



LaRoche + Associates

March 1, 2006

Randy Bates, Acting Director
Office of Project Management and Permitting
P.O. Box 110030, Juneau, AK 99811-1030

RE: Request for review and approval of revised Kenai Coastal Management Plan

Dear Mr. Bates:

The purpose of this cover letter is to request OPMP review and approval of the Revised Kenai Peninsula Borough Coastal Management Program Final Draft Plan Amendment. LaRoche + Associates has worked closely with the Kenai Peninsula Borough to prepare this plan for your review.

Each of the four CD-ROMs contains electronic copies of:

1. Final Draft Plan Amendment, Volumes 1 and 2
2. Copy of resolution of support from the Kenai Peninsula Borough Assembly
3. Public distribution mailing list
4. Copies of comments received
5. Copies of the minutes or summary of any public meetings held
6. Enforceable Policies Cross-Reference Table
7. Written documentation of consultation with state and federal agencies (Vol. 1, Chapter I, Section B, "Development of Kenai Coastal Management Plan," starting on p. 3; Vol. 1, Appendix B, starting on p. 264)
8. Names of parties that provided comments (Vol. 1, Chapter I, Section B, p. 4)

Enclosure 7 to this cover letter is a series of justifications for the plan's enforceable policies. These justifications are summaries of the justifications contained in the plan itself, and are not intended to replace a careful and complete reading of the plan on the part of reviewers. There is no requirement for justifications in state law. They are included here as a courtesy to OPMP.

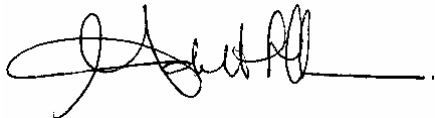
The Final Draft Plan Amendment is a complete draft of the amended Kenai Peninsula Borough Coastal Management Program (including AMSAs). The Final Draft Plan Amendment includes the following required elements (each one is followed by the volume, chapter and page number where it begins):

- Issues, goals, and objectives (Vol. 1, Chapter V, p. 164)

- Organization (Vol. 1, Chapter VI, Section A1, p. 211)
- Coastal zone boundaries (Vol. 1, Chapter II, p. 6)
- Resource inventory (Vol. 1, Chapter III, p. 12)
- Resource analysis (Vol. 1, Chapter IV, p. 90)
- Subject uses and activities (Vol. 1, Chapter VI, Section A2, p. 212)
- Designations (Vol. 1, Chapter V, p. 164; Chapter VI, Section A4, p. 212)
- Proper and improper uses and activities (Vol. 1, Chapter VI, Section A3, p. 212)
- District enforceable policies (Vol. 1, Chapter V, p. 164)
- Implementation (Vol. 1, Chapter VI, p. 211)
- Areas which merit special attention (Vol. 1, Chapter VII, p. 224)
- Public participation (Vol. 1, Chapter I, Section B, p. 3)
- Appendices A – C (Vol. 1)

The Kenai Peninsula Borough's Gary Williams is the primary point of contact for any correspondence regarding this plan update. Please copy me with any communications. We look forward to working with you to complete the approval process for this plan.

Sincerely,



LaRoche + Associates
 Gabrielle LaRoche, Principal Planner

Enclosures

1. Final Draft Plan Amendment, Volumes 1 and 2
2. Copy of resolution of support from the Kenai Peninsula Borough Assembly
3. Public distribution mailing list
4. Copies of comments received
5. Copies of the minutes or summary of any public meetings held
6. Enforceable Policies Cross-Reference Table
7. CMP Policy Justifications

cc: Gary Williams, Kenai Peninsula Borough
 Julie C. Hammonds, AICP, LaRoche + Associates
 Dave Easter, DNR, OPMP
 Sally Cox, DCCED, DCA

ENCLOSURE 7: CMP POLICY JUSTIFICATIONS

1.1. Navigation Obstruction.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to navigable coastal waters within the district's coastal zone boundary.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

As discussed in Chapter IV Section 2.12, structures, pipelines and buoys placed on the surface of navigable coastal waters that are not visibly marked can present navigation hazards. Structures, pipelines and buoys in navigable coastal waters can create navigation hazards or obstruct safe passage of vessels.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 1.0, Section 10 of the Rivers and Harbors Act falls short of adequately addressing issues of local concern that are unique to the Kenai Peninsula Borough.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 1.0, local usage and experience have shown that poor placement of docks or buoys can obstruct navigation or cause congestion in waterways. Improperly located floating facilities can also obstruct navigation. If not adequately marked or buried, underwater oil and gas pipelines, utility lines and sewage or wastewater outfalls can be hooked by boat anchors and fishing gear.

1.2. Floating Facilities.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to coastal waters within the district's coastal zone boundary.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Tidelands and waterfront areas are demonstrated as sensitive to development in Chapter IV Section 2.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 1.0, the COE evaluates floating facilities under its 404B1 and section 10 guidelines and OHMP evaluates floating facilities under the Habitats Standard. Though state and federal agencies require permits prior to approving floating facilities, the laws are broad in scope and general in their application. For example, the laws do not address restrictions based on the location of the facilities. In some cases, there may be a tradition or policy of denying or conditioning permits adjacent to areas such as wilderness areas or anadromous fish streams, but a policy does not carry the force of law. In addition, there is a COE general permit (89-4N) for floating houses, but the permit conditions are not law and cannot be relied upon to always be in place. Consequently, additional specificity in district enforceable policies for floating facilities ensures that local issues are addressed.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 1.0, local usage and experience have shown that floating facilities such as mariculture rafts, float homes, floating processors or fish buying rafts located on public tidelands or public waters provide exclusive private use of a public resource. Potential problems associated with

floating facilities include: conflicts or competition with other users, wastewater or sewage disposal, navigation obstruction, habitat disturbance, or debris accumulation.

1.3. Timely Notification Requirement.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]
Policy applies within marine and estuarine waters of the coastal area.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Marine and estuarine waters of the coastal area are demonstrated as sensitive to development in Chapter IV Section 2.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]
In comments on the revised public hearing draft version of this policy, the Alaska Oil and Gas Association noted that projects are publicly noticed. The federal requirements that call for public notice do not specifically require operators of activities relating to oil, gas, and mining exploration and production to provide timely written notification to a list of fishing organizations maintained by the Kenai Peninsula Borough. It is reasonable to think that oil companies have the resources and organizational abilities to provide the required information, thus maintaining good relations with fishing organizations. Both industries are important. The policy is not meant as an undue burden, but as a means of making the general federal requirements more specific to this coastal district.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]
Both industries are water-dependent. Local usage local usage and experience have shown that they can coexist effectively if adequate coordination is maintained.

1.4. Placement of Dredged or Fill Material in Important Habitats.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]
Policy applies in coastal water within a designated important habitat. These are designated in Chapter V Section C 11.0 and shown in Volume 2, Map Figures H-H6 and I-I3.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Important habitats are demonstrated as sensitive to development in Chapter IV Sections 2.1 and 2.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]
OHMP regulates activities that would affect anadromous fish streams under AS 41.14.870 and uncatalogued fish streams under 41.14.840. ADF&G regulates activities that occur within "Critical Habitat Areas." The Statewide Standard for important habitat applies to important habitat designated under 11 AAC 114.250(h). An area that is designated as important habitat must be managed for the special productivity of the habitat in accordance with enforceable policies that are developed to determine whether a specific land or water use or activity will be allowed. Enforceable policies related to this designation provide specific measures for meeting the management requirements for designated important habitat. Other state and federal laws that deal with the type of habitat or issues addressed in these enforceable policies are broad in scope and general in their application.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 11.0, local usage and experience have shown that construction or resource extraction activities in marine or estuarine waters could impact fish and wildlife resources by altering water quality or circulation patterns, or by altering migration routes. Development in anadromous rivers or streams has the potential to impact fish by increasing water velocity, introducing sediment or other pollutants, or obstructing free migration and passage. The protection of water quality and maintenance of minimum low water flows are important for fish and wildlife.

1.5. Ports and Harbors.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies in coastal waters within the district's coastal zone boundary.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Coastal waters are demonstrated as sensitive to development in Chapter IV Section 2.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 1.0, the Statewide Standard for coastal development directs coastal districts to prioritize uses and activities in the coastal area based on whether the uses are water-dependent, water-related, or neither water-dependent nor water-related but without an inland alternative. These terms are broad in scope. An enforceable policy that defines which uses or activities in the district fall into each of the three categories makes the broad standard more specific.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 1.0, local usage and experience have shown that certain parcels in coastal areas have unique locations or characteristics that make them valuable for water-dependent uses such as fish processing, boat storage and repair facilities, marine pipeline terminals, ports or barge land facilities, or recreation areas. Recognition of the value of these areas, public policy to support transportation and infrastructure, permitting, and management of public lands can influence development of these areas.

2.1. Floodway and Floodplain Development.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated floodways within the district's coastal zone boundary. These are depicted in Volume 2 Map Figures F1-F10.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Floodways and floodplains are demonstrated as sensitive to development in Chapter IV Section 2.3.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 2.0, in 1981, the U. S. Army Corps of Engineers prepared flood hazard maps for most of the major drainages in the borough to identify areas subject to flooding. Federal laws that deal with development activities in floodplains and other hazard areas are broad in scope and general in their application.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 2.0, a number of areas within the borough are subject to flood hazards from heavy precipitation, snow melt, ice jamming, glacier outbursts or tsunamis. Local usage and experience have shown that public awareness of flood hazards, appropriate construction techniques and management of public land in these areas can help minimize future flood damage.

2.2. Erosion.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated erosion-prone areas within the district's coastal zone boundary. Designated areas subject to the policy are shown on Volume 2, Map Figures F1-F10, G1-G-6.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Designated erosion-prone areas are demonstrated as sensitive to development in Chapter IV Section 2.4.2.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 2.0, the Statewide Standard for natural hazards provides general appropriate measures for the siting and operation of activities within designated areas. In addition, 11 AAC 114.270(g) allows districts to adopt enforceable policies that will be used to determine whether a use or activity will be allowed within a designated areas. Enforceable policies related to this standard provide specific measures to help minimize impacts within designated areas and to ensure that local issues are addressed. Policies also identify specific disallowed uses within designated areas and the criteria that will be used to determine whether a use will be allowed.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 2.0, local usage and experience have shown that bluffs along the coastline and major rivers in the borough have experienced past problems with erosion and landslides. Development activities, changes in drainage patterns and removal of vegetation can accelerate erosion and increase landslide hazards.

2.3. Landslides, Mass Wasting, and Avalanche Hazards.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated natural hazard areas within the district's coastal zone boundary. Designated areas subject to the policy are shown on Volume 2, Map Figures G1-G-6.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Terrestrial habitats are demonstrated as sensitive to development in Chapter IV Section 2.4.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 2.0, the Statewide Standard for natural hazards provides general appropriate measures for the siting and operation of activities within designated areas. In addition, 11 AAC 114.270(g) allows districts to adopt enforceable policies that will be used to determine whether a use or activity will be allowed within a designated areas. Enforceable policies related to this standard provide specific measures to help minimize impacts within designated areas and to ensure that local issues are addressed. Policies also identify specific disallowed uses within designated areas and the

criteria that will be used to determine whether a use will be allowed. Federal laws that deal with development activities in hazard areas are broad in scope and general in their application.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 2.0, local usage and experience have shown that bluffs along the coastline and major rivers in the borough experience problems with landslides. Snow avalanches occur on steep slopes surrounding Resurrection Bay and Kachemak Bay in areas receiving heavy snowfall. Development activities, changes in drainage patterns and removal of vegetation can accelerate erosion and increase landslide hazards.

3.1. Priority Use.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to lakeshores and riverfronts within the district's coastal zone boundary. The district's entire coastal zone is a designated recreation and tourism area, as shown on Volume 2, Map Figure A.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Lakeshores and riverfronts are demonstrated as sensitive to development in Chapter IV Sections 2.3.5, 2.4.1, 2.4.2, and 2.5.2.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 1.0, the Statewide Standard for coastal development directs coastal districts to prioritize uses and activities in the coastal area based on whether the uses are water-dependent, water-related, or neither water-dependent nor water-related but without an inland alternative. These terms are broad in scope. An enforceable policy that defines which uses or activities in the district fall into each of the three categories makes the broad standard more specific.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 3.0, local usage and experience have shown that public land and water used for recreational purposes sometimes contains other resources or the potential for development that may not be compatible with recreational use. The continued health and expansion of the tourism industry depends on the availability and maintenance of recreation facilities and public access points to rivers and beaches.

3.2. Activities in recreational waters.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to recreational waters within the district's coastal zone boundary. The district's entire coastal zone is a designated recreation and tourism area, as shown on Volume 2, Map Figure A.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

As discussed in Chapter IV Section 2.3.6, recreationists and tourists using designated recreational waters are sensitive to other uses that can create hazardous conditions such as obstructions to navigation.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 1.0, Section 10 of the Rivers and Harbors Act falls short of adequately addressing issues of local concern that are unique to the Kenai Peninsula Borough.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 3.0, local usage and experience have shown that public land and water used for recreational purposes sometimes contains other resources or the potential for development that may not be compatible with recreational use. The continued health and expansion of the tourism industry depends on the availability and maintenance of recreation facilities and public access points to rivers and beaches.

3.3. Public access.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to coastal water bodies, lakeshores and riverfronts within designated recreational use areas within the district's coastal zone boundary. The district's entire coastal zone is a designated recreation and tourism area, as shown on Volume 2, Map Figure A.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Access to coastal water bodies, lakeshores and riverfronts by tourists and recreationists are demonstrated as sensitive to development in Chapter IV Section B 1.8. See also Chapter IV Section B 1.10.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 3.0, the statewide coastal access standard is a very broad standard. The enforceable policies related to this standard provide more specific direction for providing appropriate public access to, from, and along coastal water. The state and federal laws that deal specifically with providing public access are limited to lands within the jurisdiction of that agency and conditioned depending on the action being taken by that agency. While it is true that access routes to coastal water bodies are regulated by Section 10 of the Rivers and Harbors Act, the federal law falls short of addressing issues of local concern that are unique to the Kenai Peninsula Borough. State and federal laws do not require access management plans or do they address the negative impacts that may result from public access are a necessary component of public access management.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 3, in order to have enforceable policies related to recreation and tourism, a district must designate an area for that use. For a designated recreation and tourism area, the "matter of local concern" test does not apply unless a proposed enforceable policy addresses a matter regulated or authorized by some other state or federal law not enumerated in the statewide standards. State and federal laws that deal with recreation and tourism are either broad in scope and general in application or, limited to state or federally managed lands. District enforceable policies enacted for a designated area provide specific management measures for addressing uses or activities within the area regardless of ownership.

3.4. Capital improvements.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to publicly owned coastal waterfront, lakefront and riverfront property within the district's coastal zone boundary. The district's entire coastal zone is a designated recreation and tourism area, as shown on Volume 2, Map Figure A.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Recreational use of coastal waterfront, lakefront and riverfront is demonstrated as sensitive to development in Chapter IV Section 1.8.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]
See discussion for Policy 3.3.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]
See discussion for Policy 3.3.

3.5. Recreational features.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated recreational areas within the district's coastal zone boundary. The district's entire coastal zone is a designated recreation and tourism area, as shown on Volume 2, Map Figure A.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Recreational areas are demonstrated as sensitive to development in Chapter IV Section 1.8.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]
See discussion for Policy 3.3.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]
See discussion for Policy 3.3.

3.6. Ports, Harbors and Docks in Rivers.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to ports, harbors and docks in rivers within the district's coastal zone boundary. The district's entire coastal zone is a designated recreation and tourism area, as shown on Volume 2, Map Figure A.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Rivers are demonstrated as sensitive to development in Chapter IV Section 2.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 1.0, the Statewide Standard for coastal development directs coastal districts to prioritize uses and activities in the coastal area based on whether the uses are water-dependent, water-related, or neither water-dependent nor water-related but without an inland alternative. These terms are broad in scope. An enforceable policy that defines which uses or activities in the district fall into each of the three categories makes the broad standard more specific.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 3.0, local usage and experience have shown that public land and water used for recreational purposes sometimes contains other resources or the potential for development that may not be compatible with recreational use.

4.1. Geophysical Surveys.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated important habitats and subsistence harvest areas within the district's coastal zone boundary. Important habitats are shown on Volume 2 Map Figures H-H6, I-13, J1-J12. Subsistence harvest areas are shown on Volume 2 Map Figures O-O3.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Important habitats and subsistence harvest areas are demonstrated as sensitive to development in Chapter IV Sections 2.1-2.6. See especially Sections 2.1.2 Blasting, 2.1.3 Seismic Testing and 2.2.2 Noise.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 4.0, while it is true that geophysical surveys are regulated by DNR on State and inter-tidal lands as well as other agencies on federal land, these state and federal controls fall short of addressing issues of local concern that are unique to the Kenai Peninsula Borough.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 4.0, local usage and experience have shown that potential fish and wildlife impacts from energy exploration and development include increased noise, pressure changes from geophysical testing or explosions, alteration of habitats used for migration, or feeding, cover, or reproduction, as well as water quality impacts. Scientific evidence has verified that blasting can injure or kill fish (see Chapter IV, Section 2.1.2) and that noise generated by geophysical exploration has been recorded up to 40 kilometers from its source (see Chapter IV, Section 2.2.2).

6.1. Suitable Areas.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to use areas designated for commercial fishing and seafood processing facilities within the district's coastal zone boundary. These are depicted on Volume 2, Map Figures N1-N8.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Use areas designated for commercial fishing and seafood processing facilities are demonstrated as sensitive to development in Chapter IV Section 2.12.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 6.0, in order to have enforceable policies related to commercial fishing and seafood processing facilities, a district must designate areas or the coast suitable for the location or development of such facilities. For a designated area, the "matter of local concern" test does not apply unless a proposed enforceable policy addresses a matter regulated or authorized by some other state or federal law not enumerated in the statewide standards. State and federal laws that deal with siting of commercial fishing and seafood processing facilities are broad in scope and general in application; district enforceable policies enacted for a designated area provide specific management measures for addressing uses or activities within the area.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 6.0, local usage and experience have shown that the fishing and seafood processing industries generally require a coastal or riverside location for efficient acquisition of fish, access to fishing vessels, gear storage and staging areas. They also need anchorage or moorage space for fishing vessels, floating processors and fish buyers. activities by other industries or development interests, which could be detrimental to the fishing and seafood processing industries, include development that results in loss of fish or shellfish habitat; water quality degradation; restriction of fish passage, migration, and feeding areas; obstructions to navigation or gear passage; or explosions or physical disturbance of fish during fishing periods or critical life-cycle stages.

6.2. Water-dependent Uses.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to use areas designated for commercial fishing and seafood processing facilities within the district's coastal zone boundary. These are depicted on Volume 2, Map Figures N1-N8.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Use areas designated for commercial fishing and seafood processing facilities are demonstrated as sensitive to development in Chapter IV Section 2.12.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 6.0, in order to have enforceable policies related to commercial fishing and seafood processing facilities, a district must designate areas or the coast suitable for the location or development of such facilities. For a designated area, the "matter of local concern" test does not apply unless a proposed enforceable policy addresses a matter regulated or authorized by some other state or federal law not enumerated in the statewide standards. State and federal laws that deal with siting of commercial fishing and seafood processing facilities are broad in scope and general in application; district enforceable policies enacted for a designated area provide specific management measures for addressing uses or activities within the area.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter III Section 2.2 and Chapter V Sections C 6.0 and D 3.7, expansion of the fishing industry is important to this district's economy. Seafood processing facilities add value to the district's fishing industry. Local usage and experience have shown that areas in and adjacent to coastal waters should be reserved for developments such as seafood processing facilities that are water-dependent.

9.1. Sand and Gravel Priority Areas.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies throughout the coastal resource district.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Areas that are potential sources of sand and gravel and that also function as fish habitat are demonstrated as sensitive to development in Chapter IV Sections C 2.1 and 2.3 and Section D 3.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 9.0, coastal sand and gravel removal is regulated under a DNR/DMLW material sale permit, COE 404B1 permit, and ACMP review under the Habitats standard. A Title 41 permit would be required for placing fill in fish bearing waters and a COE permit in all waters of the United States, including wetlands. OHMP regulates activities that would affect anadromous fish streams under AS 41.14.870 and uncatalogued fish streams under 41.14.840.

The Statewide Standard for sand and gravel extraction is very broad. Enforceable policies related to this standard provide specificity for extraction activities. Other state or federal laws that deal with permitting of sand and gravel extraction are broad in scope and limited in application depending on the landownership patterns.

The Department of Natural Resources, Division of Mining Land and Water was specifically consulted during the development of these policies. While the DNR or a federal agency may have the authority to place conditions on sand and gravel extraction activities that would be similar to the Kenai enforceable policies, the laws do not require that specific outcome. Thus the policies address issues of local concern that are unique to the Kenai Peninsula Borough and also provide a more predictable outcome for the project proponent regardless of land ownership.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter III Sections C 2.2 and 2.4 and Section D, fish-bearing streams have economic value because they support tourism and commercial fishing, two important sectors of the district's economy. Local usage and experience have shown that the economic benefits to be gained from maintaining healthy fisheries are great. Sand and gravel mining in fish-bearing streams can damage the area's long-term economic potential as a fishery, as discussed in Chapter IV Section B 1.3 and Section C 2.3.

9.2. Extraction of Sand and Gravel from Rivers and Streams.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to rivers or streams within the district's coastal zone boundary.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Rivers and streams are demonstrated as sensitive to the impacts of sand and gravel mining in Chapter IV Sections B 1.3.4 and 1.3.5; C 2.1, 2.3 and 2.5.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 9.0, Coastal sand and gravel removal is regulated under a DNR/DMLW material sale permit, COE 404B1 permit, and ACMP review under the Habitats standard. A Title 41 permit would be required for placing fill in fish bearing waters and a COE permit in all waters of the United States, including wetlands. OHMP regulates activities that would affect anadromous fish streams under AS 41.14.870 and uncatalogued fish streams under 41.14.840.

The Statewide Standard for sand and gravel extraction is very broad. Enforceable policies related to this standard provide specificity for extraction activities. Other state or federal laws that deal with permitting of sand and gravel extraction are broad in scope and limited in application depending on the landownership patterns.

The Department of Natural Resources, Division of Mining Land and Water was specifically consulted during the development of these policies. While the DNR or a federal agency may have the authority to place conditions on sand and gravel extraction activities that would be similar to the Kenai enforceable policies, the laws do not require that specific outcome. Thus the policies address issues of local concern

that are unique to the Kenai Peninsula Borough and also provide a more predictable outcome for the project proponent regardless of land ownership.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter V Section C 9.0, local usage and experience have shown that extraction of sand and gravel from rivers and coastal areas can cause erosion and degrade fish habitat and water quality in some areas. Potential environmental and sociocultural impacts from sand and gravel extraction include impacts to fish and wildlife from stream crossing or diversion, habitat alteration, increased noise and activity; water quality impacts from erosion or runoff, activities in streams or water bodies, use of chemicals and petroleum products, and effluent discharge to water bodies; air quality impacts from dust associated with transport and processing; and impacts to human uses of sand and gravel extraction areas, including restriction of public access, increased noise levels, degradation of local scenic qualities.

9.3. Overburden Disposal.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies throughout the district's coastal zone boundary.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Rivers and streams are demonstrated as sensitive to the impacts of sand and gravel mining in Chapter IV Sections B 1.3.4 and 1.3.5; C 2.1, 2.3 and 2.5. Upland areas are demonstrated as sensitive to certain impacts in Chapter IV Section C 2.4.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

See discussion for Policy 9.2.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

See discussion for Policy 9.2.

9.4. Reclamation and Restoration.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies throughout the district's coastal zone boundary.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

The floodplains of rivers and streams are demonstrated as sensitive to the impacts of sand and gravel mining in Chapter IV Sections B 1.3.4 and 1.3.5; C 2.1, 2.3 and 2.5. Upland areas are demonstrated as sensitive to certain impacts in Chapter IV Section C 2.4.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

See discussion for Policy 9.2.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

The district has been subject to catastrophic floods along the Kenai River and maintains a keen interest in promoting development that does not add to the flood risk and associated disaster and recovery costs. See Chapter III Section 1.8 "Flooding" and Chapter IV Section C 2.3.

9.5. Access to Minerals.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies throughout the district's coastal zone boundary.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Areas with suitable sand and gravel resources are demonstrated as sensitive to other types of development in Chapter IV Section B 1.3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

See discussion in Policy 9.2.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter IV Section B 1.3, local usage and experience have shown that deposits of accessible gravel and rock may become important resources for the construction and development of projects such as roads, building site pads, processing facilities, ports, causeways, breakwaters, jetties, and possibly gravel islands in shallow offshore waters.

11.1. Priority Use.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated important habitats within the district's coastal zone boundary. Important Habitats are depicted on Volume 2, Map Figures H-H6 and I-I3. In addition, habitat resources for presence, spawning, and rearing both within and outside the designated areas are depicted on Volume 2, Map Figures J1-J12.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Designated important habitats are demonstrated as sensitive to development in Chapter IV Section C 2.1 through 2.4.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter IV Section C 11.0, OHMP regulates activities that would affect anadromous fish streams under AS 41.14.870 and uncatalogued fish streams under 41.14.840. ADF&G regulates activities that occur within their "Critical Habitat Areas."

The Statewide Standard for important habitat applies to important habitat designated under 11 AAC 114.250(h). An area that is designated as important habitat must be managed for the special productivity of the habitat in accordance with enforceable policies that are developed to determine whether a specific land or water use or activity will be allowed. Enforceable policies related to this designation provide specific measures for meeting the management requirements for designated important habitat. Other state and federal laws that deal with the type of habitat or issues addressed in these enforceable policies are broad in scope and general in their application.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter III Sections C 2.2 through 2.4 and Section D, use of the fish and wildlife species that depend on important habitats benefits the economy of the district, because these species have value for commercial fishing, recreation and tourism.

11.2. Use of Explosives.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated important habitats, recreation and tourism use areas and subsistence harvest areas within the district's coastal zone boundary. Important Habitats are depicted on Volume 2, Map Figures H-H6 and I-I3. In addition, habitat resources for presence, spawning, and rearing both within and outside the designated areas are depicted on Volume 2, Map Figures J1-J12. The district's entire coastal zone is a designated recreation and tourism area, as shown on Volume 2, Map Figure A. Public land and waters surrounding the communities of Nanwalek, Port Graham, Seldovia, and Tyonek are designated subsistence use areas. See Volume 2, Map Figures O-O3.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Designated important habitats, recreation and tourism use areas and subsistence harvest areas are demonstrated as sensitive to development in Chapter IV Section B 1.8, and Sections C 2.1 through 2.4.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter IV Section C 11.0, OHMP regulates activities that would affect anadromous fish streams under AS 41.14.870 and uncatalogued fish streams under 41.14.840. ADF&G regulates activities that occur within their "Critical Habitat Areas."

The Statewide Standard for important habitat applies to important habitat designated under 11 AAC 114.250(h). An area that is designated as important habitat must be managed for the special productivity of the habitat in accordance with enforceable policies that are developed to determine whether a specific land or water use or activity will be allowed. Enforceable policies related to this designation provide specific measures for meeting the management requirements for designated important habitat. Other state and federal laws that deal with the type of habitat or issues addressed in these enforceable policies are broad in scope and general in their application.

Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]

As discussed in Chapter IV Sections C 2.1 and 2.2, detonation of explosives within, beneath, or adjacent to marine, estuarine, or fresh waters that support fish and wildlife during periods when fish or marine mammals are present is of unique concern to the district because local experience and usage have shown that the fish and wildlife species that depend on important habitats benefit the economy of the district. These species have value for commercial fishing, subsistence, recreation and tourism.

AMSA POLICY JUSTIFICATIONS

2.1. Erosion.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated erosion-prone areas within the AMSA.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Designated erosion-prone areas are demonstrated as sensitive to development in Chapter IV Section 2.4.2.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter V Section C 2.0, the Statewide Standard for natural hazards provides general appropriate measures for the siting and operation of activities within designated areas. In addition, 11 AAC 114.270(g) allows districts to adopt enforceable policies that will be used to determine whether a use or activity will be allowed within a designated areas. Enforceable policies related to this standard provide specific measures to help minimize impacts within designated areas and to ensure that local issues are addressed. Policies also identify specific disallowed uses within designated areas and the criteria that will be used to determine whether a use will be allowed.

2.2. Stabilization.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated erosion-prone areas within the AMSA.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Designated erosion-prone areas are demonstrated as sensitive to development in Chapter IV Section 2.4.2.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

See discussion for AMSA Policy 2.1.

10.1. Timing of Activities.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated subsistence use areas within the AMSA. Public land and waters within the boundaries of the Port Graham/Nanwalek AMSA as shown in Volume 2, Map Figures O1-O2 are designated subsistence use areas and include:

- Nanwalek Waterfront;
- English Bay Lakes, River, and Lagoon;
- Koyuktolik Bay, Lagoon, and its tributary streams;
- Flat Island;
- Port Graham Waterfront;
- Selenie Lagoon;
- Port Graham River;
- Passage Island;
- Point Bede;
- Russian Point;
- Port Chatham and Portlock; and
- Chugach, Rocky, and Windy Bays.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]
Designated subsistence harvest areas are demonstrated as sensitive to development in Chapter VII Sections D 2 and 3.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter VII Section A, there are state and federal laws and statewide standards that address subsistence use; however, most are broad in scope and general in application. In all cases, more specificity is needed to determine whether a specific land or water use or activity will be allowed within the AMSA and designated areas and to provide the management measures necessary to preserve, protect, enhance and restore the areas' subsistence values (as permitted by 11 AAC 114.270(g) and required by 11 AAC 114.420(d)).

10.2. Buffer.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

See discussion for Policy 10.1.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

See discussion for Policy 10.1.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

See discussion for Policy 10.1.

11.1. Habitat Buffer.

JUSTIFICATION:

Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]

Policy applies to designated important habitat within the AMSA. Within the boundaries of the Port Graham/Nanwalek AMSA, the following waterbodies and adjacent riparian areas measured as 200' from Ordinary High Water and as shown in Volume 2, Map Figures I1-I3 are designated important habitat:

- English Bay Lakes and River;
- Koyuktolik Bay tributary streams; and
- Port Graham River.

Demonstrated as sensitive to development in the resource analysis [11 AAC 114.270(h)(1)(B)]

Designated important habitats have economic and subsistence value to residents of the district and are demonstrated as sensitive to development in Chapter IV Section C 2.1 through 2.4 and Chapter VII Section D.

Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]

As discussed in Chapter VII Section A, there are state and federal laws and statewide standards that address development in designated important habitat; however, most are broad in scope and general in application. In all cases, more specificity is needed to determine whether a specific land or water use or activity will be allowed within the AMSA and designated areas and to provide the management measures necessary to preserve, protect, enhance and restore the areas' subsistence values (as permitted by 11 AAC 114.270(g) and required by 11 AAC 114.420(d)).