

Title 11 Natural Resources  
Part 8 Alaska Coastal Management Program

Chapter 110  
Alaska Coastal Management Program Implementation

Article

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Article 1

Program Administration

Section

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- 11 AAC 110.010. Applicability of the Alaska coastal management program consistency review process

Statute text

(a) The consistency review processes set out in this chapter constitute the consistency review processes for consistency determinations made under AS 46.40.096.

(b) A project is subject to 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) and (2) (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) (Coastal Zone Management Act) and 15 C.F.R. 930.57 - 930.58; or

(ii) 16 U.S.C. 1456(c)(3)(B) (Coastal Zone Management Act) and 15 C.F.R. 930.76, from a person who submits an OCS plan to the United States Secretary of the Interior; and

(2) is located

(A) within the coastal zone; or

(B) in an area described in AS 46.40.096(1)(2) that is subject to a consistency determination under 15 C.F.R. Part 930.

(c) Only the consistency review process set out in

(1) 11 AAC 110.200 - 11 AAC 110.270 apply, if the project requires only an authorization from one or more resource agencies;

(2) 11 AAC 110.300 - 11 AAC 110.355 apply, 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) 11 AAC 110.400 - 11 AAC 110.455 apply, if the project requires

(A) a federal consistency certification; or

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

(d) The specific aspects of an activity that are subject to authorization by the Department of Environmental Conservation under AS 46.40.040(b)(1) are excluded from the consistency review processes in this chapter. The issuance of authorizations by the Department of Environmental Conservation under AS 46.40.040(b)(1) establishes consistency with the Alaska coastal management program for those aspects.

(e) Where the specific aspects of an activity that would otherwise be subject to authorization by the Department of Environmental Conservation are not subject to that department's authorization because the activity is either a federal activity or is located on federal land or the outer continental shelf, the Department of Environmental Conservation shall nonetheless review those aspects for compliance with AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted under those statutes, as applicable, and provide that department's findings under AS 46.40.040(b)(2) to the office of project management and permitting by the deadline set in

(1) 11 AAC 110.345(a)(3) for an activity reviewed under 11 AAC 110.300 - 11 AAC 110.355; and

(2) 11 AAC 110.445(d) for an activity reviewed under 11 AAC 110.400 - 11 AAC 110.455.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.015. Application of enforceable policies and statewide standards to a project requiring a federal consistency determination or federal consistency certification

Statute text

For the purposes of a consistency review conducted under 16 U.S.C. 1456 for a project requiring a federal consistency determination or federal consistency certification, in accordance with the applicable provisions of 15 C.F.R. Part 930 and of the program, and notwithstanding a contrary provision of 11 AAC 112 or 11 AAC 114, a project within or affecting land or water uses or natural resources of the coastal zone is subject to the state standards in 11 AAC 112.200 - 11 AAC 112.990 and to applicable enforceable policies of a district coastal management plan approved under 11 AAC 114. Except as provided in 15 C.F.R. 930.54 and 11 AAC 110.400(c), federal license or permit activities that occur inland of the state's coastal zone boundary are not subject to a consistency review under this chapter.

History

History: Eff. 6/25/2005, Register 174

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.010

AS 46.40.040

AS 46.40.096

11 AAC 110.020. Scope of project subject to consistency review

Statute text

(a) For a project subject to review under 11 AAC 110.300 - 11 AAC 110.355, the scope of the project subject to a consistency review shall be determined in accordance with 15 C.F.R. 930.30 - 930.46.

(b) For a project subject to review under 11 AAC 110.400 11 AAC 110.455, 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, as applicable.

(c) Except as provided in AS 46.40.094, AS 46.40.096(g), 11 AAC 110.040, and 11 AAC 110.700, the scope of the project subject to a consistency review under AS 46.40.096 is limited to those activities of the project that are

(1) subject to a

(A) department or Department of Fish and Game authorization identified in the C List;

(B) federal consistency determination identified under 15 C.F.R. 930.31; or

(C) federal authorization identified under 11 AAC 110.400; and

(2) as applicable, the subject of a district enforceable policy.

(d) The coordinating agency shall consult with the applicant, any resource agency that requires an authorization for the project, and any potentially affected coastal resource district concerning the scope of the activities to be reviewed.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.030. Office of project management and permitting responsibility

#### Statute text

(a) For a consistency review, and in accordance with AS 46.39.010, AS 46.40.096, and

(1) 11 AAC 110.200 - 11 AAC 110.270, the office shall serve as the coordinating agency and render the consistency determination for a project that requires an authorization from two or more

(A) resource agencies; or

(B) divisions or offices within the department;

(2) 11 AAC 110.300 - 11 AAC 110.355, the office 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) 11 AAC 110.400 - 11 AAC 110.455, the office 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) (Coastal Zone Management Act) and 15 C.F.R. Part 930, a federal consistency determination, consistency certification, or related information is to be submitted to the state agency designated under 16 U.S.C. 1455(d)(6) (Coastal Zone Management Act) and 15 C.F.R. 923.47, that determination, certification, or related information must be submitted to the office.

(c) The office 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 program, and necessary authorizations.

(d) At the request of a resource agency that is coordinating a consistency review under AS 46.40.096(b) and 11 AAC 110.050(c), the office 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.

(e) For a consistency review under 11 AAC 110.300 - 11 AAC 110.355 or 11 AAC 110.400 - 11 AAC 110.455 that does not require a Department of Environmental Conservation authorization because the activity is either a federal activity or is located on federal land or the outer continental shelf, the office shall, in addition to the office's consistency review under AS 46.40.096, coordinate with the Department of

Environmental Conservation and issue that department's finding under AS 46.40.040(b)(2) and 11 AAC 110.010(e) of whether the relevant aspects of the activity satisfy the requirements of AS 46.03, AS 46.04, AS 46.09, or AS 46.14 and the regulations adopted under those statutes, as applicable.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.040. Review by the Department of Environmental Conservation of certain activities that are the subject of a district enforceable policy

#### Statute text

(a) This section applies to projects that are subject only to one or more Department of Environmental Conservation authorizations under 11 AAC 110.010(d).

(b) In accordance with AS 46.40.096(k), if a district enforceable policy addresses an activity of a project subject to this section, but that activity is not subject to a Department of Environmental Conservation authorization under AS 46.40.040(b)(1), then that department shall review the activity against the applicable district enforceable policies and statewide standards.

(c) The Department of Environmental Conservation, or the office, if agreed to by that department and the office, shall conduct the consistency review described in (b) of this section using the procedures set out in 11 AAC 110.200 - 11 AAC 110.270 after determining the scope of the activities subject to review in consultation with the coastal district.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

## 11 AAC 110.050. State agency authority and responsibility

### Statute text

(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) As provided in this chapter, a state resource agency shall issue authorizations in conformity with the enforceable policies of approved district coastal management plans and the statewide standards.

(c) In accordance with AS 46.39, AS 46.40.096(b), and 11 AAC 110.200 - 11 AAC 110.270, a resource agency shall, except as provided in 11 AAC 110.040(c), serve as the coordinating agency for a consistency review 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.

(d) Except as provided in AS 46.40.096(g), 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.

(e) Following issuance of a final consistency determination, a resource agency may not include an additional alternative measure on the agency's authorization unless that measure was included in the final consistency determination. Additional stipulations or conditions not necessary to achieve consistency under this chapter may be added under an agency's own statutory or regulatory authority.

(f) Except for a disposal of an 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 is necessary to fulfill the resource agency's statutory or regulatory requirements.



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

(h) 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 11 AAC 110.200 - 11 AAC 110.270.

(i) Notwithstanding having concurred in a final consistency determination for a project, a resource agency may deny approval of an authorization application for the project under that agency's own statutory and regulatory authorities.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.090

AS 46.40.096

AS 46.40.100

11 AAC 110.060. Coastal resource district responsibility

#### Statute text

(a) 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.

(b) A coastal resource district that elects to participate in a consistency review under this chapter must participate by submitting comments to the coordinating agency regarding consistency of the proposed project with the enforceable policies of the program.

(c) A coastal resource district whose district coastal management plan has taken effect under 11 AAC 114.360 or remains in effect under sec. 46(c), ch. 24, SLA 2003, as amended by sec. 16, ch. 31, SLA 2005, is considered to have expertise in the interpretation of that plan.

#### History

History: Eff. 7/1/2004, Register 170; am 6/1/2005, Register 175

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

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#### Article 2

#### State Consistency Review Process

#### Section

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260. Final consistency determination.

265. Time for issuance of a final consistency determination.

270. Consistency review schedule modification and termination.

11 AAC 110.200. Applicability

#### Statute text

The consistency review process described in

(1) 11 AAC 110.200 - 11 AAC 110.270 apply to a project if the project requires only one or more resource agency authorizations;

(2) 11 AAC 110.230 - 11 AAC 110.270 apply to a proposed categorically consistent determination under 11 AAC 110.710 and to a proposed generally consistent determination under 11 AAC 110.730.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

#### 11 AAC 110.205. Coastal project questionnaire

##### Statute text

(a) Except as provided in (c) of this section, the office 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 the questionnaire or to the office. Based on the information provided by the applicant in response to the coastal project questionnaire, the office and the resource agency shall, to the extent feasible, preliminarily identify the authorizations that are required for the project. The authorizing resource agency is the final authority in deciding whether an authorization by that agency is needed and what type of authorization will be issued.

(b) If, during review of the coastal project questionnaire, a resource agency preliminarily identifies either 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 the office; and

(2) refer the applicant to the office.

(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;

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

(3) if a categorically consistent determination developed under 11 AAC 110.710 or a generally consistent determination developed under 11 AAC 110.730 specifically states that a coastal project questionnaire is not required for the activity to which that determination applies.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

#### 11 AAC 110.210. Pre-review assistance

##### Statute text

(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) If requested by the applicant, the coordinating agency shall 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 program;

(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 11 AAC 110.400;

(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 program, compliance with resource agency authorizations, and potential mitigation requirements.

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

(1) the coordinating agency may consult with resource agencies and the office 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 the agency's statutory and regulatory authorities.

(e) The coordinating agency shall 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.215. Applicant consistency review packet

#### Statute text

(a) The applicant shall submit a consistency review packet to the coordinating agency in written and, if available to the applicant, electronic format 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 Alaska coastal management program and will be conducted in a manner consistent with the program";

(C) data, information, and an evaluation of how the proposed project is consistent with the state standards and with any applicable district enforceable policies, 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) the signature of an authorized representative of the applicant and the date signed; and

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

(b) If a project requires an authorization from two or more resource agencies, the applicant must submit the consistency review packet to the office 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 that resource agency.

(c) The coordinating agency, on the agency's 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 the agency's authorization, the applicant must submit that fee directly to the resource agency.

(e) The applicant must submit, directly to the resource agency responsible for issuing the authorization, an application for an authorization that requires 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.220. Determination of completeness and notice to applicant

#### Statute text

(a) The coordinating agency shall, within 21 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 11 AAC 110.215;

(2) each 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, with the concurrence of each authorizing resource agency, 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 11 AAC 110.235.

(d) If the coordinating agency determines that the consistency review packet is incomplete, the coordinating agency shall notify the applicant in writing and identify the information necessary to make the consistency review packet complete.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.225. Determination of the scope of the project subject to consistency review

#### Statute text

Before the initiation of the consistency review and within the timeframes established under 11 AAC 110.235(a) and (b), the coordinating agency shall determine the scope of the project subject to a consistency review in accordance with 11 AAC 110.020 and 11 AAC 110.700. If a project requires an authorization from more than one resource agency, the office shall determine the scope of the project subject to review in consultation with each resource agency that requires an authorization.



## History

History: Eff. 7/1/2004, Register 170

## Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

## 11 AAC 110.230. Timing of a consistency review

### Statute text

(a) Except as modified under 11 AAC 110.270, the consistency review process shall be completed within 30 or 50 days after the start date set under 11 AAC 110.235.

(b) A project is subject to a 30-day consistency review if all required authorizations for the activities, as identified in the C List, 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.

## History

History: Eff. 7/1/2004, Register 170

## Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

## 11 AAC 110.235. Initiation of a consistency review

### Statute text

(a) If a project requires an authorization from two or more resource agencies, the office shall start Day 1 of the consistency review on the day after the consistency review packet is determined to be complete under 11 AAC 110.220.

(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 under 11 AAC

110.220, the resource agency may start the consistency review at the time the agency initiates the agency's authorization review.

(c) Day 1 of a consistency review is the date on which the coordinating agency's public notice of the review is provided in accordance with 11 AAC 110.500.

(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; and

(3) either

(A) provide a copy of the consistency review packet to a person requesting the information; or

(B) 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.240. Request for additional information

#### Statute text

(a) No later than Day 13 in a 30-day consistency review or Day 25 in a 50-day consistency review, a review participant may 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 the agency's own initiative or based on a timely request received under (a) of this section. A request by the coordinating agency based on a request received under (a) of this section shall identify the requestor.

(c) In requesting additional information from the applicant based on a request received under (a) of this section, the coordinating agency shall request information that is 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 submitted to the coordinating agency under (a) of this section 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 program.

(d) The applicant must provide the additional information requested by the coordinating agency to the coordinating agency and, if the information was requested by a review participant, to that requestor. The applicant shall provide sufficient copies of the requested information to the office for distribution to other interested review participants. The coordinating agency shall ensure that the requestor and other interested review participants receive the additional information.

(e) A review participant that requested information under (a) of this section 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 or inadequate. If the requestor considers the information inadequate, the requestor shall also

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

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

(f) After reviewing the additional information submitted by the applicant and the comments of any requestor under (e) of this section, the coordinating agency shall either inform the applicant that

(1) the additional information provided is adequate; or

(2) some or all of the information is inadequate and request the applicant to provide the further information that is still needed to satisfy the original request in the same manner as provided under (d) of this section for the applicant's original response.

(g) 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

#### 11 AAC 110.245. Comment deadlines

#### Statute text

Except as modified under 11 AAC 110.270(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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

#### 11 AAC 110.250. Review participant comments

#### Statute text

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

(A) the specific enforceable policies with which the proposed project is inconsistent and explain why the review participant considers the proposed project inconsistent with those enforceable policies; and

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

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

(c) The coordinating agency shall send or otherwise make available to the applicant, each resource agency, and any potentially affected coastal resource district a copy of timely submitted comments. Upon request, the coordinating agency shall make a copy of the comments available to other interested persons.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.255. Proposed consistency determination

Statute text

(a) In developing a proposed consistency determination, the coordinating agency shall give careful consideration to all comments. The coordinating agency shall give a commenting resource agency and coastal resource district with an approved plan 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 program 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

(1) a project's consistency with the enforceable policies of the program; and

(2) any alternative measures that would achieve consistency with the enforceable policies of the program.

(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 that participant's 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 issuing 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 program comments under 11 AAC 110.510(a) and, if applicable, 11 AAC 110.510(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;

(4) contain a statement identifying the availability of an elevation under 11 AAC 110.600 and the deadline for submitting a request for elevation under that section; and

(5) be issued by electronic mail or facsimile to the applicant and each review participant that may request elevation under 11 AAC 110.600(a).

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

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

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

(2) any alternative measure that, if adopted by the applicant, would achieve consistency with the specific enforceable policies identified under (1) of this subsection and an explanation of how the alternative measure 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 program; or

(C) abandon the project.

(i) If the applicant modifies the project under (h)(2)(B) of this section, or if the coordinating agency is able to informally resolve an issue that has resulted or could result in the submission of a request for elevation under 11 AAC 110.600, 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 11 AAC 110.260 if the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under (h)(2) of this section.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.260. Final consistency determination

#### Statute text

(a) A final consistency determination rendered under AS 46.39.010(a) or AS 46.40.096(d) 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 program.



(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 explanation of how the proposed project is consistent with the applicable enforceable policies of the program; or

(2) objects to the applicant's consistency certification must include an identification of the specific enforceable policies and the reasons why the coordinating agency has found the proposed project inconsistent with those enforceable policies.

(c) In addition to meeting the requirements in (a) and (b) of this section, the final consistency determination must include any change made by the coordinating agency 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 in the proposed consistency determination under 11 AAC 110.255(h)(2); and

(ii) adopted by the applicant; and

(B) modification by the applicant of the project to achieve consistency with the enforceable policies of the program; 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 program comments under 11 AAC 110.510(a) and, if applicable, 11 AAC 110.510(b).

(e) If an applicant, after receiving a final consistency determination, fails to implement an alternative measure identified by the applicant under (c)(1)(A) of this section, or if the applicant undertakes a project modification not incorporated into the final consistency determination and not reviewed under 11 AAC 110.800 - 11 AAC 110.830, a resource agency may, in exercise of the agency's enforcement discretion, take action according to the resource agency's statutory and regulatory authorities.

(f) If a requirement set out in a final consistency determination for a project is more or less restrictive than a similar requirement in a resource agency authorization for that project, the applicant shall comply with the more restrictive requirement.

(g) A final consistency determination is a final administrative order and decision under the program.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.265. Time for issuance of a final consistency determination

#### Statute text

(a) Except as provided in (b) of this section, a consistency review under 11 AAC 110.200 - 11 AAC 110.270 shall be completed within 90 days after receipt of a complete application or the activity subject to review will be conclusively presumed to be consistent with the applicable enforceable policies of the program.

(b) The time limitation in (a) of this section

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

(2) is suspended

(A) from the time the coordinating agency determines that the applicant has not adequately responded in writing within 14 days after receipt of a written request from the coordinating agency for additional information under 11 AAC 110.240, until the time the coordinating agency determines that the applicant has provided an adequate written response;

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

(C) during the period of time a consistency review is undergoing an elevation under 11 AAC 110.600.

(c) Subject to (a) and (b) of this section, and except as otherwise provided in (d) of this section or as modified under 11 AAC 110.270(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.

(d) The final consistency determination shall be issued

(1) five days after the proposed consistency determination is issued, so long as the coordinating agency does not receive a timely request for an elevation under 11 AAC 110.600(a);

(2) no later than 45 days after an elevation is requested under 11 AAC 110.600(a).

(e) A consistency review and determination for those activities of a project not excluded under AS 46.40.096(g) may not be delayed or withheld pending issuance of the authorizations referred to in AS 46.40.096(g), but shall proceed regardless of the status of those authorizations.

## History

History: Eff. 7/1/2004, Register 170

## Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

## 11 AAC 110.270. Consistency review schedule modification and termination

### Statute text

(a) Subject to the overall time limit established under 11 AAC 110.265(a) and, if applicable, 11 AAC 110.265(b)(2), 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 an interest in state land, so long as the length of time for receipt of comments is at least as long as under 11 AAC 110.245;

(2) if the coordinating agency receives a request for additional information from a review participant under 11 AAC 110.240(a), 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) consistent with 11 AAC 110.265(b)(2)(A), if the coordinating agency requests additional information from the applicant under 11 AAC 110.240, the coordinating agency may modify the review schedule as necessary until the requesting review participant receives the information and considers the information adequate within the timeframe identified under 11 AAC 110.240(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 11 AAC 110.250 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) if the coordinating agency issues a revised proposed consistency determination or consistency response under 11 AAC 110.255(i) or 11 AAC 110.440(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 11 AAC 110.600;

(12) if the coordinating agency receives a request for elevation under 11 AAC 110.600, the coordinating agency shall suspend the review schedule by no more than 45 days, or until the commissioner's decision on the elevation is made, whichever occurs first.

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

(c) Except for a review modified under (a)(3) of this section, when the coordinating agency restarts a review for which the schedule was modified under this section, the day that the review is restarted shall be assigned the day of the review schedule on which the review was stopped. For a review modified under (a)(3) of this section, the day that the review is restarted shall be assigned the day of the review schedule following the day on which the review was stopped.

(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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

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### Article 3

#### Consistency Review Process for Federal Activities

#### Section

300. Applicability.

305. Pre-review assistance for a federal agency.

310. Federal consistency determination.

315. Initiation of consistency review of a federal consistency determination.

320. Request for additional information for a federal consistency determination.

325. Comment deadline for a federal consistency determination; review schedule modification or extension.

330. Review participant comments regarding a federal consistency determination.

335. Proposed consistency response to a federal consistency determination.

340. Elevation and mediation of a proposed consistency response.

345. Final consistency response to a federal consistency determination.

350. Resource agency authorization.

355. Process for a federal negative determination.

11 AAC 110.300. Applicability

#### Statute text

The consistency review process described in 11 AAC 110.300 - 11 AAC 110.355 applies to

(1) an activity that 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 generally consistent determination provided in accordance with 15 C.F.R. 930.36(c).

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.305. Pre-review assistance for a federal agency

#### Statute text

At the request of a federal agency, the office shall provide pre-review assistance in accordance with 11 AAC 110.210.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

## 11 AAC 110.310. Federal consistency determination

### Statute text

(a) Upon receipt of a federal consistency determination, the office shall review the determination 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) The office may request that the federal agency provide additional copies of the consistency review packet, maps, or other documents that the office cannot duplicate conveniently.

### History

History: Eff. 7/1/2004, Register 170

### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

## 11 AAC 110.315. Initiation of consistency review of a federal consistency determination

### Statute text

(a) The consistency review process, as contained in 11 AAC 110.300 - 11 AAC 110.355, shall be initiated, coordinated, and completed within the timeframes specified in 15 C.F.R. 930.30 - 930.46.

(b) Upon receipt of a federal consistency determination that is complete under 11 AAC 110.310(a), the office shall immediately initiate a consistency review as follows:

(1) the office shall establish Day 1 of the consistency review as the date on which the public notice of the consistency review is provided in accordance with 11 AAC 110.500;

(2) on or before Day 3, the office 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 review participants' comments, and a deadline for receipt of comments; and

(C) either

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

(ii) 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.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.320. Request for additional information for a federal consistency determination

Statute text

(a) No later than Day 25 of the consistency review, a review participant may provide the office with any request for additional information necessary to determine whether the requestor concurs with or objects to the federal consistency determination.

(b) The office may on or before Day 25 of the consistency review request additional information at the office's own initiative or based on a timely request received under (a) of this section. A request by the office based on a request received under (a) of this section shall identify the requestor.

(c) In requesting additional information from the federal agency based on a request received under (a) of this section, the office shall request 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 to the office under

(a) of this section that is outside the requestor's expertise or area of responsibility, the office 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 program.

(d) The federal agency must provide the additional information requested by the office to the office and, if the information was requested by a review participant, to that requestor. The federal agency shall provide sufficient copies of the requested information to the office for distribution to other interested review participants. The office shall ensure that the requestor and other interested review participants receive the additional information.

(e) A review participant that requested additional information under (a) of this section shall notify the office when the requested information is received. Within seven days after receiving the information, the requestor shall notify the office whether the information is adequate or inadequate. If the requestor considers the information inadequate, the requestor shall also

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

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

(f) After reviewing the additional information submitted by the federal agency and the comments of any requestor under (e) of this section, the office shall either inform the federal agency that

(1) the additional information provided is adequate; or

(2) some or all of the information is inadequate and request the federal agency to provide the further information that is still needed to satisfy the original request in the same manner as provided under (d) of this section for the federal agency's original response.

(g) 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.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.325. Comment deadline for a federal consistency determination; review schedule modification or extension

Statute text

(a) The office 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 for the reasons provided under 11 AAC 110.270(a), so long as the final consistency response is provided under 11 AAC 110.345 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.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.330. Review participant comments regarding a federal consistency determination

Statute text

(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 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 program; or

(2) state 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 program, and identify

(A) the specific enforceable policies with which the proposed activity is inconsistent and the reasons why the review participant considers the proposed activity inconsistent with those enforceable policies; and

(B) any alternative measure that, if adopted by the federal agency, would achieve consistency with the enforceable policies identified under (A) of this paragraph and explain how that alternative measure would achieve consistency with those enforceable policies.

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

(c) The coordinating agency shall send or otherwise make available to the federal agency, each resource agency, and any potentially affected coastal resource district a copy of timely submitted comments. Upon request, the coordinating agency shall make a copy of the comments available to other interested persons.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.335. Proposed consistency response to a federal consistency determination

#### Statute text

(a) The office shall develop, using the process established in 11 AAC 110.255(a) - (d), a proposed consistency response to a federal consistency determination that meets the requirements of (b) and, as applicable, (c) or (d) of this section.

(b) On or before Day 44 of the consistency review, the office shall provide the 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 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) the office requests an extension for the consistency response; and

(4) contains a statement identifying the availability of an elevation under 11 AAC 110.600 and the deadline for submitting a request for elevation under 11 AAC 110.600.

(c) In addition to the requirements in (b) of this section, if a concurrence with the federal consistency determination is proposed, the proposed consistency response must include an explanation of how the activity is consistent with the applicable enforceable policies of the program. In the explanation, the office may incorporate by reference the federal consistency determination, so long as the determination sufficiently supports the proposed concurrence.

(d) In addition to the requirements in (b) of this section, if an objection to the federal consistency determination is proposed, the office 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 11 AAC 110.600 and of Office of Ocean and Coastal Resource Management assistance under 15 C.F.R. 930.111 during the elevation.

(e) A proposed consistency response is not the final state agency concurrence or objection for purposes of 15 C.F.R. 930.41(a) and is subject to elevation under 11 AAC 110.600.

(f) The office may immediately issue a final consistency response under 11 AAC 110.345 if the review participants concur with the proposed consistency response and the federal agency adopts any alternative measures proposed by the office in the consistency response.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.340. Elevation and mediation of a proposed consistency response

#### Statute text

If a federal agency requests an elevation of the proposed consistency response under 11 AAC 110.600, the federal agency or the office may request that the Office of Ocean and Coastal Resource Management, under 15 C.F.R. 930.111, assist in the elevation.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.345. Final consistency response to a federal consistency determination.

#### Statute text

(a) A final consistency response rendered by the office under AS 46.39.010(a) and AS 46.40.096(d) must

(1) contain a description of the activity subject to consistency review;

(2) concur with or object to the federal consistency determination; and

(3) be issued within the time set in 15 C.F.R. 930.41 or 11 AAC 110.265, whichever is shorter.

(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 explanation of how the proposed project is consistent with the applicable enforceable policies of the program; in the explanation, the office may incorporate by reference the federal consistency determination, so long as 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) and (b) of this section, the final consistency response must include any change made by the office 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 11 AAC 110.335(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 program; and

(2) any minor editorial or technical corrections.

(d) On or before Day 50 of the consistency review, except as the review schedule is modified under 11 AAC 110.325(b), the office shall provide the final consistency response to

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

(2) the director of the Office of Ocean and Coastal Resource Management, 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 program comments under 11 AAC 110.500(a) and, if applicable, 11 AAC 110.500(b).

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.350. Resource agency authorization.

#### Statute text

(a) For an activity that requires a federal consistency determination and an authorization from one or more resource agencies,

(1) the office 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 commissioner, the office may amend a final consistency response to reflect the outcome of the mediation process.

(b) If a requirement set out in a final consistency response under 11 AAC 110.345 is more or less restrictive than a similar requirement in a resource agency authorization, the federal agency shall comply with the more restrictive requirement in accordance with 16 U.S.C. 1456.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.355. Process for a federal negative determination.

#### Statute text

(a) If the office receives a negative determination in accordance with 15 C.F.R. 930.35, the office shall solicit comments regarding concurrence with or objection to the negative determination from each resource agency and any potentially affected coastal resource district. The office shall establish the deadline for receipt of comments 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, the office 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 process in 15 C.F.R. 930.3 5(c) applies to the federal agency and the office.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

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#### Article 4

#### Consistency Review Process for Activities Requiring a Federal Authorization

#### Section

400. Activities requiring a federal authorization subject to consistency review.

405. Pre-review assistance for an applicant for a federal authorization.

410. Consistency certification for a federal authorization.

415. Determination of the scope of the project subject to consistency review.

420. Initiation of consistency review for a federal consistency certification.

425. Request for additional information for a federal consistency certification.

430. Comment deadline for a federal consistency certification; review schedule modifications and extensions.

435. Review participant comments regarding a federal consistency certification.

440. Proposed consistency response to a federal consistency certification.

445. Final consistency response to a federal consistency certification.

450. Resource agency authorization.

455. Review process for exploration, development, and production activities on the outer continental shelf.

11 AAC 110.400. Activities requiring a federal authorization subject to consistency review.

#### Statute text

(a) The consistency review process described in 11 AAC 110.400 - 11 AAC 110.455 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

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

(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 under the program;

(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 requires 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 (Clean Water Act);

(iii) a permit from the United States Department of Defense, Army Corps of Engineers, under 33 U.S.C. 1344 (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 or the department under AS 41.14;

(vi) a department 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 (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 (Outer Continental Shelf Lands Act), authorizing artificial islands or fixed structures on the outer continental shelf;

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

(D) under 33 U.S.C. 1344 (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 16 U.S.C. 808 (Federal Power Act);

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

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

(5) a United States Environmental Protection Agency

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

(B) permit required under 33 U.S.C. 1345 (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 (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 lease 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;

(D) Minerals Management Service OCS plan;

(E) Fish and Wildlife Service right-of-way permit under 50 C.F.R. 29 and 50 C.F.R. 36;

(F) National Park Service right-of-way permit under 36 C.F.R. 14;

(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 52 - 55; and

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

(A) 33 U.S.C. 401 (Rivers and Harbors Act) and 33 C.F.R. Parts 114-117, 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. 403 (Rivers and Harbors Act), authorizing the obstruction of navigable waters.

(c) In accordance with 15 C.F.R. 930.54, the office may notify a federal agency, the applicant, and the director of the Office of Ocean and Coastal Resource Management of unlisted federal license or permit activities within the meaning of 15 C.F.R. 930.54 that affect any coastal use or resource and that require a consistency review.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030  
AS 46.39.040  
AS 46.40.040  
AS 46.40.096

11 AAC 110.405. Pre-review assistance for an applicant for a federal authorization.

Statute text

At the request of an applicant for a federal authorization, the office shall provide pre-review assistance in accordance with 11 AAC 110.210.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010  
AS 46.39.030  
AS 46.39.040  
AS 46.40.040  
AS 46.40.096

11 AAC 110.410. Consistency certification for a federal authorization.

Statute text

(a) In accordance with 15 C.F.R. 930.50 - 930.66, an applicant for a federal authorization subject to consistency review under the program 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 program. The applicant must provide a copy of the certification to the office along with the necessary data and information identified in (c) of this section.

(b) Except as provided in AS 46.14.160 for a review under AS 46.40.040(b)(2), the office shall, within 21 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 determine whether the consistency certification is complete.

(c) To be complete, a consistency certification must include

(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) data and information sufficient to support the consistency certification required by 15 C.F.R. 930.57 - 930.58 in detail commensurate with the level of potential effects on any coastal use or resource within the meaning of 15 C.F.R. 930.11(g);

(C) 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;

(D) 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"; and

(E) the signature of an authorized representative of the applicant and the date signed;

(2) 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

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

(d) If the office determines that the consistency certification is complete, the office shall notify the applicant and identify the start date for initiating the consistency review under 11 AAC 110.420.

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

(f) The office, on the office's 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 office, the coastal resource district, or the resource agency cannot duplicate conveniently.



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

(h) An applicant must submit, directly to the agency responsible for issuing the authorization, an a for a resource agency or federal authorization requiring information that must be held in confidence by law. The resource agency shall forward to the office 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 the office.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.415. Determination of the scope of the project subject to consistency review.

#### Statute text

Before the initiation of the consistency review and within the timeframes established under 11 AAC 110.420, the office shall determine the scope of the project subject to a consistency review in accordance with 11 AAC 110.020 and 11 AAC 110.700.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.420. Initiation of consistency review for a federal consistency certification.

#### Statute text

Immediately after the consistency certification is determined to be complete in accordance with 11 AAC 110.410, or after a notification under 15 C.F.R. 930.60(a)(1)(ii), the office shall initiate a consistency review as follows:

(1) the office shall establish Day 1 of the consistency review as the date on which the public notice is provided in accordance with 11 AAC 110.500;

(2) on or before Day 3, the office 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 comments; and

(C) either

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

(ii) 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.425. Request for additional information for a federal consistency certification.

Statute text

(a) No later than Day 25 of the consistency review, a review participant may provide the office with any request for additional information necessary to determine whether the requestor concurs with or objects to the federal consistency certification.

(b) The office may, on or before Day 25 of the consistency review, request additional information at the office's own initiative or based on a timely request received under (a) of this section. A request by the office based on a request received under (a) of this section shall identify the requestor.

(c) In requesting additional information from the applicant based on a request received under (a) of this section, the office shall request 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 office under (a) of this section that is outside the requestor's expertise or area of responsibility, the office 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 program.

(d) The applicant must provide the additional information requested by the office to the office and, if the information was requested by a review participant, to that requestor. The applicant shall provide sufficient copies of the requested information to the office for distribution to other interested review participants. The office shall ensure that the requestor and other interested review participants receive the additional information.

(e) A review participant that requested information under (a) of this section shall notify the office 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 or inadequate. If the requestor considers the information inadequate, the requestor shall also

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

(2) identify the information needed to satisfy the original request or to address new issues raised in the applicant's response to the original request.

(f) After reviewing the additional information submitted by the applicant and the comments of any requestor under (e) of this section, the office shall either inform the applicant that

(1) the additional information provided is adequate; or

(2) some or all of the information is inadequate and request the applicant to provide the further information that is still needed to satisfy the original request in the same manner as provided under (d) of this section for the applicant's original response.

(g) 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.430. Comment deadline for a federal consistency certification; review schedule modifications and extensions.

#### Statute text

(a) Except as modified under (b) of this section, the office shall establish a 30-day comment deadline for receipt of public and review participant comment regarding a federal consistency certification.

(b) The office may modify the review schedule for the reasons provided under 11 AAC 110.270(a), so long as the final consistency response is provided under 11 AAC 110.445 to the federal agency on or before the deadline set under 16 U.S.C. 1456(c)(3)(A) (Coastal Zone Management Act).

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

(d) The office 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.

(e) Notwithstanding (a) - (d) of this section, the office must issue the final determination within the deadline established under 11 AAC 110.265.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.435. Review participant comments regarding a federal consistency certification.

#### Statute text

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

(A) the specific enforceable policies with which the proposed project is inconsistent and explain why the review participant considers the proposed project inconsistent with those enforceable policies; and

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

(b) In a consistency review comment, a review participant may address an enforceable policy outside the review participant's expertise or area of responsibility. However, the

office may not give a resource agency or coastal resource district due deference for comments outside that agency's or district's expertise or area of responsibility.

(c) The office shall send or otherwise make available to the applicant, each resource agency, and any potentially affected coastal resource district a copy of timely submitted comments. Upon request, the office shall make a copy of the comments available to other interested persons.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.440. Proposed consistency response to a federal consistency certification.

#### Statute text

(a) The office shall develop, using the process established in 11 AAC 110.255(a) - (d) and (j), a proposed consistency response to a federal consistency certification that meets the requirements of (b) and, as applicable, (c) or (d) of this section.

(b) On or before Day 44 of the consistency review, the office shall provide the applicant, the federal agency, each review participant, an agency that commented on the project, and a person who submitted timely program comments under 11 AAC 110.500(a) and, if applicable, 11 AAC 110.500(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 with the applicant's federal consistency certification is proposed; or

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

(4) contains a statement identifying the availability of an elevation under 11 AAC 110.600 and the deadline for submitting a request for elevation under 11 AAC 110.600.

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

(d) In addition to the requirements in (b) of this section, if an objection to the applicant's federal consistency certification is proposed, the office 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 program. 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 program;

(3) abandon the project; or

(4) file an appeal under 15 C.F.R. 930.120 - 930.131.

(e) The office, 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 the office is able to informally resolve an issue that has resulted or could result in the submission of a request for elevation under 11 AAC 110.600.

(f) The office may immediately issue a final consistency response under 11 AAC 110.445 so long as the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under (d) of this section.

(g) A proposed consistency response is not the final state agency concurrence or objection for purposes of 15 C.F.R. 930.62 - 930.63 and is subject to elevation under 11 AAC 110.600.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.445. Final consistency response to a federal consistency certification.

#### Statute text

(a) A final consistency response rendered by the office under AS 46.39.010(a) and AS 46.40.096(d) must

(1) contain a description of the proposed activity;

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

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

(4) be issued within the time set in 15 C.F.R. 930.60(a)(3) and 930.62.

(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 explanation of how the proposed project is consistent with the applicable enforceable policies of the program; 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) and (b) of this section, the final consistency response must include any change made by the office 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 11 AAC 110.440(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 program; and

(2) any minor editorial or technical corrections.

(d) Within 50 days after receipt of the applicant's federal consistency certification, except as the review schedule is modified under 11 AAC 110.430(b), the office 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 the Office of Ocean and Coastal Resource Management, 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 program comments under 11 AAC 110.500(a) and, if applicable, 11 AAC 110.500(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 11 AAC 110.800 - 11 AAC 110.830, a resource agency may, in exercise of the agency's enforcement discretion, take action according to the resource agency's statutory and regulatory authorities.

(f) If a requirement set out in a final consistency response is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement.

(g) A final consistency response is a final administrative order and decision under the program.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.450. Resource agency authorization.

#### Statute text

For a proposed project that requires a federal consistency certification and an authorization from one or more resource agencies,

(1) the office 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 commissioner, the office may amend a final consistency response to reflect the outcome of the appeal.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.455. Review process for exploration, development, and production activities on the outer continental shelf.

#### Statute text

(a) A consistency review for a federal license or permit activity described in detail within an OCS plan shall be conducted in accordance with the requirements of 15 C.F.R. 930.70 - 930.85 and 11 AAC 110.405 - 11 AAC 110.450.

(b) For purposes of this section, "federal license or permit activity described in detail" has the meaning given in 15 C.F.R. 930.71.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

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Article 5  
Public Participation

Section

- 500. Public notice.
- 510. Public comments.
- 520. Public hearing.
- 11 AAC 110.500. Public notice

Statute text

- (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 program;
    - (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 the review packet and schedule available under 11 AAC 110.235(d)(3)(B), 11 AAC 110.315(b)(2)(C)(ii), or 11 AAC 110.420(2)(C)(ii);
    - (5) be issued by at least one of the following methods:
      - (A) publication in a newspaper of general circulation within each district that the coordinating agency considers to be an affected coastal resource district or within an area outside a coastal resource district that the agency considers the project will likely affect;  
or
      - (B) posting

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

(ii) in at least three public places within each district that the coordinating agency considers to be an affected coastal resource district or within an area outside a coastal resource district 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 that the area likely to be affected has 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 another state or federal agency 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 program 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040  
AS 46.40.040  
AS 46.40.096

#### 11 AAC 110.510. Public comments

##### Statute text

(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 11 AAC 110.245, 11 AAC 110.325, or 11 AAC 110.430, 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 11 AAC 110.520.

(b) If a person contends that a project is inconsistent with an enforceable policy of the program, 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, if applicable, (b) of this section.

(d) The coordinating agency shall send or otherwise make available to the applicant, each resource agency, and any potentially affected coastal resource district a copy of timely submitted comments and, if the coordinating agency holds a public hearing under 11 AAC 110.520, the summary of the comments prepared under 11 AAC 110.520(d). Upon request, the coordinating agency shall make a copy of the comments available to other interested persons.

(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.

##### History

History: Eff. 7/1/2004, Register 170

##### Annotations

Authority: AS 46.39.010  
AS 46.39.030  
AS 46.39.040  
AS 46.40.040  
AS 46.40.096

#### 11 AAC 110.520. Public hearing

Statute text

(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 program; and

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

(b) Within seven days after receiving a written request for a public hearing regarding the project, 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 agency; 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 each such 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, so long as 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 the permit process under the authority of the agency or the district or to develop the agency's or district's consistency review comments, the coordinating agency may consider a comment received at that hearing as part of the consistency review if

(1) the comment meets the requirements of 11 AAC 110.510(a) and, if applicable 11 AAC 110.510(b);

(2) with respect to a resource agency hearing, the resource agency holds the 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 11 AAC 110.245, 11 AAC 110.325, or 11 AAC 110.430, as applicable.

(f) The office 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 of this section.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096



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Article 6  
Elevation

Section

600. Elevation process.  
11 AAC 110.600. Elevation process

Statute text

(a) Within five days after the coordinating agency issues a proposed consistency determination or proposed consistency response, a resource agency, applicant, or affected coastal resource district that does not concur with the proposed consistency determination or consistency response may request an elevation to the commissioner of the proposed consistency determination or consistency response.

(b) An elevation is limited to consideration of

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

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

(c) 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 consistency response; and

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

(d) Upon receipt of a request for elevation in accordance with (a) - (c) 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 in writing the review schedule by no more than 45 days; and

(3) if the reviewing agency is not the office, transfer the elevation process to the office.

(e) The commissioner may act on a request for elevation or may delegate the authority to a state officer or employee in or outside the department to act on the elevation.

(f) The office shall invite the coordinating agency, the resource agencies, the applicant, and any affected coastal resource district to participate in, and may invite any other affected person to attend, an elevation meeting with the commissioner or delegee to resolve the elevation requestor's concerns.

(g) An attendee may present written materials and testimony or may rely on the existing project record at the elevation meeting. The elevation meeting must be recorded electronically.

(h) After the elevation meeting but within 45 days after receipt of the request for elevation under (a) of this section, the commissioner or delegee will issue a written decision with findings of fact. The coordinating agency shall then

(1) render a final consistency determination or consistency response that reflects the decision of the commissioner or delegee on the issue raised by the request for elevation; and

(2) distribute the final consistency determination or consistency response to each review participant, the applicant, each person who submitted timely comments under 11 AAC 110.510(a) and, if applicable, 11 AAC 110.510(b), and any other affected person who was invited to attend the elevation meeting by the office.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010  
AS 46.39.030  
AS 46.39.040  
AS 46.40.040  
AS 46.40.096

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## Article 7

### General and Nationwide Permits, Categorically Consistent Determinations, and Generally Consistent Determinations

#### Section

700. Use of general and nationwide permits, categorically consistent determinations, and generally consistent 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 generally consistent determinations for activities that require a resource agency authorization.

740. Implementation of generally consistent 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. Generally consistent determinations for federal activities.

11 AAC 110.700. Use of general and nationwide permits, categorically consistent determinations, and generally consistent determinations in project consistency reviews

#### Statute text

(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 program by the appropriate coordinating agency, the scope of the project subject to review shall exclude the activity authorized by the general or nationwide permit in accordance with AS 46.40.096(m).

(b) If all activities of a project are subject to a general or nationwide permit, a categorically consistent determination, or a generally consistent determination under 11 AAC 110.700 - 11 AAC 110.780, the project is not subject to additional consistency review.

(c) If a project includes an activity that is subject to a categorically consistent determination or generally consistent determination under 11 AAC 110.700 - 11 AAC 110.780, 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 categorically consistent determination or generally consistent determination, has a temporary and de minimis impact to coastal uses and resources. An activity excluded from a consistency review under this subsection may be authorized by an authorizing resource agency in accordance with a categorically consistent determination rendered under 11 AAC 110.710 or subject to the standard alternative measures in a generally consistent determination rendered under 11 AAC 110.730, as applicable.

(d) If an activity that is part of a project is subject to a categorically consistent determination or generally consistent determination under 11 AAC 110.700 - 11 AAC 110.780, 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 (c) of this section.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.710. Review process for categorically consistent determinations for activities that require a resource agency authorization

#### Statute text

(a) The office, 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) 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.

(d) If a new categorically consistent determination or an amendment to an existing determination is proposed under (a) of this section, the office 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 11 AAC 110.500; and

(3) in accordance with 11 AAC 110.230 - 11 AAC 110.270, render a consistency determination for the proposed categorically consistent determination or amendment.

(e) The office shall maintain a list of categorically consistent determinations. The A List set out in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, published by the office, as revised as of May 24, 2004, lists the categorically consistent determinations in effect for the program. The A List is adopted by reference.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

Editor's note: The A List set out in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, adopted by reference in 11 AAC 110.710, is available for inspection at the Department of Natural Resources, Office of

Project Management and Permitting, 302 Gold Street, Juneau, AK 99801 or at [www.alaskacoast.state.ak.us](http://www.alaskacoast.state.ak.us).

11 AAC 110.720. Implementation of categorically consistent determinations for activities that require a resource agency authorization

Statute text

(a) An applicant for an activity subject to a categorically consistent determination contained in the A List 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

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

(2) the additional activity described in (1) of this subsection is not subject to a

(A) categorically consistent determination contained in the A List; or

(B) generally consistent determination contained in the B List.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

11 AAC 110.730. Review process for generally consistent determinations for activities that require a resource agency authorization

Statute text

(a) The office, a resource agency, or a coastal resource district may propose under this section

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

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

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

(c) A generally consistent 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 program.

(d) If a new generally consistent determination or an amendment to an existing determination is proposed under (a) of this section, the office shall

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

(2) provide public notice of the proposed generally consistent determination or amendment in accordance with 11 AAC 110.500; and

(3) in accordance with 11 AAC 110.230 - 11 AAC 110.270, render a consistency determination for the proposed generally consistent determination.

(e) The office shall maintain a list of generally consistent determinations. The B List of generally consistent determinations set out in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, published by the office, as revised as of May 24, 2004, lists the generally consistent determinations in effect for the program. The B List is adopted by reference.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

Editor's note: The B List set out in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, adopted by reference in 11 AAC 110.730, is available for inspection at the Department of Natural Resources, Office of Project Management and Permitting, 302 Gold Street, Juneau, AK 99801 or at [www.alaskacoast.state.ak.us](http://www.alaskacoast.state.ak.us).

11 AAC 110.740. Implementation of generally consistent determinations for activities that require a resource agency authorization.

#### Statute text

(a) An applicant for an activity subject to a generally consistent determination contained in the B List must submit a completed coastal project questionnaire to the authorizing resource agency unless the generally consistent 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 generally 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 contained in the A List; or

(B) generally consistent determination contained in the B List.

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

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.750. Activities generally subject to individual consistency review

#### Statute text

(a) The office, 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 set out in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, published by the office, as revised as of May 24, 2004, identifies the resource agency authorizations that authorize activities that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource and is adopted by reference.

(b) An activity that requires a resource agency authorization that is on the C List, and that meets the requirements of 11 AAC 110.010(b)(2), is subject to an individual consistency review in accordance with this chapter, except for

(1) those specific aspects of activities authorized by the Department of Environmental Conservation under AS 46.03, AS 46.04, AS 46.09, or AS 46.14 and the regulations adopted under those statutes; and

(2) those activities covered by 11 AAC 110.700(a) - (c).

(c) An activity requiring a resource agency authorization that is not identified on the C List is not subject to an individual consistency review.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

Editor's note: The C List set out in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, adopted by reference in 11 AAC 110.750, is available for inspection at the Department of Natural Resources, Office of Project Management and Permitting, 302 Gold Street, Juneau, AK 99801 or at [www.alaskacoast.state.ak.us](http://www.alaskacoast.state.ak.us).

11 AAC 110.760. Review process for resource agency general permits

#### Statute text

(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 resource agency proposes a new resource agency general permit or amendment to an existing resource agency general permit for an activity that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource, the resource agency shall

(1) distribute the proposed general permit to the review participants and the office;

(2) provide public notice of the proposed general permit in accordance with 11 AAC 110.500; and

(3) review the proposed general permit under 11 AAC 110.230 - 11 AAC 110.270.

(c) The resources agency shall provide the office with a copy of the final approved general permit.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.770. Review process for a federal general permit and nationwide permit

Statute text

In accordance with 15 C.F.R. 930.31(d), a federal general permit or nationwide permit for an activity that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource is subject to the consistency review process set out in 11 AAC 50.300 - 11 AAC 110.355.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.780. Generally consistent determinations for federal activities

Statute text

(a) In accordance with 15 C.F.R. 930.36(c), a federal agency may provide the office with a generally consistent determination for a federal agency activity.

(b) A generally consistent determination provided in accordance with 15 C.F.R. 930.36(c) is subject to the consistency review process set out in 11 AAC 110.300 - 11 AAC 110.355.

(c) If the final consistency response under 11 AAC 110.345 concurs with a generally consistent determination for a federal agency activity, the activity will not be given farther consistency review.

(d) The B List contains generally consistent determinations for federal agency activities.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

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#### Article 8

#### Project Modifications and Renewals of Authorizations

#### Section

800. Project modifications during a consistency review.

810. Termination of a project's consistency review.

820. Project modifications after issuance of a final consistency determination.

830. Authorization renewals, re-issuances, and expirations.

11 AAC 110.800. Project modifications during a consistency review

#### Statute text

Except for a project subject to review under 11 AAC 110.300 - 11 AAC 110.355 or 11 AAC 110.400 - 11 AAC 110.455, 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040  
AS 46.40.040  
AS 46.40.096

11 AAC 110.810. Termination of a project's consistency review

Statute text

(a) A coordinating agency may terminate the consistency review of a project subject to 11 AAC 110.200 - 11 AAC 110.270 or 11 AAC 110.400 - 11 AAC 110.455 if the applicant

(1) fails, within 30 days, to respond to the coordinating agency's request for additional information; or

(2) submits a written request withdrawing the project from review under this chapter.

(b) For a project terminated under (a) of this section, the coordinating agency shall issue an objection to the applicant's consistency certification in the manner provided in

(1) 11 AAC 110.260 for a project subject to a consistency review under 11 AAC 110.200 - 11 AAC 110.270; or

(2) 11 AAC 110.445 for a project subject to a consistency review under 11 AAC 110.400 - 11 AAC 110.455.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.820. Project modifications after issuance of a final consistency determination

Statute text

(a) A modification to a federal agency activity shall be addressed under 15 C.F.R. 930.30 - 930.46.

(b) An applicant that proposes a modification to an activity that is part of a project for which a final consistency determination 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.

(c) A modification that is proposed to a project for which a final consistency determination has been issued is subject to a consistency review if the proposed modification may cause significant 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 11 AAC 110.400 is required; or

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

(d) 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.

(e) 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.

(f) Except as provided in (g) of this section, the resource agency that will issue a new authorization, or whose authorization requires modification, shall serve as the coordinating agency and render the consistency determination for a proposed modification.

(g) The office shall serve as the coordinating agency and render the consistency determination or consistency 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.

(h) 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. A resource agency shall determine whether a new authorization or change to an existing authorization is required. A review participant shall consider whether the proposed modification may cause additional impacts to a coastal use or resource.

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

(j) If, after reviewing responses received under (h) 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 11 AAC 110.010.

(k) The following modifications have no additional effect on coastal uses and resources and 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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.830. Authorization renewals, re-issuances, and expirations

#### Statute text

The renewal or re-issuance of a resource agency authorization for an existing project, or the issuance of a resource agency 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 11 AAC 110.820.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

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#### Article 9

#### General Provisions

#### Section

900. Emergency expedited review.



910. Computation of time.  
990. Definitions.  
11 AAC 110.900. Emergency expedited review

Statute text

(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 must 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 as required by AS 46.40.096(c), 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), 11 AAC 110.255, and 11 AAC 110.260.

(c) An expedited consistency review is not subject to the public notice requirements of 11 AAC 110.500. The elevation process under 11 AAC 110.600 shall be expedited as necessary to meet the emergency.

(d) Nothing in this section affects the governor's powers under AS 26.23 during a disaster emergency declared under that chapter.

History

History: Eff. 7/1/2004, Register 170

Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

11 AAC 110.910. Computation of time

Statute text

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.

#### History

History: Eff. 7/1/2004, Register 170

#### Annotations

Authority: AS 46.39.010

AS 46.40.040

AS 46.40.096

#### 11 AAC 110.990. Definitions

##### Statute text

(a) In this chapter, unless the context indicates otherwise,

(1) "A List" means the list of categorically consistent determinations contained in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, published by the office and adopted by reference in 11 AAC 110.710;

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

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

(4) "applicant" means a person who submits

(A) an application for a resource agency or federal authorization; or

(B) an OCS plan to the United States Secretary of the Interior;

(5) "approved plan" means a

(A) district coastal management plan approved by the department under AS 46.40 and 11 AAC 114 and in effect as provided under 11 AAC 114.360; and

(B) district coastal management program approved by the former Coastal Policy Council and in effect under sec. 46(c), ch. 24, SLA 2003, as amended by sec. 16, ch. 31, SLA 2005;

(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 is identified in the C List; 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) "B List" means the list of generally consistent determinations contained in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, published by the office and adopted by reference in 11 AAC 110.730;

(8) "C List" means the list of resource agency authorizations that authorize activities that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource contained in Volume I of the List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP, published by the office and adopted by reference in 11 AAC 110.750;

(9) "coastal project questionnaire" means the questionnaire developed by the office under 11 AAC 110.030(c);

(10) "coastal resource district" has the meaning given in AS 46.40.210;

(11) "coastal use or resource" has the meaning given in AS 46.40.210;

(12) "coastal zone" has the meaning given in AS 46.40.210;

(13) "commissioner" means the commissioner of the department;

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

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

(A) includes a consistency response;

(B) does not include a federal consistency determination;

(16) "consistency response" means the response rendered by the office under

(A) 11 AAC 110.300 - 11 AAC 110.355 to a federal consistency determination; or

(B) 11 AAC 110.400 - 11 AAC 110.455 to a federal consistency certification;

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

(18) "coordinating agency"

(A) means the agency responsible for coordinating a consistency review and rendering a proposed or final consistency determination under AS 46.39.010(a) and AS 46.40.096;  
and

(B) has the meaning given "reviewing entity" in AS 46.40.096(q);

(19) "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;

(20) "de minimis impact" means an insignificant

(A) direct effect on a coastal use or resource; or

(B) indirect effect, whether cumulative or secondary, on a coastal use or resource;

(21) "department" has the meaning given in AS 46.39.900;

(22) "disposal of an interest in state land" means the sale, lease, or other disposition of state-owned or state-managed land or resources by the department;

(23) "district" has meaning given "coastal resource district" in AS 46.40.210;

(24) "district enforceable policy" means a provision contained in a district plan that either has been approved by the commissioner under 11 AAC 114 or was approved by the former Coastal Policy Council under former 6 AAC 85 and remains in effect under sec. 46(c), ch. 24, SLA 2003, as amended by sec. 16, ch. 31, SLA 2005, except for a provision that addresses any matter regulated by the Department of Environmental Conservation, or that duplicates, restates, or incorporates by reference statutes and administrative regulations adopted by state or federal agencies; "district enforceable policy" includes

(A) the definition of a term used in the provision; and

(B) a boundary map or boundary description developed by a district and incorporated into the district plan to identify the area within the district that is subject to a specific provision of the plan;

(25) "due deference" means that deference that is appropriate in the context of

(A) the commentor's expertise or area of responsibility; and

(B) all the evidence available to support any factual assertions of the commentor;

(26) "elevation" means a subsequent review under AS 46.40.096(d)(3) of a proposed consistency determination;

(27) "enforceable policy" has the meaning given in AS 46.40.210; "enforceable policy" includes

(A) policies adopted by the former Coastal Policy Council and set out at 6 AAC 80.040 - 6 AAC 80.900 to the extent applicable under 11 AAC 112.010; and

(B) district enforceable policies;

(28) "federal consistency certification" means a consistency certification that

(A) an applicant for a required federal license or permit provides to the office in accordance with 16 U.S.C. 1456(c)(3)(A) (Coastal Zone Management Act) and 15 C.F.R. 930.57 - 930.58; or

(B) is provided to the office, in accordance with 16 U.S.C. 1456(c)(3)(B) (Coastal Zone Management Act) and 15 C.F.R. 930.76, by a person who submits an OCS plan to the United States Secretary of the Interior;

(29) "federal consistency determination" means a submission that a federal agency provides to the office, in accordance with 16 U.S.C. 1456(c)(1) - (2) (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 program;

(30) "general permit" means an authorization that covers a group of similar facilities or activities subject to standard requirements;

(31) "nationwide permit" means a federal permit or authorization for a general class of activities throughout the United States; "nationwide permit" includes Army Corps of Engineers nationwide permits under 33 U.S.C. 1344 (Clean Water Act) and U.S. Environmental Protection Agency nationwide permits under 33 U.S.C. 1342 (Clean Water Act);

(32) "OCS plan" has the meaning given in 15 C.F.R. 930.73;

(33) "office" means the office of project management and permitting within the department;

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

(35) "person" has the meaning given in 11 AAC 114.990;

(36) "program" means the Alaska coastal management program, as set out in AS 46.39, AS 46.40, this chapter, 11 AAC 112, 11 AAC 114, and the program's enforceable policies;

(37) "project" has the meaning given in AS 46.40.210;

(38) "reasonably foreseeable" means a fact-specific determination of whether something can reasonably be foreseen; "reasonably foreseeable" does not include remote or speculative consequences;

(39) "render" has the meaning given in AS 46.39.010;

(40) "resource agency" has the meaning given in AS 46.39.010;

(41) "review participant" means a resource agency, a state agency that has requested participation in a consistency review, and an affected coastal resource district;

(42) "statewide standards" means

(A) until the date the commissioner certifies to the lieutenant governor under 11 AAC 112.010 that the United States Department of Commerce has approved, under 16 U.S.C. 1455(e), the standards of 11 AAC 112.200 - 11 AAC 112.990, the standards set out in 6 AAC 80.040 - 6 AAC 80.900; and

(B) after the date described in (A) of this paragraph, the standards set out in 11 AAC 112.200 - 11 AAC 112.990;

(43) "subsequent review" means a review under AS 46.40.096(d)(3) of a proposed consistency determination.

(b) For purposes of AS 46.40.096(q)(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 46.39.010(a),

(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 11 AAC 110.400 - 11 AAC 110.455;

(3) "federal consistency determination" means a consistency response rendered under 11 AAC 110.300 - 11 AAC 110.355.

#### History

History: Eff. 7/1/2004, Register 170; am 6/1/2005, Register 175

#### Annotations

Authority: AS 46.39.010

AS 46.39.030

AS 46.39.040

AS 46.40.040

AS 46.40.096

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