

HB

663

Coastal Council Coming Of Age

You don't hear much about the state's Coastal Zone Management Council right now, but that will be one of the hotter seats in town in coming years, predicts council member Fran Ulmer.

Ms. Ulmer, who is director of the governor's division of policy development and planning, told the Society of Petroleum Engineers here this week that the council isn't intended to be an extra step in the permit-granting process for oil operations.

Instead, she said, it sets guidelines for local areas to establish their own coastal management plans. The council will step in only when the local government and the state government disagree and the state decides the issue is of overriding public interest.

For example, she said, the state may determine a particular site is the best site for an onshore oil terminal but the local government says "no." Then the council will be called in as a tribunal. "I don't see that happening very often," she said.

The council is weighted in favor of local control, she said, with nine members representing local governments in nine areas of the state, and seven members representing state agencies.

In his introduction of Ms. Ulmer, Hob Iden of Atlantic Richfield Co. said oilmen from California are aware of the negative aspects of coastal zone management — its costs in time, manpower, money and, most of all, uncertainty.

"Hopefully, we can reduce that element of uncertainty," Ms. Ulmer said.

The council's guidelines for local plans were adopted last week, she said, and she urged the petroleum engineers to comment during the next 60 days while the guidelines are subject to public review.

"If you think the guidelines are unrealistic or too idealistic or inadequate, this is the time the council needs to hear from you," she said.

In order to qualify for federal funds under the Coastal Zone Management Act, the state's program must be approved by the federal government by December.

"What's in it for us?" she said. For one thing, \$3 million next year for scientific studies, in addition to coastal impact funds. For another, a clause in the act says the state plan, if approved by the federal government, will be binding on federal agencies operating within the state.

"Not only will you know the rules of the game for local and state agencies, but for federal as well," she told the oilmen.

The original state legislation for coastal zone management would have vested decision-making in the state, but lawmakers received "violent protests," she said. "The message came through loud and clear" that Alaskans prefer the decisions to be made at the level of government closest to them.

The state act "gives local governments incredible control," she said.

Ms. Ulmer said there is a serious problem with the ability of some local governments to formulate plans for management of their coastlines. While some local governments are sophisticated enough to handle such planning, others are not. "I'm very troubled," she said. "The money is available in grants to help them but not nearly enough. It's a problem for all of us, especially the council."

The coastal management program "stands or falls on the local communities' ability to do a good job of planning," Ms. Ulmer said.

The state's chief petroleum geologist, Tom Marshall, pointed out at the meeting that with oil and gas development, there is less certainty of the site of development than with other resources industries, such as timber or mining.

"People generally are deceived by whether there will be oil fields where they are expected to be found," Marshall said.

CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

January 23, 1978

Senator Joe Orsini, Chairman
Senate Community & Regional Affairs Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

This is in response to your letter of 13 January 1978 concerning Senate Bills No. 374, No. 375 and No. 388. These proposed pieces of legislation have been reviewed by the City Council. The position of the City of Skagway on each bill is as follows:

Bill No. 374: The City of Skagway strongly supports the enactment of this bill. This legislation will enable the City to obtain title to tide and submerged lands adjacent to City Park lands which were conveyed to the City by the Federal Government on 30 November 1931. Ownership of these tide lands will facilitate future development of the Park by the City. A copy of the Federal patent transferring the Park lands is enclosed for your information.

Bill No. 375: The City of Skagway supports passage of this bill. It is considered to be in the best interests of the State of Alaska and the Alaskan municipalities that a portion of the permanent fund principal and income be made available for development of municipal capital facilities.

Bill No. 388 The City of Skagway concurs in the goals and objectives of the Alaska Coastal Management Act and, therefore, supports changes which will facilitate the work of the Coastal Policy Council. The City Council, however, does have reservations with regard to the wording of Section 1.(d) of the proposed regulation. To explain:

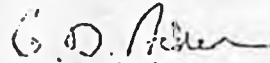
Although the need for alternates to the public members is justified, the method proposed for their selection is considered to be inadequate. It is suggested that, rather than having the principals select their alternates, the Assembly or Councils of the regions nominate alternates and that the Governor make the selections - in other words, alternates for public members be designated in the same manner as the principals.

There is one other point: Under the proposed legislation, it would be possible that alternates might constitute all or a majority of

January 23, 1978
Senator Joe Oresini
Page 2

the public participants in coastal policy actions. It is suggested that of the public members acting on coastal policy matters at least a majority be regular members.

Sincerely,


G.D. Acker
City Manager

Enclosure

cc: Representative Rudd
Senator Ray
Representative Miller ✓
Representative Duncan
Roger Allington
City Attorney Ruddy

GDACP

STATE OF ALASKA

COASTAL POLICY COUNCIL

January 23, 1978

LOCAL MEMBERS:

Roger Allington,
Northern Southeast,
Co-Chairman
Roger Fagerstrom,
Bering Straits
Donald Gilman,
Lower Cook Inlet
Eben Hopson,
Northwest
Malcolm "Pete" Isleib,
Prince William Sound
Stan Pat'ian,
Southwest
Robert Sanderson,
Southern Southeast
Lidia Selkregg,
Upper Cook Inlet
Betty Wallin,
Kodiak-Aleutians

STATE MEMBERS:

Francis Ulmer,
Director of Policy
Development &
Planning,
Co-chairwoman
Donald Harris,
Commissioner of
Transportation &
Public Facilities
Phillip Hubbard,
Commissioner of
Commerce &
Economic
Development
Robert LeResche,
Commissioner of
Natural Resources
Lee McAnerney,
Commissioner of
Community &
Regional Affairs
Ernst Mueller,
Commissioner of
Environmental
Conservation
Ronald Skoog,
Commissioner of
Fish & Game

Representative Lisa Rudd
Pouch V
State Capital
Juneau, Alaska 99811

Dear Representative *Lisa* Rudd:

There are three essentially housekeeping items which should be considered by the State legislature insofar as amendments to the Alaska Coastal Management Act is concerned. Two of these housekeeping items are contained in two bills which have been introduced in the Second Session of the 10th Legislature. Senate Bill 388 addresses the legislative intent insofar as defining the qualifications of an alternate to the council is concerned. House Bill 663 addresses the housekeeping problem of a deadline set up in the original act which was impossible to meet by establishing a deadline of April 15, 1978. The third housekeeping item which is not addressed in either bill, has to do with the clarification as to whether the regulations adopted by the Alaska Coastal Management Policy Council are part of the Alaska Coastal Plan.

Senate Bill 388 rather clearly establishes that the public member alternates shall have the same qualifications as the public member appointed by the Governor. Assuming this was the intent of the legislature, that is that the alternates have the same qualification as the original appointee, I have no problem with SB 388 as it applies to public members. However, I believe that SB 388 should be modified slightly as it applies to cabinet members so that line 19 of Senate Bill 388 would read "of this section shall be a Deputy Commissioner or other high ranking employee (responsible officer or employee) of the Department".

House Bill 663 seems to answer the problem insofar as deadlines for adoption of the regulations are concerned.

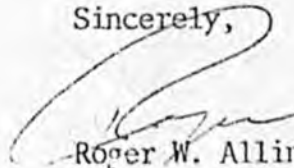
In addition to the above two housekeeping items, I believe that a third housekeeping item should be addressed by amending AS 46.35.080 as follows: "AS 46.35.080 is amended by adding a final sentence to the section as follows: Any regulations adopted by the Alaska Coastal Management Policy Council shall be considered part of the Alaska Coastal Management program."



Representative Lisa Rudd
January 23, 1978
Page 2

Inasmuch as all three of the above items are housekeeping items, it would appear to me that it would be beneficial if all three could be incorporated in a single bill so as to expedite hearings and final enactment. I will be available at the committee hearings and for personal contact with regard to these matters as you may see fit. Thank you for your consideration.

Sincerely,



Roger W. Allington, Co-Chairman
ACMPC

cc: Fran Ulmer
Glen Akin

STATE OF ALASKA

OFFICE OF THE GOVERNOR

STATE POLICY DEVELOPMENT AND PLANNING

JAY S. HAMMOND, GOVERNOR

POUCH AD - JUNEAU 99811
PHONE 463-3512

January 26, 1978

The Honorable Lisa Rudd
Alaska State House of Representatives
Chairperson, House Community and
Regional Affairs Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Rudd:

I understand that your committee will be reviewing HB 663 on Friday, January 27. As I am committed to attending an all day meeting of the Growth Policy Council I will not be able to attend the committee hearing. However, I did want to share with you a comment on the bill.

The extension of the December 1977 deadline for the adoption of guidelines is probably not absolutely essential. However, to avoid any possible question about the legality of their adoption, I feel that it is advisable for the Legislature to change the deadline. I am quite confident that the entire Coastal Policy Council would feel reassured by such action.

Next week I will be in Washington, D.C., attending the White House Conference on Balanced Growth and Economic Development; so I will be unable to attend your meeting to review the guidelines. I know that Roger Allington and Glenn Akins will ably brief you on the guidelines and standards, but if there's any additional information or assistance which I can give upon my return, please let me know.

Sincerely,

Frances A. Ulmer
Frances A. Ulmer (AU)
Director

C&RA Committee Members;

The informational meeting on the Coastal Energy Impact Program (CEIP) which had been scheduled for this Monday, January 23rd has been rescheduled for Tuesday, January 31 at 11:15 a.m. in the Governor's Conference Room.

This will be an informal meeting with Ms. JoEllen Murphy, Director of Federal Programs and the State CEIP Coordinator, Doug Griffen,

COASTAL RESOURCE SERVICE AREA BOUNDARIES
A Determination Under Section 46.35.120(b) of the
Alaska Coastal Management Act (Ch. 84 SLA 1977)

December 2, 1977

Lee McAnerney
Commissioner
Alaska Department of
Community and Regional
Affairs

Kevin Waring

BY: Kevin Waring, Director
Division of Community
Planning

Debra E English
12/2/77

Introduction

Section 46.35.120(b) of the Alaska Coastal Management Act states that:

The Commission of the Department of Community and Regional Affairs may, after public hearings held in the area affected, consolidate two or more regional educational attendance areas as a single coastal resource service area

(1) if a substantial portion of the coastal area contains land and water area owned by the federal government over which it exercises exclusive jurisdiction or land held in trust by the federal government for Alaska Natives over which the state would not exercise control as to use; or

(2) if, after giving due consideration to the standards applicable to incorporation of borough governments and the likelihood that a borough will be incorporated within the area, the commissioner determines that the functions to be performed under this chapter could be undertaken more efficiently through the combination of two or more regional educational attendance areas as a single coastal resource service area.

All determinations under this section must be made by December 4, 1977.

Coastal resource service areas are areawide coastal planning districts that may be formed in portions of the unorganized borough outside of municipalities that have and exercise planning authority. Service area boundaries must parallel those of one or more existing regional educational attendance area (REAA); the area covered by an REAA cannot be subdivided in determining boundaries of units that might be organized as coastal resource service areas. No time limits are set for establishment of a coastal resource service area.

Actual organization may be initiated:

- (1) by submission to the (Alaska Coastal Policy) council of a petition signed by a number of registered voters equal to 15 per cent of the number of votes cast within the coastal resource service area at the last state general election;
- (2) by submission to the (Alaska Coastal Policy) council of a resolution approved by the city council or traditional village council of not less than 25 per cent of the number of cities and villages within the coastal resource service area; or
- (3) at the direction of a majority of the members of the (Alaska Coastal Policy) council when it appears that a major economic development activity will occur.

In all cases, organization must be preceded by an election in the affected area.

Proposal

On June 21, 1977, the Commissioner of Community and Regional Affairs proposed consideration of coastal resource service area boundary adjustments in four regions, which included the following regional educational attendance areas.

- (1) Regional educational attendance areas 3(Lower Yukon) and 4(Lower Kuskokwim).
- (2) Regional educational attendance areas 6(Nushagak-Bristol Bay) and 7(Lake/Peninsula-Bristol Bay).
- (3) Regional educational attendance areas 8(Aleutian Chain), 9(Pribilof), and 10(Adak).
- (4) Regional educational attendance areas 18(Northern Panhandle), 19(Southern Panhandle), and 20(Metlakatla/Annette).

Response

To obtain comments on boundary adjustments under consideration, the Department of Community and Regional Affairs:

- (1) scheduled and conducted public hearings in affected areas;
- (2) attended and participated in public workshops conducted by the Office of Coastal Management;
- (3) published a public notice in several newspapers of general circulation;
- (4) sent a cover letter (or memorandum) and information packet to mayors and city managers of coastal communities in affected areas, village council presidents, village corporation presidents, Coastal Policy members from affected areas, numerous state and federal agencies, and a variety of interest groups;
- (5) delivered presentations at meetings of organizations drawing individuals from throughout an affected area (e.g., the South-eastern Conference in Sitka, and a Bristol Bay Area Health Corporation Board of Directors meeting in King Salmon);
- (6) held informal meetings and discussions with people in affected areas; and
- (7) made a brief presentation to the Coastal Policy Council at their October, 1977 meeting in Kodiak.

Public hearings were held in Unalaska, Juneau, Dillingham, Ketchikan, and Craig. Hearings were also planned in Bethel, Emmonak, Naknek, St. Paul Island, and Petersburg, but were not conducted as a result of scheduling difficulties. Public sessions not actually conducted as formal hearings were held in Petersburg and King Salmon. Hearings were generally poorly attended, with members of the public present ranging from two to twelve.

Department of Community and Regional Affairs representatives attended coastal management workshops conducted in Kipnuk, Kotzebue, Juneau, Anchorage, Kodiak, Ketchikan, and Craig. Coastal resource service areas represented an item actively discussed at several of these workshops, as well as other workshops carried out in locations such as Bethel, Dillingham, and Unalaska.

Written comments were received from three state agencies, four federal agencies, and eight other individuals representing private corporations, non-profit associations, local governments, or no identifiable affiliation.

No clear consensus has emerged. Several comments received were not actually directed toward furnishing guidance on coastal resource service area boundaries. Many expressed a preference for creating coastal resource service areas smaller than existing REAA's. As previously noted, this is not allowed by statute.

Comments on the Nushagak-Bristol Bay and Lake/Peninsula-Bristol Bay REAA's (6 and 7) were mixed, but a majority of those presenting their views favored a single coastal resource service area for the Bristol Bay region.

Comments on the Northern Panhandle, Southern Panhandle and Metlakatla/Annette REAA's (18, 19, and 20) were predominantly in favor of maintaining separate areas, although many also supported a coastal resource service area that would include two or more REAA's.

Comments on the Aleutian Chain, Pribilof and Adak REAA's (8, 9, and 10) were also mixed, but a majority of commentators supported maintaining three separate areas.

Input on the Lower Yukon and Lower Kuskokwim REAA's (3 and 4) was limited by an inability to schedule a hearing there, but a majority of those who made recommendations expressed a preference for a single coastal resource service area in the Yukon/Kuskokwim Delta region.

Determination

() Section 46.35.120(c) of the Alaska Coastal Management Act, which requires a final determination on coastal resource service area boundaries by December 4, 1977, should be amended. A majority of citizens appearing at public hearings and expressing themselves through other means were unable to make an informed recommendation on territory that should be included in a coastal resource service area without a clearer understanding of what a coastal management program would entail. A determination by the Commissioner of Community and Regional Affairs without substantial input from affected residents is inconsistent with the Act's emphasis on a strong local role in coastal decision-making. Since no time frame is specified for service area organization, the problem could be rectified by revising Section 46.35.120(c) to read:

(c) a determination under (b) of this section shall be made before organization of the coastal resource service area.

Because expanded opportunities for better informed public input might result in preferences contrary to combinations recommended in this report, specific provision for "deconsolidating" REAA's combined should also be made, if the amendment suggested above is not interpreted to accommodate that option.

(2) We encourage that if a service area is organized in the Bristol Bay region, it should include both the Nushagak-Bristol Bay and Lake/Peninsula-Bristol Bay REAA's (6 and 7), and have therefore combined these REAA's. Although distinctions exist between these two portions of the region, these differences are outweighed by areawide commonalities.

(3) We support maintenance of two separate coastal resource service areas in northern and southern Southeast Alaska, and inclusion of the Metlakatla/Annette REAA (20) in a single service area with the Southern Panhandle REAA (19). Inclusion of REAA's 19 and 20 in a single service area is based on the criterion in AS 46.35.120(b)(1) concerning land held in trust by the Federal Government for Alaska Natives. While Southeast Alaska is a distinct region, significant differences between communities at northern and southern extremes of the region, as well as substantial distances involved, discourage formation of a single service area at this juncture. In addition, Southeast's unusual situation, with a number of small, dispersed first class cities, relatively few second class and unincorporated communities, and a majority of coastline under U.S. Forest Service jurisdiction, points out a need to consider special adaptations of the coastal resource service area, or alternatives to it, for responsive coastal

planning and management in this region.

(4) At this time, we encourage maintenance of three separate areas for the Aleutian, Pribilof and Adak REAA's (8, 9, and 10). The Pribilof Islands are linked to the Aleutian Chain by certain transportation, cultural and related ties, but remoteness makes the Pribilofs an independent entity in many respects. While Section 46.35.120(b)(1) of the Act provides grounds for including Adak in a combined Aleutian coastal resource service area, a disadvantage would be that the Adak Island population, which is solely military, contrasts sharply with that of civilian communities characterizing the remainder of the Aleutian Chain.

(5) We encourage that if a service area is organized in the Yukon/Kuskokwim Delta region, it should include both the Lower Yukon and Lower Kuskokwim REAA's (3 and 4), but consider it inappropriate to place these REAA's in a single service area prior to adequate public hearings.

Conclusion

The major question facing unorganized borough residents with respect to the Alaska Coastal Management Program is what form coastal management should take in their areas. Coastal resource service area boundaries represent only one aspect of this question, and one that cannot be responded to in an informed manner without considering what a coastal management

program might consist of, and how it should be carried out. These answers can only be furnished after a thoughtful educational and local involvement effort which was not possible in the constricted time frame and with the limited subject matter that applied to consideration of service area boundaries.

The Office of Coastal Management's recently completed extensive series of public workshops has provided a crucial first step in informing localities and their citizens about coastal management. With a Coastal Policy Council that is just becoming operational, and basic guidelines and standards that are only now being formulated, disseminated, and reviewed, final determination of service area boundaries at this time is premature, however.

We strongly encourage that the Coastal Policy Council devote careful attention to the complex question of coastal planning and management in the unorganized borough, and that service area boundaries be considered in the more appropriate context of but one component of broader questions involving the unorganized borough, before final boundary determinations are made. A minor amendment to the Alaska Coastal Management Act, as described in this report, is required to allow service area boundaries to be considered in this context, and we support such a change as a step which would strengthen Alaska Coastal Management Program effectiveness.

MEMO

TO: Lisa Rudd FROM: Arnette Smith

January 26, 1978

Subject: Approval of Coastal Management Guidelines and Standards

I asked Jack Chenoweth about the procedure for legislative approval of the guidelines and standards of the Coastal Management Policy Council and the possibility of amending them should the Committee feel this was necessary.

If we approach the guidelines as though they are part of the Coastal Management Program, then legislative approval is accomplished by concurrent resolution (46.35.080). In his opinion this precludes any amendment of the guidelines during the legislative process. It would be simply approval or rejection of the entire package. Therefore, any amending of the guidelines would have to be done to the hearing draft and submitted to the Council at its meeting in March when it deliberates on the final draft to be submitted to the Legislature.

Sec. 46.35.080 does not name the guidelines and standards specifically as part of the Program which is to be approved by concurrent resolution of the Legislature. It seems to include everything else which would logically make up the Alaska Coastal Management Program, i.e., each individual district program and any amendments or revisions will be submitted for approval by the Legislature as they appear.

Sec. 46.35.040 (p.7) identifies the guidelines and standards as "regulations" to be adopted under the provisions of the Administrative Procedures Act (AS 44.62). As regulations, they will eventually be reviewed by the Administrative Regulation Review Committee of the Legislature which can recommend annulment of certain regulations.

Section 6 of the CZM law provides that the Administrative Review Committee will review regulations adopted by the departments to insure conformity with the objectives and standards of the CZM Program.

Lisa:

Here's a copy of Joe Josephson's notes on CZM guidelines, given to the council in written form at the last meeting in Juneau.

Specifically, the problem we have is that an oil and gas lease is not specifically designated as a matter of "state concern", and although the guidelines and the statute clearly refer to "energy facilities" as matters of state concern, shouldn't the lease itself also be included under that definition? If it isn't, then there ~~exists~~ is vagueness in the law that will lead to litigation down the road...

You might raise the question, if you wish, at your meeting with CZM people on Friday. Otherwise, I'll keep you informed as to our progress with the council in getting the guidelines to clarify this matter....State DNR, incidentally, supports this inclusion of leases as matters of state concern...

Our intent ~~is~~ is to in no way limit local govt P&Z jurisdiction over surface uses, but rather require that local govt P&Z be required to justify their action with an analysis, procedure, etc. which they would be required to do ~~if~~ with all "land uses of state concern", e.g. ~~energy~~ energy facilities. If an oil and gas lease is not included as an "energy facility" or designated as a "use of state concern", then the local govt can do what it wishes with zoning decisions over ~~its~~ state oil and gas leases, with no requirement to justify their action.

Tim Bradner

NOTES FOR ALASKA COASTAL POLICY COUNCIL

Premise: Federal and state coastal zone management laws have as a principal goal the improvement of intergovernmental cooperation and coordination in the regulation and management of activities in the coastal zone.

Evidence for Premise: 1. Staff Comment #15: "The Council will determine if local programs are consistent with the guidelines and standards.

"The guidelines and standards will be the basic criteria for federal agencies to determine consistency..." (p. 5).

2. Staff Comment #25: "The purpose of coastal management is to coordinate efforts by different units of government, not establish new permits or layers of control..." (p. 16).

3. Staff Comment #2: "Standards will be implemented, primarily, by local zoning and existing state regulations..." (p. 22).

4. Staff Comment #36: "A basic concept leading to the development and approval of the Alaska Coastal Management Act was that no new coastal management permits would be created. The guidelines and standards may be applied as criteria for existing regulatory efforts, however." (p. 36).

5. Staff Comment #8: "The Act provides a test for the Council to apply to district programs when it is stated that a regional interest is being limited by local action." (p. 36)

6. Staff comment #25: "The state is responsible for siting decisions on a regional or statewide basis. The coastal management process will cause coordination with coastal districts. (p. 43).

7. Staff Comment #26: "District program guidelines and the standards encourage proper siting, not prohibition of (energy) facilities." (p. 43).

8. State statutes:

- a. AS 46.40.070: Local restrictions or exclusions on a use of statewide concern should be approved in a local management plan only if "the District has based its restriction or exclusion on an analysis

showing that the proposed use is incompatible with the proposed site."

- b. AS 46.40.020: Requires the adopted collection of local district plans to be "consistent" with "the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs".
 - c. AS 46.40.030: Requires district programs to be consistent with state guidelines and standards, and to include a description of the uses and activities which will be considered both proper and improper within the coastal area; a statement of policies to be applied, and the procedures to be used to determine whether specific proposals for land and water use activities shall be applied; and a designation of policies to be applied in coastal areas which merit "special attention".
 - d. AS 46.40.040: Requires the Alaska Coastal Policy Council to "initiate a process for identifying and managing uses of state concern within specific areas of the coast...". (State guidelines and standards must include policies and procedures to determine whether specific proposals for land and water use activities within a local district shall be allowed.)
 - e. AS 46.40.060: Requires the Council to find that local district programs are "substantially consistent" with all provisions of AS 46.40 and that the programs do not "arbitrarily or unreasonably restrict or exclude uses of state concern" before a local program can be approved. It also provides for mediation of disputes between the Council and local districts over elements of a local coastal plan.
 - f. AS 46.40.100: Provides for enforcement of local coastal programs and establishes a right to petition the state Council to show that a district coastal program is not being properly implemented or enforced.*
9. Legislative History of the Coastal Zone Management Act of 1972 (P.L. 92-583):

Admin. News 4776 (92d Cong.):

"The intent of this legislation is to enhance state authority...

"...At present, local governments do possess authority in the coastal zone...Local government needs financial, planning, political, and other assistance to avert damage to natural values in the coastal zone...

"...The American Law Institute has estimated that at least 90% of the current land use decisions being made by local governments have no major effects on state or national interests. Local governments should maintain control over a great majority of matters which are only of local concern. The range of problems that arise in the coastal zone, however, often calls for wider jurisdictional range...

"It is the intent of the Committee to recognize the need for expanding state participation in the control of land and water use decisions in the coastal zone..."

10. See also, e.g., Mandelker & Sherry, "The National Coastal Zone Management Act of 1972", 7 Urban Law Annual 119 (1974): "...CZMA also seems directed toward a centralized supervision of shoreland uses that require state control... The second additional development control requirement...requires that the state CZMA program provide for 'adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.'...Critics of the American land use control process have long argued for greater state involvement in the regulatory system and have called for greater assumption of state power over the land use decisions of local government. Though restricted in application to the coastal zones of the thirty coastal states, the Coastal Zone Management Act of 1972 represents the first national effort, through congressional initiative, to bring about a re-allocation of these land use control powers."

See also W. Brewer, "The Concept of State and Local Relations under the CZMA", 16 William & Mary L. Rev. 717 (1975): "One of the goals of the Coastal Zone Management Act of 1972 is to shift the focus of decisionmaking in certain

areas of regional and national interest from the local to the state level."

11. 15 CFR 923.14; 15 CFR 923.43 (requires that state programs provide "a method of assuring that local land and water uses regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit"); 15 CFR 923.52 (requires the state to "consult" with industry to "determine the potential regional, interstate, national and/or international demand for such facilities in each state" and says that "the adequacy of a state's consideration" during program development of national interest involved in the planning for or siting of facilities which may be more than local in nature" is very important in terms of obtaining federal approval of state programs.)

Query: With respect to energy development sites, and energy production areas leased by the state, do the proposed guidelines and standards adequately protect the national and state interest?

Relevant Provisions:

6 AAC 80.020 - would require the Division of Policy Development and Planning to determine the consistency of state actions with the Alaska Coastal Management Program and to respond to federal agency determinations of the consistency of federal actions therewith. DPDP would not have a like role with regard to local actions. However, "the Council shall identify specific uses of state concern (as defined in AS 46.40.210(6)) and areas of the coast where uses of state concern shall be sited and managed...". Also, the Council "shall direct the development of management policies and practices for uses of state concern by state agencies and coastal resource districts". Query: what is the definition in AS 46.40.210(6)? What does it mean to "direct the development of management policies and practices"? What authority is thereby given?

6 AAC 80.060 - "Sites suitable for the development of major nearshore and onshore petroleum-related facilities shall be identified by the state in cooperation with coastal resource districts. The siting and approval of these facilities shall be based on the policies of the State of Alaska concerning the onshore and nearshore aspects of

OCS development. Coastal resource districts may use and apply these policies in the preparation of district coastal management programs." Query: Why is the reference just to state "policies...concerning the onshore and nearshore aspects of OCS development"? Why does the paragraph say only that districts "may" use and apply these policies, instead of that they "must" or "shall" do so?

6 AAC 85.010 - Boundaries within a district coastal management program "may diverge from the interim boundaries (the requirements for which are set out in the same paragraph) but must "exclude those areas owned, leased, held in trust, or whose use is otherwise subject solely to the discretion of the federal government, its agents, and officers." Query: why is this exclusion only as to federally owned, controlled, or leased areas? What is the relationship intended as to state-leased lands, and the obvious state interests to be inferred, i.e., the attainment of production from the leased areas where the resource exists in commercial quantities?

6 AAC 85.010(7) - "Policies and regulations (of the district coastal management program) shall be consistent with the standards of the Alaska Coastal Management Program contained in 6 AAC 80 and shall meet...additional criteria..."

6 AAC 85.010(8) - (The district plan shall include) "a description "of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area. This description shall be based upon the district's statement of overall needs, objectives, or goals. or the district's comprehensive land and resource use plan, and shall be consistent with the standards of the Alaska Coastal Management Program contained in 6 AAC 80."

6 AAC 85.010(9) - "...It shall be the general policy of the coastal resource district to approve specific proposals for land and water uses and activities which are consistent with the district coastal management program."

6 AAC 85.040 - (Districts shall provide)"opportunities for coordination and review by governmental agencies and other parties with a significant interest in coastal resources..."

PROBLEM: Since federal regulations, and federal and state statutes, seek to promote coordination of government activities, and to recognize paramount national and state interests, the proposed new regulations should make manifest, as a matter of legislative housekeeping, that local coastal districts will not thwart state land management policy. This is obviously the intended policy, and indeed a goal of the Coastal Zone Management Act. (See above). But it must be an explicit regulatory standard governing the review of coastal district plans and plan implementation.

There are many ways to accomplish this correction of an oversight, or of the susceptibility of the existing draft to misinterpretation inviting dispute or litigation, including the following:

Add a provision saying that "coastal resource districts shall consider that the uses contemplated by the issuance of state leases for mineral and petroleum resource extraction are specific uses of state concern. District coastal management programs and plans shall be consistent with such uses."

Or/And

Add to proposed 6 AAC 85.010(7): "Policies and regulations (of the district) shall be consistent with the standards of the Alaska Coastal Management Program contained in 6 AAC 80 and shall meet...additional criteria, including consistency with uses contemplated by the issuance of state leases within the district for mineral and petroleum resource extraction or related purposes."

Or/And

Add to proposed 6 AAC 85.010(8): "The description of the uses and activities which will be considered proper within the coastal area shall not be inconsistent with established state policy as made manifest by the issuance of leases in effect for the exploration or extraction of mineral or petroleum resources of the state."

Or/And

Add to proposed 6 AAC 85.010(9): "...It shall be the general policy of the coastal resource district to approve specific proposals for land and water uses and activities which are consistent with the district coastal management program, and the classification and management policies governing state lands as otherwise established or promulgated."

RATIONALE

1. Protects paramount state interests and state policy governing state lands.
2. Creates a more favorable environment for business and investment, tending to increase bidding on state leases in a more predictable climate.
3. Avoids possibility of regulatory vagueness leading to (1) intergovernmental conflicts or (2) conflicts between private parties and government, or (3) litigation.
4. Proposed state preleasing procedures will provide ample opportunity for comment and input from districts and municipalities prior to state decision to lease.

J. P. J.