.

## **GENERAL CONCURRENCE GP-9240-DB006**

### **DISPOSAL OF WASTEWATER PRODUCED FROM FISH HATCHERIES**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### **DESCRIPTION OF THE ACTIVITY**

Disposal permit for the disposal of wastewater produced from fish hatcheries. This permit covers fish hatcheries that have a fish food budget of greater than 30,000 pounds per annum and discharges wastewater to waters of the State.

*Authority:* 18 AAC 72.210  
18 AAC 72.910

*Permit:* DEC General Permit 9240-DB006 (Expires 7/1/97)

*Region:* Statewide

### **PROCEDURE**

Applicants wishing to conduct disposal activities under this permit must submit a Notice of Disposal to the appropriate DEC regional office at least thirty (30) days prior to the disposal activity. This notification must be a written notice of intent to operate under this permit. Applicants must receive written approval from the Regional Administrator of the appropriate Regional Office before conducting disposal activities under this permit.

Monitoring is also required. Specific requirements, including the submission of reports, are discussed in Appendix A of this general permit.

### **STANDARD CONDITIONS**

See Appendix A for a copy of DEC General Permit 9240-DB006.

## **GENERAL CONCURRENCE GP-9440-DB001**

### **DISPOSAL OF LESS THAN 15,000 GALLONS PER DAY OF TREATED DOMESTIC WASTEWATER TO LAND OR WATERS OF THE STATE**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### **DESCRIPTION OF THE ACTIVITY**

The disposal of less than 15,000 gallons per day of treated domestic wastewater to the land or waters of the State. The general permit applies to discharges from chemical/physical and biological package sewage treatment plants. The permit does not apply to waters listed by the State as impaired, where the impairment is wholly or partially caused by a pollutant contained within the proposed discharge. Subsurface discharges are not covered by the general permit.

*Authority:* AS 46.03

*Permits:* DEC General Permit 9440-DB001

*Region:* Statewide

#### **PROCEDURE**

Prior to making written notification of intent to operate under the permit, the applicant must obtain plan approval of the sewage treatment plant through a plan review per 18 AAC 72. Plans must be stamped by an engineer registered in the State of Alaska. The plan review process requires at least 30 days for completion.

#### **STANDARD CONDITIONS**

See Appendix A for a copy of DEC General Permit 9440-DB001, including conditions contained in Appendices A, B, and C of the General Permit.

## GENERAL CONCURRENCE GP-9440-DB002

### DISPOSAL OF WASTEWATER FROM EXCAVATIONS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

The disposal of wastewater from excavations within the boundaries of DEC Southcentral and Northern Regions. This general concurrence applies to any volume of wastewater disposal from excavations such as culvert placement, gravel mining, pipeline installation, inspection or repair, bridge construction, building construction, and other similar projects.

This general concurrence does not apply to wastewater from placer mining and is not applicable to waters listed by the State as impaired, where the impairment is wholly or partially caused by a pollutant contained within the proposed discharge.

*Authority:* AS 46.03

*Permits:* DEC General Permit 9440-DB002

*Region:* DEC Northern and Southcentral Regions

### PROCEDURE

Applicants wishing to conduct disposal activities under this permit and whose estimated total discharge volume is greater than 500,000 gallons must submit a Notice of Disposal to the appropriate DEC regional office at least two weeks prior to the initiation of disposal activities. Permittees whose discharge is estimated be less than 500,000 gallons are not required to submit a Notice of Disposal.

### STANDARD CONDITIONS

See Appendix A for a copy of GP DEC General Permit 9440-DB002, including Specific Permit Conditions I-XIII and General Conditions I-IX.

## GENERAL CONCURRENCE GP-9440-DB003

### DISPOSAL OF LESS THAN 1,500,000 GALLONS OF WASTEWATER USED FOR HYDROSTATIC TESTING

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Disposal of less than 1,500,000 gallons of wastewater used for hydrostatic testing within the Department of Environmental Conservation's Northern and Southcentral Regions. The general permit is not applicable to waters listed by the state as impaired, where the impairment is wholly or partially caused by a pollutant contained within the proposed discharge.

*Authority:* AS 46.03

*Permits:* DEC General Permit 9440-DB003

*Region:* DEC Northern and Southcentral (listed in Statewide section in Appendix A)

#### PROCEDURE

Applicants wishing to conduct disposal activities under this permit must submit a notice of Disposal to the appropriate DEC regional office at least two weeks prior to the initiation of disposal activities.

#### STANDARD CONDITIONS

See Appendix A for a copy of DEC General Permit 9440-DB003, including permit conditions in the permit Appendices A and B.

## GENERAL CONCURRENCE GP-9440-DB004

### DISPOSAL OF SECONDARY TREATED DOMESTIC WASTEWATER FROM COMMUNITY OPERATED FACILITIES THAT SERVE LESS THAN 1,000 RESIDENTS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The disposal of secondary treated domestic wastewater from community operated facilities located within that serve less than 1,000 residents and discharge less than 250,000 gallons per day of wastewater. The general permit applies to facilities designed with once-a-year or at most twice-a-year discharges from treatment lagoons. The wastewater must receive secondary treatment prior to discharge. The permit does not apply to waters listed by the State as impaired, where the impairment is wholly or partially caused by a pollutant contained within the discharge.

*Authority:* AS 46.03  
18 AAC 72.990

*Permits:* DEC General Permit 9440-DB004

*Region:* Statewide

#### PROCEDURE

Applicants must submit a written notice of disposal and intent to operate to the appropriate DEC regional office at least 30 days prior to the disposal activity. Notification and operating limitations are discussed in Appendix A of the permit.

#### STANDARD CONDITIONS

See Appendix A for a copy of GP DEC General Permit 9440-DB004, including operating requirements I-XI and General Conditions I-X.



## GENERAL CONCURRENCE GP-9440-DB005

### DISPOSAL OF TREATED DOMESTIC WASTEWATER FROM COASTAL COMMUNITY OPERATED FACILITIES THAT SERVE LESS THAN 1,000 RESIDENTS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

The disposal of treated domestic wastewater from coastal community operated facilities that serve less than 1,000 residents and discharge less than 250,000 gallons per day of wastewater. The general permit applies to the discharge of sanitary wastes that have received primary treatment. The treated wastewater must be discharged to marine waters via an outfall pipe(s). The permit does not apply to waters listed by the State as impaired, where the impairment is wholly or partially caused by a pollutant contained within the discharge.

*Authority:* AS 46.03  
18 AAC 72.990

*Permits:* DEC General Permit 9440-DB005

*Region:* Statewide

#### PROCEDURE

Applicants must submit a written notice of disposal and intent to operate to the appropriate DEC regional office at least 30 days prior to the disposal activity. Notification and operating limitations are discussed in Appendix A of the permit.

#### STANDARD CONDITIONS

See Appendix A for a copy of GP DEC General Permit 9440-DB005, including operating requirements I-IX and General Conditions I-X.

## GENERAL CONCURRENCE GP-9440-DB006

### DISPOSAL OF CONTAINED HYDROCARBON CONTAMINATED WATER

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Disposal of contained hydrocarbon contaminated water. Contained water means water isolated from the environment in a manmade container or a lined impoundment structure. The permit applies to the one-time disposal of volumes of water less than 1,000,000 gallons through discharge to the land surface or a surface water body. The permit does not apply to contaminated ground waters where halogenated hydrocarbons are the contaminant of concern, nor to waters listed by the state as impaired, where the impairment is wholly or partially caused by a pollutant contained within the proposed discharge.

*Authority:* AS 46.03

*Permits:* DEC General Permit 9440-DB006

*Region:* Statewide

### PROCEDURE

Applicants must submit a written notice of disposal to the appropriate DEC regional office at least 30 days prior to the disposal activity. Notification and operating limitations are discussed in Appendix A of the permit.

### STANDARD CONDITIONS

See Appendix A for a copy of GP DEC General Permit 9440-DB006, including operating requirements I-XI and General Conditions I-X.

**B-LIST  
SECTION II  
SOUTHEAST**

## GENERAL CONCURRENCE GP-81-17N

### FLOATING DOCKS AND MOORING PILINGS IN SITKA

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Construction of fixed and/or floating docks and associated mooring pilings for private single family use in or over navigable waters in designated areas in the City and Borough of Sitka, Alaska.

*Authority:* Section 401 Clean Water Act  
Section 10 Rivers and Harbors Act  
30 Stat 1151  
33 USC 403  
AS 46.03

*Permit:* COE General Section 10 Permit 81-17N (expires 6/19/97)  
Certificate of Reasonable Assurance (DEC)

*Region:* City and Borough of Sitka

### STANDARD CONDITIONS

See Appendix A for a copy of Permit 81-17N, including special conditions 1(a)-(h) and General Conditions 2(a)-(p).

## GENERAL CONCURRENCE GP-81-20N

### PLACEMENT OF MATERIALS FOR THE CONSTRUCTION OF SANITARY SEWER OUTFALL LINES IN SITKA

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Placement of sand, gravel, and shot rock material free of toxic substances, in connection with the construction of sanitary sewer outfall lines within designated areas of the City and Borough of Sitka, Alaska.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 Rivers and Harbors Act  
30 Stat 1151  
33 USC 403  
33 USC 1344  
AS 46.03

*Permit:* COE General 404 and Section 10 Permit 81-20N  
(expires 6/19/97)  
Certificate of Reasonable Assurance (DEC)

*Region:* City and Borough of Sitka

#### STANDARD CONDITIONS

See Appendix A for a copy of Permit 81-20N, including special conditions 1(a)-(f) and general conditions 2 (a)-(n).

## GENERAL CONCURRENCE GP-81-21N

### PLACEMENT OF MATERIALS FOR BANK STABILIZATION IN SITKA

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Placement of sand, gravel, and shot rock material free of toxic substances, for the purpose of bank stabilization within designated areas of the City and Borough of Sitka, Alaska.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 Rivers and Harbors Act  
30 Stat 1151  
33 USC 1344  
AS 46.03

*Permit:* COE General 404 and Section 10 Permit 81-21N  
(expires 6/19/97)  
Certificate of Reasonable Assurance (DEC)

*Region:* City and Borough of Sitka

### STANDARD CONDITIONS

See Appendix A for a copy of Permit 81-21N, including special conditions 1(a)-(h) and general conditions 2 (a)-(n).

## GENERAL CONCURRENCE GP-9410-DB000

### DISPOSAL OF DOMESTIC WASTEWATER FROM TEMPORARY CAMPS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Disposal of less than 10,000 gallons per day of secondary treated domestic wastewater from temporary camps into the marine waters of Southeast Alaska. A temporary camp is one that discharges at a site for a period of one year or less. Subsurface discharges are not covered by this general concurrence.

*Authority:* 18 AAC 72.015  
18 AAC 72.910

*Permit:* DEC General Permit 9410-DB000 (expires 12/31 annually)

*Region:* Southeast Alaska marine waters

### PROCEDURE

Written notification of intent to operate under this general concurrence is required and is subject to written approval from the Alaska Department of Environmental Conservation (DEC). Contact the DEC for notification requirements. Eligibility for this general concurrence requires DEC approval of the sewage treatment plant through a plan review per 18 AAC 72.60. Monitoring is also required. Specific requirements, including the submission of reports, are discussed in standard conditions 10-16.

### STANDARD CONDITIONS

See Appendix A for a copy of DEC General Permit GP-9410-DB000

**B-LIST  
SECTION II**

**SOUTHCENTRAL**



## GENERAL CONCURRENCE GP-83-4N

### WETLANDS FILL FOR INFRASTRUCTURE DEVELOPMENT IN BETHEL

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

This GP authorizes the discharge of dredged and fill material into waters of the United States, including wetlands, within specific areas of Bethel, Alaska for the purpose of creating foundation pads for structures, utilities, associated roads, driveways, parking areas, and other domestic and commercial development. The general permit authorizes excavation activities, including mechanized landclearing, ditching, and other excavation activities that can result in the redeposition of material when the placement of pilings has the effect of a discharge of fill material. A map showing the areas subject to authorization of this GP, and areas specifically excluded, is available at the City of Bethel, and the COE.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* COE General 404 Permit 83-4N (expires 12/16/99)  
Certificate of Reasonable Assurance (DEC)

*Region:* City of Bethel, Alaska

### STANDARD CONDITIONS

See Appendix A for a copy of Permit 83-4N, including conditions 1-14 and monitoring and reporting requirements. See also the attached DEC Certificate of Reasonable Assurance with stipulations 1-4.

## GENERAL CONCURRENCE GP-87-3N

### MOORING BUOYS ON THE KASILOF RIVER

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

Mooring buoys to be placed on the Kasilof River.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 Rivers and Harbors Act  
33 USC 1344  
33 CFR 325  
33 USC 403  
AS 46.03

*Permit:* COE General 404 and Section 10 Permit 87-3M  
(expires 5/16/98)  
Certificate of Reasonable Assurance (DEC)

*Region:* Kasilof River

### STANDARD CONDITIONS

See Appendix A for a copy of permit 87-3N, including special conditions (a)-(r) and general conditions (a)-(f), and a map.

## GENERAL CONCURRENCE GP-88-6M

### WETLANDS FILL IN HOMER

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

GP 88-6M authorizes the placement of fill into wetlands within the City of Homer that have been designated "low value" in the on-going Homer wetlands study for the purpose of residential, commercial and industrial development.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
40 CFR 230  
AS 46.03

*Permit:* COE General 404 Permit 88-6M (expires 3/17/97)  
Certificate of Reasonable Assurance (DEC)

*Region:* Southcentral-Homer

### PROCEDURE

All persons desiring to perform work under this GP must submit an application to the City of Homer Planning Department.

### STANDARD CONDITIONS

See Appendix A for a copy of permit 88-6M, including conditions 1-19 and a special application form.

## GENERAL CONCURRENCE GP-90-6

### CERTAIN ACTIVITIES IN THE KENAI RIVER SPECIAL MANAGEMENT AREA

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### DESCRIPTION OF THE ACTIVITY

This GP covers the following activities in the Kenai River Special Management Area, provided the specifications in the GP are met: docks, tree cables, bank stabilization and maintenance dredging.

*Authority:* Section 401 and 404 Clean Water Act  
Section 10 Rivers and Harbors Act  
33 USC 1344  
33 USC 403  
AS 46.03

*Permit:* COE General 404 Section 10 Permit 90-6 (expires 7/17/95)  
Certificate of Reasonable Assurance (DEC)

*Region:* Southcentral-Kenai River Special Management Area

### STANDARD CONDITIONS

See Appendix A for a copy of general permit 90-6, including conditions 1-8.

## **GENERAL CONCURRENCE GP-90-7**

### **PLACEMENT OF LADDERS AND STEPS WITHIN THE KENAI RIVER SPECIAL MANAGEMENT AREA**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### **DESCRIPTION OF THE ACTIVITY**

This GP covers the placement of ladders and steps which extend over or below the ordinary high water along the banks of the Kenai River Special Management Area.

*Authority:* Section 10 Rivers and Harbors Act

*Permit:* COE General Section 10 Permit 90-7 (expires 10/25/95)

*Region:* Kenai River Special Management Area

### **STANDARD CONDITIONS**

See Appendix A for a copy of general permit 90-7, including conditions A-F.

## **GENERAL CONCURRENCE GP-93-10 to 93-14**

### **ANCHORAGE WETLANDS MANAGEMENT PLAN**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

### **DESCRIPTION OF THE ACTIVITY**

The placement of fill material into wetlands within the Municipality of Anchorage which have been designated "C" in the revised Anchorage Wetlands Management Plan.

GP-93-10 is for residential fill pads, site preparation and driveways.

GP-93-11 is for roads and other linear developments.

GP-93-12 is for commercial, institutional, and community development and parking lots.

GP-93-13 is for industrial developments.

GP-93-14 is for wetland, habitat, and water quality enhancement.

*Authority:* Section 401 and 404 Clean Water Act

*Permits:* U.S. Army Corps of Engineers GP 93-10 to 93-14 (expires 10/20/99)

*Region:* Southcentral, Municipality of Anchorage

### **PROCEDURE**

Applicants must submit an application to the Municipality of Anchorage, Community Development Department. The application will require descriptions of the location, proposed activity, purpose and need.

The description must include quantities of fill, acreage of disturbed surface area, steps that the applicant proposes to take to comply with the management strategies of the Anchorage Wetlands Management Plan, source of fill, and offsite disposal locations, supported by applicable drawings and narrative.

The Municipality of Anchorage will determine whether the proposed activity is located in areas classified as a "C" wetland and meet the criteria of the General Permits. All necessary municipal authorizations must be obtained before the requested discharge of dredged and fill material can proceed.

### **STANDARD CONDITIONS**

See Appendix A for a copy of COE Special Public Notice 93-10 for General Permits 93-10 to

93-14, including General Conditions 1-24 and site-specific Special Conditions. See also the Anchorage Wetlands Management Plan.

**B-LIST  
SECTION II**

**NORTHERN REGION**



## **GENERAL CONCURRENCE GP-83-80**

\*\* The renewal for this general permit has been found consistent with the ACMP but has not been issued by the COE as of 6/1/95.

### **WETLANDS FILL FOR HOUSING DEVELOPMENT IN THE ASHA REGION**

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### **DESCRIPTION OF THE ACTIVITY**

Placement of fill material in wetlands of eight villages (Anaktuvuk Pass, Atqasuk, Barrow, Kaktovik, Nuiqsut, Point Hope, Point Lay, and Wainwright) within the Arctic Slope Housing Authority (ASHA) region, for the construction of domicile, public, and commercial development (see Appendix A for legal descriptions and maps of village boundaries). The modification also authorizes the placement of fill material with regard to the construction of foundation pads for domiciles only in the remainder of the ASHA Region.

This authorizes the placement of fill material in wetlands of the designated villages for the purpose of constructing foundation pads for domicile, public, and commercial development; associated driveways and access roads; and sanitation and utility facilities, including state approved sewage treatment facilities, associated with these activities. In areas outside the eight designated villages, placement of fill material for the construction of foundation pads for domiciles is the only work authorized. The construction of roads and foundation pads associated with development other than domiciles is specifically excluded from this permit for outlying areas.

Domicile development is defined as the construction of a dwelling; a place of residence; or a person's fixed, permanent, and principal home for legal purposes. Domicile development also includes work performed in association with installation of a dwelling's septic/sewage system.

Public development is defined as the construction of facilities relating to business or community interests as opposed to private interests. Public development allowed by this permit shall include city halls, church buildings, post offices, fire stations, and similar projects approved by the U.S. Army Corps of Engineers (Corps).

Commercial development is defined as the construction of private facilities for the exchange or buying and selling of commodities. Commercial development allowed by this permit shall include: movie theaters, pool halls/arcades, video tape rentals, bingo halls, hotels/restaurants, hair salons, tanning salons, fabric/dress shops, daycare/babysitting facilities, lumber and hardware stores, and similar projects approved

by the Corps.

Fill material must be clean sand, gravel or shot rock free of toxic substances in toxic amounts. Maximum fill pad dimensions shall not exceed 12,500 square feet measured at the crown. Access roads or driveways shall be no wider than 48 feet at the base.

In order to adequately protect the permafrost layer from thermal degradation, a layer of fill material at least four feet thick, or an equivalent amount of insulation, must be provided and maintained for all projects located in permafrost areas.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* COE General 404 Permit 83-8O (expires / / )  
Certificate of Reasonable Assurance (DEC)

*Region:* Eight Villages on North Slope (see above)

## **STANDARD CONDITIONS**

See Appendix A for a copy of general permit 83-8N, including special conditions 1-18, reporting requirements and maps of the villages.

## GENERAL CONCURRENCE GP-90-1

### WETLANDS FILL FOR RESIDENTIAL, PUBLIC OR COMMERCIAL DEVELOPMENT WITHIN CERTAIN AREAS OF THE CITY OF NOME

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

This GP authorizes the discharge of dredged and/or fill material into wetlands for residential, public and commercial development within certain areas of the City of Nome, Alaska.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* COE General 404 Permit 90-1 (expires 7/5/95)  
Certificate of Reasonable Assurance (DEC)

*Region:* City of Nome

#### STANDARD CONDITIONS

See Appendix A for a copy of general permit 90-1, including conditions 1-14.

## GENERAL CONCURRENCE GP-92-08

### DISCHARGE OF DREDGED AND/OR FILL MATERIAL INTO WETLANDS AT DEADHORSE, ALASKA

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

This GP covers the placement of dredged and/or fill material into waters of the United States, including wetlands, for certain activities within the Deadhorse subdivision and airport properties at Deadhorse, Alaska.

*Authority:* Section 401 and 404 Clean Water Act  
33 USC 1344  
AS 46.03

*Permit:* COE General 404 Permit 92-08 (expires 2/12/98)  
Certificate of Reasonable Assurance (DEC)

*Region:* Deadhorse, Alaska

#### STANDARD CONDITIONS

See Appendix A for a copy of general permit 92-08, including conditions 1-12.

## GENERAL CONCURRENCE GP-AKG2841000

### DISCHARGES FROM OIL AND GAS EXPLORATORY FACILITIES IN THE BEAUFORT SEA IN FEDERAL LEASE SALE AREA 97

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Discharges from oil and gas exploratory facilities in the Beaufort Sea in federal lease sale area 97 (including any leases re-offered from Joint Lease Sale BF, or from Federal Lease Sales 71 and 87).

*Authority:* Section 401 and 402 Clean Water Act  
33 USC 1251  
AS 46.03

*Permit:* EPA General NPDES Permit AKG2841000 (expired 9/27/93; extended under  
40 CFR 122.6 and APA 558(c))  
Certificate of Reasonable Assurance (DEC)

*Region:* Specific areas in the Beaufort Sea

#### STANDARD CONDITIONS

See Appendix A for a copy of General NPDES permit AKG2841000.

## GENERAL CONCURRENCE GP-AKG288000

### DISCHARGES FROM OIL AND GAS EXPLORATORY FACILITIES IN THE CHUKCHI SEA IN FEDERAL LEASE SALE AREA 109

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 50.050 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and federal individual agencies.

#### DESCRIPTION OF THE ACTIVITY

Discharges from oil and gas exploratory facilities in the Chukchi Sea in federal lease sale area 109.

*Authority:* Section 401 and 402 Clean Water Act  
33 USC 1251  
AS 46.03

*Permit:* EPA General NPDES Permit AKG288000 (expire 9/27/93; extended under 40 CFR 122.6 and APA 558(c))  
Certificate of Reasonable Assurance (DEC)

*Region:* Specific areas in the Chukchi Sea

#### STANDARD CONDITIONS

See Appendix A for a copy of General NPDES permit AKG288000.

## C LIST – 6 AAC 50.750

### DEPARTMENT OF ENVIRONMENTAL CONSERVATION

- 50-day *Permit to apply pesticides.* Aerial applications on public or private land, right-of-way applications which require a DEC permit to apply pesticides, pesticide treatments to waters of the State. See also “B List” GCD-9.  
AS 46.03.320  
18 AAC 15  
18 AAC 90.500  
18 AAC 90.505
- 50-day<sup>1</sup> *Air quality control construction permit* that approves air emissions. See also “A List” and “B List” GCD’s 13, 13A, 26, and 27, and DEC General Permits in Section II of the “B List”.  
AS 46.14.120  
AS 46.14.130  
18 AAC 15  
18 AAC 50
- 50-day<sup>1</sup> *Air quality control operating permit* that approves air emissions. See also “B List” GCD’s 13, 13A, 26, and 27, and DEC General Permits in Section II of the “B List”.  
AS 46.14.120  
AS 46.14.130  
18 AAC 15  
18 AAC 50
- 50-day *Solid waste disposal permit.* See also DEC General Permits in Section II of the “B List”.  
AS 46.03.020  
AS 46.03.100  
AS 46.03.110  
AS 46.03.120  
18 AAC 15  
18 AAC 60
- 50-day *Reclassification of State waters.*  
AS 46.03.020  
18 AAC 15  
18 AAC 70.055

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<sup>1</sup> The consistency review schedule may be modified for Air Quality Control Construction and Operating permits in accordance with 6 AAC 50.235 and 6 AAC 50.280(a)(1).

- 50-day **Waste disposal permit** (wastewater discharge). See also DEC General Permits in Section II of the "B List".  
AS 46.03.020  
AS 46.03.100 & 110  
AS 46.03.120 & 710  
18 AAC 15  
18 AAC 70  
18 AAC 72.010
- 50-day 401 Certification-**Certificate of Reasonable Assurance Section 401**. See also Nationwide Permits and federal agency General Permits in Section II of the "B List".  
AS 46.03.020  
18 AAC 15  
18 AAC 70  
18 AAC 72
- 50-day **Oil discharge contingency plans** for offshore facilities and onshore fuel storage facilities with a capacity of 10,000 barrels or greater.  
AS 46.04.030  
AS 46.04.050  
18 AAC 75.400-495
- 50-day **Oil discharge contingency plans** for vessels (tankers and barges).  
AS 46.04.030  
18 AAC 75.400-495



## C LIST – 6 AAC 50.750

### DEPARTMENT OF FISH AND GAME

- 30-day ***Fish habitat permit.*** See also “A List” and “B List” GCD’s 1, 1A, 2, 4, 5, 5A, 6, 7, 8, 15A, 22, 24, 25, 32, 33, 36, 37, 38, 40, 41, 46, 47, 48, 49, and 50.  
AS 16.05.840  
AS 16.05.870
- 50-day ***Permit to operate a clam dredge***  
5 AAC 38.050
- 50-day ***Aquatic farm operations permit.*** Required for transportation, possession and release of live fish, as well as aquatic farming.  
AS 16.40.105  
5 AAC 41
- 30-day<sup>2</sup> ***Special Area Permit.*** See also “A List” and “B List” GCD’s 1, 1A, 2, 4, 5, 6, 7, 8, 15A, 19, 22, 23, 23B, 23C, 23D, 23E, 24, 37, 41, 42, and 43.  
AS 16.20  
5 AAC 95
- 30-day ***Hatchery permit*** (Private Non-Profit).  
AS 16.10.400-430
- 30-day ***Fish Resource Permit*** for Mariculture Site Suitability.  
AS 16.05.930

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<sup>2</sup> Complex or large projects may be reviewed under a 50-day consistency review schedule at DFG’s discretion.

## C LIST – 6 AAC 50.750

### DEPARTMENT OF NATURAL RESOURCES

#### Division of Agriculture

##### *I. Disposals<sup>3</sup>*

50-day      *Lease* of cleared or drained agricultural land. AS 38.07.010-050

50-day      *Disposal of agricultural interest.* AS 38.05.321  
11 AAC 67.160-192

##### *II. Permits and Other Approvals*

50-day      *Approval of application* for clearing or draining of agricultural land in vicinity of State land. See also “B List” GCD-17. AS 38.07.030

#### Division of Forestry

##### *I. Disposals<sup>3</sup>*

50-day      *State timber sale* and personal use contract of more than 10 acres in the spruce-hemlock coastal forests (DGC southeastern region and Prince William Sound) and more than 40 acres in interior forests south of the Alaska Range (DGC Southcentral region excluding Prince William Sound), and any timber sale which includes timber lands within 90 meters from anadromous and high value resident fish waters. See also “A List”.

*State timber sale* and personal use contract of more than 160 acres north of the Alaska Range (DGC northern region), and any timber sale which includes timber lands within 30 meters of anadromous and high value resident fish waters. See also “A List”.

##### *Negotiated Timber Sales to Local Manufacturers.*

AS 38.05.123  
AS 38.05.110-12  
11 AAC 71.005-910

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<sup>3</sup> The consistency review schedule may be modified for a DNR disposal of interest in state land in accordance with 6 AAC 50.235 and 6 AAC 50.280(a)(1).

30 or 50-day ***Log salvage sales.*** See also “B List” GCD-10.

AS 38.05.110-120  
11 AAC 71.400-430

**Division of Mining, Land and Water**

*I. Disposals*<sup>4</sup>

50-day ***Aquatic farm site permit and lease.*** See also “B List” GCD-30.

AS 38.05.856  
AS 38.05.083  
11 AAC 63

50-day ***Coal lease sales.***

AS 38.05.150  
11 AAC 84.100-170

30 or 50-day ***Coal prospecting permit.***

AS 38.05.145  
AS 38.05.150(c)  
11 AAC 84.115-135

50-day ***Disposal of land*** by auction or lottery.

AS 38.05.050-057  
11 AAC 67

50-day ***Disposal of remote parcels.***

AS 38.05.077  
11 AAC 67.110-135

50-day ***Grazing lease.*** See also “B List” GCD-17.

AS 38.05.070  
AS 38.05.075  
11 AAC 60

50-day ***Homestead disposal.***

AS 38.09  
11 AAC 67.138-155

50-day ***Lease, sale, grant, or other disposal.*** See also “A List” and “B List” GCD’s 15A, 30, 33, 38, 47, and 48.

AS 38.05.070-075  
11 AAC 58  
11 AAC 60

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<sup>4</sup> The consistency review schedule may be modified for a DNR disposal of interest in state land in accordance with 6 AAC 50.235 and 6 AAC 50.280(a)(1).

**C List**

*Resource Agency Authorizations*

- 50-day ***Lease of tidelands.***  
AS 38.05.070-075  
11 AAC 62
- 50-day ***Material sales***, except sales from approved upland sources and personal use contracts. See also "A List" and "B List" GC-50.  
AS 38.05.110-120  
11 AAC 71
- 30 or 50-day ***Offshore mining lease and sale.***  
AS 38.05.145  
AS 38.05.250(b)  
11 AAC 86.545-570
- 30 or 50-day ***Offshore mining prospecting permit.***  
AS 38.05.250(a)  
11 AAC 86.500-535
- 30 or 50-day ***Phosphate lease.***  
AS 38.05.145  
AS 38.05.155  
11 AAC 84.200
- 30 or 50-day Oil and natural gas ***pipeline right-of-way leasing.*** See also "B List" GCD-47.  
AS 38.05.020(c)  
AS 38.35.010-260  
11 AAC 80.005-055
- 30 or 50-day ***Potassium compound prospecting permit and lease.***  
AS 38.05.145  
AS 38.05.175  
11 AAC 84.600
- 50-day Opening of an area for issuance of ***remote cabin permits.*** See also "B List" GCD-21.  
AS 38.05.079  
11 AAC 67
- 30 or 50-day ***Right-of-way or easement permit*** for roads, trails, ditches, pipelines, drill sites, log storage, telephone or transmission lines, outfall lines, or access corridors. See also "B List" GCD's 7, 15A, 22, 33, 35, 46, 47, and 48.  
AS 38.05.850  
11 AAC 58.200

30 or 50-day ***Sodium compound prospecting permit and lease.***

AS 38.05.145  
AS 38.05.170  
11 AAC 84.400

30 or 50-day ***Sulfur prospecting permit and lease.***

AS 38.05.145  
AS 38.05.170  
11 AAC 84.500

50-day ***Tideland Conveyance.***

AS 38.05.820  
AS 38.05.825  
11 AAC 62

30 or 50-day ***Upland mining lease.***

AS 38.05.185  
AS 38.05.250  
11 AAC 86.300-325

30-day ***Water use permit.*** See also "A List" and "B List" GCD's 1, 1A, 8, 24, 25, 34, and 35.

AS 46.15  
11 AAC 93

*II. Permits and Other Approvals*

30 or 50-day Approvals subject to the ***Alaska Surface Coal Mining Control and Reclamation Act*** (SMCRA), other than Notices of Intent to Explore. See also "A List".

AS 27.21.030  
11 AAC 90.002

30-day General ***land use permits***, except for those classified as categorically consistent ("A List") or generally consistent ("B List") approvals. See "A List" and "B List" GCD's 2, 3, 4, 5, 6, 7, 12, 15A, 19, 20, 21, 22, 23, 23A, 23C, 23D, 23E, 24, 28, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 47, 48, and 49.

AS 38.05.850

30-day Miscellaneous ***land use permit*** for mining activity or mineral exploration. See also "A List" and "B List" GCD's 1A and 29.

AS 38.05.020  
AS 38.05.035  
AS 38.05.180  
11 AAC 96.010-140

- 30-day **Mining reclamation plan approval.** See also "B List" GCD's 1A and 29.  
AS 27.19  
11 AAC 97
- 50-day Approval of **plan of operations** or plan of development on leased lands (Deadline does not apply when the plan is included in the lease at the time of the sale.)  
AS 38.05.035  
AS 38.05.070-075  
11 AAC 62.700
- 50-day **Plans of operations** on leased land or land subject to an offshore prospecting permit.  
AS 38.05.020  
AS 38.05.035  
11 AAC 96.010-140
- 50-day Material mining **reclamation plan approvals.** See also "A List" and "B List" GCD's 1A and GC-29.  
AS 27.19  
11 AAC 97
- 30-day **Site suitability permit** for aquatic farming.  
AS 38.05.850  
11 AAC 63
- 30-day **Temporary water use permits** for water withdrawals except for withdrawals from sources classified as categorically consistent or generally consistent approvals. See also "A List" and "B List" GCD's 1, 1A, 8, 24, 25, 34, 35, and 36.  
AS 46.15.150  
11 AAC 93
- 30-day **Tideland use permit.** See also "A List" and "B List" GCD's noted above for land use permits.  
AS 38.05.850  
11 AAC 62.720-830

## Division of Oil and Gas

### I. Disposals<sup>5</sup>

- 50-day **Oil and gas disposals.**

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<sup>5</sup> The consistency review schedule may be modified for a DNR disposal of interest in state land in accordance with 6 AAC 50.235 and 6 AAC 50.280(a)(1).

AS 38.05.131-134  
AS 38.05.135  
AS 38.05.145  
AS 38.05.177  
AS 38.05.180  
11 AAC 83

30 or 50-day *Geothermal prospecting permit.*

AS 38.05.145  
AS 38.05.181(g)  
11 AAC 84.700(b)

30 or 50-day *Geothermal lease sales.*

AS 38.05.145  
AS 38.05.181(h)  
11 AAC 84.700

30 or 50-day *Oil shale lease.*

AS 38.05.145  
11 AAC 84.300

*II. Permits and Other Approvals*

50-day Application to drill *geothermal wells.*

AS 41.06.050

30-day *Plan of operations* on lease lands. See also "A List" and "B List" GCD's 34, 45, 46, 47, 48, and 49.

AS 38.05.135  
AS 38.05.145  
AS 38.05.180  
11 AAC 83.158

30-day *Geophysical exploration permit.* See also "B List" GCD-25.

AS 38.05.020  
AS 38.05.035  
AS 38.05.180  
11 AAC 96.010-140

**Division of Parks and Outdoor Recreation**

*I. Permits and Other Approvals*

30-day *Authorization to construct structure* in State parks. See also "B List" GCD-15.

AS 41.20.040

**C List**

*Resource Agency Authorizations*

11 AAC 12.140

30-day

**Authorization to use explosives** in State parks. See also "A List".

AS 41.20.040

11 AAC 12.140

50-day

**Permit for access** across State parks. See also "B List" GCD-14.

AS 41.20.040

11 AAC 18.020

30-day

**Special use permit.** See also "A List" and "B List" GCD's 14, 15, 15A, 16, 33, 34, 35, 37, 38, 39, 41, and 43.

AS 41.20.040

11 AAC 18.010

50-day

**Archaeological Permit** for the excavation of historic or archeological resources. See also "A List" and "B List" GCD's 31 and 36.

AS 41.35.040

AS 41.35.080

11 AAC 16.030-080





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# Coastal Zone Management Act Of 1972

as amended through P.L. 104-150, The Coastal Zone Protection Act of 1996

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- § 1451. Congressional findings (Section 302)
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- § 1462. Coastal Zone Management Reports (Section 316)
- § 1463. Rules and Regulations (Section 317)
- § 1464. Authorization of appropriations (Section 318)
- § 1465. Appeals to the Secretary (Section 319)

## **§ 1451. Congressional findings (Section 302)**

The Congress finds that--

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.

(b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including

requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(d) The habitat areas of the coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, exclusive economic zone, and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters;

(g) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(h) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate

(i) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(j) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

(m) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management,

and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.

**§ 1452. Congressional declaration of policy (Section 303)**

The Congress finds and declares that it is the national policy--

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development, which programs should at least provide for--

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands,

(C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,

(D) priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

(E) public access to the coasts for recreation purposes,

(F) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

(G) the coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources,

(H) continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

(I) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking,

(J) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies, and

(K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and

(3) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(4) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title;

(5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.

### **§ 1453. Definitions (Section 304)**

For the purposes of this title--

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United

States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705), as applicable. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) The term "coastal resource of national significance" means any coastal wetland, beach, dune, barrier island, reef, estuary, or fish and wildlife habitat, if any such area is determined by a coastal state to be of substantial biological or natural storm protective value.

(3) The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (B) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(4) The term "coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa.

(5) The term "coastal energy activity" means any of the following activities if, and to the extent that (A) the conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion, or operation of any equipment or facility; and (B) any technical requirement exists which, in the determination of the Secretary, necessitates that the siting, construction, expansion, or operation of such equipment or facility be carried out in, or in close proximity to, the coastal zone of any coastal state;

(i) Any outer Continental Shelf energy activity.

(ii) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas.

(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 3(10) of the Deepwater Port Act of 1974 (33 USC 1502(10)) [33 USC § 1502(10)]).

For purposes of this paragraph, the siting, construction, expansion, or operation of any equipment or facility shall be "in close proximity to" the coastal zone of any coastal state if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(6) The term "energy facilities" means any equipment or facility which is or will be used primarily--

(A) in the exploration for, or the development, production, conversion, storage,

transfer, processing, or transportation of, any energy resource; or (B) for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A). The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

(6a) The term "enforceable policy" means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.

(7) The term "estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(8) The term "estuarine sanctuary" means a research area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to such estuary, and which constitutes to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(9) The term "Fund" means the Coastal Zone Management Fund established under section 308(b) [16 USC § 1456a(b)].

(10) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 307 (g) [16 USC § 1456(g)].

(11) The term "local government" means any political subdivision of, or any special entity created by, any coastal state which (in whole or part) is located in, or has authority over, such state's coastal zone and which (A) has authority to levy taxes, or to establish and collect user fees, or (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. The term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(12) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(13) The term "outer Continental Shelf energy activity" means any exploration for, or any development or production of, oil or natural gas from the outer Continental Shelf

(as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (a)) [43 USC § 1331(a)], or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development, or production.

(14) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

(15) The term "public facilities and public services" means facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary finds will support increased population.

(16) The term "Secretary" means the Secretary of Commerce.

(17) The term "special area management plan" means a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.

(18) The term "water use" means a use, activity, or project conducted in or on waters within the coastal zone.

#### **§ 1454. Management program development grants (Section 305)**

(a) In fiscal years 1997, 1998, and 1999, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306 [16 USC § 1455]. The amount of any such grant shall not exceed \$ 200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than four grants pursuant to this subsection.

(b) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306 [16 USC § 1455].

#### **§ 1455. Administrative grants (Section 306)**

(a) The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

(1) For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(b) The Secretary may make a grant to a coastal state under subsection (a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection (d).

(c) Grants under this section shall be allocated to coastal states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(d) Before approving a management program submitted by a coastal state, the Secretary shall find the following:

(1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 [16 USC § 1452].

(2) The management program includes each of the following required program elements:

(A) An identification of the boundaries of the coastal zone subject to the management program.

(B) A definition of what shall constitute permissible land uses and water users within the coastal zone which have a direct and significant impact on the coastal waters.

(C) An inventory and designation of areas of particular concern within the coastal zone.

(D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of



relevant State constitutional provisions, laws, regulations, and judicial decisions.

(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(F) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

(G) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

(3) The State has--

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone--

(i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and

(ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that--

(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

(ii) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

(iii) the management agency, if any comments are submitted to it within the 30-day period by any local government--

(I) shall consider the comments;

(II) may, in its discretion, hold a public hearing on the comments; and

(III) may not take any action within the 30-day period to implement the management program decision.

- (4) The State has held public hearings in the development of the management program.
- (5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.
- (6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.
- (7) The State is organized to implement the management program.
- (8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.
- (9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational ecological, historical, or esthetic values.
- (10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—
  - (A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and
  - (B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.
- (11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:
  - (A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.
  - (B) Direct State land and water use planning and regulation.
  - (C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.
- (12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

(13) The management program provides for--

(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

(B) specific and enforceable standards to protect such resources.

(14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

(15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.

(16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 [16 USC § 1455b].

(e) A coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:

(1) The State shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this section pending State submission of the proposed amendments, modification, or other program change.

(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the State whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

(3) (A) Except as provided in subparagraph (B), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

(B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expend funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 307 [16 USC § 1456].

**§ 1455a. Coastal resource improvement program (Section 306A)**

(a) Definitions. For purposes of this section--

(1) The term "eligible coastal state" means a coastal state that for any fiscal year for which a grant is applied for under this section--

(A) has a management program approved under section 306 [16 USC § 1455]; and  
(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (K) [16 USC § 1452(2)(A)--(K)].

(2) The term "urban waterfront and port" means any developed area that is densely populated and is being used for, or has been used for, urban residential recreational, commercial, shipping or industrial purposes.

(b) Resource management improvement grants. The Secretary may make grants to any eligible coastal state to assist that state in meeting one or more of the following objectives:

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by section 306(d)(9) [16 USC § 1455(d)(9)] because of their conservation recreational, ecological, or esthetic values, or (B) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts.

(2) The redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated in the state's management program pursuant to section 306(d)(2)(C) [16 USC § 1455(d)(2)(C)] as areas of particular concern.

(3) The provision of access to public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under section 306(d)(2)(G) [16 USC § 1455(d)(2)(G)].

(4) The development of a coordinated process among State agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

(c) Uses, terms and conditions of grants.

(1) Each grant made by the Secretary under this section shall be subject to such terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.

(2) Grants made under this section may be used for--

(A) the acquisition of fee simple and other interests in land;

(B) low-cost construction projects determined by the Secretary to be consistent with the purposes of this section, including but not limited to, paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures; except that not more than 50 per centum of any grant made under this section may be used for such construction projects;

(C) in the case of grants made for objectives described in subsection (b)(2)--

- (i) the rehabilitation or acquisition of piers to provide increased public use, including compatible commercial activity,
- (ii) the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increasing public access and use, and
- (iii) the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas, but activities provided for under this paragraph shall not be treated as construction projects subject to the limitations in paragraph (B);

(D) engineering designs, specifications, and other appropriate reports; and  
(E) educational, interpretive, and management costs and such other related costs as the Secretary determines to be consistent with the purposes of this section.

(d) Maximum amount of grants.

(1) The Secretary may make grants to any coastal state for the purpose of carrying out the project or purpose for which such grants are awarded, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; and 1 to 1 for each fiscal year after fiscal year 1988."

(2) Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

(3) The total amount of grants made under this section to any eligible coastal state for any fiscal year may not exceed an amount equal to 10 per centum of the total amount appropriated to carry out this section for such fiscal year.

(e) Allocation of grants to local governments and other agencies. With the approval of the Secretary, an eligible coastal state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 [42 USC § 3334], a regional agency, or an interstate agency, a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

(f) Other technical and financial assistance. In addition to providing grants under this section, the Secretary shall assist eligible coastal states and their local governments in identifying and obtaining other sources of available Federal technical and financial assistance regarding the objectives of this section.

## **§ 1455b. Protecting coastal waters (Section 6217)**

(a) In general.

(1) Program development. Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455] shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) Program coordination. A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972 [16 USC §§ 1651 et seq.], as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], as the program under that section relates to land and water uses affecting coastal waters.

(b) Program contents. Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g), to protect coastal waters generally, and shall also contain the following:

(1) Identifying land uses. The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of--

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) Identifying critical coastal areas. The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

(3) Management measures. The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

(4) Technical assistance. The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and

regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) Public participation. Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

(6) Administrative coordination. The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) State coastal zone boundary modification. A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) Program submission, approval, and implementation.

(1) Review and approval. Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if--

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) Implementation of approved program. If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through--

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act [33 USC § 1329]; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], as amended by this Act.

(3) Withholding coastal management assistance. If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], as

follows:

- (A) 10 percent for fiscal year 1996.
- (B) 15 percent for fiscal year 1997.
- (C) 20 percent for fiscal year 1998.
- (D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) Withholding water pollution control assistance. If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

- (A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.
- (B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.
- (C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.
- (D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) Technical assistance. The Secretary and the Administrator shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include--

- (1) methods for assessing water quality impacts associated with coastal landuses;
- (2) methods for assessing the cumulative water quality effects of coastal development;
- (3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and
- (4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) Inland coastal zone boundaries.

(1) Review. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) Recommendation. If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to



protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) Financial assistance.

(1) In general. Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) Amount. The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) State share. The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) Allocation. Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972 [16 USC § 1455(c)], except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

(g) Guidance for coastal nonpoint source pollution control.

(1) In general. The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) Content. Guidance under this subsection shall include, at a minimum--

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

(D) quantitative estimates of the pollution reduction effects and costs of the measures;

(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) Publication. The Administrator, in consultation with the Secretary, shall publish--

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act [enacted Nov. 5, 1990]; and

(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

(4) Notice and comment. The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) Management measures. For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) Authorizations of appropriations.

(1) Administrator. There is authorized to be appropriated to the Administrator for use for carrying out this section not more than \$ 1,000,000 for each of fiscal years 1992, 1993, and 1994.

(2) Secretary.

(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972 [16 USC § 1464(a)(4)], as amended by this Act, not more than \$ 1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than--

- (i) \$ 6,000,000 for fiscal year 1992;
- (ii) \$ 12,000,000 for fiscal year 1993;
- (iii) \$ 12,000,000 for fiscal year 1994; and
- (iv) \$ 12,000,000 for fiscal year 1995.

(i) Definitions. In this section--

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "coastal State" has the meaning given the term "coastal state" under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

(3) each of the terms "coastal waters" and "coastal zone" has the meaning that term has in the Coastal Zone Management Act of 1972 [16 USC §§ 1651 et seq.];

(4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972 [16 USC § 1455(d)]

- (6)];
- (5) the term "land use" includes a use of waters adjacent to coastal waters; and
- (6) the term "Secretary" means the Secretary of Commerce.

### **§ 1456. Coordination and cooperation (Section 307)**

(a) Federal agencies. In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) Adequate consideration of views of Federal agencies. The Secretary shall not approve the management program submitted by a state pursuant to section 306 [16 USC § 1455] unless the views of Federal agencies principally affected by such program have been adequately considered.

(c) Consistency of Federal activities with state management programs; certification.

(1) (A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, United States Code, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) [16 USC § 1455(d)(6)] at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved state management programs.

(3) (A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal

zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 306 [16 USC § 1455], any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until—

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) Applications of local governments for Federal assistance; relationship of activities with approved management programs. State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use of natural resource of the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Inter-governmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

(e) Construction with other laws. Nothing in this title shall be construed--

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Construction with existing requirements of water and air pollution programs. Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable

to such program.

(g) Concurrence with programs which affect inland areas. When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title [16 USC § 1455], includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

(h) Mediation of disagreements. In case of serious disagreement between any Federal agency and a coastal state--

(1) in the development or the initial implementation of a management program under section 305 [16 USC § 1454]; or

(2) in the administration of a management program approved under section 306 [16 USC § 1455];

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(i) Federal fee.

(1) With respect to appeals under subsections (c)(3) and (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], the Secretary shall collect an application fee of not less than \$ 200 for minor appeals and not less than \$ 500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee.

(2) (A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management Fund established under section 308 [16 USC § 1456a].

### **§ 1456a. Coastal Zone Management Fund (Section 308)**

(a) (1) The obligations of any coastal state or unit of general purpose local government to repay loans made pursuant to this section as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], and any repayment schedule established pursuant to this title as in effect before that date of enactment, are not altered by any provision of this title. Such loans shall be repaid under authority of this subsection and the Secretary may issue

regulations governing such repayment. If the Secretary finds that any coastal state or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such State or unit, take any of the following actions:

- (A) Modify the terms and conditions of such loan.
- (B) Refinance the loan.
- (C) Recommend to the Congress that legislation be enacted to forgive the loan.

(2) Loan repayments made pursuant to this subsection shall be retained by the Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under subsection (b).

(b) (1) The Secretary shall establish and maintain a fund, to be known as the "Coastal Zone Management Fund", which shall consist of amounts retained and deposited into the Fund under subsection (a) and fees deposited into the Fund under section 307(i)(3) [16 USC § 1456(i)(3)].

(2) Subject to amounts provided in appropriation Acts, amounts in the Fund shall be available to the Secretary for use for the following:

(A) Expenses incident to the administration of this title, in an amount not to exceed for each of fiscal years 1997, 1998, and 1999 the higher of--

- (i) \$ 4,000,000; or
- (ii) 8 percent of the total amount appropriated under this title for the fiscal year.

(B) After use under subparagraph (A)--

(i) projects to address management issues which are regional in scope, including interstate projects;

(ii) demonstration projects which have high potential for improving coastal zone management, especially at the local level;

(iii) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;

(iv) appropriate awards recognizing excellence in coastal zone management as provided in section 314 [16 USC § 1460];

(v) program development grants as authorized by section 305 [16 USC § 1454], in an amount not to exceed \$ 200,000 for each of fiscal years 1997, 1998, and 1999; and

(vi) to provide financial support to coastal states for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306 [16 USC § 1455].

(3) On December 1, of each year, the Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund in the preceding fiscal year.

## **§ 1456b. Coastal Zone Enhancement Grants (Section 309)**

(a) For purposes of this section, the term "coastal zone enhancement objective" means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

(9) Adoption of procedures and policies to evaluate and facilitate the siting of public and private aquaculture facilities in the coastal zone, which will enable States to formulate, administer, and implement strategic plans for marine aquaculture.

(b)(1) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal states to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(2) (A) In addition to any amounts provided under section 306 [16 USC § 1455], and subject to the availability of appropriations, the Secretary may make grants under this subsection to States for implementing program changes approved by the Secretary in accordance with section 306(e) [16 USC § 1455(e)].

(B) Grants under this paragraph to implement a program change may not be made in any fiscal year after the second fiscal year that begins after the approval of that change by the Secretary.

(c) The Secretary shall evaluate and rank State proposals for funding under this



section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (d). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(d) Within 12 months following the date of enactment of this section [enacted Nov. 5, 1990], and consistent with the notice and participation requirements established in section 317 [16 USC § 1463], the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish--

(1) specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

(2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

(3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

(e) A State shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(f) Beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of this title [16 USC §§ 1455, 1455a] shall be retained by the Secretary for use in implementing this section, up to a maximum of \$10,000,000 annually.

(g) If the Secretary finds that the State is not undertaking the actions committed to under the terms of the grant, the Secretary shall suspend the State's eligibility for further funding under this section for at least one year.

### **§ 1456c. Technical assistance (Section 310)**

(a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309 [16 USC § 1456b], and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

(3) The Secretary shall consult with coastal states on a regular basis regarding the development and implementation of the program established by this section.

### **§ 1457. Public hearings (Section 311)**

All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

### **§ 1458. Review of performance (Section 312)**

(a) Evaluation of adherence with terms of grants. The Secretary shall conduct a continuing review of the performance of coastal states with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K) [16 USC § 1452(2)(A)-(K)], and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

(b) Public participation. In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.

(c) Interim sanctions.

(1) The Secretary may suspend payment of any portion of financial assistance

extended to any coastal state under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 315 of this title [16 USC § 1461], or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

(2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with--

(A) written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

(3) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(d) Final sanctions. The Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection (c)(2)(A).

(e) Notice and hearing. Management program approval and financial assistance may not be withdrawn under subsection (d), unless the Secretary gives the coastal state notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this subsection (d), the Secretary shall provide the coastal state with written specifications of the actions that should be taken, or not engaged in, by the state in order that such withdrawal may be canceled by the Secretary.

(f) [Repealed]

### **§ 1459. Records and audit (Section 313)**

(a) Maintenance of records by recipients of grants or financial assistance. Each recipient of a grant under this title or of financial assistance under section 308 [16 USC § 1456a], as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant and of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access by Secretary and Comptroller General to records, books, etc., of recipients of grants or financial assistance for audit and examination. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall--

(1) after any grant is made under this title or any financial assistance is provided under section 308 [16 USC § 1456a], as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990]; and

(2) until the expiration of 3 years after--

(A) completion of the project, program, or other undertaking for which such grant was made or used, or

(B) repayment of the loan or guaranteed indebtedness for which such financial assistance was provided, have access for purposes of audit and examination to any record, book, document, and paper which belongs to or is used or controlled by, any recipient of the grant funds or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if the grant funds or the proceeds of such financial assistance are being, or were, used in accordance with the provisions of this title.

### **§ 1460. Walter B. Jones Excellence in Coastal Zone Management Awards (Section 313)**

(a) The Secretary shall, using sums in the Coastal Zone Management Fund established under section 308 [16 USC § 1456a] and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315 [16 USC §§ 1454, 1455, 1455a, 1456b, 1456c, and 1461]), implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

(b) The Secretary shall elect annually--

(1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

(2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles embodied in this title [16 USC §§ 1451 et seq.]; and

(3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

(c) In making selections under subsection (b)(2) the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local government planning and land use.

(d) In making selections under subsection (b)(3) the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

(e) Using sums in the Coastal Zone Management Fund established under section 308 [16 USC § 1456a] and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315 [16

USC §§ 1454, 1455, 1455a, 1456b, 1456c, and 1461]), the Secretary shall establish and execute appropriate awards, to be known as the "Walter B. Jones Awards", including--

- (1) cash awards in an amount not to exceed \$ 5,000 each;
- (2) research grants; and
- (3) public ceremonies to acknowledge such awards.

### **§ 1461. National Estuarine Research Reserve System (Section 315)**

(a) Establishment of the System. There is established the National Estuarine Research Reserve System (hereinafter referred to in this section as the "System") that consists of--

- (1) each estuarine sanctuary designated under this section as in effect before the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985 [enacted Apr. 7, 1986]; and
- (2) each estuarine area designated as a national estuarine reserve under subsection (b).

Each estuarine sanctuary referred to in paragraph (1) is hereby designated as a national estuarine reserve.

(b) Designation of national estuarine reserves. After the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985 [enacted Apr. 7, 1986], the Secretary may designate an estuarine area as a national estuarine reserve if--

- (1) the Governor of the coastal state in which the area is located nominates the area for that designation; and
- (2) the Secretary finds that--

(A) the area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(B) the law of the coastal state provides long-term protection for reserve resources to ensure a stable environment for research;

(C) designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation; and

(D) the coastal state in which the area is located has complied with the requirements of any regulations issued by the Secretary to implement this section.

(c) Estuarine research guidelines. The Secretary shall develop guidelines for the conduct of research within the System that shall include--

(1) a mechanism for identifying, and establishing priorities among, the coastal management issues that should be addressed through coordinated research within the System;

(2) the establishment of common research principles and objectives to guide the development of research programs within the System;

(3) the identification of uniform research methodologies which will ensure comparability of data, the broadest application of research results, and the maximum use of the System for research purposes;

(4) the establishment of performance standards upon which the effectiveness of the research efforts and the value of reserves within the System in addressing the coastal management issues identified in paragraph (1) may be measured; and

(5) the consideration of additional sources of funds for estuarine research than the funds authorized under this Act, and strategies for encouraging the use of such funds within the System, with particular emphasis on mechanisms established under subsection (d).

In developing the guidelines under this section, the Secretary shall consult with prominent members of the estuarine research community.

(d) Promotion and coordination of estuarine research. The Secretary shall take such action as is necessary to promote and coordinate the use of the System for research purposes including--

(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting estuarine research, give priority consideration to research that uses the System; and

(2) consulting with other Federal and State agencies to promote use of one or more reserves within the System by such agencies when conducting estuarine research.

(e) Financial assistance.

(1) The Secretary may, in accordance with such rules and regulations as the Secretary shall promulgate, make grants--

(A) to a coastal state--

(i) for purposes of acquiring such lands and waters, and any property interests therein, as are necessary to ensure the appropriate long-term management of an area as a national estuarine reserve,

(ii) for purposes of operating or managing a national estuarine reserve and constructing appropriate reserve facilities, or

(iii) for purposes of conducting educational or interpretive activities; and

(B) to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c).

(2) Financial assistance provided under paragraph (1) shall be subject to such terms and conditions as the Secretary considers necessary or appropriate to protect the interests of the United States, including requiring coastal states to execute suitable title documents setting forth the property interest or interests of the United States in any lands and waters acquired in whole or part with such financial assistance.

(3) (A) The amount of the financial assistance provided under paragraph (1)(A)(i) with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein or \$5,000,000, whichever amount is less.

(B) The amount of the financial assistance provided under paragraph (1)(A) (ii) and (iii) and paragraph (1)(B) may not exceed 70 percent of the costs incurred to achieve the purposes described in those paragraphs with respect to a reserve; except that the amount of the financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System.

(C) Notwithstanding subparagraphs (A) and (B), financial assistance under this subsection provided from amounts recovered as a result of damage to natural resources located in the coastal zone may be used to pay 100 percent of the costs of activities carried out with the assistance.

(f) Evaluation of system performance.

(1) The Secretary shall periodically evaluate the operation and management of each national estuarine reserve, including education and interpretive activities, and the research being conducted within the reserve.

(2) If evaluation under paragraph (1) reveals that the operation and management of the reserve is deficient, or that the research being conducted within the reserve is not consistent with the research guidelines developed under subsection (c), the Secretary may suspend the eligibility of that reserve for financial assistance under subsection (e) until the deficiency or inconsistency is remedied.

(3) The Secretary may withdraw the designation of an estuarine area as a national estuarine reserve if evaluation under paragraph (1) reveals that--

(A) the basis for any one or more of the findings made under subsection (b)(2) regarding that area no longer exists; or

(B) a substantial portion of the research conducted within the area, over a period of years, has not been consistent with the research guidelines developed under subsection (c).

(g) Report. The Secretary shall include in the report required under section 316 [16 USC § 1462] information regarding--

(1) new designations of national estuarine reserves;

(2) any expansion of existing national estuarine reserves;

(3) the status of the research program being conducted within the System; and

(4) a summary of the evaluations made under subsection (f).

### **§ 1462. Coastal Zone Management Reports (Section 316)**

(a) Biennial reports. The Secretary shall consult with the Congress on a regular basis concerning the administration of this title and shall prepare and submit to the President for transmittal to the Congress a report summarizing the administration of this title during each period of two consecutive fiscal years. Each report, which shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to which it pertains, shall include, but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved, and a statement of the reasons for such action; (5) a summary of evaluation findings prepared in accordance with subsection (a) of section 312 [16 USC § 1458(a)], and a description of any sanctions imposed under subsections (c) and (d) of section 312 [16 USC § 1458]; (6) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307 [16 USC § 1456(c), (d)], are not consistent with an applicable approved state management program; (7) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (8) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (9) a summary of outstanding problems arising in the administration of this title in order of priority; (10) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 308 [16 USC § 1456a] in dealing with such consequences; (11) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (12) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (13) such other information as may be appropriate.

(b) Recommendations for legislation. The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

(c) Review of other Federal programs; report to Congress.

(1) The Secretary shall conduct a systematic review of Federal programs, other than this title, that affect coastal resources for purposes of identifying conflicts between the objectives and administration of such programs and the purposes and policies of this title. Not later than 1 year after the date of the enactment of this subsection [enacted Oct. 17, 1980], the Secretary shall notify each Federal agency having appropriate jurisdiction of any conflict between its program and the purposes and policies of this title identified as a result of such review.



(2) The Secretary shall promptly submit a report to the Congress consisting of the information required under paragraph (1) of this subsection. Such report shall include recommendations for changes necessary to resolve existing conflicts among Federal laws and programs that affect the uses of coastal resources.

### **§ 1463. Rules and Regulations (Section 317)**

The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code [5 USC § 553], after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

### **§ 1464. Authorization of appropriations (Section 318)**

(a) Sums appropriated to Secretary. There are authorized to be appropriated to the Secretary, to remain available until expended--

(1) for grants under sections 306, 306A, and 309 [16 USC §§ 1455, 1455a, 1456b]--

(A) \$ 47,600,000 for fiscal year 1997;  
(B) \$ 49,000,000 for fiscal year 1998; and  
(C) \$ 50,500,000 for fiscal year 1999; and

(2) for grants under section 315 [16 USC § 1461]--

(A) \$ 4,400,000 for fiscal year 1997;  
(B) \$ 4,500,000 for fiscal year 1998; and  
(C) \$ 4,600,000 for fiscal year 1999.

(b) Limitations. Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 306 or 309 [16 USC § 1455 or 1456b].

(c) Reversion of grants to Secretary. The amount of any grant, or portion of a grant, made to a State under any section of this Act which is not obligated by such State during the fiscal year, or during the second fiscal year after the fiscal year, for which it was first authorized to be obligated by such State shall revert to the Secretary. The Secretary shall add such reverted amount to those funds available for grants under the section for such reverted amount was originally made available.

(d) [Redesignated]

### **§ 1465. Appeals to the Secretary (Section 319)**

(a) Notice. The Secretary shall publish in the Federal Register a notice indicating when the decision record has been closed on any appeal to the Secretary taken from a

consistency determination under section 307(c) or (d)[16 USC § 1456(c) or (d)]. No later than 90 days after the date of publication of this notice, the Secretary shall--

(1) issue a final decision in the appeal; or

(2) publish a notice in the Federal Register detailing why a decision cannot be issued within the 90-day period.

(b) **Deadline.** In the case where the Secretary publishes a notice under subsection (a) (2), the Secretary shall issue a decision in any appeal filed under section 307 no later than 45 days after the date of the publication of the notice.

(c) **Application.** This section applies to appeals initiated by the Secretary and appeals filed by an applicant.

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