

Representatives Bryce Edgmon, Paul Seaton and Senator Donny Olson
Alaska State Legislature
Juneau, Alaska

Dear Representatives Edgmon, Seaton and Senator Olson,

Per your request, I am forwarding comments regarding the upcoming sunset date of the ACMP and suggestions for changes to the program.

I cannot speak from a historical perspective, having only been the program director since September, 2010, but I have gleaned much from my board members, area residents, conferences and the legislative audit that was recently released. My suggestion would be to consider a one-year extension of the ACMP sunset date which would then afford the legislature an opportunity to review and consider changes to how the ACMP is currently overseen.

BBCRSA gives local "voice" to the state when projects are developed, a voice that is mindful of both protection of natural resources, as well as responsible development. Giving sole power over ACMP to Division of Natural Resources (DNR) is not in the best interest of developing and maintaining that voice when enforceable policies that protect and develop our region are not within our jurisdiction. Consideration of moving the program back to the Governor's office, to ADF&G, or DEC would be appropriate. A recent press release from President Obama (on 2/14/11) wherein he details the re-organization of BOEMRE, and states that CIAP (Coastal Impact Assistance Program) will be moved from under BOEMRE to Fish & Wildlife is a good example of recognizing when overview from one agency is not working. It is probable ACMP would work more efficiently, and with better cohesion, if moved to another agency. The Coastal Policy Board was also an effective tool to balance the power of DNR, and thought could be given to re-establishing this board to assist in approving coastal district plans and changes to regulation.

One of the issues BBCRSA dealt with under the reorganization in 2003, and the move to DNR, was the requirement that we revise our coastal plan and only address additional policies if they were not already "adequately addressed by state law." Some of our revisions were denied on the basis of already being "adequately addressed by state law" and the BBCRSA appealed. Our appeal was denied so we were forced to accept that decision or be dissolved. This type of decision-making defeats the purpose of ostensibly allowing us a voice.

The BBCRSA has been in existence since 1982, and includes board members who have been here since inception. It is on behalf of the BBCRSA board of directors and residents that we suggest a one-year extension of the ACMP sunset date. During the one-year extension, please develop a team of various users/contributors to determine the best way for our state to oversee ACMP. We would be pleased to forward the name of someone from our region who would be an objective, competent team member.

We wish you a productive session and are available to answer any questions you might have regarding our suggestions.

Thank you for your time and attention to this matter.

Sincerely,

Celeste Novak

Celeste Novak, Program Director
Bristol Bay Coastal Resource Service Area
PO Box 849
Dillingham, AK 99576
907.842.2666

Bristol Bay Coastal Resource Service Area

Resolution #2011-01

A resolution of the Board of Directors of the Bristol Bay Resource Service Area in support of legislation that will continue the Alaska Coastal Management Program (ACMP) without further sunset provisions and restore local participation to allow meaningful and effective coastal community participation.

WHEREAS, the Bristol Bay Coastal Resource Service Area has participated in the Alaska Coastal Management Program (ACMP) since 1982; and

WHEREAS, the ACMP provided the Bristol Bay region the ability to develop enforceable policies that address local circumstances and concerns; and

WHEREAS, HB 191 in 2003 revised all ACMP coastal management plans, including removal of air and water quality policies from local reviews and greatly diminishing the "local voice" that was originally intended; and

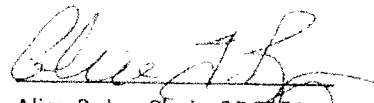
WHEREAS, the ACMP as currently written minimizes the effectiveness of allowing regional economic development and resource protection efforts and input; and

WHEREAS, if the program were to be eliminated the loss of local voice would be significant to the economy and residents of the region and have a detrimental effect on the economy; and


WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program or removes the termination language from existing legislation.

NOW, THEREFORE BE IT RESOLVED that the Bristol Bay Coastal Resource Service Area Board of Directors supports legislation to extend the ACMP without a future termination date, eliminate the DEC carve-out of 2003, bring back water and air quality issues on the local level to the review process, allowing more meaningful enforceable policies and appropriate local voice in the permitting process and re-establishes a coastal policy board.

PASSED AND APPROVED by the Bristol Bay Coastal Resource Service Area Board of Directors, on this second day of March, 2011.


Alice Ruby, Chair, BBCKSA

ATTEST:


Susan Flensburg, Secretary/Treasurer



CITY OF CORDOVA

Planning Department

City of Cordova
602 Railroad Ave.
P.O. Box 1210
Cordova, Alaska 99574
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Web: www.cityofcordova.net

Louie Flora
House Resources Committee Aide,
Representative Paul Seaton
Co-Chair House Resources Committee

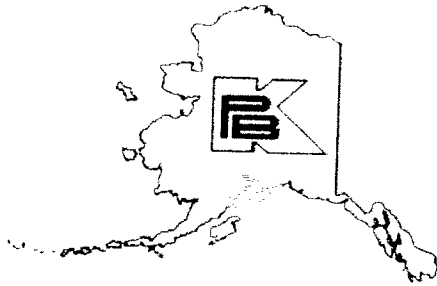
To Whom It May Concern:

In response to your letter asking for input on how enforceable policies or regulations would be beneficial to the coastal communities. I appreciate the effort and time the committee has put forth to ask for our input and feel this is a great way to open communication lines.

I haven't been in this position (city planner) for very long (5 months) and have very little experience with the program. I am still trying to learn the program and understand my role as the coordinator. I do not feel like I have the experience or knowledge to address how the program could be improved or changed. I hope you can understand my position and if in the future, when I am more experienced I would be more than willing to provide input.

Thank you for your time,

Samantha Greenwood
Cordova City Planner



KENAI PENINSULA BOROUGH

Coastal Zone Management Program

514 Funny River Road • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2216 • **FAX:** (907) 260-5992

www.kenairivercenter.org

**DAVE CAREY
BOROUGH MAYOR**

February 3, 2011

Ms. Katie Koester, Legislative Aide
Office of Rep. Paul Seaton
State Capitol, Room 102
Juneau, Alaska 99801

Subject: Reauthorization of the ACMP

Dear Ms. Koester:

Thanks for your interest in the perspective of the Kenai Peninsula Borough Coastal Zone Management Program on ways to make the ACMP more meaningful with new legislation. Hopefully, with Representative Seaton's assistance, the legislature will reauthorize the ACMP and include many revisions that will enhance the value of the program.

My suggestions are as follows:

Statewide Standards of the ACMP

Current regulations severely limit the ability of coastal districts to obtain enforceable policy approval from the Department of Natural Resources because the statewide standards have narrowed or eliminated the purview of coastal districts regarding certain coastal uses and resources.

Habitat Standards. The habitat standard at 11 AAC 112.300 limits the scope of enforceable policy in habitats to "coastal waters"(waters with measurable amounts of salinity). That restriction eliminates the opportunity for districts to take a watershed approach in the evaluation of ecosystem impacts and is inconsistent with the objectives of AS 46.40.020 and in particular subsection (8) which calls for the "full evaluation of all demands on the land and water in the coastal area". The habitat standard should be amended to include all impacts, direct and cumulative, to habitat within the coastal district including fresh water wetlands.

Air and Water Quality Standards. The air and water quality standard at 11 AAC 112.310 removes the ability of districts to comments on these important ecosystem issues. Air and water quality matters overlap virtually all issues in coastal districts and, as we have learned from more developed areas, are essential to ecosystem health. The intent is not to duplicate or assume the authority of DEC in the regulation of air and water quality standards but simply to have the

ability to write enforceable policies that are not duplicative of state law but allow for local government perspectives in the review process.

Designated Areas Current state standards require scientific analysis and extensive mapping to meet the criteria for obtaining a designation and to write enforceable policies. This standard places a significant financial burden on a district to conduct studies that provide meaningful results. Districts should be able to designate areas containing important resources and write enforceable policies based substantial anecdotal information or in light of information found subsequent to district plan adoption. We support the ability of state and local agencies to designate hazards during public review in 11 AAC 112.210, Natural Hazards, and in 11 AAC 114.250, Subject Uses and Designations. The reference to designations should be removed in 11 AAC 112.270, Subsistence, 11 AAC 112.300, Habitat, and 11 AC 112.320, Historic Areas.

Sequencing Process to Avoid, Minimize, or Mitigate. Under 11 AAC 12.900, the requirement to avoid the impact of activities on important habitat follows, in sequence, “avoid, minimize, or mitigate”. This sequence relies on the definition of “practicable” as the means of assessing whether an applicant has avoided or minimized impacts. The term “practicable” is defined in statute as the project’s feasibility considering cost, existing technology and logistical matters. The definition of “practicable” should be changed to reflect what is “feasible and prudent” in the protection of the environment from significant adverse impacts. With regard to mitigation, statutes and regulations should provide for compensatory mitigation when avoidance and minimization are not feasible and prudent.

Enforceable Policy Development

In keeping with the protection of the environment of coastal areas as called out in AS 46.40.20, there are several changes that should be affected in statutes.

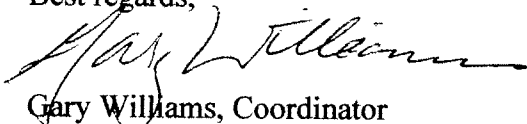
- 1) AS 46.40.070(a)(2)(c)(ii), allows coastal districts to write enforceable policies unless the matter is “adequately addressed” in state or federal law. The definition of “adequately addressed” in our experience is what DNR says it is not whether the state or federal agencies actually administers a particular law. This provision should be removed.
- 2) AS 46.40.070(a)(2)(c)(ii), has resulted in many district policies having been disallowed because the policy did not “flow from” specific state or federal law. The concept of “flow from” should be removed from the enforceable policy evaluation or provide that unless a specific state or federal law addresses the matter in a way the local policy does not, then the local policy should be allowed.
- 3) AS 46.40.070(a)(2)(c)(iii), requires a coastal district to find that a specific coastal use is of “unique concern” and to demonstrate that uniqueness by local usage or scientific evidence. This level of documentation is burdensome in areas where little scientific evidence has been accumulated in sensitive habitats and local usage may be sparse. The term “unique concern” is highly interpretable and should be removed from the statute.
- 4) Cumulative Impacts: Current Alaska Statutes and Administrative Code do not allow for consideration of activities that occur outside the boundaries of “coastal resources”. The effect is that, for example, an activity in an upland area that could damage a nearby

wetland (a "coastal resource") may not be considered in a district consistency review. Cumulative impacts must be considered in any rational resource management plan.

Relocation of the ACMP. While it is arguable that with statutory and regulatory guidance a program can be effective under a variety of umbrella agencies, our experience with the ACMP under the Department of Natural Resources has been unfavorable compared with our experience when the ACMP was in the Governor's Office and had the guidance of the Coastal Policy Council. From my perspective the significant changes in the ACMP and its relocation to DNR have combined to reduce the effectiveness of the Program both in fact and in public perception. The KPB Coastal Zone Management Program suggests that moving the ACMP to a permit-neutral, community advocacy agency would signal that the ACMP is seeking to regain its proper and appropriate role in Alaska coastal management. The best alternative agency would be the Division of Community and Regional Affairs.

I sincerely appreciate your efforts to coordinate a meaningful restructure of the ACMP.

Best regards,



Gary Williams, Coordinator
Kenai Peninsula Borough
Coastal Zone Management Program

Copy: David Carey, Kenai Peninsula Borough Mayor

KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 2287

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH IN SUPPORT OF CONTINUING THE ALASKA COASTAL MANAGEMENT PROGRAM AFTER JUNE 2011; AND ESTABLISHING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the Ketchikan Gateway Borough initiated its Coastal Management Program (CMP) in 1978 and approved its first CMP in 1984; an update of the plan was approved by the Assembly in 2007; and

WHEREAS, the ACMP provides Ketchikan the ability to develop enforceable policies that address local circumstances and concerns; and

WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program or removes the termination language from existing legislation; and

WHEREAS, the ACMP as written facilitates both economic development and personal property development efforts; and

WHEREAS, if the program were to be eliminated the quantitative losses could be significant and the services provided to the local businesses and residents would have a detrimental effect on the economy.

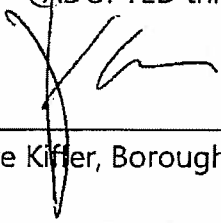
NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH as follows:

Section 1. The Ketchikan Gateway Borough supports reauthorization of the existing ACMP so it continues indefinitely beyond June 30, 2011.

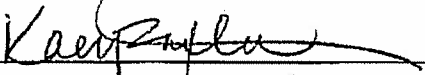
Section 2. The Borough Clerk shall provide a copy of this resolution to Senator Bert Stedman and Representative Kyle Johansen.

Section 3. This resolution is effective immediately upon adoption.

ADOPTED this 3rd day of January, 2011.



Dave Kiffer, Borough Mayor



Kacie Paxton, Borough Clerk

APPROVED AS TO FORM:



Scott A. Brandt-Erichsen, Borough Attorney

EFFECTIVE DATE: JANUARY 3, 2011			
ROLL CALL	YES	NO	ABSENT
Harrington	✓		
Moran	✓		
Rotecki	✓		
Phillips	✓		
Salazar	✓		
Shoemaker	✓		
Bailey	✓		
Mayor (tie votes only)			
4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE			



Kodiak Island Borough

Office of the Borough Mayor

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

March 4, 2011

Representative Alan Austerman
State of Alaska
State Capitol Room 204
Juneau AK, 99801

RE: Impact of Alaska Coastal Management Program on Kodiak

Dear Representative Austerman:

In response to your letter regarding potential changes to the Alaska Coastal Management Program (ACMP), the Kodiak Island Borough presents the following replies to your questions:

1. Have community conversations arisen on the impacts that the Murkowski changes to the ACMP have had or are having on coastal communities?

There have been no recent conversations. We have been fortunate that there have been no large federal or state projects (such as oil and gas exploration or a pebble mine type project), or smaller projects with far reaching impacts that are occurring around Kodiak Island. In the past there has been discussion on concentrating projects close to villages that have infrastructure (airports, roads and utilities) versus having projects spread out all along what is currently undeveloped coastline.

2. Did Kodiak have local 'enforceable policies' that were impacted during the 2003 ACMP changes? Were ordinances or zoning codes implemented because of the changes?

The Kodiak Island Borough has reviewed smaller projects with the local enforceable policies that were granted to us, but they lack any real substance. The policies important to citizens of Kodiak (subsistence, commercial and sport fishing, clean air and clean water (i.e. the environment)) are reserved to the state agencies that under the current program do not consult or coordinate with local government.

No ordinances or zoning codes changes were implemented because of the Murkowski era changes; however, the Borough's Coastal Management Plan was rewritten to be consistent with the philosophical change of state government.

3. How would the City and Borough like to see this program addressed?

In the Borough's most recent Strategic Plan, we identify the need to have the current ACMP changed. The Strategic Plan language (Planning and Zoning Goals and Objectives – Community Development – Provision 5(b)) calls out the need to “allow for the addition of meaningful enforceable policies *that reflect local concerns and which allow borough residents a greater opportunity to interact with state and federal agencies* during the coordinated review of projects within the Borough's Coastal zone. Encourage a re-write of this plan to give the Borough *maximum authority possible to govern its own coastal zone and resources...*”

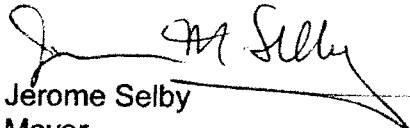
As such, the Borough Assembly approved a resolution at the March 3rd meeting supporting the Alaska Municipal League resolution to amend the current ACMP program. The AML resolution promotes a reestablishment of the “good parts” of the former ACMP program with the (re)formation of a Coastal Policy Council, DEC review of air and water quality issues (ADF&G is already back to being a department), and most important to the Borough, the ability to conduct a local consistency review of projects. This review would recognize local knowledge and local experience and give it great weight during the decision making process. Lastly, any project must be consistent with the Kodiak Island Borough's enforceable policies and other borough plans.

We are in favor of a revised ACMP that gives a voice to Borough citizens for projects that could occur on or along our coasts (the KIB zoning code provides for a regulatory framework for shore side improvements, but its authority does not extend beyond the shore). The ACMP provides for that “beyond the shoreline” participation with agencies to create decisions that include local knowledge and local experience. The Kodiak Island Borough desires changes in the program that would provide for maximum local control and the ability to govern our own coastal zone and resources.

The opportunity to provide input on this matter is greatly appreciated. Should you have further questions please feel free to contact me or Bud Cassidy, Community Development Director, whose department coordinates the Kodiak program with the overall state ACMP.

Sincerely,

KODIAK ISLAND BOROUGH


Jerome Selby
Mayor

Introduced by: Borough Manager
Requested by: CDD Director
Drafted by: CDD Director
Introduced on: 03/03/2011
Adopted on: 03/03/2011

**KODIAK ISLAND BOROUGH
RESOLUTION NO. FY 2011-19**

**A RESOLUTION OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
SUPPORTING THE ALASKA MUNICIPAL LEAGUE'S RESOLUTION
TO AMEND THE ALASKA COASTAL MANAGEMENT PROGRAM
AND EXTEND THE PROGRAM SUNSET DATE**

WHEREAS, the Kodiak Island Borough Assembly is the governing body of Kodiak Island; and

WHEREAS, the Assembly desires to promote and strengthen the Borough's continued participation in the Alaska Coastal Management Program (ACMP); and

WHEREAS, the Kodiak Island Borough's Coastal Management Plan has been an important program that promotes a balance between economic development and protection of coastal resources; and

WHEREAS, in recognition that the ACMP gives Alaska's coastal municipalities a powerful tool to promote responsible development while protecting coastal resources and uses, the Alaska Municipal League recently passed a resolution supporting the continuation of the ACMP, reestablishing a coastal policy board, bring back air and water quality issues in the ACMP consistency review process, eliminating requirements for designating subsistence use areas and allowing for meaningful policies; and


WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program; and

WHEREAS, The Borough wishes to join in AML's support of the continued operation and enhancement of the ACMP.

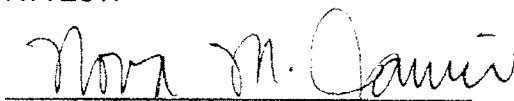
NOW, THEREFORE BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH that it supports legislation that will extend the ACMP, that establishes a coastal policy board, that brings back air and water quality issues into the ACMP consistency review, eliminates requirements for designation of subsistence use areas, and allows for meaningful enforceable policies.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS THIRD DAY OF MARCH, 2011**

KODIAK ISLAND BOROUGH


Jerome M. Selby, Borough Mayor

ATTEST:


Nova M. Javier, MMC, Borough Clerk



CITY OF NOME

Nome Coastal District
102 Division Street ~ P.O. Box 281
Nome, Alaska, 99762
(907)443-6603 ~ (907)443-5435 fax

March 09, 2011

RE: Request for Information, ACMP Reauthorization

Dear Louie Flora and David Scott,

Thank you for the opportunity to provide recommendations for changes to the Alaska Coastal Management Program. The Nome Coastal District has participated in the program since 1983 and recently amended our plan as required in 2004. The following items are submitted for your consideration.

Enforceable Policies

The Legislature authorized changes to the district's enforceable policies in 2004. The regulations that were subsequently written are more stringent than the Legislature approved. The enforceable policies that we are currently working under limits our ability to participate in project reviews.

Designated Areas

The federal coastal management agency the Legislative Audit have both recommended that the designated area requirements be deleted. This requirement results in delays and is almost impossible to get approved through DNR.

DEC Carveout

The DEC Carveout has never been a good idea. Why would air and water quality not be part of the ACMP? There are no coastal uses or resources that do not include impacts to air and water quality. It is not reasonable that districts cannot write air and water quality policies.

Approval Process

It has not worked well having DNR be the sole decision maker. The Department does not need to work with the districts or even other state agencies to reach a consensus on projects. It is not appropriate for the ACMP to be part of DNR whose mission is development of resources. It seems like it would make more sense to have the program in a non-resource department. When the program was administered by DCCED the districts participated more in permit reviews and had a strong community of coastal coordinators. The Coastal Policy Board was fair and less vulnerable to political pressure. When a project is elevated, DNR does not need to reach a consensus with other resource agencies, a statute change is needed to change that provision of the program.

Subsistence State Standard

It is unreasonable that local districts have not been able to write policies regarding subsistence (it is near impossible to get a subsistence policy approved) and that the new state standard only requires that a project avoid or minimize impacts to subsistence. As important as subsistence is in our state it is incredible that our ACMP regulations as currently written take away one of the tools that the ACMP provided. Please consider an amendment that would make it easier for the coastal districts to write enforceable policies regarding subsistence.

Mining

The 2004 revision to the regulations removed mining from the ACMP standard and, while there has not been a carveout of mining activities, the removal of uplands from the Habitat Standard and mining from the Sand and Gravel standard has combined to deny the ability of the Nome Coastal District to write policies that should be included within the state standards and about which policies can be developed.

Thank you again for your work on the ACMP.

Sincerely,

Jim Dory, Nome Coastal Coordinator

North Slope Borough

PLANNING AND COMMUNITY SERVICES DEPARTMENT



P.O. Box 69
Barrow, AK 99723
☎ (907) 852-0320
Fax: (907) 852-5991
Email: Dan.Forster@north-slope.org

Daniel W. Forster, Director

February 25, 2011

Honorable Senator Donny Olson
State Capitol, Room 508
Juneau AK, 99801

Honorable Representative Paul Seaton
State Capitol, Room 102
Juneau AK, 99801

Dear Senator Olson and Representative Seaton:

The North Slope Borough (NSB) appreciates this opportunity to respond to your February 11, 2011 letter requesting input for how the Alaska Coastal Management Program (ACMP) could be amended to provide a stronger, more meaningful program for coastal districts. Certainly our views on this topic are informed by several decades of generally positive experiences working with the ACMP prior to the 2003 statute changes and the 2004 regulation changes. Unfortunately, following the changes to the regulations, NSB finds little, if any value to the ACMP as it is currently being implemented by the Department of Natural Resources (DNR). Thus, we urge the Legislature to amend ACMP statutes to provide clarity, predictability and value for coastal districts. The remainder of this letter addresses the following specific topics: enforceable policies, designated areas, the so-called "DEC Carve-out," concentration of power, mediation, and use of consultants.

Enforceable Policies

For NSB, the most problematic ACMP change is that with the amended program, DNR has not approved local enforceable policies that could be used to fill gaps in state and federal law. Particularly troubling is the fact that the new statutes clearly allow districts to establish enforceable policies for matters not adequately addressed by state or federal law, nevertheless, DNR's Division of Coastal and Ocean Management's (DCOM) interpretation of the statutes has made it impossible for districts to secure DNR approval for any meaningful enforceable policies.

Statutes provide guidance for establishing district enforceable policies, including a requirement that policies must address matters of local concern. One criterion for "local concern" is that policies cannot address a matter already adequately addressed by state or federal law. DNR provided further guidance on this subject in its 2005 Program Description approved by the federal Office of Ocean and Coastal Resource Management (OCRM). The guidance effectively states that districts can establish local policies regarding a particular topic where a state or

federal agency with broad authorities to regulate said topic does not have specific regulations addressing the particular matter for which a coastal district wants to write an enforceable policy.¹ This interpretation of AS 46.40.070(a)(2)(C)(ii) was affirmed in a July 12, 2004 Attorney General memorandum that found districts could establish policies for matters addressed in a DNR Area Plan as long as those matters weren't specifically addressed in DNR regulation. However, in marked contrast to these findings, DNR has adamantly disallowed districts to write such policies, asserting that district policies cannot address any matter for which an agency has general authority, regardless of whether that agency has addressed the specific matter in regulation.

As acknowledged by DCOM director, Randy Bates, the final set of 2004 ACMP regulations are more stringent than what was intended by the Legislature. For example, new regulations limit district policies to certain subjects specifically addressed in statewide ACMP standards and within designated areas (11 AAC 114.270(a)(1)). Yet, DNR denied many policies proposed by coastal districts, claiming that these matters are adequately addressed by the statewide standards. Since agencies have broad authorities for almost all coastal issues, DNR's interpretation of its new regulations makes it impossible for districts to establish any meaningful district enforceable policies.

We believe the Legislature should clarify the criteria for approving coastal district policies by specifying that districts may address gaps in state and federal law, regardless of whether the underlying issues would be within the authority of a state or federal agency to address. There are already provisions in statutes that prohibit policies from unreasonably or arbitrarily restricting a matter of state concern, so there should be no opposition to this clarification. Since DNR is not implementing the ACMP according to guidance in the 2005 Program Description and has made no attempt to redress regulations that are more stringent than intended by the Legislature, it is appropriate for the Legislature to remedy this issue.

Designated Areas

For some coastal uses and resources, DNR must first approve a designated area before a district can establish an enforceable policy. This is another example where DNR's 2004 amended regulations are more stringent than intended by the Legislature. For subsistence issues, DNR went a step further by requiring approval of a designated area before the statewide subsistence standard can be applied. In other words, a coastal district cannot even raise concerns about potential impacts to subsistence unless DNR approves a subsistence-use designated area. Yet, DNR disapproved all proposed subsistence use areas for four of the largest coastal districts representing over 50% of Alaska's coastal area: Cenaliulriit Coastal Resource Service Area (CRSA), Bering Straits CRSA, Northwest Arctic Borough, and North Slope Borough.

Our experience working with DNR on proposed subsistence use designated areas provides another example of DNR's inconsistent implementation of its regulations. Working toward our district plan approval, DNR continually "raised the bar" in terms of what was required for an approvable designated area. When regulations were approved in July 2004, DNR agreed that districts could designate their entire coastal zone as a subsistence use area if they provided

¹ See subsection 5.3.5.2 of the June 2, 2005 *The Alaska Coastal Management Program*, commonly referred to as the "Program Description."

appropriate supporting information. DNR later changed its policy to require separate designated areas for each type of subsistence use. Answering a question about what DNR meant by type of subsistence use, DNR stated it would be best left up to coastal districts to identify the types of subsistence use that should be designated. But later, DNR disapproved our proposed subsistence use areas described in our February 2006 draft plan. In response, NSB created elaborate subsistence use maps at substantial cost to the Borough (not funded by the ACMP). The tentative agreements reached during meditation of our plan broke down when DNR continued to change the requirements for subsistence maps and associated policies.

To our surprise, during 2010, DNR again changed its mapping requirements without consulting the districts. For NSB, the new scale requirements would involve preparation of 575 new maps. Assuming a cost of \$400 per map, this new requirement would result in \$230,000 of additional costs for the Borough. While DCOM agreed to reconsider this new mapping requirement during a November 2010 coastal district workshop, it has not yet done so.

Similar to subsistence issues, a district must receive approval for designated “important habitats” before it may establish habitat-related enforceable policies, and DNR has approved only a few, very small important habitat areas statewide. Due to changes to the statewide habitats standard in 2004, most habitats within the coastal zone that were previously included under the standard are no longer covered. This change is another example of how ACMP regulations are more stringent than intended by the Legislature. In order to address these habitats, a district would have to receive approval for an important habitat designation.

Although draft regulations prepared by DNR in 2008 as part of its “ACMP reevaluation” would have removed the designated area requirements, these regulations have been tabled. Both the 2008 federal evaluation of the ACMP by OCRM and the recent Legislative Audit recommend that DNR revisit the designated area requirements. Since DNR has made no progress in addressing this issue, we request that the Legislature amend the statutes to clearly eliminate the designated area requirement.

DEC “Carveout”

The 2003 changes to ACMP statutes removed the Department of Environmental Conservation (DEC) from the coordinated ACMP project review process. While DNR testified to the Legislature in 2003 that districts would be able to establish enforceable policies to address air and water quality matters not adequately covered by DEC laws, DNR has summarily denied all proposed air and water quality district enforceable policies.

The DEC Carveout is problematic because air and water quality relates to almost every coastal resource or use. For example, during an ACMP review of a proposed offshore oil and gas exploration project, the Borough is not allowed to discuss impacts of an oil spill to subsistence, even though no DEC laws address such impacts. Furthermore, the DEC Carveout has eliminated opportunities for public review and comment on the DEC consistency finding of proposed activities in the federal Outer Continental Shelf (OCS). Since DEC’s finding has been removed from the coordinated review process and DEC does not have a permit for activities in federal waters, there is no opportunity for public comment on any air or water quality issues.

As with the designated area requirement, DNR's 2008 draft statutory changes would have eliminated the DEC Carveout. Again, both the 2008 OCRM evaluation of the ACMP and the 2011 Legislative Audit strongly recommended that DNR revisit this issue. Since resolution of this issue will require a statutory change, we recommend that the Legislature address it as part of legislation addressing the ACMP sunset.

Concentration of Power

Legislative changes in 2003 moved the ACMP from the Governor's Office to DNR, eliminated the Coastal Policy Council, and gave the DNR Commissioner sole decisionmaking power for coastal issues, including project appeals (elevations). The recent Legislative Audit found that centralized decisionmaking has lessened consensus building among review participants and that DNR has been criticized for lacking impartiality and local representation.

The Borough supports statutory changes that would restore a cooperative decision-making process among state agencies and coastal districts that implement the ACMP. One way to accomplish this goal would be to establish a streamlined coastal policy board composed of state agency and district representatives. This board would provide an opportunity for districts and the other state resource agencies to work cooperatively with DNR to approve coastal district plans and changes to the ACMP regulations. Another way to restore said checks and balances would be to reestablish the requirement for consensus among the resource agencies during elevations of proposed consistency determinations.

Statewide Standards

In 2004, DNR substantially limited the ability of the ACMP to address legislative objectives in AS 46.40.020. These changes limited the scope of topics addressed by ACMP standards and severely limited the geographic area covered by the standards. For example, the statewide habitats standard was substantially revised to address only limited impacts to habitats. For offshore habitats, only impacts to "competing uses" may be addressed during ACMP reviews—eliminating the ability to address impacts to particular species using offshore habitats, the productivity of offshore habitats or other potentially adverse impacts to offshore habitats.

Changes to the definitions of "coastal waters" and "wetlands" resulted in some statewide standards, including the habitats standard, applying to only a small part of the coastal zone. As described in the above section on designated areas, an important habitat area would need to be designated in order to consider impacts to most habitat areas within the coastal zone. DNR has approved only a few, small important habitats, all of which are located in Southeast Alaska. So, although most of the oil and gas development is located within the NSB coastal zone, it would be impossible to address impacts to the habitat because the ACMP regulations exclude these areas from possible coverage by the statewide habitats standard.

One unexpected result from the 2004 changes to the statewide habitats standard involves the federal designation of vast expanses of critical habitat for polar bears. One of the reasons cited in the final rule for the designation was the lack of ability to address habitat impacts through the ACMP. NSB believes that if the ACMP had a broader and stronger habitat standard, and if DNR were to facilitate more robust and meaningful involvement from the coastal districts, the ACMP could be a powerful tool to require that federal proposed actions such as the designation of

millions of acres of critical habitat under the Endangered Species Act undergo a full public review through the ACMP consistency determination process.

The Borough supports efforts by the Legislature to direct DNR to amend the statewide standards so they allow consideration of impacts to all coastal resources and uses identified in the ACMP legislative objectives.

Mediation

NSB requested mediation of the DNR Commissioner's Decision for our coastal plan in 2007. We found the mediation process frustrating because of DNR's unwillingness to reach a reasonable compromise. While we made some progress in resolving certain issues, we ultimately requested that the mediator declare an impasse due to DNR's ever-changing requirements and unwillingness to implement ACMP regulations as per its 2005 Program Description. The attached mediation brief provides more detail regarding specific concerns raised by the Borough during the mediation.

Use of Consultants

The Borough uses consultants on a regular basis to assist in its participation in ACMP reviews including ongoing reviews and adjustments to the ACMP itself. Although we have experienced and competent staff, consultants with long-term coastal management experience provide many additional and useful services. Thus, we agree with findings in Part 2 of the ACMP Legislative Audit that DNR's unwritten policy regarding consultants disregards a district's right to determine how and when it chooses to use a consultant.

We wish to provide an example where DCOM's consultant policy provided a problem for us. During an important review coordinated by DCOM a couple of years ago, our staff person assigned to the review was out of the office for a two-week period. We were surprised when DCOM denied our request to have our consultant added to the distribution list for the review during this period. Our request was reasonable and only involved adding a name to the email distribution list. This was the first we had heard about DCOM's policy to not distribute certain information to consultants working for coastal districts.

This concludes our response to your request for information for how the ACMP can be improved. We encourage the Legislature to address the problems outlined in this letter through changes to ACMP legislation. Without meaningful changes to the ACMP, we question whether it would be advisable to extend the sunset date for the program.

Sincerely,



Daniel W. Forster
Director

Cc: Coastal District Coordinators State-wide Attachment: NSB Mediation Brief

Edward Itta, NSB Mayor
Siikauraq Martha Whiting, Mayor, Northwest Arctic Borough
NSB Planning Commission
Bessie O'Rourke, NSB Attorney
Karla Kolash, NSB Mayor's Office
Andy Mack, NSB Mayor's Office
Marla Berg, NSB Mayor's Office
Taqulik Hepa, NSB Department of Wildlife Management
Tom Lohman, NSB Department of Wildlife Management
Randy Bates, Director, DNR Division of Coastal and Ocean Management

NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

Kotzebue, Alaska 99752

(907) 442.2500 or (800) 478.1110

Fax: (907) 442.3740 or 2930

Honorable Senator Donny Olson

State Capitol, Room 508

Juneau, AK 99801

Honorable Representative Paul Seaton

State Capitol, Room 102

Juneau, AK 99801

RE: Reauthorization of the Alaska Coastal Zone Management Program (ACMP)

Dear Senator Olson and Representative Seaton;

The Northwest Arctic Borough (Borough) is glad to respond to your February 11, 2011, letter to Coastal Coordinators to address changes to the ACMP for making it a more meaningful process for the borough and coastal resource service areas. On behalf of the Borough, I appreciate the opportunity to address the issues of the current program and what specific program changes can be made so that coastal communities can benefit from local enforceable policies.

Overall, the changes we recommend are to update and modernize the program including methods to increase public involvement for effective democracy in the process, update statutes regarding the subsistence policy to reflect life-long Alaskans way of life, facilitate the ability of coastal districts to establish enforceable policies for addressing local needs in responsible resource development, and remove the designated area requirement to reduce unneeded bureaucracy. All these recommendations reflect the importance of the way of life of life-long Alaskans and promote modernizing the program to better reflect the uniqueness of Alaska as the end product of these changes.

PUBLIC INVOLVEMENT

Since the elimination of the Coastal Policy Board in 2003, there are no current checks and balances in the ACMP to provide for effective democracy. Appeals to coastal management plans are now decided by the state staff and Commissioner for the Department of Natural Resources

NORTHWEST ARCTIC BOROUGH

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Kotzebue, Alaska 99752

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(DNR), which gives DNR all decision-making authority to address matters. The establishment of a Coastal Policy Board would provide for public involvement through representatives from coastal districts and state agencies to decide elevations and the approval of coastal district plans. This Board would also oversee amendments to ACMP regulations and ACMP grant programs. A Coastal Policy Board would increase public involvement in administrative and program decisions in the ACMP; therefore promoting modern democracy and good governance.

SUBSISTENCE

As you know, subsistence, which includes the acquisition of subsistence resources, is key to the survival and sustainability of our borough residents. Changes over the years have made the ACMP regulations extremely difficult, if not impossible, to address impacts to subsistence, which have and continue to sustain the economies and culture of life-long Alaskan residents and communities. Subsistence issues need be considered during a project review – it is a reality and important to maintain the uniqueness of the great state of Alaska. The current statewide standard is very general and does not address specific subsistence-related issues; for example, the people of Southeast Alaska have very different subsistence uses than those on the Northwest Arctic, for instance.

A solution to this would be to eliminate the designated area requirement, which has resulted in over bureaucratic administration, and change the program to allow coastal district to design enforceable policies on subsistence for matters to ensure responsible resource development that honors regional knowledge and uses.

FACILITATE ENFORCEABLE POLICIES

Currently, DNR has authorianly limited policies to the specific matters in certain statewide standards; at the same time, the agency has denied policies on the basis that the statewide standards already address the issue. DNR's Interpretation of the regulations and statutes (often seen as arbitrary) makes it practically impossible for coastal districts to have meaningful enforceable policies. To make policies effective and meaningful, statutory changes need to clarify that districts may establish enforceable policies that fill-in gaps in state of federal law.

NORTHWEST ARCTIC BOROUGH

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DESIGNATED AREAS

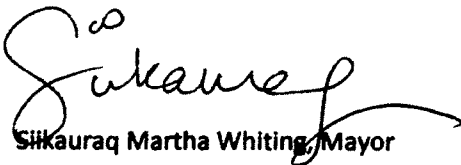
There are currently rigorous administrative requirements by DNR that mandate designation of areas before impacts can be considered for subsistence, upland habitat and natural hazards. This requirement has resulted in costly mapping that has not been funded by DNR and many proposed designated areas have been denied by DNR through administrative reviews. A quick and efficient solution to the designated area issue would be to simply eliminate the requirement as overly bureaucratic and unnecessary according to federal coastal management program.

CONCLUSION

This concludes important list of changes that would dramatically increase the effectiveness and relevance of the ACMP to the Borough communities and our many life-long Alaskan residents. We appreciate your valuable time and efforts in understanding some of the challenges faced by the Northwest Arctic Borough. The challenges we face with the current ACMP is shared with many coastal districts and we look forward to any Legislative changes to increase its effectiveness.

If you have any specific questions about the Borough's recommendations with the ACMP, please feel free to contact Planning Director, Ukallaysaq at 907.442.2500, extension 109 or at email tokleasik@nwabor.org.

Taikuu,



Silkauraq Martha Whiting, Mayor

Cc: Ukallaysaq Tom Okleasik, Planning Director
Alagiaq Grant Hildreth, Deputy Planning Director
Kill'aq John Chase, Community Planner & Coastal Area Specialist

**CITY OF PELICAN, ALASKA
RESOLUTION 2011-23**

**A RESOLUTION SUPPORTING THE EXTENSION OF AND AMENDMENTS
TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

WHEREAS, the City of Pelican desires to promote and strengthen its continued participation in the Alaska Coastal Management Program (ACMP); and

WHEREAS, the ACMP has been an important program that promotes a balance between economic development and protection of coastal resources and uses since its inception in 1977; and

WHEREAS, the ACMP gives Alaskan coastal communities an essential tool to promote responsible development while addressing impacts to coastal resources and uses;

WHEREAS, changes to the ACMP statute in 2003 and changes to the ACMP regulations in 2004 eliminated the Coastal Policy Council, removed consideration of air and water quality impacts during ACMP project reviews and diminished the opportunity for meaningful participation in the program by the City of Pelican and other coastal districts; and

WHEREAS, the coastal communities' having a voice in addressing local circumstances and concerns is vital to the future well-being of traditional ways of life; and

WHEREAS, recommendations from the June 2008 evaluation of the ACMP by the federal Office of Coastal, Ocean, and Resource Management encouraging the state to reevaluate the implementation of the amended ACMP, revisit the requirements for designated areas, provide more technical assistance, and evaluate the effectiveness of retaining the DEC "carve-out" have not been sufficiently addressed; and

WHEREAS, the comprehensive 2008 reevaluation of the ACMP initiated by the State of Alaska in 2008 has not resulted in any changes to the program; and

WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program.

RESOLUTION 2011-23
PAGE 2

NOW, THEREFORE, BE IT RESOLVED THAT: The City of Pelican supports amendments to the ACMP that will restore checks and balances to the program, allow meaningful participation by coastal districts and promote responsible development.

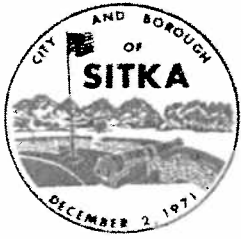
BE IT FURTHER RESOLVED THAT: The City of Pelican supports introduction and passage of legislation that will eliminate sunset provisions for the ACMP, restore the ability for coastal districts to establish enforceable policies for matters not adequately addressed by state or federal law, eliminate requirements for designated areas for the application of enforceable policies, include the Department of Environmental Conservation in project consistency reviews, and establish a Coastal Policy Board to restore checks and balances to the program.

**PASSED, APPROVED AND ADOPTED BY THE PELICAN CITY COUNCIL ON
THIS _____ DAY OF _____, 2011.**

Signed: _____
Clint Bean, Mayor

Attest:

Gunnar E. Combs, Assistant City Clerk



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

March 7, 2011

The Honorable Representative Paul Seaton
The Honorable Representative Eric Feige
Alaska State House of Representatives
by e-mail

Dear Representatives Seaton and Feige:

Thank you for your recent letter to Coastal District Coordinators asking for input on proposed changes to and reauthorization of the Alaska Coastal Management Program (ACMP). The City and Borough of Sitka Assembly approved the attached Resolution 2010-35 SUPPORTING LEGISLATION TO EXTEND AND RESTORE THE ALASKA COASTAL MANAGEMENT PROGRAM TO ENABLE EFFECTIVE COASTAL COMMUNITY PARTICIPATION. This Resolution supports the following areas of changes needed to permit the City and Borough of Sitka's Coastal Management Program to once again meaningfully participate in the ACMP:

- **Sunset** – The Alaska Coastal Management Program will sunset July 1, 2011 unless the Alaska State Legislature extends the program. The ACMP is the only program providing financial assistance and regulatory framework for local coastal communities to have a “seat at the table” in management decisions affecting their local coastal zone. The arbitrary “sunset” provision needs to be eliminated and the program reauthorized.
- **Enforceable Policies** -- Sitka lost more than half its 55 enforceable policies in the “streamlined” process which began in 2003. Those remaining are so limited as to be ineffective. Coastal Districts need to be able to promulgate enforceable policies which address local coastal issues not already addressed by State and Federal laws. This has been a cornerstone of the ACMP to permit districts to address local circumstances.
- **DEC Carve-Out** – Not permitting any enforceable policies or comments relating to air or water quality has virtually eliminated meaningful participation in the ACMP, since almost all coastal uses and resources relate to air or water quality. DEC does not communicate with coastal districts or even other agencies and usually does not address key issues of concern to the coastal districts and agencies. This is untenable. DEC needs to be brought back into the ACMP review process, and coastal districts and agencies need to be able to comment on air and water quality issues in the coordinated review.
- **Designated Areas** – Requiring that any physical area subject to either Subsistence or Habitat Enforceable Policies must be pre-designated before any impacts to coastal resources or uses

Providing for today...preparing for tomorrow

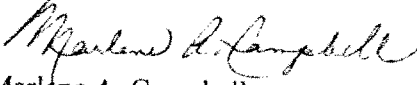
could be considered ignores the reality that resources and habitats occur throughout the entire coastal area (more than 300 miles of coastline in the City and Borough of Sitka), and many are migratory. It is extremely costly and difficult to scientifically document all this coastline required for Designated Areas. Project reviews are site specific; and many of the resources such as deer and fish and uses move around. Designating areas rather than resources or uses themselves is unrealistic and inaccurate. This regulation should be eliminated.

- **Meaningful Local Participation in the ACMP** – The City and Borough of Sitka has participated in the ACMP since its plan was approved in 1981. A costly, multi-year, and frustrating complete revision of Sitka's Coastal Management Plan was finally approved in 2007. DNR Division of Ocean and Coastal Management (DCOM) went beyond the Legislative intent of HB 191 and regulations, leaving the formerly lauded Sitka Coastal Plan as a shell with little substance and the Sitka Coastal Program no longer an active participant in the formerly comprehensive ACMP.

New leadership is needed to restore the ACMP to permit meaningful local participation and ensure a seat at the table for all, including applicants, agencies, and coastal communities. A classic example of DCOM's unwillingness to permit coastal districts to meaningfully participate in the ACMP is its "policy" of not allowing consultants to assist local districts using ACMP 306 funding. If a coastal district wishes to contract for services rather than hire staff, that should be a local decision. I have served as Sitka's Coastal Coordinator since 1987, the first eight years of which were as a consultant under contract. This arbitrary usurping of local community ACMP administration is unwarranted.

The City and Borough of Sitka Coastal Management Program has always tried to balance responsible development with protection of the coastal environment. There has never been an elevation or appeal of a Sitka project, and developers have worked closely with the Coastal Coordinator in the past to address coastal issues and also expedite permitting through the cooperative ACMP review process. The Sitka Coastal Management Program is eager to return to the table and participate in a re-energized coordinated review process which has been lost since the "streamlined ACMP process" was implemented. For further information, contact Marlene Campbell at 907-747-1855 or campbell@cityofsitka.com e-mail.

Sincerely,


Marlene A. Campbell
Coastal Management Coordinator

cc: Senator Bert Stedman
Representative Peggy Wilson
Sitka Assembly
Municipal Administrator Jim Dinley

**CITY AND BOROUGH OF SITKA
RESOLUTION 2010-35**

**A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF
SITKA, ALASKA, SUPPORTING LEGISLATION TO EXTEND AND RESTORE
THE ALASKA COASTAL MANAGEMENT PROGRAM TO ENABLE
EFFECTIVE COASTAL COMMUNITY PARTICIPATION**

WHEREAS, the City and Borough of Sitka has participated in the Alaska Coastal Management Program (ACMP) since approval of its first Sitka Coastal Plan in 1981; and

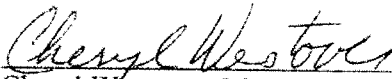
WHEREAS, the "streamlined ACMP process" which began with House Bill 191 in 2003 forced the complete revision of all Alaska Coastal Management plans (Sitka's revision was approved in 2007) and resulted in a greatly diminished role for coastal districts, including inability to establish meaningful local enforceable policies and removal of air and water quality from ACMP project reviews; and

WHEREAS, Sitka lost more than half of its 55 enforceable policies, the only portion of Sitka's coastal plan with standing in the ACMP permit review process, and the remaining policies are limited and ineffective in coastal comments addressing local issues; and


WHEREAS, the ACMP will sunset July 1, 2011 and all Coastal Management funding and coordination will cease unless the Alaska State Legislature extends the program;

NOW, THEREFORE BE IT RESOLVED that the City and Borough of Sitka Assembly supports legislation to extend the ACMP, eliminate the "DEC carve-out" and bring back air and water quality issues in the ACMP consistency review process, eliminate requirements for pre-designation of subsistence, habitat, or other areas subject to policies, and permit meaningful local participation in the ACMP through expanded enforceable policies addressing a wide range of coastal uses to permit City and Borough of Sitka and other coastal communities to better manage the coastal zone.

PASSED AND APPROVED by the Assembly of the City and Borough of Sitka, Alaska, on this twenty-eighth day of December, 2010.


Cheryl Westover, Mayor

ATTEST:


Sara Peterson
Acting Municipal Clerk



Municipality of Skagway

GATEWAY TO THE KLONDIKE

P.O. BOX 415 SKAGWAY, ALASKA 99840

(PHONE) 907-983-2297 – Fax 907-983-2151

WWW.SKAGWAY.ORG

March 8, 2011

The Honorable Paul Seaton
Co-Chair, House Resources Committee
State Capitol Building, Room 102
Juneau, AK 99801-1182

Dear Rep. Seaton,

I am new to the position of Coastal District Coordinator for the Alaska Coastal Management Program (ACMP); however, in my short time working with the ACMP I have been aware of the need for the program here in Skagway and would like to see it continue.

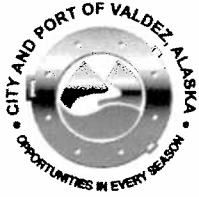
The ACMP provides communities with a voice regarding projects that are occurring in the area. Local coordinators are closely acquainted with issues within their communities and are therefore uniquely qualified to review and give feedback on proposed projects.

The ACMP staff has been nothing but helpful orienting me with the program, providing many training opportunities and quick responses to my inquiries. Many district coordinators perform their duties in addition to regular work tasks, so this additional help is invaluable. I fully support the Alaska Coastal Management Program.

Please contact me with any questions.

Sincerely,

Emily A. Deach
Coastal District Coordinator & Borough Clerk
Municipality of Skagway



City of Valdez **ALASKA**

Department of Community
& Economic Development

*Dave Cobb, Mayor
John Hozey, City Manager*

March 10, 2011

Representative Eric Feige

Alaska State Legislature House Resources
Committee
State Capitol Building, Room 126
Juneau, AK 99802-1182

Representative Paul Seaton

Alaska State Legislature House Resources
Committee
State Capitol Building, Room 102
Juneau, AK 99802-1182

Dear Honorable Representative Feige & Honorable Representative Seaton,

The City of Valdez City Council recently passed a resolution supporting the introduction and passage of legislation that will renew the Alaska Coastal Management Program and extend and/or eliminate the Alaska Coastal Management Program sunset provision. A signed copy of the resolution is attached to this letter. The resolution deliberately divides the sunset issue from any proposed changes to the program because Valdez values the ACMP greatly and the most important issue for us is the continuation of the program. However, we have seen a reduction in our local enforceable policies and do share some of the frustration many of the Coastal Districts have with the recent changes to the program. Overall we still benefit significantly from its implementation.

With the understanding that there are a multitude of differing opinions on what changes need to be made to the ACMP among Valdez citizens, there are two changes that the City of Valdez would like to propose that would help the way the Valdez Coastal District Implements it's Coastal Management Plan.

First, we would like to request a longer time period for consistency reviews. At least 50% of Valdez consistency reviews come to us with a deadline that does not provide enough time to take them before a Commission or the City Council for discussion or action. The City of Valdez feels our comments benefit from more eyes and a healthy discussion before they are submitted. Should the issue be a very hot topic, we most certainly do not have enough time to do a public hearing. Extending the deadline for local consistency reviews would provide much greater flexibility to collect public opinion and allow commissions to consistently weigh in on the issues.

Second, we propose implementing a process that acknowledges our comments are appropriately weighted in the consistency review process. The easiest and best way the Valdez Coastal District can be assured that its comments are taken into consideration and given due deference is in a written response to our submitted comments from the Agency coordinating the review. The written response should also include an explanation of the final outcome of the State's determination. With a written response Valdez can be assured that its comments were relevant to the decision making process and Valdez will gain a better understanding of why decisions were ultimately made.

We appreciate the time the House of Representatives is taking to understand the needs of all coastal communities in Alaska. Certainly the administrative issues presented in any Coastal Management Program are complex and complicated by the fact that around the State, just as it is in Valdez, the issues are also very personal and close to the hearts and identities of the residents. We hope the renewal of the ACMP is successful in this legislative session and look forward to changes in the program that will strengthen and ensure its continued success. Please contact me if you require any additional information or comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Robertson". The signature is fluid and cursive, with the first name "Laura" written in a larger, more prominent script than the last name "Robertson".

Laura Robertson
Valdez Coastal District Coordinator
(907) 834-3450
lrobertson@ci.valdez.ak.us

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 11-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, SUPPORTING THE EXTENSION AND/OR RENEWAL OF THE ALASKA COASTAL MANAGEMENT PROGRAM IN THE 2011 ALASKA STATE LEGISLATIVE SESSION

WHEREAS, the City of Valdez has been an active participant in the Alaska Coastal Management Program (ACMP) since its adoption of the Valdez Coastal Management Plan in 1987; and

WHEREAS, the ACMP has helped shape the way the City of Valdez balances beneficial uses of its coastal areas with protection of coastal resources and development of coastal industries; and

WHEREAS, the ACMP has been an effective tool in management of coastal areas within the City of Valdez; and

WHEREAS, the City of Valdez supports the comprehensive network of government agencies the ACMP provides that allows coordinated communication over each coastal project review; and

WHEREAS, the City of Valdez desires to promote and strengthen its continued participation in the ACMP; and


WHEREAS, the ACMP will sunset and terminate on July 1, 2011 unless the Alaska State Legislature extends the program during the 2011 legislative session.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that:

The Valdez City Council hereby supports introduction and passage of legislation that will renew the Alaska Coastal Management Program and extend and/or eliminate the Alaska Coastal Management Program sunset provision.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this 7th day of February, 2011.

CITY OF VALDEZ, ALASKA


Dorothy M. Moore, Mayor Pro Tem

ATTEST:


Sheri L. Pierce, MMC, City Clerk





THE CITY OF WHITTIER

Gateway to Western Prince William Sound

P.O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

March 11, 2011

Honorable Paul Seaton
Alaska State Capitol, Room 434
Juneau, AK 99801

Honorable Eric Feige
Alaska State Capitol, Room 126
Juneau, AK 99801

Re: Request for Input on the Alaska Coastal Management Program

Dear Representative Seaton and Representative Feige:

This letter responds to your request for suggestions on how enforceable policies or regulations could be improved for the Alaska Coastal Management Program (ACMP).

The City of Whittier passed a resolution on February 15, 2011 about the ACMP that is enclosed with this letter. In addition to extending the sunset date for the program, the resolution supports establishment of a coastal policy board, reintegration of air and water quality issues into ACMP consistency reviews, elimination of requirements for designated areas, and amendments that would allow meaningful coastal district enforceable policies.

A stronger role for coastal communities in the ACMP will help promote balanced economic development. The City of Whittier encourages the House Resources Committee to amend House Bill 106 to ensure that coastal districts have a meaningful role in the ACMP.

Sincerely,

Robert Prunella
City Manager

Please visit our website at
www.whittieralaska.gov

**CITY OF WHITTIER, ALASKA
RESOLUTION 983-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA,
SUPPORTING CHANGES TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

WHEREAS, the City of Whittier has participated in the Alaska Coastal Management Program (ACMP) for over 20 years as a coastal resource district; and

WHEREAS, since its inception in 1977 the ACMP has been an important program to promote responsible coastal development; and

WHEREAS, changes to ACMP statutes in 2003 and changes to the regulations in 2004 made significant changes to the program, including elimination of the Coastal Policy Council; and

WHEREAS, the 2008 evaluation of the ACMP by the federal Office of Coastal, Ocean and Resource Management recommended the Alaska Department of Natural Resources reconsider changes to the program, including the requirement for designated areas and the removal of air and water quality from ACMP reviews; and

WHEREAS, the November 2008 draft statutes and regulations prepared by the Alaska Department of Natural Resources would have removed the designated area requirements and brought the Alaska Department of Environmental Conservation back into ACMP reviews; and

WHEREAS, the December 8, 2010 legislative audit found that changes to the ACMP limited the ability for coastal districts to establish enforceable policies; restricted the ability to address impacts to upland habitats, and limited the ability to meet legislative objectives for the program; and

WHEREAS, the legislative audit recommended the Alaska Department of Natural Resources review the designated area requirements and develop proposals to reintegrate the Alaska Department of Environmental Conservation into the ACMP; and

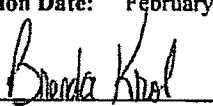
WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska Legislature extends the program

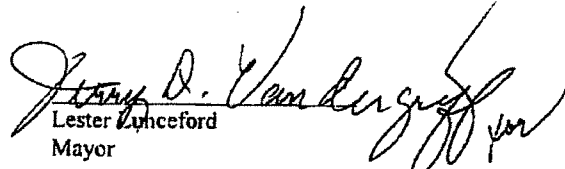
NOW THEREFORE BE IT RESOLVED; that the City Council of the City of Whittier hereby supports legislation that will extend the ACMP, establish a coastal policy board, bring back air and water quality issues into the ACMP consistency review process, eliminate requirements for designated areas, and allow meaningful coastal district policies.

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this 15th day of February 2011.

Introduced by: Bob Prunella
Introduction Date: February 15, 2011

ATTEST:


Brenda Krol
City Clerk


Lester Lunceford
Mayor

Ayes: 5
Nays: 0
Absent: 2
Abstain: 0

**CITY AND BOROUGH OF YAKUTAT, ALASKA
RESOLUTION 11-172**

A RESOLUTION OF THE CITY AND BOROUGH OF YAKUTAT ASSEMBLY SUPPORTING THE ALASKA MUNICIPAL LEAGUE'S RESOLUTION SUPPORTING THE EXTENSION OF THE ALASKA COASTAL MANAGEMENT PLAN AND RESTORATION OF ORIGINAL PLAN PURPOSES

WHEREAS, the City and Borough of Yakutat Assembly is the governing body of the City and Borough of Yakutat; and

WHEREAS, the assembly desires to continue and strengthen the Borough's role in the Alaska Coastal Management Program (ACMP); and

WHEREAS, The City and Borough of Yakutat's Coastal Management Plan has been a useful program that coordinated development efforts within the Borough ensuring a balance between economic considerations and conservation of coastal resources since it's inception in 1982; and

WHEREAS, the Borough is a member of the Alaska Coastal Municipal League; and

WHEREAS, with the understanding that the ACMP provides Alaska coastal communities a real tool to promote responsible development while protecting locally important coastal uses and resources; and

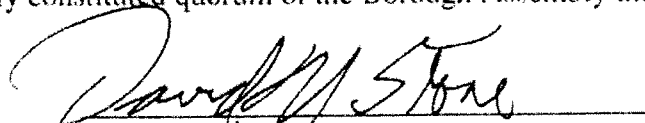
WHEREAS, the Alaska Municipal league recently passed a resolution supporting the continuation of the ACMP, reestablishing a Coastal Policy Board, allowing communities to comment on air and water quality impacts during project consistency reviews, eliminating arbitrary designations on subsistence use areas and allowing for the reinstatement of meaningful enforceable policies; and

WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program; and

WHEREAS, the Borough wishes to join the AML's support of the continued operation and improvement of the ACMP;

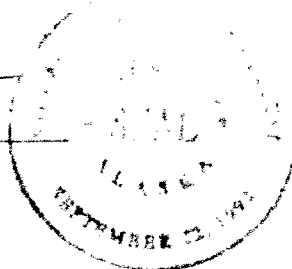
NOW THEREFORE BE IT REOLVED: that the City and Borough of Yakutat supports legislation that will extend the ACMP, establish a Coastal Policy Board, reinstate the ability to comment on air and water quality issues, eliminate requirements for designations of subsistence use areas and allow meaningful enforceable policies.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly this ____ day of January 2011.


David Stone, Mayor

ATTEST:


CATHY BREMNER, CMC





CITY & BOROUGH of YAKUTAT

P.O. Box 160
Yakutat, Alaska 99689
Phone (907) 784-3323
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15 August 2008

To: Randy Bates
Director, Division of Coastal and Ocean Management
PO Box 111030
Juneau, Alaska 99811-1030

Also via email randy.bates@alaska.gov

SUBJECT: Alaska Coastal Management Program Re-evaluation

Dear Mr. Bates,

Thank you for the opportunity to offer some suggestions for the restructuring of the ACMP. The following comments are intended to represent the suggestions of the Yakutat coastal district staff developed through site-specific experience and communication with other districts.

You are well aware that the general feeling within the Yakutat Borough to the previous changes under the Murkowski Administration was unfavorable. It was our viewpoint that the changes were intended to limit local public involvement from the decision-making process regarding development projects within our Coastal District.

We surmise that the intent of the ACMP overhaul and dissolution of the ADF&G Habitat Division was to reduce the public's role for upcoming development projects; mines, OCS drilling, LNG Pipeline, Forest Plan Revisions, etc. All of these actions generate substantial concern and public interest. In our view, the specific intent in changing the ACMP was to limit the public's ability to access due process in order to streamline planning and permitting. Compatible actions such as shortening the legislative session, reducing NEPA comment durations and generally restricting the public voice simplifies the discussion. This in turn hastens the timeline to production, creating jobs and profit for the state economy.

Unfortunately, these profits tend to centralize and benefits to the state as a whole may not be realized proportionally to what would be considered fair. This is especially true when long-term costs are factored into the balance sheet. What is the true cost when the subsistence, recreational and commercial value of the land is diminished after various industries have exhausted their target commodities and moved on? Such costs are rarely calculated in mitigation negotiations and too frequently, taxpayers shoulder the burden of

cleanup. It is a common global story. However, in the modern era we should have the tools and knowledge to develop in a clear calm manner.

There is always a need for development, resource extraction and jobs. Our interpretation of the intention of the ACMP is that it exists to ensure that the broadest spectrum of minds and authorities review potential projects. The revised ABC list will ease the burden for small actions where excessive oversight can be frustrating and focus analysis on projects with greater potential impacts. The wealth of Alaska is not going anywhere and it will only become more valuable as time progresses. Developing rationally will probably create more cumulative wealth in the end. A strong Coastal Program within the communities is the public's best avenue for traveling this path.

Through our weekly teleconferences, we identified the following items as needing revision.

They are as follows:

- 1) Participation of DEC in the ACMP review process**
- 2) Development of state standards for air and water quality**
- 3) Development of regional metal mining standards**
- 4) Development of sand and gravel mining standards**
- 5) Habitat Standards revisited and strengthened**
- 6) Designated areas and local enforceable policies**
- 7) Local policy requirements revisited**
- 8) Confirm due deference on consistency review comments considers all evidence**
- 9) Establishment of the Coastal Policy Council**
- 10) Elevations of disagreements**
- 11) Additional emphasis on agency participation and notification requirements**
- 12) An expedited review process and additional funding for local planning**

Specific concerns to CBY are outlined as follows.

1) Participation of DEC in the ACMP review process.

The Department of Environmental Conservation has jurisdiction over both air and water quality. It is difficult to assess project impacts without including these key components. For example, potential gravel extraction within the borough would necessitate hauling rock from the mining area to a shipping facility. A potential health issue could be dust blowing off the loads into town. Without being able to cite air quality, the ACMP program would have little authority to negotiate transport routes to minimize public exposure to the dust.

In a past example, DEC was successful in removing Ophir Creek from the impaired waterbodies list. Historically, sewage ran directly into the creek. During coastal reviews of restoration initiatives, this problem was addressed and solved. Further water quality

testing confirmed that the waters are clean and the creek was removed from the list. This is exactly the type of collaboration and results that we expect from the program.

In contrast, during the last days of ADF&G Habitat Division, the oversight on the Yakutat Airport repaving project was hampered as the personnel were removed mid-project. Numerous problems arose. Silt fencing standards were inadequate to contain the abundant glacial flour excavated during the process and salmon streams ran turbid. An overflow of asphalt went into a salmon stream. Local personnel sampled the heavy spill that clearly affected salmon habitat. Due to the chaos surrounding the ACMP changeover no fines, mitigation, cleanup nor monitoring occurred. A large pit of exposed fuel was uncovered and then reburied due to jurisdictional disputes. Overall, oversight failed to keep the project within reasonable standards.

The explanation given for removing DEC from the ACMP review process was that permit issuances were taking too long. This seems to be a departmental issue and does not seem to justify removing air and water quality standards from the rest of the program.

Citations. To restore DEC's role in the ACMP, amend AS 46.40.040(b) (1), AS 46.40.096(g) (i), and (k). In addition, repeal regulations associated with the "carve-out".

2) Development of Air and Water Quality State Standards and Local Policies

The ACMP should restore and enhance Statewide Air and Water Quality Standards. Coastal districts should be able to address concerns with these standards and create standards that are more rigorous where they are not adequately addressed by state or federal regulations. The general silt fence requirements during the Yakutat airport project is a clear example of the inadequacy of existing requirements to prevent fine particle entry into spawning tributaries. In this situation, the potential local enforceable policy would require extra settling ponds and straw bales in place of silt fencing.

Citations. Amend 11 AAC 114.270(f) to clarify that districts can establish policies that do not duplicate DEC statutes and regulations.

3) Mining

There are 160,000 abandoned mining sites across the nation. Many of these pose safety issues and contamination risks due to lack of appropriate regulation. Alaska should not repeat history. As the mining industry grows in Alaska, CBY would like to see projects responsibly developed. Large portions of the CBY were staked and we had no authority to be involved with operating procedures when mining begins. Some forms of mining are negligible in their impact to water quality while others essentially rearrange the landscape. In response, the borough enacted its own mining ordinance further complicating the regulatory landscape. Without a strong ACMP, the borough will be forced to continue enacting its own code.

In a common theme, there is value in having local knowledge of the landscape at the planning table. Large mining operations should be heavily scrutinized by the ACMP and enhanced by local policies on specific issues not covered by standard state and federal regulations. This would help alleviate potential enduring problems experienced by other states. Many mining impacts are essentially irreversible. The mines play out in time and the after effects can last indefinitely.

Mining must have its own statutes in the ACMP. This is probably the most critical amendment to the program at this time for the CBY.

4) Sand and Gravel

CBY has vast reserves of sand and gravel. This resource is currently under review for production. The Yakutat Foreland's gravel deposits have been mapped by CBY and appropriate areas and methods for production have been discussed with potential operators, including shipping facilities. Plans for extraction include fishery enhancement and appropriate aesthetic standards. However, without the teeth of good policy these agreements are little more than handshakes. The sand and gravel standard must include the term "**freshwater**" to confirm that it applies to all operations within the coastal zone that can affect coastal uses and resources.

5) Designated Areas and Local Policies

It is standard federal practice to review habitat issues on a project-by-project basis. The intent of designating areas was, on the surface, a positive one. Developers and landowners can become frustrated by various species maps, public uses and habitat restrictions that arise during the planning process. If the issue is large enough, mitigation becomes cost prohibitive and the desired action cannot be undertaken. The designated areas were intended to highlight sensitive places where developers would be aware of potential problems during scoping phases of project planning. Working around sensitive areas saves time and frustration for all involved.

Unfortunately, the dynamic geology, climatic shift and the sheer "youthfulness" of the Yakutat Forelands makes this method unworkable. Salmon streams shift with uplift and tectonic activity. Recently deglaciated channels are being colonized by new runs of salmon, shorebird colonies take advantage of changing landscapes moving colonies as habitat parameters shift. In summary, various species of commercial, subsistence and non-game value are experiencing rapid population shifts both up and down as conditions alter.

It is difficult to secure monitoring monies to track these trends. Therefore putting the burden of "scientific evidence" upon the districts is somewhat disingenuous. We are attempting to do as much of this work as we can. The CBY works well with USGS and ADF&G for monitoring water discharge, the USFWS for habitat and shorebird monitoring and conservation education, NOAA for tracking marine mammal strandings and research, and we have cooperative projects with the local USFS and ADF&G offices

for recreation development, fisheries, wildlife and habitat issues. This is a daunting task given the limited funding allotted in the annual required tasks grant. Even with these limitations, CBY is doing more than its share to track the quality of our coastal zone.

The concept of “Designated Areas” or “Areas Meriting Special Attention” is still valuable for the aforementioned reasons. However, restricting policies to these areas is a key problem with the existing plan. Funding districts to collaborate with tribes, state and federal agencies to broaden our knowledge of specific areas and ecologies can only help the process of responsible development.

Citations. The designated area requirement should be removed in 11 AAC 114.250, 11 AAC 114.270, 11 AAC 112.210 (hazards), 11 AAC 112.270 (subsistence), 11 AAC 112.300 (important habitat), and 11 AAC 112.320 (historic areas).

6) Habitat Standards

Unfortunately, many times habitat function is in the eye of the beholder. For example, reviews of road impacts on water flow by hydrologists, fish biologists, foresters and operators can vary significantly during BMP monitoring trips. Local observations can be an invaluable resource for insight into the region’s habitat value. Local hunters, fishermen and trappers contain a large pool of observations that can enhance decision-making. Agency staff turnovers and the resultant lack of experience can hamper good decision making as regulators are tasked across a large array of habitat types.

Wetlands.

Wetland regulation generally involves filling or dredging regulation. Neither state nor federal regulations have sufficient statutes to protect wetlands in an ecosystem sense. Under current ACMP status, only saltwater wetlands are eligible for review. The following IKONOS satellite imagery illustrates how lack of buffers on wetland habitats can drastically affect the hydrology of an area.

This picture is taken on Yak-tat Kwaan Corporation land where timber harvest was overseen by the State of Alaska. The kettle ponds to the left were not buffered while the ponds to the right were. The stream on the right dries up stranding juvenile salmon while the buffered headwaters typically maintain a wetted channel throughout the year. The trees in the buffer zone create both shade and a snow accumulation zone. The consequent spring melt off is metered out over a longer duration more beneficial to salmon habitat. Shade also keeps water temperatures cooler and more favorable to rearing salmon.

The wetland standard, under AC 112.300(a) (3) and (b) (3), limits the review to looking at impacts to water flow and drainage patterns. Temperature needs to be included as well. Since 11 AAC 112.300(B) (i) and the definition of coastal water and wetlands (11 AAC 112.990), only address saltwater wetlands this previously described situation cannot be addressed by the Coastal Program since it is freshwater habitat. The USFS does not

buffer wetlands either. This photo is clear evidence of significant impact to wetland function. Note that the entire wetland complex around the buffered drainage is clear-cut.

Buffered vs Unbuffered Wetlands



Figure 1Day Glo Creek West Yakutat Forelands

Upland Habitat. The elimination of Important Upland Habitat from the ACMP is illogical. The Yakutat Forelands are intricately linked to the near shore marine environment. Seals and sea lions travel miles upstream chasing salmon and eulachon. Murrelet species nesting on glacial scree and in old growth trees travel daily to the sea to

feed, the fisherman living in the uplands descend to the harbor to ply their trade, bears emerge from their dens and travel to the beaches for the first greens of spring and later the vast swaths of strawberries, moose over winter on the coast and calve in the dense woods, many deer survive the winter along the coast yet thrive inland during the summer. Sediments pouring from glaciers and snowfields create our long sandy beaches, which in turn sculpt our estuaries that harbor massive shorebird migrations, rearing salmon and the majority of our fishing economy. They also deposit the gold and other minerals sought after by the mining industry. The Habitat Section should be revised to include Important Upland Habitat, which may be identified by the local district or state or federal resource agencies with supporting evidence. All upland habitats within the current coastal boundary be considered for this classification if science can determine level of importance.

Citations. Important Upland Habitat should be added as a subject area in 11 AAC 112.300, Habitats.

Fisheries Habitat.

Fisheries habitat is an extremely important aspect of the ACMP. The Division of Sport fish has documented that 30% of all freshwater angling effort in SE Alaska occurs in the Yakutat Borough. Our commercial fishery is modest by statewide standards but our local people hold over 200 permits and for many it is their sole source of income. The Habitat Standard section needs to include a separate standard for important fisheries habitat. It should include fish passage, spawning, and rearing as upfront considerations for development activities. Both the State and local policies need to be free to exercise strong conservation standards to protect an increasingly valuable renewable resource..



Figure 2. Logging road after rains on state managed salvage sale Upper Lost River Watershed



Figure 3 Sediment entering salmon stream through silt fencing from previous road.

Citations. Important Fisheries Habitat should be added in 11 AAC 112.300, Habitats.

Rivers, Streams, and Lakes, and Riparian Management Areas.

There are a number of streams, within the CBY, that were not buffered during logging activity or inadequately buffered given the local wind patterns. The picture below shows a buffer that is failing. There are several more examples across the borough. On the Yakutat Forelands, once a stand is opened to the wind mass blow down events can overwhelm buffers set by current standards. From the USFS West Forelands Assessment it was noted that 90% of the most intense blow down events occur adjacent to timber harvest. This is an example of state and federal guidelines not being adequate for local conditions to ensure protection of the stream corridor, though that is the intent of the law.



Figure 4 Failed riparian buffer West Fork of the Situk River

From the photos, it is evident that state standards are falling short. The standard calls for avoiding, minimizing, and mitigating significant adverse impacts to natural water flow, active floodplains, and natural vegetation within Riparian Management Areas. Again, the sediment impacts are part of water quality standards and are not allowed review under the ACMP. On the forelands, buffers should trend towards maximum width given the wind disturbance component of local forest ecology. After experiences on Ophir Creek with excessive blow down preventing fish passage and sewage outflows, a local ordinance was passed to prevent development within 500 feet of the stream bank. Conventional wisdom sees this as too restrictive, but local experience with multiple failed buffer zones indicates that this standard may be the minimum that actually functions..

General Habitat Standard issues.

The old system of maintaining and enhancing habitats where it is feasible and prudent put the discussion into a precautionary mode. The best-case scenario was maintaining what already existed. It is far easier and cheaper to maintain a watershed then it is to put one back together again after significant alterations.

For example, if logging road construction, culvert installation and timber harvest are implemented according to reasonable policies, mitigation is unnecessary. In a local

scenario, logging roads would be constructed above grade to avoid changing water flow, culverts would pass National Fish Passage standards outlined in the clean water act and timber harvest would occur on a partial harvest sustainable rotation. The result would be no litigation, no pre commercial thinning and no expensive “restoration” or “mitigation” shouldered by the taxpayers. Given the long-term hidden costs post timber sale, doing the job well up front would likely cost less in the end. ACMP policies guiding good habitat decisions could help drive this fundamental change in perspective.

The three-part test allows for projects that cannot avoid impacts, but are essential to the community;

- 1) There is significant public need for the proposed use or activity [deference would go to the local district for determining the need];
- 2) There is no feasible or prudent alternative to meet the public need; and
- 3) All feasible and prudent steps to maximize conformance with the standards have been taken.

An example in Yakutat would be the current multi-use dock project. Since the dock will be constructed of sheet pilings filled with gravel, it cannot avoid destroying intertidal habitats. The need for the dock has been well demonstrated and the loss of habitat to the overall shoreline has been determined to be minimal by the local district. Though the dock will cause an immediate loss of existing spawning substrate for herring, the overall result may well be an *increase* in spawning surface area as the piles become colonized with macrophytes. In turn, the dock will provide economic opportunities from cruise ship off loading and gravel shipment while allowing a larger fuel barge to dock decreasing local gas prices.

7) Local policy requirements

“Adequately Addressed.” Statute (AS 46.40.070) allows districts to have their own policies. Certain rivers, soil types, forest stands and local populations of plants, fish and wildlife have specific needs depending on use, sensitivity and natural history. A great deal is unknown about various natural processes. General jurisdiction authority or blanket statutes often times do not adequately reach the desired intent of the regulation. Local experience can assist in pinpointing these gaps. These regulatory holes can then be addressed through statute or enforceable policy amendments. If the science is not adequate to formulate a concise amendment then funding should be provided to address the information gap and multi-party discussions can collaborate to analyze research results and author a regulatory solution.

An example of this for Yakutat would be the seismic exploration currently scheduled for next month. Though the current ABC list precluded any meaningful comment in this case, it was obvious that the current scientific literature is inadequate in determining effects of underwater noise. An authority on seismic operations in Woods Hole Oceanographic Institute has authored an essay stating that at least a decade of applied research is necessary to determine cause and effect. Several papers indicate significant risks and just as many indicate negligible impacts depending upon the species involved.

For whaling districts, this is a large concern. Much of the CIAP money should be put into researching this question and policies developed. To date the seismic question has not been “Adequately Addressed”

“Allow/Disallow.” Flexibility is important to problem solving. Sometimes habitats must be altered or a “take” of a protected species authorized for essential projects to go forward. If a policy must be waived for a specific project, it should not be interpreted as unimportant for future consideration.

8) Confirm Local Deference for Standards that Utilize Local Knowledge.

The due deference definition and 11 AAC 110.250(b) should be changed to confirm consideration of all factual evidence.

11 AAC 110.250(b), allows comments to be submitted without the regulatory authority giving due deference. It is unclear who decides the commentor’s expertise. In the case of the recent review of seismic activity in Yakutat Bay, the coastal coordinator reviewed numerous scientific documents. Though the “area of expertise” would be considered to be outside the district’s expertise is it not possible to contact various universities and agency personnel who are experts in the field and incorporate their research and comments into local commentary. Many times affected areas are known to local districts while knowledge of potential effects can come from outside “experts” The combination of knowledge in district reviews should not be parsed based on “expertise” of the actual author. This provision runs the risk of inadvertent dismissal.

Though the definition of due deference in 11 AAC 110.990(25) states that:

“Due deference means that deference in 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 commenter:

The risk is that the burden of collecting “All evidence available” is extremely large. To review all research on acoustic impacts of seismic survey is a long process and currently inconclusive.. This statement should be revised to (B) there is *supporting* evidence to support any factual assertions of the commenter.

9) Establishment of the Coastal Policy Council

If the CPC had been functioning during the initial changes to the ACMP there would have been another outlet for mediation and this rewrite might not have been necessary. Early signs of this dysfunction occurred during COYAK I & II timber sales on the Yakutat Ranger District in the Tongass National Forest. The CBY filed comments on the COYAK I timber sale through the DGC. The timeline for this state forum on comments ended 9 days after the USFS had, unbeknownst to the CBY, already signed the timber sale Decision Memo. There might as well not have been a state comment period.

The CBY was taken aback at the lack of coordination, which was the DGC's job. This disempowered concerned local citizens who had to accept promises from the USFS that the harvest would be minimal, take only blow down and stay on the road system. The sale proceeded with 40% green trees being harvested and, after the Bush administration's overturning of the roadless rule against overwhelming public support, the sale was doubled in size and included acreage far off the road system. The sale was challenged under NEPA rules, the USFS was found to be acting illegally and a rare **permanent injunction** was issued. The logging contractors were evicted from the job site, the town was in an uproar and lingering hostility remains to this day. All of this could have been avoided if the ACMP and the Council had been properly supported and utilized. It is not sufficient to rely on any one agency to make wise decisions.

10) Elevations

Following the previous testimony, it follows that the DNR Commissioner should not hold the final scepter. The current law gives all decision-making authority for elevations to the DNR Commissioner. AS 46.40.096(d) should be amended to include all state resource agencies in the decision to elevate or not and put the final decision to the CPC.

11) Transfer of the ACMP to the State Department of Commerce, Community, and Economic Development, DCRA.

Vertical integration of reviewing and permitting is problematic as it is difficult to avoid hierarchical pressure when in-agency job promotions, social interactions and impromptu meetings are commonplace. In order to use the time-tested system of checks and balances it is necessary to allow disagreements to occur without political ramifications. Decentralizing decision-making is a key component to power sharing and reviews that are more equitable. Experiences with DCED have been mostly positive with the CBY enjoying a variety of grants including fishery revitalization projects, such as Yakutat Wild Regional Branding. This positive relationship with the communities creates a better format for implementing the ACMP. DNR would still hold various permitting authorities and would still be an integral part of the review process. This has been achieved somewhat by the reinstatement of ADF&G's Habitat Division.

12) Additional Emphasis on Agency Participation and Notification Requirements.

The example illustrating lack of coordination between the USFS and DGC on the recent Yakutat Timber sales clearly shows the need for improved agency participation. However, there has been a relatively good track record recently on notifications in the CBY, which is promising. This, of course, has been simplified by the lack of statutes and appropriate enforceable policies. Several Yakutat constituents have requested comment opportunities on current actions this summer and we had no avenue to offer them. Revamping the program where citizens can effectively use the ACMP for a forum will build trust in public involvement.

13) An Expedited Approval Process and Additional Funding for Local Plan Changes.

There was consensus during the recent conference calls that the districts do not wish to rewrite their plans. It would be sufficient to make these fundamental statute changes and allow us to reinvigorate our local policies. The vast increase in CIAP monies should provide an opportunity for districts to enhance their knowledge within their coastal zone through research and monitoring. If the only intent of the funding is managing the OCS then maybe there needs to be a similar funding source for near shore marine and coastal uplands.

Currently we are facing projects on multiple fronts. Within the borough, over 160,000 acres of BLM land has been opened up to oil, gas and mineral development. In addition, approximately 90 square miles of the eastern forelands was staked for open pit mining, there is talk of oil exploration on mental health trust land and a seismic boat sent 265 dB sound waves throughout Yakutat Bay during the height of the coho season. It is hard to believe that none of these projects is subject to honest review under the neither current ACMP statutes nor beholden to local enforceable policies.

We should be allowed access to the CIAP monies to further the science needed to better research our ecosystem so that future development can coexist with a healthy people and place.

As the mission states:

The Alaska Coastal Management Program provides stewardship for Alaska's rich and diverse coastal resources to ensure a healthy and vibrant Alaskan coast that efficiently sustains long-term economic and environmental productivity.

The Yakutat Coastal District wants to restore functionality to the ACMP. Our suggestions are based on specific experiences outlined throughout this document. We are neither anti-development, nor open to rapid depletion of our borough's natural resources. We believe that the collective wisdom of the community can offer valuable insight to the planning of development within our coastal district. The CBY has a long history of protecting its resources for the benefit of the community. In the end, we have the most at stake.

Thank you for the opportunity to comment on this ACMP revision.

Sincerely



Bill Lucey,
Yakutat Coastal District