

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 23, 2011

1:19 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Alan Dick
Representative Neal Foster
Representative Bob Herron
Representative Cathy Engstrom Munoz
Representative Berta Gardner
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION(S): COMMISSIONER~ DEPARTMENT OF NATURAL RESOURCES

- HEARD

HOUSE BILL NO. 106

"An Act extending the termination date of the Alaska coastal management program and relating to the extension; relating to the review of activities of the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 22, ch. 31, SLA 2005; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 106

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	RES, FIN
03/07/11	(H)	RES AT 1:00 PM BARNES 124
03/07/11	(H)	Heard & Held

03/07/11	(H)	MINUTE(RES)
03/11/11	(H)	RES AT 1:00 PM BARNES 124
03/11/11	(H)	Heard & Held
03/11/11	(H)	MINUTE(RES)
03/16/11	(H)	RES AT 1:00 PM BARNES 124
03/16/11	(H)	Heard & Held
03/16/11	(H)	MINUTE(RES)
03/18/11	(H)	RES AT 1:00 PM BARNES 124
03/18/11	(H)	Heard & Held
03/18/11	(H)	MINUTE(RES)
03/23/11	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

DAN SULLIVAN, Commissioner Designee; Acting Commissioner
 Department of Natural Resources (DNR)
 Anchorage, Alaska

POSITION STATEMENT: Testified during the confirmation hearing for commissioner of DNR and answered questions during the discussion of HB 106.

JOE BALASH, Deputy Commissioner
 Department of Natural Resources (DNR)
 Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

RANDY BATES, Director
 Division of Coastal and Ocean Management (DCOM)
 Department of Natural Resources (DNR)
 Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

LARRY HARTIG, Commissioner
 Department of Environmental Conservation (DEC)
 Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106 on the Alaska Coastal Management Program (ACMP).

JOHN SANDOR
 Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 106.

JOHN CHASE
 Community Planner & Coastal Area Specialist
 Northwest Arctic Borough (NAB)
 Kotzebue, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

KATHIE WASSERMAN, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

DEAN WESTLAKE, Assembly Member
Northwest Arctic Borough (NWAB)
Kotzebue, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

RON PLANTZ, Human Resources & Community Relations Manager
HECLA Greens Creek Mining Company (Greens Creek)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 106.

MARILYN CROCKETT, Executive Director
Alaska Oil & Gas Association (AOGA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 106.

MICHAEL SATRE, Executive Director
Council of Alaska Producers (CAP)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

PAUL GLAVINOVICH, Minerals Consultant
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 106.

KEITH SILVER
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 106.

RACHEL PETRO, CEO and President
Alaska State Chamber of Commerce (ASCC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 106.

FRANK KELTY, Chair
Aleutian West CRSA
Unalaska, Alaska

POSITION STATEMENT: Testified in support of HB 106.

JASON BRUNE, Executive Director
Resource Development Council (RDC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 106.

MARV SMITH, Manager
Bristol Bay Borough (BBB)
Naknek, Alaska

POSITION STATEMENT: Testified in support of HB 106.

DAVID STONE, Mayor
City and Borough of Yakutat;
President, Alaska Conference of Mayors
Yakutat, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

TOM LOHMAN, Attorney
North Slope Borough (NSB)
Barrow, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

BILL LUCEY, Coastal District Coordinator
City and Borough of Yakutat
Yakutat, Alaska

POSITION STATEMENT: Testified during the discussion of HB 106.

BOB HOEKZEMA, Geologist; Research Assistant
Alaska Miners Association (AMA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 106.

ACTION NARRATIVE

[1:19:33 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:19 p.m. Representatives Feige, Seaton, Foster, P. Wilson, and Herron were present at the call to order. Representatives Dick, Gardner, Kawasaki, and Munoz arrived as the meeting was in progress.

[1:20:22 PM](#)

CONFIRMATION(S): Commissioner, Department of Natural Resources

CO-CHAIR FEIGE announced that the first order of business would be to take up the confirmation hearing for commissioner of the Department of Natural Resources' (DNRs) Designee, Dan Sullivan.

1:20:31 PM

DAN SULLIVAN, Commissioner Designee; Acting Commissioner, Department of Natural Resources (DNR), read an opening statement, as follows:

I appreciate the opportunity to testify here. It's an honor to actually be in the chair and be nominated for this important commissioner position. And I want to say at the outset I appreciate the constructive relationship with members of this committee both during my short time as DNR commissioner and during my time as the state's Attorney General.

1:21:34 PM

ACTING COMMISSIONER SULLIVAN said:

What I'd like to do for my opening statement is to be relatively brief but touch on my experience and background and how I believe that relates to qualifications to be the commissioner of DNR. I came to the position after serving as the Attorney General for the state for the past year and a half where my number one focus as Attorney General was working on the state's epidemic levels of sexual assault and domestic violence but I was also very involved in resource development issues, particularly with regard to ESA matters, Outer Continental Shelf (OCS) issues, pushing back on what we saw as federal government overreach. So I believe I came to the position from state work with some experience. Prior to the Attorney General position, I had served off and on for a number of years in Washington D.C. for Condoleezza Rice, first as her Assistant Secretary of State for the Economic and Energy Bureau and at the State Department where I had responsibilities covering global energy issues, global finance, and economic issues. I focused a lot on energy issues in that position. I was the U.S. Governing Board Member at the International Energy Agency. I worked closely with the federal coordinator on the Arctic Gasline. I headed a U.S.- Canada Energy Working Group and worked closely with [U.S.] Senator Murkowski and then Chair of the Arctic Research Commission, now Lieutenant Governor Mead Treadwell on President Bush's new arctic policy which "he got out the door before he left." I

had been an attorney prior to leaving for Washington, in Alaska for a number of years, served as a judicial law clerk in the Alaska Supreme Court and also on the U.S. Court of Appeals for the Ninth Circuit in Fairbanks. I've also, since 1993, been a U.S. Marine serving for several years on active duty, still in the reserves, and I've held positions that have ranged from rifle platoon commander, Task Force Commander for Search and Rescue Task Force, Staff Officer to the Commanding General U.S. Central Command (Centcom) and in those positions, particularly the Centcom position saw the importance of national security issues and Global Energy issues. Finally, I'm a father of three daughters, husband to a wonderful woman born and raised in Fairbanks, and in some ways it's the whole reason I'm in Alaska.

[1:24:16 PM](#)

ACTING COMMISSIONER SULLIVAN said:

Three months on the job. I'm still burning the midnight oil and many ways think I'm still scratching the surface on my knowledge in this position. I probably won't be able to answer all the questions but certainly will try and if I don't have answers to questions I'll certainly get back to the committee members. I believe my background and experience provides me with knowledge and skill sets that I think will be helpful for the DNR commissioner position. First of all, I have managed and led large organizations, particularly public sector, public policy related organizations. The State Department Bureau I led was over 200 people; the Department of Law close to 500; U.S. Marine Corps officer and several different marine organizations.

[1:25:11 PM](#)

ACTING COMMISSIONER SULLIVAN said:

I've worked on developing and implementing high-level strategy, whether at the White House, whether at Centcom, whether as Attorney General with the Governor in the Governor's office. I've led and overseen several complex negotiations, both for the United States and for the State of Alaska. I have a decent

perspective and understanding of global energy issues and markets, which I think is an enormously important issue for Alaska to be able to evaluate our resource base and energy opportunities, not just locally, but globally because that's the marketplace that we're in. And I have experience and recognize the importance of partnership among key stakeholders, whether it's governments, non-government organizations, whether it's industry, whether it's communities in terms of getting large resource development projects up and running. That partnership idea is something that I've been working on since "day one" in this position. I've testified before this committee on what I was referring to as my engagement tour but that's getting out meeting with members of the legislature, but communities, environmental groups, industry - I've probably met with well over 300 people in the past three months. Maybe that's where I'll end it because I think the issue of partnership, particularly between the executive branch and the legislature is something I've been very focused on and I think something that is critical to getting our resource development moving in the state and having a bright future. And what I've tried to do, and testifying before this committee the first time with all my directors, is to be responsive, respectful, and helpful to the legislature and that's something that if I'm confirmed I will continue to focus on. Thank you. I'll be glad to try to answer any questions you may have. And, again, I appreciate the opportunity and constructive engagement that I've already had with every member of this committee.

[1:27:49 PM](#)

REPRESENTATIVE FOSTER asked for insight into ways that he could leverage being new to DNR.

ACTING COMMISSIONER SULLIVAN responded that being new to an issue could be a disadvantage in some ways. He related one example as being the ACMP issue before the committee, which is a complicated issue that he's scrambling to become familiar and understand. He recalled that as the state's Attorney General he has worked on a lot of resource development issues and as the U.S. Assistant Secretary of State he worked on global energy projects. Thus, he has an understanding. One advantage is that by not being involved in some of the history in controversial,

contentious, long standing issues enables him to look at the issue very fresh and objectively. Therefore, he does not have the need to push for specific solutions since that has been the stance four years ago. He would like to review all of the very important issues from the perspective of having distance from the issues. He characterized his position as avoiding "baggage" associated with the issues.

1:30:53 PM

CO-CHAIR SEATON recalled earlier conversations in which DNR had previously been "wrapped in" the gasline issues. He inquired as to whether Mr. Sullivan has been able to elevate the other divisions such as the Division of Agriculture.

ACTING COMMISSIONER SULLIVAN related that he had not mentioned the department's oil and gas focus in a critical manner. He acknowledged that once a person becomes involved in the daily operation it is easy to have a gravitational pull toward oil and gas due to its importance to the state. He offered an example and described a trip he had taken to the Matanuska-Susitna Valley to work with the Division of Agriculture. He related he was then informed that the EPA was going to "take over" the re-start of TAPS, something he thought was a very bad symbol. He immediately cancelled his planned day to the Matanuska-Susitna Valley to fly to Fairbanks to ensure that a federal agency did not interfere. He offered that he later met with the Division of Agriculture and the board, adding it had been a number of years since a commissioner had met with them. He assured members his goal will be to maintain balance for the divisions in the department.

ACTING COMMISSIONER SULLIVAN said he has also been much focused on the Division of Mining, Land and Water and the permitting problems. He has spent considerable time working to understand the challenges in that division. He has also advocated for significant increases to the division's budget. He pointed out that he has recognized the tension since he personally has felt that pull [to oil and gas].

1:35:11 PM

CO-CHAIR SEATON understood the focus. He has been contacted by a number of constituents concerned about the Chuitna coal mining project activity that occurs through a salmon stream. He inquired as to whether Mr. Sullivan has held any public hearings or has DNR reviewed the legalities or practicality of a mine

that would preempt a salmon stream. He pointed out that this would also be relevant to other areas of the state besides his district.

ACTING COMMISSIONER SULLIVAN answered that he has been striving for balance, whether it relates to the Chuitna Coal Project, Wishbone Hill, or Pebble Mine. He has met with Native groups and community leaders in Sutton trying to get out and see the area. He emphasized that DNR has very stringent regulations for permitting, particularly for coal activities. Additionally, the DNR has continually monitored projects to detect any problems. The department could potentially not renew a mining permit due to air or water quality violations. He said he has been impressed with the coal mining statutes and regulations in Alaska. He offered his belief that the state has a good record for monitoring mining in a transparent, fair, and stringent way. He offered to provide a copy of DNR's response to Senator French with respect to his concerns with the Chuitna Coal Project. His response outlines procedures the DNR would undertake, including close coordination with Alaska Department of Fish & Game (ADF&G).

CO-CHAIR SEATON responded that he would appreciate having the letter sent to the committee.

[1:40:09 PM](#)

REPRESENTATIVE HERRON said he has reviewed Mr. Sullivan's resume. He asked whether he had dealt with Arctic issues during the time he was the articles editor at the Georgetown Law Journal.

ACTING COMMISSIONER SULLIVAN responded that he did not recall. He related his understanding that the Arctic issues and its importance to the U.S. has accelerated in the past 10 years. He mentioned that the Bush administration undertook a national security policy directive. He elaborated that the reviews were extensive and once undertaken has typically been well received as a thoughtful, non-partisan document. He recalled that at the time, the Arctic had not been reviewed from a national perspective in 15-20 years. He said he worked closely on the project and understood that the Obama administration has continued it. He further recalled that Secretary of State Hillary Clinton has frequently referred to the importance of the Arctic. He reported that the bureau he ran at the U.S. State Department was focused on the national security policy issues and it also had a pretty important component on resource

development issues due to the national focus on energy. In addition to environmental issues the policy covered issues related to Native groups and their cultures. He offered his belief that 20 years ago when he was a student at Georgetown University the Arctic was not a "hot topic" but it certainly is important now.

[1:43:05 PM](#)

REPRESENTATIVE HERRON concurred, noting that U.S. Senator Begich has acknowledged a new awareness of the Arctic in the Congress, but the question is whether that would make a difference to rank and file bureaucrats in terms of policy development related to Alaska. He noted that U.S. Senator Begich was able to get his colleagues energized but what about energizing the bureaucracy.

[1:43:57 PM](#)

ACTING COMMISSIONER SULLIVAN related from his experience that a significant number of people still take direction from the top which is important to note, given his sense of the direction for resource development. He offered his belief that in every federal bureaucracy some silos in different institutions have a much more pro-development view but they have been losing the debates to those that do not share that view. He emphasized the importance of the state's role to help win those debates with pro-development agencies in Washington, D.C. He stated that now is a good time to win that debate given the price of oil is \$100. He also thought that it would be possible to have the federal agencies play a more constructive role in Alaska in terms of resource development.

REPRESENTATIVE HERRON stated that he looked forward to working with him on issues such as coastal management.

[1:46:26 PM](#)

REPRESENTATIVE P. WILSON related that oil and gas issues are not as critical to Southeast Alaska as fishing and mines since those industries provide local jobs. She asked how Mr. Sullivan views hydroelectric power being included as a renewable energy source by the federal government.

ACTING COMMISSIONER SULLIVAN answered that Southeast Alaska has an impressive track record in terms of hydroelectric power. He recalled that a significant amount of energy is derived from hydroelectric power. He offered his belief that Southeast

Alaska provides a good example for the state and the nation. He pointed out another issue is the issue of federal government's role in terms of economic development in Southeast Alaska since it is comprised of federal lands. He emphasized cooperation is enormously important. He related that he spoke with several groups including mining and the Southeast Conference. He focused on the importance of unlocking the economic development on federal lands for hydroelectric, mining, and timber. He recalled a recent federal court decision with respect to the "Roadless rule" which has negative implications for both timber and hydroelectric or the intertie. The broader issue that represents a partnership with the federal government is almost more important than oil and gas in Southeast Alaska because so much of the economic potential in this part of the state must be done in conjunction with the cooperating federal government. Otherwise, Alaska will not "get anywhere" he said.

[1:50:23 PM](#)

CO-CHAIR SEATON related that the committee has reviewed the qualifications of the Commissioner Designee for the Department of Natural Resources.

CO-CHAIR SEATON moved to forward Mr. Dan Sullivan's name to the joint session of the House and Senate for confirmation. There being no objection, Mr. Sullivan's name was advanced from the House Resources Standing Committee.

[1:50:55 PM](#)

The committee took an at-ease from 1:50 p.m. to 1:53 p.m.

HB 106-COASTAL MANAGEMENT PROGRAM

[1:53:20 PM](#)

CO-CHAIR FEIGE announced that the next order of business would be HOUSE BILL NO. 106, "An Act extending the termination date of the Alaska coastal management program and relating to the extension; relating to the review of activities of the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 22, ch. 31, SLA 2005; and providing for an effective date."

[1:53:34 PM](#)

JOE BALASH, Deputy Commissioner, Department of Natural Resources (DNR), on behalf of the DNR, offered to present the consistency review process and highlight a few points.

[1:53:57 PM](#)

DAN SULLIVAN, Acting Commissioner, Department of Natural Resources (DNR), apologized since he was unable to attend the hearing two weeks ago when the administration took up this bill. He stated he has been focused on this issue and has discussed this issue with legislators and the stakeholders. He said he has recognized the importance of this program to the state. He acknowledged that the Alaska Coastal Management Program (ACMP) is a complicated program. He said he has been learning the intricacies of the ACMP while moving forward on this issue. He pointed out he has become aware of the disagreements in the past history. He offered his intent to be respectful, transparent, and constructive in terms of engagement.

ACTING COMMISSIONER SULLIVAN mentioned that the DNR has been working internally within the administration and executive branch toward getting its "own house in order." He has met to resolve differences between agencies since they can be problematic for the implementation of a program. He also related some legislators have expressed interest in regular meetings being held by directors, deputy commissioners and commissioners.

[1:56:32 PM](#)

ACTING COMMISSIONER SULLIVAN stated the committee has heard or will hear the results of the audit and DNR has been working on regulations to improve key areas mentioned in the audit. He advised that Mr. Balash would outline the consistency review process and the development of local district plans.

ACTING COMMISSIONER SULLIVAN reported that the Governor's bill, HB 106, represents a straight extension of the program and the Governor's preference would be to keep that separate from the issues of the program. However, he indicated his willingness to engage with legislators who propose substantive changes to the program. He indicated that this process will be based and guided by four principles. First, the program must maintain a predictable process. Second, the ACMP must be maintained as a strong state program where participant input is valued. Third, the Alaska Coastal Management Program (ACMP) standards and enforceable policies must be objective and must not duplicate or

redefine existing authorities. Finally, coastal districts should be afforded a meaningful role for input on projects but should not possess a veto decision over projects. He characterized the principles as broad. He reiterated his willingness to meet with legislators to answer any questions.

1:58:30 PM

MR. BALASH related he would like to address the consistency review process since it is important to understand the differences between the review process and the development of local programs.

MR. BALASH noted the committee had questions last week on the consistency review process. The prior presentation melded back and forth between descriptions of the review process and the interplay with local enforceable policies and development of local coastal plans. These are interdependent but significant differences exist between the two. He highlighted that he would like to keep the two issues separated so members will understand whether the issue involves the review process or the development of local plans. He offered to go through this presentation and highlight instances in which the local districts and the public have an opportunity to comment on projects and affect the decisions that state agencies make on whether or not to grant a consistency determination for a given project. He acknowledged the program is very complicated. He offered that at the closing he would discuss specific projects to "walk committee members through" a consistency review process.

2:01:35 PM

MR. BALASH related that the ACMP authority comes from a variety of authorities throughout federal and state law and regulations [slide 2]. It is an umbrella program that draws on existing authorities a number of state statutes have for the management and protection of our state resources. He identified the specific statutes governing the program as AS 46.39 and 46.40 and state regulations in 11 AAC 110, project review, 11 AAC 112, statewide standards, and 11 AAC 114, district plan regulations.

MR. BALASH related the ACMP's place in the overall permitting schedule [slide 3]. He pointed to the incredible array of rules and regulations to protect the natural resources in the state, including air, land, water, and fish habitat. Alaska has a fortified level of hurdles for development in particular even more hurdles apply to coastal zone development. He related that

obtaining a consistency determination from the Division of Coastal and Ocean Management in instances in which development is to proceed in the coastal zone. No other permit can be granted by a state agency and no other authorization can be granted unless the consistency determination has been issued by the Division of Coastal and Ocean Management (DCOM).

[2:04:47 PM](#)

MR. BALASH discussed what triggers a consistency review [slide 4]. He indicated that part of that depends on project location and the other depends on the type of authorization required. He related the consistency determination is triggered when the project is located within the coastal zone or outside the coastal zone and is a federal activity with reasonably foreseeable coastal effects, or the project requires certain federal authorizations. In some instances some projects require a state or federal permit and must undergo a consistency determination. All of those circumstances are identified in regulations and the program documents. He offered to provide any documents to committee members.

MR. BALASH explained that the review process involvement [slide 5]. This process involves the applicant, the affected coastal district, state resource agencies, federal agencies, and the public. He elaborated that the applicant is often a developer, and can be a private or public entity such as the state Department of Transportation & Public Facilities (DOT&PF). The process is designed to evaluate projects on the front end and make sure the project will be executed in a manner that protects and manages those coastal resources. This process not meant to be a straight yes or no at the front end of the project. At the end of the process the consistency determination details that the project plan is consistent or in cases in which the plan is not consistent the project must adopt alternative measures. He characterized this as an important part to understand.

[2:07:43 PM](#)

MR. BALASH highlighted that the affected coastal district is the local government or local coastal resource district and coastal resource representatives are located in the area the project is being proposed.

MR. BALASH discussed the ACMP consistency review process timelines [slide 6]. He indicated the first process is to determine the applicability. In the event the project is

required to be reviewed, the DCOM has a process to assist project sponsors with "getting their arms around the program" and what will be needed to obtain the necessary permits. He explained that these meetings can happen informally ranging from meeting with division staff to a wide array of review participants. He pointed out one of the more useful tools is the Coastal Project Questionnaire (CPQ) [slide 7]. He related that this document is 18 pages that a project sponsor can fill out that helps to identify the permits and authorizations required on both the state and federal side in order for the project to be completed. The CPQ will inform the departments and agencies that will be involved, which drives who will directly perform the review.

MR. BALASH offered his belief that the CPQ is an important tool on the front end and once it has been completed and submitted the consistency review process begins.

[2:10:56 PM](#)

MR. BALASH related that DCOM has 21 days to determine whether the process is complete [slide 8]. Once the CPQ has been turned in along with the relevant permit applications and the determination has been made the scope of the review will be decided. This process includes activity, the facilities, effects on any coastal use or resource, and identify the things that need to be examined since some low-impact activities would not be included in the scope of the review. He characterized this as a "bucket and bundle of activities" which are contained for all the reviewers examining the project and whether the project is consistent with the body of coastal policies.

MR. BALASH explained that once the application is complete and the scope is defined, that the DCOM will prepare the public notice [slide 8]. He indicated the public notice is prepared by the division and appears on the state's online public notice site, will be posted in three public places within the potentially affected coastal district, and provided upon request. He stated that public notice indicates whether it is a 30-day or 50-day review. He clarified that a 30-day review is one limited to state authorizations and a 50-day review is one in which federal authorizations are required. He stated the public notice starts the consistency determination clock at day 1.

[2:13:38 PM](#)

MR. BALASH explained that once the public notice is issued materials are sent to the reviewing parties, which is important to note since the review participants includes the local coastal district affected by the project. He further explained that gives the local coastal district certain rights, such as the right to review information, comment on information, and to be considered in the decision-making process. He specified that one of the critical components of the process is what occurs at day 13 or day 25, depending on whether the review is a 30 or 50 day review. He emphasized that any reviewing participant can request information, including the local district. A participant has the right to review the additional information to ensure that it complies with the request. In the extreme the clock can be stopped if an applicant has not provided critical information and does not restart until the information request has been satisfied.

[2:14:58 PM](#)

REPRESENTATIVE P. WILSON asked for clarification on the number of days it would take.

MR. BALASH answered that beginning on day 1 when the process starts, when a project reviewer has seen the scope in the application and wants additional information to better understand how the project would affect the area or the resource, the project reviewer can request that information from the applicant. He explained that could occur on day two or day five. Deadlines apply so a reviewer must request that information of day 13 for a 30-day review. If the reviewer misses the deadline it is too late, he said. Since an overall number of days in which the review can be completed exist a reviewer can effectively stop the clock to allow that information needs to be satisfied. He clarified that these delays are usually done at the request of the project applicant.

[2:16:46 PM](#)

MR. BALASH returned to his presentation. He stated that a reviewing entity and specifically a coastal district not only can request specific information, but can also request a specific geographic area within the proximity to the project to be designated for a specific purpose or set of protections. He related that a subsistence area or a natural hazard area can be requested and designated by the local district. He cautioned that this has nothing to do with the local coastal plan but is simply in the context of this review. He recalled this is a

tool that has been used under the existing program since the 2003 changes. In particular, the North Slope Borough has utilized this for more than a half dozen projects to protect subsistence areas important for local use. He characterized this as a significant tool. However, this does not necessarily become part of the permanent local plan. He reported that reviewing agencies and entities can submit their analysis of the project and its consistency with the local and statewide standards.

[2:18:53 PM](#)

REPRESENTATIVE GARDNER referred to the day 13/25 portion of the slide that represents the point during which reviewers could request additional information or designate an area for special review, but the consideration does not become part of the permanent plan. She asked for clarification for the instance in which the local community holds a concern not addressed by state or federal statutes or plans. She wondered why this would not be included as part of the permanent local plan.

MR. BALASH asked to defer the question as the department is scheduled to talk about local plans and their development on Friday. He clarified that the review process timeline is specific to the permits and projects in question to mitigate impacts on an area.

REPRESENTATIVE GARDNER agreed to wait.

[2:20:18 PM](#)

MR. BALASH continued the presentation. He reported that comments are submitted by all of the reviewing state and federal agencies to the coordinating agency which is typically the DCOM. He related that the comments must be in writing and basically says one of two things: either it is consistent or can be made to be consistent by doing certain specified things.

MR. BALASH emphasized that this is the opportunity for communities to "drive" how a project will proceed. The evaluation consists of the coordinating agency considering all comments and granting due deference to the coastal district in considering and applying the standards to the affected coastal community. He referred to 11 AAC 110.255(a), which read, "The coordinating agency shall give a commenting resource agency and coastal district with an approved plan due deference within that agency's or district's expertise or area of responsibility." He

clarified that in other words "they're getting to really call the balls and strikes" as the standards are applied to the project. He said, "And that's a big deal." He stated that this is a state program and "a big gate keeper" on whether a project happens in the coastal zone or not. He pointed out that if a project does not get a consistency determination from DCOM, the developer does not get to proceed with the project and it is at this particular stage in which a coastal district can determine whether the project is in conformance or not. He concluded that if the coastal district says no, the department will go that way. He characterized this as a unique tool. The DCOM has found this to be an important part of the process as it approves projects for development.

[2:23:37 PM](#)

MR. BALASH said it is not uncommon to have conflicting views between the reviewers as to whether a project is consistent. In such instances, a consensus process is specified under 11 AAC 110.255 (c) which lays out how to resolve this through consensus. He read:

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

MR. BALASH pointed out that someone must make the decision, which is typically DCOM, and that decision is spelled out and identifies whether there are alternative measures needed to meet consistency and proceed with the project. When the coordinating agency has reached that step by day 24/44 that proposed determination, in writing, would be circulated to all reviewing entities and made public. Again, this would give the project applicant an "up or down" so either the project is consistent or it is not. If it not consistent the means for making it consistent would be spelled out.

[2:25:55 PM](#)

MR. BALASH stated that the applicant has a choice of adopting the alternative measures and proceeding or abandoning the

project and withdrawing it. He indicated that the applicant would also have the opportunity at this point to elevate the decision. The elevation can be spurred by one of the reviewing entities, including a coastal district or an applicant. That would take the decision from DCOM and elevates the decision to the commissioner. Fortunately that does not happen very often. He related his understanding that the one time it occurred since the 2003 program, the elevation was initiated by a coastal district and the commissioner sided with the coastal district against the division. Once the final elevated decision is made a final consistency determination it is published on day 30/50 depending on the scope of the review.

MR. BALASH clarified that the process does not always need to go 30/50 days in all cases. The DCOM has an expedited process.

[2:28:05 PM](#)

CO-CHAIR FEIGE inquired as to the first point in which a coastal district becomes aware of an application.

MR. BALASH answered that on day 1 the coastal district would receive the official notice electronically to the official for the coastal district. Typically the communities have an awareness of a forthcoming project during the pre-review process.

[2:28:55 PM](#)

CO-CHAIR FEIGE inquired as to whether a municipality within the coastal district is notified that an application has been received.

MR. BALASH answered correct.

[2:29:09 PM](#)

CO-CHAIR FEIGE referred to day 13 or day 25 and asked for clarification.

MR. BALASH responded that the number of days depends on which scope the project falls under and whether it is a 30/50 day track.

[2:29:23 PM](#)

REPRESENTATIVE HERRON related his understanding that the statutes require a plan, following the criteria, which is submitted to the DCOM. The department must review and approve the process. He inquired as to why the presentation is covering the review and approval process prior to covering the management plans, submission, and department review.

MR. BALASH responded that during the first presentation the department was asked to provide a flowchart on the review process and did not. He remarked that the department is doing its best to meet the co-chairs' request.

[2:30:25 PM](#)

REPRESENTATIVE MUNOZ asked for a percentage of the projects that are able to complete the process in 30 or 50 days. She further inquired as to the reason to have the process go much longer.

MR. BALASH answered that he does not have a specific percentage, in mind. He recalled some summary information in members' packets that identifies the number of projects applied, withdrawn, and completed. He deferred to Mr. Bates.

[2:31:33 PM](#)

RANDY BATES, Director, Division of Coastal and Ocean Management (DCOM), Department of Natural Resources (DNR), answered that 100 percent of the projects going through a consistency determination are completed within the 30 to 50 day timeframe.

[2:31:58 PM](#)

MR. BALASH stated that not every single activity requires a complete review like this. The division has developed an ABC list (slides 9-10). He identified that the ABC list identifies certain routine activities that frequently occur and are not required to undergo a longer process. He identified "A list" activities as ones pertaining to low impact activities or projects. The B list activities would include activities that are "generally consistent" when alternative measures are taken into account. Additionally, the B II category of projects would include the ones that fall under the nationwide or general permit list. The C list would include the types of state permits that occur too infrequently to be included on a general or categorical designation. He emphasized that those projects are those that absolutely go through the 30 to 50-day review process. In FY 2010, 20 percent of the project reviews were

completed and conducted through this expedited list mechanism. He reiterated that a review is not necessary in instances in which all of the activities fall on the A or B list [slide 10]. Additionally, parts of a project may be excluded if resource agencies and the affected coastal district agree that the A or B list has a "de minimis" impact. He restated that this is a way to narrow the focus of the program and reviewers and concentrates staff time on the projects that matter most.

[2:34:32 PM](#)

MR. BALASH emphasized that the ACMP is unique and valuable [slide 11]. He commented that how it is applied in Alaska is very different than in other coastal states. Alaska has taken steps to ensure that its program is an effective program and one that allows communities to make a difference in the way projects occur in the coastal zone. He pointed out the extensive number of coastal miles in Alaska and how it affects Alaska's communities from fishing to reliance on resources in coastal areas. The federal consistency reviews have had an impact on a number of things that do not necessarily relate to a specific project such as lease sales. He related that if the program was not continued the state would not be able to participate in reviewing federally permitted activities, such as the outer continental shelf (OCS). The governor has recommended the program be extended for six years.

MR. BALASH provided examples of reviews [slide 12]. He related that the Northern Fiber Optic Link is one project. Projects were competing for federal funds and this project proposed installing 30,000 miles of fiber optic cable around the outer coast of Alaska and tying into the existing fiber optic link. This project would make a big difference in everyday life in rural areas of the state in terms of commerce and quality of life. The DCOM received the coastal project questionnaire application and held a pre-application meeting with the applicants.

[2:38:32 PM](#)

MR. BALASH reported that the division issued an insufficient information letter to let the applicant know that additional information would be required for a complete application. Subsequently a second pre-application meeting was held. He explained a series of separate meetings with agencies were held to detail the issues with the application which ultimately resulted in a complete application. The division then started

its review. The division received a request for additional information from the Bristol Bay Borough and conflicts with the Naknek and Dillingham fisheries arose including the Bristol Bay CRSA. He explained that the project proposed cable landings to be sited in a high erosion area. The Northwest Arctic Borough expressed concern with subsistence in the Kotzebue Sound. Numerous applicant project changes occurred during the course of the review. The applicant received a second request for additional information (RFAI) from the Bristol Bay CRSA so the clock was stopped to evaluate the RFAI and consult with the review participants. He said the review was restarted three days later with new comments, deadlines, and proposed and final determination date.

[2:40:23 PM](#)

MR. BALASH related the comment deadline was reached and comments received from the Alaska Department of Fish & Game (ADF&G), the Bristol Bay CRSA, the Northwest Arctic Borough which focused mainly on conflicts with fishing activities and subsistence. He added that one comment was received from a Nome miner about conflicts with Norton Sound mining activities. The division issued a proposed determination objecting to the project but proposing alternative measures. The applicant adopted the alternative measures into the project description, avoiding subsistence and peak fishing activities by adopting timing windows and notified communities and competing user groups. The DCOM issued a final consistency determination for the Northern Fiber Optic Link project.

[2:41:18 PM](#)

MR. BALASH provided a second project example of the consistency review process for the Sitka Runway Safety Area Project [slide 13]. He provided background information on the project site and review. He explained that the airport sits on Japoniski Island with marine waters on three sides. The runway itself did not meet Federal Aviation Administration (FAA) standards for safety area and stipulated an upgrade. The Department of Transportation & Public Facilities (DOT&PF) proposed an intertidal fill to create a 280 foot by 200 foot wide runway safety area expansion which required a U.S. Army Corps of Engineers (USACE) permit. He stated that DCOM coordinated a pre-review meeting between the USACE and DOT&PF and received a complete Coastal Project Questionnaire (CPQ) which began the 50-day consistency determination review. Comments were received from the Environmental Protection Agency (EPA), the U.S. Fish

and Wildlife Service (USF&WS), National Marine Fisheries Service (NMFS), which were forwarded to the review participants. Review participants commented at the ADF&G and Sitka Coastal District level. The concerns were not around habitat, but the coastal district was afraid the fill could damage a wastewater outfall line and/or block vessel passage through Middle Channel to the harbor. The division issued a proposed determination objecting to the project but proposing alternative measures, including alternatives to protect the outfall from the wastewater line, to provide video documentation of the fill placement, and to notify mariners of the in water work windows. At that point the DOT&PF asked the division to stop the clock so it could take stock of the situation without the pressure of time. The DOT&PF facilitated meetings with the local coastal district and affected agencies and ultimately DOT&PF modified the project. The DCOM restarted the clock and the project moved forward.

2:44:30 PM

MR. BALASH related another example of the consistency review process, the Cosmopolitan Oil Development Project [slide 14]. He stated that this project is just outside Anchor Point in the Southern Kenai Peninsula. He then provided background information and detailed the consistency review process taken. He said that the parcel represents a collection of leases offshore intended to be developed onshore using horizontal drilling techniques. The parcel ownership was private upland but was surrounded by private recreational and residential properties. He related that DCOM held a pre-application meeting after an application packet was received. The applicant also applied to the federal Minerals Management Service (MMS) since the reservoir was located further offshore so a portion would lie in the federal offshore area. After some discussion with DCOM the applicant withdrew its MMS application. He offered that several letters of support were received but also received comments from people concerned about the drilling noise that might occur. He pointed out that during the exploration phase of the project the neighboring properties had been impacted on a 24-hour basis. The Alaska Division of Oil and Gas (ADO&G) requested an alternative measure to make the project consistent with the energy facilities statewide standard in terms of adjacent uses. He identified the proposed project activities were incompatible with private residences and private properties under the standard. The recommendations were to construct an earth and berm barrier to minimize sound, to construct a fence to block sound and visual impact and additional alternatives based on discussion with the adjacent landowners. The applicant

agreed to build noise attenuating fencing or earthen berms and to enclose some equipment in noise mitigating modules. The applicant minimized the visual impacts with the lighting to ensure it was directed more closely to the ground to reduce offsite illumination and through appropriate facility painting. The division found the project consistent and the project moved forward with the consistency determination. He remarked that the project is not advancing in this particular fashion. The leases were relinquished and will be offered at the upcoming Cook Inlet oil and gas lease sale.

[2:48:23 PM](#)

MR. BALASH referred to the fourth project, the Kenai Watershed Project [slide 15], noting that this project was one that had an expedited review using the ABC list process. The Kenai Watershed Forum is a local non-governmental organization (NGO) that was seeking to improve and replace culverts blocking fish passage. He related that on June 17, 2011 the DOMC received three CPQs from the Kenai Watershed Forum for three separate projects. The next day the DOMC sent "heads-up" e-mails to other sister agencies within the DNR, ADF&G, Department of Environmental Conservation (DEC), and the local coastal district notifying them of the three applications, asking whether any permits were required by ADF&G Division of Habitat, and whether the agencies would agree to an expedited review using a general consistency determination (GCD). The agency responses indicated no permits required from DNR. However, the ADF&G Division of Habitat required permits. On June 22, 2011, an expedited review letter for all three applications and determined the project was consistent via GCD #7 on the "A List" for the bridges and culverts. Thus, these three culvert projects were able to move to completion in the month of June.

[2:50:33 PM](#)

MR. BALASH offered that 20 percent of the projects are expedited in this fashion. He detailed the culvert projects were 3 of 93 project requests the Anchorage project review team received in the month of June. He underscored the substantial activity happening in the coastal zone and the importance that the DCOM places on being responsive to all stakeholders and the DCOM's efforts to provide a predictable process that is easy to navigate and complete.

[2:51:24 PM](#)

CO-CHAIR FEIGE related that the legislature must decide whether to extend the ACMP. He pointed out that if the legislature cannot come to an agreement, the program would be allowed to lapse. He asked for clarification on the program impacts such that if the legislature cannot come to an agreement and the ACMP sunsets for the effect on the state and the developers on projects within the coastal districts.

2:53:03 PM

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), stated that the ACMP is a voluntary program not mandated by the federal government funded by the U.S. Department of Commerce. In the event that the department lost the program, the state would not be in violation of a federal law because it is a voluntary program. In terms of the permitting agencies, including the DEC, the state would not lose the right under the federal statutes governing the Clean Water Act, the Clean Air Act, and Safe Drinking Water Act to move forward with the permits and authorizations it issues on projects. Thus, the department would still be able to issue permits in the state.

2:54:02 PM

COMMISSIONER HARTIG offered his belief that the one thing that would be lost right now under AS 40.40.040(c), the DEC's standards are extended to OCS and offshore areas and other federal activities. He offered that what it would mean when Shell Western E&P Inc. or ConocoPhillips Alaska, Inc. conducts exploration and needs federal permits that the Alaska's standards must be met under the AS 40.40.040(c). When EPA would issue a permit for air permitting it would come to DEC through the DCOM to assess whether the permit was consistent with state standards. In the event the ACMP lapsed the state would still have an opportunity to comment through the National Environmental Policy Act (NEPA) process although it would not conduct a consistency determination review process.

COMMISSIONER HARTIG pointed out that issues arise in the permitting process that could be resolved at an early stage if all the agencies are coordinating the project prior to the formal permitting process. He said that overall, the bottom line is that it would not preclude projects from moving forward or from permits being issued but it might change opportunity for local input, and the department would have to find a different

vehicle to provide the state's comments during the federal permitting process.

[2:56:49 PM](#)

CO-CHAIR FEIGE inquired as to whether that would be good or bad for the state or if it would be neutral.

COMMISSIONER HARTIG answered that it depends on what the coastal zone management program looks like. He thought ways exist for the state to manage and construct the program. He suggested that certain changes would raise concerns which would need to be weighed against some of the benefits. He elaborated that a well-refined program can offer benefits while not constructing unnecessary barriers, duplication, confusion, or lack of predictability. Additionally, federal money comes with the program. He cautioned that benefits are not automatically reaped without detriments.

[2:58:04 PM](#)

REPRESENTATIVE HERRON related much discussion has been held with the DEC "carve-out." He inquired as to whether the DEC "carve-out" is necessary except for the Prevention of Significant Deterioration Air Quality Permit (PSD).

COMMISSIONER HARTIG answered yes. He said that he felt strongly as does the administration about keeping the DEC "carve-out." Besides the Prevention of Significant Deterioration (PSD) air permit, which he identified as an air permit issued for a complicated permitting facility, the same issues that arise in the context of air permitting come up in the context of other permits including water permits. The changes made during Governor Murkowski's administration to the ACMP program in 2003 were ones made prior to the primacy for the MPDS program so no water permitting was necessary under the Clean Water Act. Thus, the argument that problems didn't exist back then can't be made. He detailed three aspects to the DEC "carve-out." First, as previously mentioned, the "carve-out" provides a vehicle for extending state standards to the OCS and for the DEC consistency determination. Secondly, the "carve out" also provides that DEC standards apply to air and water quality for spill prevention and response as well as for other standards. If the standards are met consistency should be found under the ACMP. He expressed the department's concern about potentially removing the "carve-out" on air or any permitting is primarily due to an

absence of predictability and reliance that those standards are based on the best science, engineering, and public process.

[3:00:25 PM](#)

COMMISSIONER HARTIG related the final concern about removing the DEC "carve-out." He related that just like the PSD permits, the NPDES permits or water permits have schedules that are followed when issuing the permits, some mandated by federal law, some by state law. Typically, the DEC would develop a water permit using federal and state standards. He related a scenario in which someone wants more time to comment on a draft permit. Under the ACMP consistency determination process the DEC is on the ACMP clock and cannot provide an additional 30 days. If the ACMP were to lapse, the DEC may not be able to follow the right federal process for the timing for the permit and still meet the ACMP. He stated that this would apply to both to air and water quality permits. The schedules for two different programs may not mesh. He offered his belief that the PSD and all other permits would have the same issues as the NPDES permits.

[3:01:45 PM](#)

CO-CHAIR SEATON announced that he held a conversation with Commissioner Hartig who has agreed to put in writing the time sequences.

COMMISSIONER HARTIG agreed to provide the information to the Co-Chairs.

[3:02:19 PM](#)

CO-CHAIR FEIGE announced that HRES will reconvene at 6:00 p.m. tonight but for members who could stay for the next few minutes that he will continue on with the DNR's presentation.

[3:03:01 PM](#)

CO-CHAIR SEATON requested notes on the four projects presented as examples.

MR. BALASH agreed to provide them to the committee. In further response to Co-Chair Seaton, he also offered to provide a copy of the questionnaire, the CPQ.

CO-CHAIR FEIGE pointed out that the questionnaire can also be found online under DCOM's website.

CO-CHAIR SEATON clarified his interest in having a CPQ that has been filled out by an applicant.

[3:04:22 PM](#)

REPRESENTATIVE P. WILSON referred to slide 8 to the review timeline. She inquired as to whether a community could go beyond the traditional subsistence area and request an entire area be designated as subsistence.

MR. BALASH responded that she is delving into some of the distinctions between the local plan and the consistency review process. He explained that the subsistence designation is significant for the three coastal districts that have not yet had their plans approved yet. The program process requires that the subsistence use and documented subsistence activity must be submitted. He acknowledged subsistence has been a big part of why a local plan has not been approved.

MR. BALASH said that even without the permanent designated subsistence area in the local plan, the consistency review process in day 13/25 allows for requests for subsistence area designation in the review solely for a specific process. He reiterated that a district could request that a particular area be designated for that project so the review process does allow subsistence activities to be considered and addressed during the consistency determination.

[3:07:34 PM](#)

REPRESENTATIVE HERRON related that the governor has expressed interest in only an extension of the ACMP, but earlier comments indicated a willingness of the department to entertain some changes to the ACMP program. He inquired as to any reason why not to have coastal policy board even without veto power.

ACTING COMMISSIONER SULLIVAN asked for clarification on the question.

REPRESENTATIVE HERRON recalled earlier testimony that the department did not want to have a coastal policy board with veto power. He inquired as to whether it would consider a coastal policy board that provided input but did not have veto power. He asked whether the administration would have any objection to that structure.

ACTING COMMISSIONER SULLIVAN related that he was unprepared to get into substantive issues right now.

3:10:14 PM

CO-CHAIR FEIGE answered if he would like to see it in writing.

ACTING COMMISSIONER SULLIVAN answered absolutely.

3:10:20 PM

REPRESENTATIVE HERRON suggested there may be an amendment that may eliminate the requirements for subsistence use areas. He suggested that perhaps that could be discussed at a future meeting.

CO-CHAIR SEATON, following up on Representative P. Wilson's question, expressed interest in the process between day 13/25 and day 17/30 in which areas could be designated and uses. He recalled that local enforceable policies are in place so developers know what activities can be done. He expressed concern that "things that aren't in enforceable policies or anything can be thrown in at the last minute and stop the clock between day 13 and day 17 while we consider putting in something that is not in a local policy or state standard." He asked for clarification on whether he is misunderstanding the process.

3:11:42 PM

MR. BALASH answered no, that he did not think he was misunderstanding the process. He characterized this as a tool available through the review process put in place as a result of the 2003 changes. He added that during discussions it was decided a mechanism to designate areas was needed in the review process to address a potential gap between the old local plans being extinguished and the new ones not yet approved. He stated that the tool remains in the ACMP and in the review regulations. He said this has been utilized by the coastal districts in that particular fashion. He acknowledged that what Co-Chair Seaton has described in having a local plan with the subsistence areas clearly identified on the front end is the ideal. He offered his belief that real differences of opinion exist as to under what circumstances an area is designated and the size of the subsistence area and what parts of the year the designations apply. He hoped to get into some of those distinctions in later hearings. He pointed out that discussing an area the size of

the North Slope Borough that the land mass and coastal area is immense.

[3:13:32 PM](#)

CO-CHAIR SEATON asked whether this provision is only available for subsistence or for anything not in an enforceable policy for a specific area.

MR. BALASH offered to provide a specific list of what can be designated. He related his understanding the additional information did not just pertain to subsistence but did not encompass everything else either. He suggested that natural hazard areas could be identified and anything that could be identified in a local plan could also be identified at this juncture with this tool.

[3:14:21 PM](#)

REPRESENTATIVE GARDNER recalled earlier testimony from Glenn Gray who has indicated some districts had frustration with instructions or changes that were given verbally. She related his understanding that the districts were told that the clarification would not be put in writing. She inquired as to whether it is it possible to have a requirement that the instructions in writing. She personally prefers "in writing" provisions, she said.

MR. BALASH understood that this particular line of questions and occurrence in the past was an attempt to obtain finer granularity as the conversation develops and questions become more nuanced. He emphasized it was not that the answers were changed but the questions were becoming more specific. He characterized the program as voluminous. The program rules and regulations are written ones which have been in place since 2005. He acknowledged the period of time when legislation was developed and debated in 2003 to the period when ultimately the OCRM approved the state's program in 2005 that certain nuances could not be rectified. He indicated that some understandings and assumptions were made in 2003. He offered to provide the written program.

[3:16:51 PM](#)

REPRESENTATIVE GARDNER stated that regardless of the reason for the question, it seemed to be reasonable to expect to be directed to a specific regulation cite. If the answer is not in existing regulation, it seemed reasonable to be provided an answer in writing since it would create a chain and record that can be referred to later on by the parties involved. She elaborated that obtaining information in writing can help avoid misunderstandings. She reiterated that creating a record seemed to be a reasonable approach.

MR. BALASH agreed that she made a reasonable request and he offered to review the DCOM's policy.

[3:18:06 PM](#)

REPRESENTATIVE P. WILSON stated that anyone considering a project needs to know the parameters and bases to consider prior to submitting an application. She now recognizes the importance written guidelines provide to applicants.

MR. BALASH answered she is correct. He stated that from the agency's perspective, as the agency charged with "handing out the permission slips," knowing the rules has relevance since the agency must be able to "stand squarely" on its decision, answer questions, and offer guidance to applicants on how to proceed. He pointed out due to the extensive coastline in Alaska, the DCOM affects most projects.

REPRESENTATIVE P. WILSON surmised there must be numerous areas that no person has ever set foot on.

[3:20:24 PM](#)

CO-CHAIR FEIGE recessed the meeting until 6:00 p.m.

[6:05:59 PM](#)

CO-CHAIR FEIGE reconvened the House Resources Standing Committee meeting at 6:05 p.m.

[6:06:13 PM](#)

CO-CHAIR FEIGE announced that the committee would now take testimony on HB 106

[6:06:41 PM](#)

JOHN SANDOR, speaking on behalf of himself, stated that he served as Commissioner of the Department of Environmental Conservation in 1990-1994 during Governor Wally Hickel's administration. He also serves as a board member for the Alaska Energy Coalition and is Chair, Juneau Chamber of Commerce's Resource Committee. He said he is speaking today on his own behalf, as a resident of the state to support HB 106. He was aware of proposals to modify the bill to add districts that would play a greater role in consistency determinations in the coastal zone. He expressed concern that the investment community could be subjected to uncertainties if the state reverts back to the prior process of approving coastal zone consistency determinations district by district basis. He noted that Southeast Alaska has had a significant population decline He supported the timber industry but it was essentially terminated in the 1990s. The Department of Labor & Workforce Development (DLWD) 2010 population projections indicate Southeast Alaska population will decline from 69,000 to 59,000 by 2034. He urged members to pass HB 106 and continue to maintain the consistency determination process of the past few years.

[6:10:03 PM](#)

JOHN CHASE, Community Planner & Coastal Area Specialist, Northwest Arctic Borough, related that the Northwest Arctic Borough (NWAB) promotes responsible and sustainable development. It is important to the NWAB that it has a "seat at the table" to address potential impacts to coastal resources and uses. He related that subsistence remains an important way of life for NWAB but under the current program the NWAB was not afforded the means to discuss impacts to subsistence during the ACMP project reviews. The NWAB has had difficulties getting proposed subsistence areas approved by DNR for inclusion in its plan and during consistency determinations. The NWAB supports the proposed committee substitute (CS) for HB 106. This draft fixes three of the biggest problems with the ACMP. The proposed CS would establish a coastal policy and appeals board. It would make the criteria for enforceable policies more clear. It would bring air and water quality back to ACMP. The new Coastal Policy and Appeals Board (CPAB) would be more efficient than the former Coastal Policy Council because its duties would be limited to three things: approving changes to the ACMP regulations with DNR; resolving differences for projects elevated by a review participant; and making final decisions on coastal district plans when a district and DNR cannot reach agreement during mediation. He offered his belief the NWAB would current have a

plan in place if the Coastal Policy and Appeals Board were firmly in place. It is likely that the regulations regarding coastal district plan approval criteria would have been more reasonable so the NWAB would not have had to request mediation. Secondly, DNR would have had more motivation to reach an agreement during mediation if the final outcome could be appealed to a board. The NWAB appreciated clarification in the proposed CS for HB 106 in terms of criteria for approval of coastal district enforceable policies. He related that the DNR admitted its regulations are more stringent than expected so it is necessary to amend the statutes to provide more predictability. Lastly, the proposed CS for HB 106 would bring back air and water quality issues into ACMP issues by eliminating the DEC "carve out." The "carve out" just has not worked, he said. Even the DNR's 2008 proposed changes to the ACMP's statutes would have eliminated it. In summary, the NWAB supports the proposed CS for HB 106 and urges the committee to adopt it. He concluded that DNR has recognized problems with the ACMP it has made little effort to fix these problems.

[6:13:55 PM](#)

REPRESENTATIVE MUNOZ asked whether the Northwest Arctic Borough had approved district plan.

MR. CHASE answered there was not an approved plan but has attempted to mediate with DNR without success.

REPRESENTATIVE MUNOZ asked whether the NWAB was still working toward a plan.

MR. CHASE answered the NWAB has worked to draft a coastal management plan.

REPRESENTATIVE MUNOZ asked whether the defined subsistence areas were part of the proposed coastal management plan.

MR. CHASE answered that he cannot define subsistence as defined in the plan but he could explain what subsistence means to him personally. He offered that subsistence means taking bearded seals, ringed seal, caribou, sheefish, salmon, ducks, geese, and ptarmigan. He related that subsistence means all of those things that he feeds his family.

[6:15:41 PM](#)

REPRESENTATIVE SEATON asked whether NWAB incorporate enforceable policies into borough code.

MR. CHASE responded no. He explained that some enforceable policies are in the coastal management plan but the policies are not included in the borough code. After conferring with NWAB staff, corrected his answer by stating that some of the enforceable policies are in the borough code.

REPRESENTATIVE SEATON asked for an explanation on the procedures. He related his understanding the NWAB has enforceable policies incorporated into the code. He surmised that an applicant would need to seek a permit from the NWAB after its project had undergone a Division of Coastal and Ocean Management (DCOM) consistency review.

MR. CHASE answered no.

[6:17:21 PM](#)

REPRESENTATIVE P. WILSON asked how many subsistence areas are in NWAB.

MR. CHASE responded that the NWAB has identified 17 subsistence areas in its coastal management plan but only one was approved and 16 have been disapproved.

REPRESENTATIVE P. WILSON asked why the others were declined.

MR. CHASE said he was unsure of the specific reason for the denial. He stated that many of the NWAB's subsistence use areas have been denied and it has been disheartening during mediation sessions to have so many areas disapproved. He elaborated the difficulty since it is impossible to pinpoint a specific place where seals or caribou will be on any given day although it is possible to identify the general area subsistence use happens.

[6:19:13 PM](#)

CO-CHAIR FEIGE clarified for the audience that a CS has been presented but has not yet been adopted. [Before the committee was HB 106.]

[6:19:30 PM](#)

KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), offered that the AML held considerable discussion on this

issue during its annual conference in December. She related that the best way to "cement" the decision came from a council member in the City of Cordova who asked, "Why would we not want to have a voice in what happens in our coastal areas as municipalities." She offered the AML's support to extend the ACMP, but would like to see some changes made. She pointed out that some people assume the AML will be opposed to things. She assured members the AML does not want a veto power. She clarified that the AML wants to "be at the table." She offered that all the mayors want to see wise growth in the community. She summarized the resolution such that the AML supports extending the ACMP, establish a Coastal Policy Board, bring back air and water quality issues into the ACMP consistency reviews, and eliminate requirement for designation of subsistence use areas and allow meaningful enforceable policies. She summarized that the AML supports extending the ACMP.

[6:21:27 PM](#)

REPRESENTATIVE MUNOZ related that the law required due deference to communities that have a district plan with enforceable policies. She inquired as to whether the communities receive due deference as defined by law.

MS. WASSERMAN answered that most communities have had a difficult time getting their consistency reviews processed through the ACMP. She offered an example such as the North Slope Borough and the NWAB that has had a difficult time identifying the subsistence caribou region since game moves. She reiterated that it is difficult to designate a closed area for subsistence.

[6:22:33 PM](#)

REPRESENTATIVE MUNOZ clarified that she had been referring to those communities with approved plans and enforceable policies already approved by the state. She asked whether those communities had adequate input into the process.

MS. WASSERMAN related her understanding that those communities do not believe they have adequate input. The communities have few areas for comment. Some of them have put the enforceable policies into ordinance hoping they can address them in that manner. In response to a question, she provided the last "bullet" from her testimony, which was to eliminate requirements for designation of subsistence use areas and allow meaningful

enforceable policies. She referred members to AML's resolution in members' packets.

[6:23:51 PM](#)

REPRESENTATIVE HERRON referred to removing designation areas. He asked whether that provided a conundrum. He elaborated, "You have to have them, but if you don't have them, you can't comment subsistence on a consistency review."

MS. WASSERMAN agreed, that it is a "Catch 22" since if a community does not have this designation the community can't comment and if the community cannot capture the designation, it just keeps revolving. It becomes a situation in which there is not a way to fit in and provide comment.

[6:24:42 PM](#)

REPRESENTATIVE SEATON related his understanding that she had primarily been referring to the enforceable policy not being adopted. He related his understanding that 210 of 409 enforceable policies have been adopted. He inquired as to whether she was referring to the remaining enforceable policies that were disapproved. Thus, if communities did not have the ability to comment on those policies since the policies had not been approved at the time the communities made their plans.

MS. WASSERMAN agreed. She offered that the committee heard today about the review, which is great, but if communities cannot make comments on the review it does not help municipalities.

[6:25:45 PM](#)

REPRESENTATIVE P. WILSON asked whether there is any room to work on this issue.

MS. WASSERMAN said she totally believes there is room to work on the issue. She would like to see the ACMP extended. She recalled that Commissioner Hartig mentioned that if this were to go away, the State of Alaska would have less input into what the federal government wanted. Municipalities feel they have less input into what the state wants. She stated that the municipalities would like to see the extension passed and work on the issues and be part of the solution without garnering veto power.

6:27:06 PM

DEAN WESTLAKE, Assembly Member, Northwest Arctic Borough (NWAB), said Ms. Wasserman brought up a valid point. The consistency review has been a "one way street." He explained that the NWAB must be consistent with DNR rather than "hashing" anything out. He explained that the NWAB's priority has been subsistence but not to the exclusion of resource development. The NWAB is not opposed to resource development. Instead the NWAB has been pro-development in a responsible fashion. He pointed out that the NWAB, the size of the State of Indiana only wants 17 designated subsistence areas. He said it points to how marginalized the NWAB has been in this process. The NWAB wants local involvement. He referred to what the EPA has currently been doing in terms of emissions at the Red Dog Mine and reiterated the NWAB "wants a voice at this table." The NWAB believes it could assist with development. He characterized this as the state missing out a good partner. He reviewed the NWAB's resolution in support of the AML's resolution of support for the AMCP's extension. He concluded that this is "near and dear to us." He restated that the NWAB should "have a say in this and consistency review should go both ways."

6:30:54 PM

RON PLANTZ, Human Resources & Community Relations Manager, HECLA Greens Creek Mining Company (Greens Creek), stated that Greens Creek Mining Company (Greens Creek) is one of the largest private sector employers with 340 employees, as well as numerous indirect jobs. The largest property taxpayer in Juneau. He spoke in support of HB 106 as it offers predictability while the stakeholders work on a long-term solution on issues. He related under the current scenario Greens Creek runs out of area to place its tailings in 2015. He cautioned that would likely result in cessation of its operations. Greens Creek is currently undergoing a NEPA process with the U.S. Forest Service (USFS) as the lead agency working in partnership with state and local organizations to expand the tailings area. He anticipated a final environmental impact statement (EIS) and Record of Decision (ROD) in the spring of 2012. Greens Creek would have two seasons to complete the process timely and avoid any unanticipated delays or interruptions. He reiterated that Greens Creek counts on the predictability of the process which he characterized as a very public process with public comment on the front-end before the final draft EIS and after the final draft of the EIS has been released. He predicted the EIS and

ROD would be issued timely and is the reason Greens Creek supports this extension of the current program.

6:33:44 PM

REPRESENTATIVE SEATON asked whether Greens Creek was permitted prior to the 2003 ACMP changes under the previous Coastal Zone Management Program. He observed that Juneau has been supportive of access and permits and further asked whether Greens Creek had concerns that the Juneau would adopt a policy to preclude Greens Creek from utilizing areas.

MR. PLANTZ answered yes, that Greens Creek knew what to expect in the prior process and wants predictability so the mine would not experience any delays in the permitting process.

6:35:45 PM

REPRESENTATIVE HERRON referred to earlier testimony on the review and consistency determination process. He stated that some of his constituents would like to see local participation without having veto power. He inquired as to whether he would support having more people "at the table" so long as the timeline would not be lengthened

MR. PLANTZ responded that currently Greens Creek has a predictable process that provides local input through the sessions with the lead agency. He recalled that Juneau and Angoon previously participated in the USFS sessions. He maintained that it relates to predictability. Greens Creek knows the statutes and regulations and counts on its ability to adhere to them in a responsible manner to achieve the approvals from the state and federal government. He encouraged ongoing conversations with affected stakeholders.

REPRESENTATIVE HERRON asked for clarification on whether this is through the comment process as opposed to an "at the table process."

MR. PLANTZ responded that the large mine permit process as well as the local process with the City and Borough of Juneau. He was unsure of any comparable process with Angoon but Greens Creek has held regular conversations with the city council and other community members.

6:37:33 PM

CO-CHAIR FEIGE suggested that the possibility exists the ACMP could sunset. He inquired as to whether what preference he had with respect to the ACMP.

MR. PLANTZ said:

We would prefer to have what we have now because it's predictable. Again, we encouraged that multi-year grace period while people work together on a solution that's well thought through with all the consequences and implications involved thoroughly vetted. And then where we end up after that is fine. No program at all puts us in a very unpredictable situation again.

REPRESENTATIVE HERRON asked whether this represents a perfect process that doesn't need adjustments.

MR. PLANTZ answered no, but the process needs to be extended while people explore more thoughtful considered options.

[6:39:06 PM](#)

MARILYN CROCKETT, Executive Director, Alaska Oil & Gas Association (AOGA), ,on behalf of the Alaska Oil & Gas Association (AOGA), testified in support of HB 106, which would extend the sunset date for the ACMP. She expressed support for HB 106 since virtually all the operations of members of AOGA take place in or adjacent to the coastal zone. The AOGA has been actively engaged in development and implementation of provisions of the original act and program since its inception in 1977. She related her personal observations during the time the coastal zone districts programs were developed. She pointed out that the AOGA has been an advocate to sound legislation and regulations that balance resource development with environmental protection. The AOGA input to achieve these goals has included support for a timely smooth functioning and predictable state permitting program. In order to be successful and serve all entities in Alaska, any permitting program, in particular the ACMP, must embody the following principles: provide benefit for all Alaskan residents by developing Alaska's resources; contain clear and unambiguous requirements; avoid opportunities for misinterpretation; provide predictable and firm timelines; provide predictability regarding applicable applications and scope; avoid duplication with other state and federal permitting programs; and contain clear limits so that district policies not require agencies to implement authorities they do not already have through existing statute. She concluded that AOGA believes

the program as it exists today encompasses these principles and AOGA supports continuance of the program in its current form.

[6:41:21 PM](#)

MICHAEL SATRE, Executive Director, Council of Alaska Producers, on behalf of the Council of Alaska Producers, stated that the CAP is non-profit, trade association representing the producing large metal mines and developmental projects in the state. Unlike most coastal states, Alaska has a very strong ACMP that ensures development activities in the coastal areas follow strict statewide standards while conforming to the approved local polices of its coastal districts. Alaska's existing statutes dictates that the state defer to local coast districts in the implementation of statewide standards. It allows for some flexibility of designating certain areas of local concern during the consistency review process and most importantly, allows for a predictable non duplicative permitting pathway for development in the state's important coastal areas. The Council of Alaska Producers urges members to pass HB 106 without amendments as it believes it is important to separate the extension of this program from concerns regarding its effectiveness and allowance for meaningful local input. He expressed concern that adding substantive amendments to the bill may result in controversial legislation that may not pass the body and the ACMP will sunset completely at the end of June. He reiterated that the CAP urges members to preserve the program. He suggested that if members believe that changes and improvements still required that they should do so. He encouraged the legislature work with the governor, the DNR, the local coastal districts, and concerned industry during the interim, potentially, to find ways to implement the findings from the legislative audit. He further encouraged the legislature to find ways to promulgate regulations under consideration since 2008 and ensure this program will remain in effective and work for all Alaskans ranging from industry, subsistence regulations, or coastal districts.

[6:44:40 PM](#)

REPRESENTATIVE HERRON inquired as to whether he supported the six-year extension.

MR. SATRE answered yes. He emphasized that the key is to extend the program for a meaningful amount of time that does not put us under a strict deadline to try to find ways to amend the program any change it. He expressed concern that such a process ends up

with the program working for one part of state but not another. He stressed the importance to deal with subsistence use issues and concerns for meaningful local input, yet still allow the development of natural resources throughout the state and especially along Alaska's coastal regions. He urged members to separate what has become a very emotional debate on the effectiveness of the ACMP from the program simply existing. He suggested that it may take a task force and timeline to recommend improvements to the program.

REPRESENTATIVE HERRON inquired as to what the impetus or urgency to make changes will come from if the program is extended for six years. He asked why not work on it now.

MR. SATRE offered his belief that it would be incumbent on legislature to find the direction and hold DNR's feet to the fire to make them do the work and make this program work for Alaska. He said there are very good things about this industry is supportive of the ACMP and staff try hard to implement the program. He would like to ensure that finding of the legislative audit are implemented, ensure concerns raised during the committee discussions are addressed, and find workable solutions for issues. The process should be separated from the extension bill with the "sunset date staring us in the face." He stated that some people have suggested a shorter extension date, less than the current six years, but continue to address ACMP issues.

[6:47:38 PM](#)

REPRESENTATIVE SEATON stated that in 2008 regulations were proposed but not adopted. The federal government suggested changes in the approval process. The legislative audit identified problems. He asked what changes he would like if it not to just leave the current program in place. He explained the legislature works on a time frame. It seems as though he is requesting the time frame be removed and for the legislature to tell communities and coastal districts that it will not address the issues. He inquired as to the level of confidence he had that something will happen if the extension passes.

MR. SATRE agreed that this presents a bit of a conundrum. The CAP wants the program to move forward recognizing that there are "some warts" on it. The time frame between now and the sunset date will not allow enough time to address problems. He surmised that it may cause possible controversial legislation that may not pass the legislature. He offered his belief that

if able to move program forward for another six years then it's up to the legislature to bring parties to table including DNR, coastal districts, and industry to make the program better or introduce another bill to address the substantive issues. He said CAP thinks that will not be necessary since the parties could work together to make the program more effective at the DNR level and address issues.

[6:51:10 PM](#)

PAUL GLAVINOVICH, Minerals Consultant, speaking on behalf of himself, expressed his support for HB 106. He related that he has been engaged in the mining industry in Alaska for 40 years. He has been actively engaged in numerous projects that have come under the oversight of the ACMP. He said he does not have affection for the program, but acknowledged the structure it has provided for coastal communities and realized the political reality for its continued existence. He related his understanding that some would like to change the existing program to address alleged concerns by some of the coastal communities. He stated that HB 106 would extend the program. Changes to the program should be separated from the extension bill. The ACMP provides an added layer of oversight, but he has learned to navigate the program. He expressed concern that changes may complicate the permitting process in the state.

[6:52:48 PM](#)

KEITH SILVER, encouraged members to pass HB 106, as written. He opposed any changes to ACMP program that would shift decision making from the DNR to other entities. He offered his belief those six additional years would allow time to work with the stakeholders to create a lasting document. He urged members to pass HB 106 as written.

[6:53:38 PM](#)

RACHEL PETRO, CEO and President, Anchorage, Alaska State Chamber of Commerce (ASCC), stated that this year the ASCC selected continuation of ACMP in current form as one of its top three priorities. The ASCC believes the ACMP should remain in its current form and supports HB 106. She expressed an awareness of prior discussions and it seems logical to preserve the program and the predictability that it is critical to extend the program. She related that approach would allow the time needed to work together on changes, which can be well vetted in the

public process. She encouraged members to pass HB 106 in its current form.

[6:55:10 PM](#)

FRANK KELTY, Chair, Aleutian West CRSA, stated that the Aleutian West CRSA region encompasses the large portion of the Bering Strait fishing industries, including communities of Unalaska, Nikolski, Atka, Adak, and Shemya. He stated the City of Unalaska has been the number one port in the nation for 22 years. The Aleutian West CRSA supports the reauthorization of HB 106 and thinks it is critical it be extended but needs some changes. He pointed out that in 2008 the Aleutians West had 60 enforceable policies at the time the Murkowski administration changed the ACMP. Now it has 10 enforceable policies. He lamented that the number one fishing port in the nation has no say on air, land and water quality issues. He offered support for the Coastal Policy Council, noting he served on the CPC through several governors. He thought the CPC worked well and gave individuals an opportunity to voice concerns. The CPC approved district plans. He reported the Aleutians West CRSA has an approved district plan. He stressed the importance that the CPC be reinstated. He expressed concern over the area designations, particularly in an area as large as the Aleutians Islands. He reported the borough does not have any subsistence policy due to issues designation. He remarked that most of the policies left are ones that not very exciting since they relate to sand and gravel, and recreation areas.

[6:58:34 PM](#)

REPRESENTATIVE P. WILSON related her understanding that the Aleutians West CRSA has fewer enforceable policies. She inquired as to whether the state has taken any action the borough wishes it had not done.

MR. KELTY answered the DEC "carve out" was a major hit to many of the borough's policies.

REPRESENTATIVE P. WILSON asked for clarification on whether the state issued permits in the Aleutians West CRSA that the borough was opposed to being developed.

MR. KELTY answered that he was not aware of any projects.

[6:59:52 PM](#)

JASON BRUNE, Executive Director, Resource Development Council (RDC), testified in support of HB 106 as currently written for six years. He related that the RDC is a statewide business association comprised of individuals and companies from Alaska's oil and gas industry, mining, forest products, tourism, and fisheries industries. Additionally, the RDC members include native corporations, local communities, organized labor and industry support firms many of whom are intimately involved with the ACMP program. He related RDC's purpose as an organization that encourages a strong, diversified private sector in Alaska and expansion of its economic base through the responsible development of our natural resources. He has held numerous conversations with members, including the North Slope Borough, the Arctic Slope Regional Corporation, NANA, Sealaska, and many oil, mining and timber companies on how to find a win-win situation. He expressed concern that the middle ground would extend the program as it exists because without passage of this bill the program will disappear. He reiterated the RDC's support for the current bill as drafted but will oppose any proposed amendments to the ACMP that would shift decision-making authority from the DNR to other entities. Additionally, the RDC would oppose any changes that would impede, delay, duplicate processes since those activities jeopardize investments in resource development projects which cost Alaskans jobs or business opportunities. Ultimately any changes that diminish the sovereignty of the state, as represented by the administration should not be accepted by the committee. This bill should be passed as is expeditiously. And additionally changes to the ACMP should be dealt with in separate legislation. Additionally, he endorsed four principles as previously laid out by the administration. A predictable process must be maintained. The ACMP must be maintained where participant input is valued. The ACMP standards and enforceable policies must be objective and must not duplicate or redefine existing authority. Finally, coastal districts should be afforded a meaningful role on projects but should not possess a veto decision over projects. He reiterated his desire to have the committee pass the bill in its current form.

[7:03:40 PM](#)

MARV SMITH, Manager, Bristol Bay Borough (BBB), on behalf of the BBB, expressed support for the ACMP extension. He emphasized the need for major changes to the program. He supported the CS, including the policy and appeals board provision to resolve differences between the DNR and coastal districts. The CS would repeal district area requirements for designations. It would

also clarify that the coastal districts' enforceable policies apply to all land and water issues subject to the plan. It would further require plans to be clear and concise, prescriptive and performance based. It would repeal "adequately addressed" as stated in standards. That needs to be changed. It would also delete the DEC "carve out." The proposed CS would exempt projects requiring an EIS from the 90 days consistency review. He stressed that boroughs and cities would be at the table. The BBB, as capital of the largest sockeye salmon industry, has seven onshore processors, and promotes economic development. He offered his belief that the input should be at the local level, which does not currently happen. The BBB has an approved coastal district program. However, the BBB approved the district about five years at a time when DNR recommended one consistency policy. Thus, the BBB's program only contains one policy. He characterized its program as one that basically "has no guts in it." The BBB obtained a DNR grant and has currently been working to revise its coastal program and incorporate policies with "some teeth." However, it has been difficult to get approval from DNR. He related that he previously has served as the Coastal Coordinator for the Lake and Peninsula Borough so he's been involved in the process of trying to get a program adopted. He reiterated the need to rewrite the program. He recommended the committee adopt the CS and move it forward. He said, "Kicking the ball down the road for seven more years don't solve the problems we've got today. We've got to fix them now."

[7:06:42 PM](#)

REPRESENTATIVE P. WILSON asked whether the state permitted something that was not wanted in the district during the time the BBB has only had one designation.

MR. SMITH answered no, not to his knowledge.

[7:07:24 PM](#)

DAVID STONE, Mayor, Yakutat; President, Alaska Conference of Mayors, stated that at its November 2010 meeting the Alaska Conference of Mayors, along with the Alaska Municipal League, discussed coastal zone and issued a resolution, 2011-22, that should be in members' packets. He related that considerable discussion prior to a vote led to only one negative vote. He pointed out that the organization represents 150 organizations that span 36,000 miles of coastline in Alaska. Additionally, the major projects in operation were all in prior to 2003 when the ACMP was changed. He recalled earlier testimony that only

one percent of the projects had problems of approval. He offered his belief that his organization's vote with only one negative vote identifies the will of the public. He urged members to extend the ACMP but currently the communities are not happy with the program.

REPRESENTATIVE SEATON asked him to summarize the resolution or identify it as the Alaska Municipal League's (AMLs) resolution.

MR. STONE agreed it was the AML's resolution.

[7:10:06 PM](#)

REPRESENTATIVE P. WILSON asked whether the state permitted something that Yakutat had opposed since the changes to the ACMP were made.

MR. STONE deferred to the Yakutat Borough Manager.

[7:10:53 PM](#)

The committee took an at-ease from 7:11 p.m. to 7:30 p.m.

[7:30:46 PM](#)

CO-CHAIR FEIGE brought the committee back to order.

[7:31:03 PM](#)

TOM LOHMAN, Attorney, North Slope Borough, stated he has worked for the NSB for almost 24 years. He has been involved in the coastal management program since its approval in 1988. He asked to testify in support of HB 106 with appropriate changes to restore a meaningful role for local coastal districts. He responded to earlier testimony suggesting a process up to six years for stakeholders to deliberate on the needed changes for the program, noting a good faith has been going on for eight years. He offered that a significant number of meetings have been held with numerous stakeholders present. He detailed that draft legislation and suggested regulatory changes have been made without resolution to the issues. He offered his belief that the NSB and other boroughs are not anti-development. The boroughs want some measure of respect from state government that the state government demands from the federal government. The ACMP at its heart "is a development program." If the ACMP provides a meaningful role for your constituents, the local communities, it also would enhance that likelihood that projects

would be permitted more smoothly. He spoke to earlier testimony by the administration. He related that Mr. Balash posed a much rosier picture that implied the district have far greater power to influence projects than is true. He described the ACMP as a "big gatekeeper" on whether a project can occur or not on the coastal zone. He quoted, "If a coastal district says no we go their way." He respectfully suggested that has not been the case. He also said to his knowledge there had only one elevation appeal to the commissioner of DNR of a project review that had occurred since 2003, but the NSB has elevated three different projects to the commissioner and of the decisions went their way. In fact, there was little or no attention to any of the concerns that the NSB raised. He emphasized that the NSB does not have any coastal management plan, a local plan, at this time. The NSB has attempted to have its plan approved and has not been able to reach agreement with the state. Two of the elevations brought to the DNR's commissioner involved the Shell Oil drilling in the Beaufort and Chukchi Seas. Some may argue that this provides an indication that the NSB is anti-development. He said:

That couldn't be farther from the truth. If you go back and look at those elevations you'll see that we raised...number one, Shell did not do its best work in its early proposals for those projects. And there's no better indication of that than that they've come around now and made substantial changes to their project design and operations, many of which met the concerns we raised and were ignored by the state DNR in our elevations and our consistency reviews.

MR. LOHMAN emphasized that the NSB does not take an anti-development stance. The proposed CS for HB 106 ensures that policies have "been run through certain criteria." The NSB will not haphazardly use policy to halt projects. He envisioned that the NSB would craft policies which will "provide a road map to applicants for how to design their projects in advance to front-load the projects. He related that Shell Oil had characterized its experience as "five years of frustration" to get "where we are today, much closer to agreement with the NSB than when it brought its elevations." He related that Mr. Balash spoke of reviews of federal activities including the outer continental shelf (OCS) sales as a reason the state really likes the program relating to the federal consistency provisions. However, he argued that DNR has passed on opportunities to review a number of federal projects including Arctic OCS lease sales in which the opportunity existed and the responsible federal agency, MMS,

offered its lease sales for consistency review but state declined. He pointed to review of proposed U.S. Navy training and bombing activities in the Gulf of Alaska that envisioned five years of sonar activity and abandonment of 300 thousand pounds of spent material. The state opted for a de minimus review although the sheer numbers supported a much more extensive review. He reiterated that the NSB is not anti-development, pointing to the history of oil and gas development as support for this view. He pointed out a total absence of any instance of projects halted based on the NSB's implementation of the coastal management plan. He related in the few instances in which projects have been delayed that the projects were also delayed by other permitting processes that discovered flaws in the applications and proposals. The web of development that has occurred in the NSB since 1988 has been permitted under the former coastal management program with more far-reaching local enforceable policies. He said to put a meaningful role for the coastal districts into the ACMP would not halt develop since the NSB depends on oil and gas development as much as the state depends on it. Instead, it would have the effect of tailoring the application of the entire state program to address specific concerns on the NSB. Thus, the NSB would bring expertise to the process just as it has in the past and to do so on the OCS, beyond the reach of the NSB's land management regulations, is something critically important to the NSB's constituents.

[7:38:23 PM](#)

REPRESENTATIVE SEATON asked how many projects annually to NS Borough for approval.

MR. LOHMAN said he did not know for certain. However, he affirmed the NSB has not used its program to stop any of them.

[7:39:21 PM](#)

REPRESENTATIVE P. WILSON related that the impetus for the changes to the ACMP was an attempt to reduce the timeline for the permitting process. She asked whether the NSB would still agree to keep the same timeline.

MR. LOHMAN said yes. He referred to the former pre-2003 program, in which the timing of the consistency reviews may have been more difficult in past, but the NSB has not had problem meeting the timelines for the consistency reviews in conjunction with other agency reviews.

REPRESENTATIVE SEATON asked whether the NSB had incorporated its enforceable policies into the borough code.

MR. LOHMAN said yes, but to the extent that the NSB involving OCS concerns, the NSB does not have any reach beyond 3 miles. He characterized it as a significant concern. Additionally, subsistence has been another concern that can be addressed through land management regulations, but "it is not clean fit" to perform wildlife management and subsistence regulation through land management regulations. He reiterated that the NSB is "red flagging for applicants" any concerns. He referred to the 2003 amendments. He recalled long discussions with the DNR's commissioner who said in front of legislative committees that coastal districts would be able to craft local enforceable policies specifically on OCS issues. He said, "We came up with a big goose egg when we tried to do that in our plan amendment."

[7:42:16 PM](#)

BILL LUCEY, Coastal District Coordinator, City and Borough of Yakutat, read from prepared testimony, as follows:

My name is Bill Lucey I am the coastal district coordinator for the City and Borough of Yakutat. For the record the City and borough would like to support the reinstatement of a streamlined Coastal Policy Council, bring back coordinated DEC reviews and expand local enforceable policies without area restrictions.

I would also like to point out for the record that we are not asking for "veto" power over projects. What we are asking for is strong local input regarding coastal development. There is difference between simply providing comments then sitting at the negotiating table. Regardless of the claim that we're given due deference and allowed to call "balls and strikes", my experience is that we are generally ignored if an agency person disagrees with us. Furthermore we have a handful of very narrow policies remaining for our use and that requires us to comment utilizing state standards. Those have also been significantly whittled down after the program change in 2003.

All municipalities want economic growth. We also want a strong position from which to champion the kind of economic growth our citizens prefer. Sometimes this

can cause conflicts between user groups which is exactly why the ACMP exists. It provides a platform to negotiate these conflicts outside the courtroom. That is why all the mayors at the AML convention, excepting one, voted to restore the ACMP to its former structure. That seems to be a clear mandate for this committee and the legislature to act now on amending the ACMP. We have been talking about this "stuff" a lot. We've testified over and over again on various aspects of this and we've gone absolutely nowhere.

If development is pursued irresponsibly we end up using taxpayer dollars to clean up after the fact. The majority of my job involves fish habitat restoration: fixing blocked culverts, decommissioning poorly constructed logging and gas exploration roads, wetland restoration, and endless tree thinning. Again, this is all at taxpayer expense. These are avoidable expenses. We have the experience locally to know what impacts are likely to occur from proposed projects because we have spent years hunting and fishing and making a living in our boroughs and we've been cleaning up after the remains of some of these past actions. Federal and state agencies don't always have the local knowledge - sometimes they do. Sometimes they have superior knowledge but they don't always have the right knowledge to make a good call "on the ground." The enforcement is sporadic and there is a constant turnover of personnel. That is why we want to form customized local enforceable policies specific to our area and we want them to complement, not replace or duplicate state and federal management.

There has been a lot of talk about predictability. As far as that is concerned I don't recommend getting into commercial fishing like our town. However, a recent report from Northern Economics of Anchorage put the industry at \$5.8 billion dollars annually, producing the largest number of private sector jobs in the state. The vast majority of our past enforceable policies that were thrown out dealt with fish habitat as commercial fisheries rely on good habitat and clean water. It's as simple as that. When you throw the economics of sport fishing into Yakutat we get another \$2-3 million dollars of benefit. That's a lot to a town of 600 people. Our town has an extremely high

per capita of commercial fishing permit holders. Though the abundance varies the fish come back every year. Long after the gas and minerals are extracted people will still be able to make a living fishing and it is our responsibility as borough managers and staff to maintain that opportunity for our citizens.

In closing, there are people working hard at DCOM attempting to function within the existing ACMP limitations and I would like to recognize them for their efforts. I frequently work with state, corporate, tribal and federal managers on a wide variety of research and development projects. We are currently exporting gravel, beginning second growth logging and discussing cruise ship tourism. We can work together effectively. We are not going to bring a halt to resource development. We simply wish to move it forward responsibly, protecting our established industries and with maximum benefit for communities, the land, the water and the state as a whole.

CO-CHAIR FEIGE asked whether he had written testimony.

MR. LUCEY recalled he has submitted previous written testimony. He offered to fax a copy of his testimony.

[7:47:40 PM](#)

BOB HOEKZEMA, Geologist; Research Assistant, Alaska Miners Association (AMA), on behalf of AMA, testified in support HB 106, as introduced, without any changes. He emphasized the importance of extending the ACMP be extended to ensure that it does not sunset. He further stressed the importance to extend the ACMP for several years to provide for careful analysis of the program to determine whether and what changes are needed. He stated that this is a complex issue and it is crucial that the impacts of any changes will be fully understood.

[HB 106 was held over.]

[7:48:54 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 7:48 p.m.