

COASTAL
ZONE
MANAGEMENT,
SUB-
COMMITTEE

AGENDA

Alaska Coastal Policy Council

December 14-15, 1981 Meeting

Shee-Atika Inn
Sitka, Alaska

Monday afternoon, December 14, 1981 -- 2:00 P.M. Convene

- A. Call to order - Introductions
- B. Approval of October 26 meeting minutes
- C. Coordinator's Report
- D. ACMP Improvements: Changes to the Alaska Coastal Management Act and the ACMP Regulations

-- Recess for dinner

Monday Evening, December 14, 1981 -- 7:30 P.M. Reconvene

- E. Sitka Coastal Management Program

-- Recess for the evening

Tuesday Morning, December 15, 1981 -- 9:00 A.M. Reconvene

- F. The ACMP Budget
- G. Progress on the Fish Creek Appeal
- H. OCM move to DCRA
- I. Other items as requested
- J. Set date and place of next meeting
- K. Adjourn

Procedure: Items D and E.

1. Chairman declares the item to be properly before the Council
2. OCM Report by Others is arranged by OCM
3. Council Member questions of OCM
4. Public Comment Opportunity
5. Council Discussion and Action

Summary of Agenda
Items and Supplements Material

(Note: The actual agenda preceding this section of the packet lists only the topics to be covered. This summary is intended as a quick review of the agenda materials for the benefit of ACMP participants. The summary is not a substitute for the full text of the agenda attachments which follow.)

Agenda Item A:

Call to Order.

Agenda Item B:

Approval of Minutes. Minutes are attached as agenda attachment B.

Agenda Item C:

Coordinator's Report. Among the topics of discussion will be an Outercontinental Shelf litigation update. The results of the annual Alaska Municipal League Conference in which resolutions supporting Coastal Management were unanimously passed will be discussed. Also included is a recent letter from the Resource Development Council (RDC) to mayors asking their consideration of supporting repeal of the Alaska Coastal Management Act. Agenda Attachment C contains a copy of the 1981 Policies regarding Coastal Management passed by the Municipal League and a copy of the RDC letter. OCM will invite a representative from the RDC to the Sitka meeting so that the Council can hear first hand the problems with and analysis of the ACMP that they might have. OCM will seek guidance as to how to inform the mayors of the Council's thoughts on both the AMC resolutions and the RDC letter. Time did not permit preparation of a draft response to the RDC letter prior to mailing the Council packet. OCM will prepare such a draft response for the council's consideration at the Sitka meeting.

Agenda Item D:

ACMP Improvements Package. The December meeting of the Coastal Policy Council (CPC) will be the final opportunity to discuss changes and improvements to the Alaska Coastal Management Program (ACMP) before the 1982 session of the Legislature begins. The current ACMP improvements package (see attachment D) contains amendments to the Alaska Coastal Management Act (ACMA) and offers possible changes to the regulations of the ACMP contained in 6 AAC 80 and 6 AAC 85. The improvements package is intended to address problems with the ACMP identified by districts, state agencies, the Coastal Policy Council, the Senate Resources Committee, and the Office of Coastal Management (OCM).

Two major changes have been made to the ACMP improvements package since it was discussed at the Council's October 26 meeting. The first change adds two new amendments to the ACMA dealing with

consistency reviews of federal actions and transferring the location of the Council and OCM out of the Governor's office. These additions are in response to Senator Fahrenkamp's request to address these problems in the legislative package.

The second change deletes four statutory amendments that were in the October 26 package:

1. district regulatory provisions,
2. issue-specific district programs,
3. new uses of state concern, and
4. state agency participation.

As suggested by the Council, regulatory changes to the ACMP are a more appropriate way to address these concerns. The proposal to revise the ACMP regulations is based on comments made to OCM by some Council members at the October meeting and by Senator Fahrenkamp that some of the ACMP's problems are administrative and should be solved by changes to the regulations instead of the statute.

We anticipate spending most of Monday afternoon discussing the ACMA amendments and taking public comment on them. The language contained in this packet has been sent to the Department of Law for submission to the Governor. There is, however, still the opportunity for the Council to discuss and change the amendments before actual introduction in January.

Following action on the statutory amendments, we will request the Council to conceptually approve or modify these possible revisions to the regulations. The changes being proposed are outlined in the context of the objectives they intend to accomplish to address the following problem areas:

- o Time required for consistency reviews
- o Local control over uses of State concern
- o Impacts of ACMP authorities on Title 29 authorities
- o Increasing focus of district programs on significant land and water use issues
- o Local administrative control after local district program approval
- o Responsibilities of State agencies to districts and to the ACMP
- o Organization of the regulations

Policy guidance on the objectives and the areas for amendment will be needed from the Council. There will be many future opportunities such as Council meetings and workshops with local governments and agencies to discuss the actual language of any eventual regulatory changes.

Agenda Item E:

Council Action on Sitka Coastal Management Program. See Agenda Attachment E for OCM's revised finding and conclusions on the Sitka Program. Also included are summaries of comments regarding the Sitka programa and OCM's responses to the comments.

Agenda Item F:

ACMP Budget. The federal budget is undergoing intense scrutiny in an attempt to achieve further reductions. 33 million dollars have been allocated nationwide for coastal management in federal fiscal year 1982. If this amount was actually made available to states, Alaska would receive one more grant of 3 million dollars. Federal carryover amounts should give Alaska enough money to meet FY83 budgetary requirements without a significant increase in State funds. However, it has been heavily rumored that the Reagan Administration will seek to rescind 12 million dollars of the 33 million. If this occurs, then Alaska will get a grant of only 2 million dollars, necessitating either radical budget reductions threatening the viability of the ACMP, or additional State funding to fill the gap.

OCM will present the current situation to the Council, and seek guidance for working with the Administration and the Legislature on this potential fiscal problem.

Agenda item G:

Progress on Fish Creek Appeal. At the time of printing of the Council packet, the Governor had not yet appointed a hearing officer for the Fish Creek appeal. We will provide an update at the Council meeting on recent developments.

Agenda Item H:

OCM Move to DCRA. See Agenda Attachment H for memorandum to Council from Murray Walsh regarding this subject.

AGENDA ATTACHMENT B

Minutes

MINUTES

ALASKA COASTAL POLICY COUNCIL

Anchorage, Alaska

October 26, 1981

A. CALL TO ORDER -- INTRODUCTION

Council members present:

Public:

John Crawford, Seldovia
Jon Halliwill, Haines
Robert Kellar, Valdez
Pat Phillip, Alakanuk
Lidia Selkregg, Anchorage
Elaine Seymour, Ketchikan

State:

Richard Aks, DCRA (alternate)
John Halterman, DEC (alternate)
Dick Logan, F&G (alternate)
Ted Smith, DNR (alternate)
Jim Souby, DPDP, Governor's Office

Office of Coastal Management (OCM) staff present were Murray Walsh, Coordinator; Bill Ross, Deputy Coordinator; Kurt Fredriksson, Tom Lawson, and Michelle Shook, Planners; and Lorraine Marshall, Administrative Assistant. Lauri Adams, Assistant Attorney General, was present as well.

The meeting was called to order at 9:00 a.m. at which time the Council members introduced themselves.

B. APPROVAL OF SEPTEMBER MINUTES

It was moved and seconded to approve the September 24, 1981, minutes. The motion carried with no opposition.

C. COORDINATOR'S REPORT -- APPROVAL OF AGENDA

Walsh informed the Council that there are two documents about wetlands that will be available soon for review. He mentioned other items of news: the U.S. Department of Commerce withdrew their regulations which narrowly defined the term "directly affect"; the State of Alaska had joined California to sue the Department of the Interior on the five-year leasing schedule, and a decision was made that favored Alaska's

position. He advised the Council about two vacancies on the Council: the Kodiak-Aleutian Islands and the Bering Straits Regions.

The chairman ruled the agenda to be in order.

D. SITKA DISTRICT PROGRAM WORKSHOP

Walsh asked Mike Schmidt, the Planning Director for Sitka, and Bob Pavitt, a consultant for Sitka, to speak to the program. First, Michelle Shook gave an overall presentation. She began by commending Sitka for their accomplishments, and for addressing an issue of concern (the general permits they are applying for). The City and Borough of Sitka contracted with Fish and Game for three habitat studies, which resulted in Sitka's ability to apply to the COE for general permit authority to locally administer five types of activities. The permits have not been approved, but encouragement has been received from COE, F&WS and F&G.

She pointed out three areas of the Guidelines and Standards with which OCM felt the program was not consistent: (1) implementation; (2) policies; and (3) coastal development.

She said the City and Borough concurs and is working on the implementation and coastal development areas, but there is disagreement regarding policies.

The term "policies" has caused a problem in that traditional planning does not use policies as enforceable type actions.

She explained OCM recommended that the district review the policies, and reword the policies to fulfill criteria by making them more specific. OCM has been working with other options with which to meet this policies guideline. Shook concluded by stating it is important that there is a clear identification in the program of what the rules are.

Schmidt, Planning Director, first commended Fish and Game for their technical assistance, and passed around the four documents that resulted from those studies. He felt the term "policy" means "direction you want to travel" and the rules are in the ordinances. He said Sitka should use the standard techniques, and is in the process of rewriting of the ordinances that would put the additional sections in place to ensure the program's policies are brought on line. Regarding the general permit matter, Schmidt reported the City and Borough is trying to cut down the timeframe by seeking general permits. Most of the non-urban area is governed by the Forest Service, so Sitka has adopted the Tongass Land Use Management Plan as its coastal management plan. The main focus of the program is the roaded area and the urban community.

Bob Pavitt, consultant, said it is fortunate that Sitka has knowledge resulting from the studies, but he clarified that Sitka entered into Coastal Management long before permits were an issue. They recognize

that coastal management is land use planning with emphasis on coastal resources and concerns, and followed the mandates to use existing authority to the greatest extent possible. He felt the word "policy" does not indicate enforceability, but is a statement of intent, and the approach Sitka took is in concert with the ACMP. Regarding federal and state regulations affecting the use of privately owned land, he said it is the intent of the City and Borough to urge the Legislature to establish a fund for the purchase of private property when State regulations restrict use of property so private development is unfeasible. This is a major policy issue for the Council to consider, and he urged the Council to look at guidelines in the view that policies are not understood by local government of being in lieu of regulations.

Walsh said in the program it is shown that the City and Borough is going to revise City ordinances so policies in the program can be carried out. The existing ordinances of Sitka being the coastal rules would be a solution.

E. RESOLUTION ON IMPLEMENTATION GUIDANCE

Walsh said this would give guidance to the districts on how to implement programs and what kind of material to include in the program documents to show means of implementation. The paper provides for a district consistency recommendation rather than consistency decision or determination. Walsh added OCM believes the guidance document serves existing regulations, and is not new material.

Public participation:

Don Glass of Shell Company presented the following comments on the resolution:

1. In the first paragraph of the resolution, strike the word "substantially" from the statement that the CPC determines whether a district program is substantially consistent; and
2. In the second paragraph, define "activities" -- "once a district . . . program is approved . . . , approvals for affected activities by . . . agencies must be consistent"

Glass also commented on the document "Implementing the District Program":

1. He questioned the use of the word "resource";
2. He stated confusion about what enforceable and unenforceable rules are;

3. He questioned the matter of local governments setting up their own permit system. He asked what would happen if a local Title 46 permit was refused but the State lead agency determined an activity consistent;
4. The guidance refers to great weight, and defines great weight as from the proposed uniform procedure regulations which are not yet in effect;
5. The words "may," "should" or "request" should be avoided, and he questioned whether they would be appropriate in balancing;
6. Regarding field checking, words should be added as follows: "to assure . . . projects which are found to be consistent by somebody other than the district with the approved program are . . . being conducted properly";
7. He felt the guidance is premature, as it relies on concepts of proposed uniform procedure regulations, the use of great weight and reference to balancing;
8. Glass recommended that this resolution not be considered until after those regulatory concepts are established, as he felt it contains new regulatory concepts.

Walsh explained that the document intended to give the districts guidance under the rules as they exist now, and OCM proposed a resolution as a means for the Council to express their feelings on the subject. Ross added that districts need guidance on how to coordinate with the State, and the document does not depend on the scenario of the proposed uniform procedures.

Motion. Selkregg moved for approval of the resolution of the CPC endorsing the document entitled "Implementing the District Program." Halterman seconded. The motion passed unanimously by roll call.

F. ACMP IMPROVEMENT PACKAGE

Walsh said the ACMP Improvement Package had been sent to legislators involved in the ACMP, and a response from Senator Fahrenkamp has been received. One of her comments was that the Council should prepare the language without assuming the existence of SB 84.

Walsh proposed to discuss first the language in the present package, and to later address those solutions housed in the proposed SB 84 that will have to be added to the Council's legislative proposal. Walsh gave short presentations about each section.

Staff presentation of language presently in the package:

AS.46.40.040(4): The proposed language will clarify that there must be specific binding provisions (coastal management rules and regulations) contained in local programs (might be in a local ordinance, new or existing). Ross added that the purpose is to make land and water use regulation very specific.

AS 46.40.060(a): The new language provides greater flexibility for the Council in dealing with deficiencies in a district program, allowing the Council to (1) put performance conditions on the district, and (2) to modify the content of the program in the approval process. The issue of a district failing to meet a condition that would jeopardize the program is not addressed.

Adams explained if the district doesn't comply with the condition, the Council retains jurisdiction over the district's program. There are provisions in the Act for the Council's continuing review regarding implementation. If not being implemented according to the Council's direction, there is a mechanism for the Council to hold a hearing.

AS 46.40.050 and AS 46.40.170(b) and (c): The proposal is to repeal the standard deadline in place for all districts and replace it with a procedure by which each district would negotiate a deadline. Ross said there is a question of whether the Council wants enforcement power if a district misses a deadline. (1) Should there be a minimum deadline? There is no need to put this in if there is no enforcement power. (2) What about extensions? He said the desired attitude is desired to be of negotiable trust. OCM concurs with the no-minimum-deadline procedure and feels extensions should also be negotiated.

Ross said the first sentence of the proposed AS 46.40.050, "Each coastal resource district shall, . . . or within six months of the certification of the results of the organization election . . . submit to the Council . . . a schedule including dates for the completion . . .", the six-month time period should perhaps be changed to six months after the election of the board members.

AS 46.40.035: The idea is to provide districts with or without approved programs a way of speeding up planning efforts so they can deal with a specific issue, while being less comprehensive, and be more comprehensive later.

Ross said the district would have to justify why it was a pressing issue. There was concern that other coastal issues may be held in abeyance and the comprehensive nature of the ACMP might be lost if this is abused. Walsh said a requirement could be established: that the district obligate itself to continue working on a general and comprehensive program.

AS 46.40.075: When a new use emerges that the plan doesn't accommodate, the amendment sets out the procedure for how the Council would treat this situation. He added that the word "new" and the definition of land use caused concern. Ross said this also includes future uses of State concern.

Walsh said the agencies would discover the concern, approach the district, come to the Council, and say it is being excluded or restricted by the district. Or, a citizen group could appeal before the agency, and the agency would go before the Council. Halliwill commented that there should be criteria established to show standing to initiate such action.

AS 46.40.037 (State agencies) and AS 44.49.161(2): This section sets out responsibilities for agencies in the development of district programs, and eliminates the provision regarding comprehensive coastal resource planning for each geographic coastal region of the State. Agencies are exhorted to coordinate their existing planning authorities and programs with districts.

AS 46.40.140 (a), (b); AS 44.19.155(a)(1) and (d); and AS 46.40.190(b): Ross said this allows coastal resource service area (CRSA) boards to continue after their programs have been approved and gives them responsibility to comment and recommend on interpretations of the district program.

AS 46.40.140(b) provides for flexibility of the number of CRSA board members.

AS 44.19.155(a)(1) provides that any member of a CRSA board is eligible to be appointed to the CPC. Subsection (d) states board members would be eligible as an alternate, and provides for the Division of Policy Development and Planning to have an alternate.

AS 46.40.190(b) changes the types of agreements, entered into by the REAA-sized CRSAs and cities which want to opt out, for exchange of information concerning district programs.

Walsh said an additional suggested change was to see if there is a way for a CRSA to alter the number of planning board members they have.

Bill will present these changes to the Council later.

Additional language needed (pointed out by Senator Fahrenkamp):

Walsh presented the additional matters that need to be discussed.

1. Lengthy consistency review: The proposed SB 84 added to the improvement package for dividing consistency determination up between three agencies (DNR, DEC, and DPDP). Proposed SB 84

would have presumed the determination would be made in the same time and same process as regular agency decisions. There is no legislative change that deals with permit reform. It will be difficult to propose something that would affect all agency permit processes. In terms of speed of consistency determinations, this would have to rely on the uniform regulations. For the second issue, comprehensive planning addresses all social and physical issues of local government; coastal planning addresses physical coastal land and water use issues.

2. Statewide community planning vs. resource planning: There are two issues: (a) whether the ACMP can be related statewide; and (b) how local comprehensive planning and local coastal management planning differ. Regarding the first issue, the idea of spreading the technique of coastal management inland is worthy of consideration. The Council would be reluctant to propose a statewide version of ACMP, but will inquire what action the Senator intends the Council to take.
3. Too little or too much control over land use decisions: Different people have opposite opinions on local government power. This question needs more consideration.
4. Departmental affiliation of OCM: The legislative package could include the move of OCM to the Department of Community and Regional Affairs. An administrative order should be proposed also. The relation of OCM to the Council needs to be articulated.

Souby directed staff to work with the issues and put before the Council feasible proposals regarding the four areas of Senator Fahrenkamp's letter, and to clarify whether the Senator is asking the Council to propose a statewide program, without implying that the CPC would be the body to do that.

Public participation on the ACMP improvement package:

Art Monson of Yakutat asked for a definition of "new" regarding uses of concern. Walsh clarified it pertained to one that the coastal plan does not cover.

Walsh invited Representative Tony Vaska to share his thoughts. Representative Vaska said that the unorganized borough should be given as much local control as possible, that residents should be involved in the decision-making process from the beginning. He supports the unorganized borough organizing into whatever possible mechanism for decision-making, and said he would like to see what kinds of ideas the Council has to give the Legislature for developing programs. Vaska

questioned whether "great weight" is really applicable in making decisions.

Council discussion of the proposals:

Walsh said the proposals can be next discussed at the Municipal League meeting on November 6. He suggested that the Council solicit the Municipal League's support, and continue working on the amendments for the rest of the fall until the December Council meeting, and submit the final package. He also suggested that a subcommittee of the Council meet in November.

Order: Souby directed staff to respond to those issues discussed specifically mentioning the transition issues, 46.40.140(b), public entity, AS 46.40.075, and use of the word "new" or "unanticipated" for use of State concern. He then instructed a Council subcommittee to work on these issues in the interim. (No objection.) Council member Pat Phillip was appointed a member of the subcommittee. There was no objection, and he accepted.

Order: Souby then ordered, hearing no objection, that the CPC co-chairs will attend the Municipal League meeting in November.

G. DISCUSSION OF LOCAL RESOURCE MANAGEMENT JURISDICTION

Chart:

Bill explained a chart by OCM entitled "Legal Relationship of District Coastal Management Programs." Walsh said the purpose of this presentation was to describe the relationship of an approved program with the local government and the State.

Walsh and Ross responded to questions after explanation of the chart. Ross said once you have rules and tools, the decisions have to be made consistently. If a local government keeps its rules inside ordinances, then changes to that ordinance have to go before the Council.

Regarding rules, Walsh said districts can use inventories and analysis from other planning efforts, it may be a repetition of standard ordinances, or adopting a coastal rules ordinance. A district can rely on State and federal procedures for implementation tools. Walsh said if the local government chose its ordinance to be the coastal rules, OCM would be agreeable, although it would subject agencies and Council to dealing with very detailed rules.

"Local Resource Management Jurisdiction":

Walsh said some local governments will want to direct administrative jurisdiction over land and water use activities through zoning

ordinances, etc. The question is, what is different about ACMP than the existing powers already granted local governments? In the paper entitled "Local Resource Management Jurisdiction" OCM listed kinds of actions, and estimated whether the local government had the right to administer direct control of those actions (local permission). He asked the Council to ponder what the Council thinks local governments should be able to do, and examine the answers listed for correctness. He stated that under present existing powers, a local government has the ability to establish direct control over some activities that occur there, and coastal management might add to that.

Ross said the question is whether coastal management can give Title 46 coverage with Title 29 autonomy.

Public participation:

Don Glass of Shell Company wanted to differentiate between Title 29 and coastal management. He said Title 29 applies to a small area, but it is an important key that consistency deals with a different order of geographical areas -- if a zoning ordinance is included in a coastal plan, he said you would have to think how the same ordinances would affect the broader range of activities and the broader areas of coverage.

Walsh said question No. 11 on the document, "Can a municipality demand that a State permit . . . be denied . . . upon the basis of explicit local requirements?" should have been written to indicate reference to areas within the local jurisdiction.

Ross interjected that a lead agency has no discretion if there is a "no" rule, but that rule has to state a clear "no."

Jim Barnett, attorney for Sohio Alaska Petroleum Company, said the question regards the comparison between the local coastal management program and the zoning ordinances -- whether a (municipality following its Title 29 powers) that intends to have coastal plan, will be limited by what can be approved by the Council. He commented that the oil and gas industry's response to the question, "can a municipality establish direct control over oil and gas exploration and development by private parties on State lands pursuant to a State lease," would be "probably not" rather than yes. Barnett said that in the oil and gas field, where a State agency preempts the field, Title 29 would not give the municipality the power to say no.

Art Monson, Yakutat, commended OCM staff for the chart, and suggested that further discussions of the chart be done in local government workshops.

H. ANCHORAGE APPEAL

Walsh introduced the matter by explaining that after a program is approved, actions must be conducted consistently with the program plan. A group of people had petitioned the Council with the allegation that Anchorage violated its program when it approved a replat of lots in the Fish Creek area. The Department of Law advised that the Council is obligated to hold a hearing. It was noted at this point that the Council has no procedures for appeal. He recommended that the Council request a hearing officer who would make a recommendation to the Council. The co-chairmen had agreed to solicit a hearing officer.

Adams said the Council had to decide how the hearing should be conducted:

1. The Council could delegate the responsibility to a hearing officer who would conduct the hearing, and offer a recommendation to the Council. The Council members could attend but not participate; or
2. The Council could hold a hearing in its own right, but would have to participate and deliberate.

The Council would have to afford the parties an opportunity to respond to the hearing officer's recommendations, and also would have to offer an opportunity to the parties to appear before the Council. Then the Council would decide the case:

1. allow the proposed decision to become final;
2. order reconsideration within 30 days, allowing for additional evidence;
3. adopt the proposed decision but modify the recommendation;
4. decline to adopt the proposed decision and decide the case with or without additional evidence.

Motion: Halliwill moved that a hearing officer be appointed to decide this case and make recommendation to the Council. It was seconded, and passed unanimously.

I. BRISTOL BAY BOROUGH PRESENTATION

Don Penner, administrative assistant for the Bristol Bay Borough, explained Bristol Bay's program was started some time ago, and there were problems with turnover on the borough's staff and lack of public enthusiasm. After recent public hearings and planning meetings, the program was changed from land classification to a policy statement. A citizen's advisory committee was established to develop goals to go to

the planning commission. He said the inventory was complete, and thought they could work them in as policies. The plan is to revise the resource analysis and management plan into a policy type program. They will expand with some new data, and they want to expand AMSAs. The implementation section will be revised.

Barry Quinn, Consultant for the Bristol Bay Borough, explained the events leading up to the change in the direction of the program. He said the emphasis is developing the program to meet the needs of the people, and get people involved.

J. OTHER ITEMS AS REQUESTED - none.

K. SET DATE AND PLANS OF NEXT MEETING

It was moved by Seymour that the next meeting be in December at a date to be arranged by OCM. Kellar seconded, and the motion passed.

M. ADJOURN

The meeting adjourned at 5:00 p.m. on October 26.

Respectfully submitted,



Lorraine Marshall
Administrative Assistant

AGENDA ATTACHMENT C

1981 AML Policies

and

RDC Letter

COASTAL MANAGEMENT POLICIES

1. Local Control: The League supports continued and maximum local control in the development, management and implementation of coastal planning and policies.

2. Extra-Territorial Planning: The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt the "extra-territorial" planning as part of the Alaska Coastal Management Program until such time as a resource district plan is adopted.

3. Agency Review of Local District Programs: All state and federal agency comments and recommendations must be made expeditiously by these agencies prior to local government conceptual approval of the district plan.

4. Federal Consistency: Where an approved local district program is in effect, coastal district findings shall have "great weight" in determining consistency recommendations.

5. Coastal Leasing: The League encourages the state not pursue leasing activity in a coastal area until a local coastal management plan is in effect or the deadlines for establishment of that plan have been expired.

6. Financial Support: The League encourages state financial support of the Alaska Coastal Management Program.



Resource Development Council

for Alaska, Inc.

444 West 7th Avenue, Anchorage, Alaska 99501
Box 516, Anchorage, Alaska 99510 - 907/278-9615

EXECUTIVE DIRECTOR
Paula P. Easley

EXECUTIVE COMMITTEE
Charles F. Herbert, President
Mona Frey, Vice President
Dorothy Jones, Vice President
Bob Swetnam, Secretary
Darrel Reawinkel, Treasurer
Tom Fink, Past President
E.W. "Pete" Casper
Paul Dunham
Bob Fleming
O & "Easy" Gilbreth
M "Glen" Glentzer, Jr.
Dan Hinkle
Jed Malley
John Kelsey
Tom Pargater
Bill Sumner

DIRECTORS/FOUNDERS

Hameed Ahmad
Doug Buchtel
Charles Becker
Dr. Earl Beiswiler
Ken Bishop
Terry Brady
Glen Briggs
Milton Byrd
Frank Chapados
Bob Childers
John Creed
Erwin Davis
Dr. James Drew
James G. "Bud" Dye
Fred O. Eastrough
William D. English
Janice Farrell
Wayne Fincher
Lee E. Fisher
John Gulea
Kelly Gay
Bob Gilliland
Howard Grey
Gordon Harang
Dave Harbour
Roger Masby
Hazel Meath
Carl Hamiller
James Hendershot
Robert Michel
E. Eldridge Hicks
George Hiller
Phil Holdsworth
Jerry Jean
James LaBelle
Dr. Phillip Locker
Dr. Charles Logsdon
Dennis Lahti
Robert Lischer
Roger Meeks
Richard Morgan
Ethel "Pete" Nelson
Greg O'Clary
Nate Clemaun
Tom Owen
Robert Penney
Ilysi Perneki
William Purrington
Pat Quinlan
Sig Restad
William Ross
G E "Hank" Schaub
Carroll Smith
Patrick Smutz
James Saurant
Pat Storian
Dale Teel
Joe Thomas
Duane L. Triplett
James Wakefield
Lew Williams
Dan Wald

STAFF CONSULTANTS

Terry Brady
Dr. James Drew
Sara Memphis
Dr. Arthur Mippier
Robert Muck
Frank M. Jones
Dr. William Ogil
Cyle Tuboi

November 20, 1981

NOV 23 1981

Dear Mayor

The Resource Development Council has taken a position supporting the repeal of the Coastal Zone Management Act. I am enclosing a paper we have developed that represents our stand and the reasoning behind such.

Coastal zone management was introduced by the federal government to aid in local planning but the history in other states has proved it becomes another layer of bureaucracy and a tool to prevent sound development.

For example--in California a developer seeking to build two luxury resort hotels in Marina del Rey in the County of Los Angeles met all environmental qualifications but was then told by the California Coastal Commission that to receive the permits to build, he must make available low and moderate rates in 45 rooms and the restaurants must have prices that coincide with "Sambo's."

This, of course, is not the purpose of coastal zone management. To prevent this from happening in Alaska we ask that you consider the information enclosed.

If you have any questions please contact us.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Joyce Munson
Deputy Director

TITLE 29 v. CZM

Set out below are a few of the Resource Development Council's comments regarding the recent Attorney General's memorandum entitled: "Comparison to Local Government Planning Powers Under Titles 29 and 46 of the Alaska Statutes."¹ The Resource Development Council contends Alaska would be better served by the repeal of the Alaska Coastal Management Program (SB 216) and, thereby, a return to planning under Title 29. By commenting on the above-described memorandum, the Resource Development Council believes the value of a return to Title 29 and the need to repeal the Alaska Coastal Management Program can be more readily seen.

COMMENTS

Three major differences between Title 29 and Title 46 are set out on the first page of the Attorney General's memorandum. The Resource Development Council directs its comments to these "differences", as follows.

1. AS 46.40 applies only in the Coastal Zone of the state.

Under this difference, the memorandum states: "Nevertheless, even larger areas of the interior of the state are not under the jurisdiction of the Coastal Management Act." The significance of this comment is twofold. First, it brings out the point of what or where is the Coastal Zone. Though this point sounds rather fundamental, it is not. The definition of the Coastal Zone is so nebulous as to make it virtually impossible for the average person to determine where it is. The Assistant Attorney General took a little over half a page to set out the generic definition. For the definition of a coastal district boundary, please see the attached regulation and try your luck. Remember this coastal zone boundary may be different than the State's coastal zone boundary. Second, the point demonstrates Alaska has been divided, arbitrarily, by the Coastal Zone Management Act. Interior communities fail to receive the only benefit from the CZM program - funds for planning. Interior communities have planning needs, too. The Resource Development Council contends all Alaska communities should receive comparable treatment and funding in regards to the planning function under Title 29.

2. "In those areas where it applies, AS 46.40 alters the traditional balance between the state and local government legal authorities over land use decisions."

1. Assistant General Laurie Adams to the Co-chairman of the Coastal Policy Council.

How unfortunately true this statement is. The traditional balance that guided the development of the Trans Alaska Pipeline; Prudhoe Bay; mining; logging; etc. has shifted. The shift has been one from "health, safety and welfare" for the local community to one where the local community through the "great weight" CZM mechanism holds a veto in the decision process on how best the state's land/resources will be used. It is important to note this "shift" results from not only AS 46.40, but Administrative Orders 52 and 54. Though Administrative Orders have questionable legal significance, Administrative Order 54 states in Paragraph 12: "In making federal consistency determinations, state agencies and DPDP shall consult with affected local governments, federal agencies, and other state agencies, and shall accord great weight to their views within their areas of expertise." (Emphasis added.) This requirement for multiple consultation has been lost by the Administration. Further, the Resource Development Council questions any decision-making process (Admin. Ords. 52 & 54) established without the participation of the legislature.

The Attorney General's office emphasizes the fact that state agencies are brought into the review process via statutes for a Coastal Zone Management Plan, but not for a Title 29 Plan. This emphasis appears to be somewhat misplaced, if not misleading. Granted, the statute does set out state agency involvement in the CZM plan review process, but it is important to note the federal agencies are also involved.

The state, in a Title 29 Plan, has a constitutional obligation to participate in a Title 29 Plan. For you see, the state agencies, as custodians of the state's land, have an obligation to maximize/protect the useage of the land. If state land may be adversely affected by a Title 29 Plan, then the state must participate to protect the interest of the people. As a practical matter, it is the rare situation where state agencies do not become involved in comprehensive plans and zoning ordinances.

Along this same line, it is interesting that the Attorney General's office noted the state agencies' oversight role in the Coastal Zone Management Plan, but failed to mention the recent exclusion of the legislation from the process. As CZM was originally enacted, the legislature was to be the final state voice in regards to oversight of a CZM plan. Now, via the A.L.I.V.E. decision and an Attorney General's opinion, the legislature no longer holds this oversight authority. The legislature's oversight authority was a vital link in the CZM process because CZM plans have statewide impacts. In other words, what might appear to be good for a minute group, could well be detrimental to the mainstream of Alaska due to the state's resources

being prohibited from development. Clearly, the legislature should be involved as the final oversight authority in such a process.

As to Title 29, the legislature still holds its oversight role. The Attorney General points out a number of cases that demonstrate the legislature's role. Further, the Attorney General's case cites support the conclusion that the legislature's role under Title 29 is on much stronger legal grounds than that found in Title 46.

3. AS 46.40 provides a comprehensive planning mechanism for the coastal areas of the unorganized boroughs which lack local government units exercising the municipal planning powers conferred by Title 29.

It is significant the Attorney General's office advises in Footnote 7 on the above that AS 46.40 has the potential for unconstitutional activity. The Assistant Attorney General goes on to say in Footnote 7: "We (the Attorney General's office) perceive a potential for legal impediments in the future if special service districts in the unorganized borough multiply without any mechanism for unification of services, function and control." It is difficult to comprehend why the state is advised of such a significant point in a footnote.

Title 29 does have applicability to the unorganized boroughs under Alaska Stat. § 29.18.220, wherein it states:

The legislature finds that the development of natural resources in isolated and relatively unpopulated areas requires a policy and procedure which will provide planning, financial and other assistance necessary for encouraging orderly development of well-planned, diversified and economically sound new cities necessary to support the sound development of the state's resources by both the private and public sector.

It should be noted Title 29 is currently under revision (SB 180), and it is unclear whether Chapter 18 will be retained in its present form; piecemealed throughout Title 29 or repealed in entirety. For the present, however, Chapter 18 is in effect and does apply to the unorganized boroughs. In reviewing the above language one comes to the immediate conclusion that Chapter 18 deals with many of the issues involved in CZM. An important part brought into Chapter 18 is the incorporation of private enterprise directly into the process. Both the public and

RESOURCE DEVELOPMENT COUNCIL
BOX 518
ANCHORAGE, ALASKA 99510

private sectors working together for a common goal has strong public policy support. In reviewing Chapter 18 the question arises - why was CZM enacted if Chapter 18 was already in place? The only rationale that can be found is that CZM offered federal funds at a time when the state treasury was low.

The thought outlined in Chapter 13, that planning should occur for only those areas where development will occur, is sound. As discussed previously, Alaska's coastline is approximately 33,000 miles. Obviously, development is not going to occur in all of those areas in the immediate future. The Resource Development Council understands development may occur, in approximately 5 to 10 areas and, as to those areas, Chapter 18 demonstrates a solid and strong approach to answering those problems. Should development occur in or about established cities, then Title 29 would come into play.

Interestingly, the Attorney General's office failed to address the legislature's constitutional authority regarding planning in the unorganized boroughs. Article X, Section 6, of the Alaska Constitution states:

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Under this authority, a strong argument can be made for the legislature to initiate planning process in the unorganized boroughs - those five to ten areas where development appears imminent. Once the planning has occurred, then the legislature provides the proper forum to balance the needs of the local community with those of the state.

In addition to the legislature's authority set out above, it is important to note the legislature has acted in regards to the planning for the unorganized borough through its five year lease plan and permitting process. CZM serves only to duplicate this system.

SUMMARY

1. CZM applies to a limited area. All Alaska communities should be treated the same.

2. CZM has altered a traditional balance between the state and the local governments as to the planning and the useage of state resources.

3. Local governments planning function should be limited to "health, safety and welfare" concerns for local citizens. Local governments have a legitimate right in that area, but the balancing of how the state's resources should be used for the best interest of all Alaskans rests with the state. Certainly local communities should have the right to voice their opinions on the balancing process, but the decision should rest with the state.

4. Increased usage of CZM in the unorganized boroughs has the potential for unconstitutional activity on the part of the state.

5. The Alaska Legislature has lost its oversight function on CZM plans via the A.L.I.V.E. decision and an Attorney General's Opinion. The legislature still has an oversight role regarding Title 29 and the unorganized boroughs. This oversight role is rooted in the Alaska Constitution - not a Federal Act. By repealing CZM, the legislature can once again take its rightful place in the planning process for Alaska's future.

The Resource Development Council concludes its comments in this area with a quote from an unknown bureaucrat 42 years ago:

Further surveys of Alaskan resources will be useful to the extent that they are closely linked with programs of action; and, contrariwise, will be worse than useless if they are used as excuses to delay action.

. . .in the development of new countries planning and research have served to reduce many risks, but in no case have the potentialities of the country been realized without a process of trial and error on the part of those who are staking their lives and their fortunes on success.*

*U. S. Department of the Interior. "The Problem of Alaskan Development" (August 9, 1939, mimeographed) p.20.

COASTAL ZONE MANAGEMENT: THE INCONSISTENCIES

Some of the common statements made in regard to the Coastal Zone Management Program are set out below. The Resource Development Council questions these common statements and asks you - are these statements consistent with what is actually the case or with what is actually occurring in Alaska?

1. Coastal Zone Management, through its local district plan function, gives local communities greater control over state and federal activities.

Inconsistent. Local district plans are subject to being consistent with the state and federal Coastal Zone Management Plans. That is, subject to minor variations, the local plan follows or mirrors the state and federal plans. Any "control" a local community might have through its plan is what the state and federal government allows it to have. In short, the state and federal governments are only complying with the plan they have agreed to before hand and the local community has little, if any, actual control over a state or federal activity.¹

2. Coastal Zone Management is the only planning mechanism for the unorganized boroughs.

Inconsistent. In Article X, § 6 of the Alaska Constitution, it states:

The Legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Through this provision of the Alaska Constitution, the Legislature may conduct planning, zoning, etc. - just like any organized borough assembly. Local input is guaranteed and the "expertise" of the state agencies is at the disposal of the local community.

As demonstrated below, the Legislature has exercised its power in this area and there are additional planning mechanisms.

3. Coastal Zone Management is the only planning mechanism for Alaska's coastal zone.

1. As the Alaska Attorney General's office has stated to the Coastal Policy Council Co-chairman, "the United States Secretary of Commerce is prohibited from approving a management program submitted by a state unless the views of the federal agencies 'principally affected by such program have been adequately considered.'" 16 U.S.C. § 1456(a).

Inconsistent. Alaska's coastline (not the coastal zone - just the coastline) is approximately 33,000 miles in length. Does anyone really believe the entire 33,000 miles will be developed in the immediate future and, therefore, we must have a comprehensive plan in place for the entire 33,000 miles? Certainly there are 5 to 10 areas along the coast that have a high probability of development over the next 10 years². For these developments there are numerous planning mechanisms already in place. To name a few of these planning tools, they are: 1) Environmental Impact Statements; 2) Alaska's Sociological Environmental Economic Assessment; 3) Alaska's Five Year Lease Plan; 4) the Federal Leasing Plan; 5) the entire state and federal permitting process; 6) local community zoning and planning powers (Title 29); 7) Alaska Stat. 29.18.220. Development Cities, whereunder the legislature has set out a planning process for development cities in the frontier areas³; and 8) Department of Community and Regional Affairs - Alaska Stat. §§ 44.47.080-100 Planning Assistance; 9) Copper River Basin Regional Plan (current budget); 10) Alaska Fish and Game/Department of Natural Resources - Regional Resource Plan; and 11) the Alaska Legislature's zoning and planning powers in unorganized boroughs.

4. Coastal Zone Management has added little, if any, regulatory burdens to the permitting process.

Inconsistent. Coastal Zone Management has, in essence, doubled the permitting process. Each agency in making its decision on a permit for an activity within the Coastal Zone must make an internal "consistency" decision. An agency receiving comments on an activity within the Coastal Zone must make an internal "consistency" decision on the comments in addition to its own internal decision-making process. Lastly, the office of Coastal Management makes a "consistency" decision on the permit.

2. Based upon public information, the Resource Development Council understands some of the areas having a high probability are: 1) Beluga Coal Fields - Point McKenzie; 2) Mining - Ambler River Mining District; 3) Mining - Kobuk River Valley; 4) Mining/Logging - Admiralty Island; and 5) Oil and Gas Onshore Facilities - Nome; Cold Bay; Dutch Harbor.

3. Title 29 is currently under review in SB 180. It is unclear at this time if Chapter 18 of Title 29 will be retained in its entirety, but it does appear the essence of Chapter 18 will be retained and, therefore, remain available.

Each "consistency" decision, in the vast majority of cases, generates stipulations by the agency. These stipulations must then be coordinated and worked out by the agencies involved. A specific example demonstrating the additional regulatory burden is attached for your review.⁴

5. Coastal Zone Management's additional Powers over Title 29 are necessary for orderly development to occur.

Inconsistent. First, all the present developments generating income in Alaska came onstream without the "benefit" of Coastal Zone Management. These developments - Prudhoe Bay, Trans Alaska Pipeline, Cook Inlet oil production, fish processing, mining, logging, etc. - can certainly be described as being environmentally sensitive and proceeding in an orderly manner. These developments demonstrate the Coastal Zone management program is more surplusage to a working, proven and dependable system.

Second, as demonstrated in No. 3 above, the alleged "additional powers" do not exist and the Title 29 powers provide succinct specific controls for the local community to use in the development process. Under Title 29, the local community, without procedural coordination constraints with the state and federal government, may design its own plan for the protection of its citizen's "health, safety and welfare" (see attached memorandum, Title 29).

Third, one must remember, the Coastal Zone Management Program applies only to the coastal zone. Interior communities, those outside the coastal zone, rely upon the traditional Title 29 powers. Orderly development is occurring in the interior, e.g., Usibelli Coal, and this point demonstrates orderly development is occurring without Coastal Zone Management.

Fourth, Title 29 powers are rooted in the Alaska Constitution, they apply throughout the state and they are time-proven. Coastal Zone Management is rooted in the federal government, applies to a limited area and is ever-changing through court battles. How can orderly development under Coastal Zone Management occur when the rules are being changed?

Last, the North Slope Borough is developing a Comprehensive Plan and Zoning Ordinance under Title 29 to manage development. This example speaks for itself.

⁴. It is interesting to note the current OCS and CZM amendments before Congress are calling for permit issuance within 90 days.

One last question, what does Coastal Zone Management really offer?

The only thing one can say Coastal Zone Management offers to Alaska is approximately \$4 million in federal money. Is this point really true? Is it in the best interest of Alaska?

To both of these questions, the response should be, no. The Reagan Administration has stated it will cut these funds in July, 1982. When one considers Alaska's current treasury and public image, one has to ponder whether it is truly in Alaska's best interest to be standing in line for federal money. This amount of money could be and should be directly supplied from Alaska to Alaska communities. Alaska is preparing to spend \$2 million to improve its public image. Standing in line for federal money when our coffers are full does not help our image. Just think how much local community planning could be paid for by the Office of Coastal Management budget alone?⁵

The Resource Development Council contends Alaska would be better served by the repeal of Coastal Zone Management. We urge you to support Senate Bill 216.

5. 59% of the Coastal Zone Management budget goes directly for staff in the resource agencies and Office of Coastal Management. Devries, Coastal Zone Management at 8. House Research, March 10, 1981.

REGULATORY PROBLEM EXAMPLESProblems in Obtaining a Permit to Construct a Gravel Fill Drill Site on the Shore of the Beaufort Sea within a State Oil and Gas LeaseBackground:

On June 5, 1980, an oil company applied to the U.S. Army Corps of Engineers (COE) for a permit, under Section 404 of the Clean Water Act and under Section 10 of the River and Harbor Act, to construct a gravel-fill drill pad. The pad was to be located on a spit in the Beaufort Sea on a State of Alaska oil and gas lease. The application to the COE included planning to construct the drill site during the winter construction season of 1980-81, and stated that the Plan of Operations would be furnished to the COE at the time the plan is submitted to the State in connection with the application to drill.

In order for the COE to issue a Section 404/10 permit to discharge dredged or fill material for construction in the coastal wetlands, it requires, among other things, a Certificate of Reasonable Assurance (Water Quality Certification) from the Alaska Department of Environmental Conservation under Section 401 of the Clean Water Act. In addition, for operations in or affecting the state coastal zone, the COE must receive a Certification of Consistency with the Alaska Coastal Management Program (ACMP) from the State Division of Policy Development and Planning (DPDP). By Public Notice, the COE solicits comments from state and federal agencies, the North Slope Borough, and other interested private parties.

Problem:

The permit application to the COE was solely for the purpose of placing gravel-fill material on the tundra to construct a drill pad on a State oil and gas lease. The commenting and certifying agencies delayed the permitting process, imposed unwarranted stipulations, and ultimately were successful in getting the permit denied. The actions of these agencies were based upon operational considerations of future activities which will be properly addressed in due time, by Alaska Oil and Gas Conservation Commission and the Department of Natural Resources under state law. Examples of the problems stated above are:

Delays:

- 1) On August 7, 1980, the U.S. Fish and Wildlife Service (USF&WLS) initially requested a copy of the Plan of Operations and requested the permit be held in abeyance until two weeks after receipt of the plan. It is important to note that COE approval was requested for construction of a gravel pad, and not for subsequent drilling operation. USF&WLS submitted comments to the COE on October 27, 1980 - 144 days after application submittal.

- 2) On July 15, 1980, DPDP set a 30-day deadline for its review of the permit application. DPDP extended the deadline on the following dates:

<u>Date</u>	<u>Reason for Extension</u>
August 14	Interested agencies needed more time. No letters from agencies attached.
September 2	No reason given.
September 12	Waiting on Alaska Department of Environmental Conservation (ADEC); all other agencies had commented.
October 28	Still waiting on ADEC.
November 14	Alaska Department of Fish and Game (ADF&G) cannot make comments without a Plan of Operations. Review is extended indefinitely until a plan has been completed and a lease operations permit has been applied for.

On January 13, 1981, DPDP found the proposal "inconsistent" with the ACMP because of the lack of data and information - 222 days after the Company applied for the permit.

- 3) Even though the COE had rejected an earlier request to hold a public hearing on the proposal, on October 8 ADEC announced its intentions to respond to a request from the village of Kaktovik through the Alaska Legal Services for a hearing on the 401 certification. The hearing was held in Kaktovik on October 16. The 401 certification was finally issued on November 22, 1980 - 170 days after application submittal.

Stipulations:

- 1) National Marine Fisheries Service (NMFS)
 - o Drilling and associated downhole activities restricted to November 1 - March 31.
 - o Annual cleanup activities be completed by May 15.
- 2) USF&WLS
 - o All downhole drilling operations restricted to November 1 - March 31.
 - o Annual cleanup be completed by May 15.

3) ADEC

- Drilling, testing and other downhole activities limited to November 1 - March 31. The Alaska Department of Natural Resources (DNR), in consultation with ADEC and ADF&G, allowed to grant two-week extensions through May 15, after which no drilling or downhole activities allowed. Operations essential to well control and human safety, excepted.

Denial:

On February 2, 1981 - 242 days after the Company submitted the permit application - the COE denied the permit. In its denial, the COE found the issuance of the permit to be in the public interest; however, regulations precluded the issuance without the ACMP Consistency Determination. The denial was without prejudice and the permit would be issued without further public review if the DPDP declared the project consistent with the ACMP. The applicant has appealed to DPDP and the Secretary of Commerce under the Coastal Zone Management Act with regard to its determination.

Summary:

These problems result from a complex permitting process which allows and encourages indiscriminate actions by commenting and certifying agencies, and other parties. Federal and state agencies are attempting to impose stipulations which are beyond the limits of their statutory authority and/or beyond the scope of the permit application.

AGENDA ATTACHMENT D

ACMP Improvements Package

1
2
3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the coastal management program;
7 providing for the membership and duties of the Coastal
8 Policy Council and coastal resource service area
9 boards; and providing for the staff to the council."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 44.19.155(a) is amended to read:

12 (a) There is created in the Department of Community and Regional
13 Affairs [OFFICE OF THE GOVERNOR] the Alaska Coastal Policy Council.

14 The council consists of the following:

15 (1) nine public members appointed from a list comprised of
16 at least three names from each region, nominated by the municipalities
17 of each region; the nominees shall be the mayor or member of the
18 assembly or council of a municipality, or member of a coastal resource
19 service area board for a coastal resource district within the region;
20 one public member shall be appointed from each of the following regions:

21 (A) northwest Alaska, including, generally, the area
22 the North Slope Borough and the Northwest Arctic regional educa-
23 tional attendance area;

24 (B) Bering Straits, including, generally, the area of
25 the Bering Straits regional educational attendance area;

26 (C) southwest Alaska, including, generally, the area
27 within the Lower Yukon, Lower Kuskokwim, Southwest, and Lake-Per
28 sula regional educational attendance areas and the Bristol Bay

1 (D) Kodiak-Aleutian, Adak and Pribilof regions, educa-
2 tional attendance areas;

3 (E) Upper Cook Inlet, including the Municipality of
4 Anchorage and the Matanuska-Susitna Borough;

5 (F) Lower Cook Inlet, including, generally, the area
6 within the Kenai Peninsula Borough;

7 (G) Prince William Sound, including, generally, the
8 area east of the Kenai Peninsula Borough to 141° W. longitude;

9 (H) northern Southeast Alaska, including the area south
10 west of 141° W. longitude and north of 57° N. latitude, including
11 the entirety of the City and Borough of Sitka; and

12 (I) southern Southeast Alaska, including that portion
13 of southeastern Alaska not contained within the area described in
14 (H) of this paragraph;

15 (2) each of the following:

16 (A) the director of the division of policy development
17 and planning;

18 (B) the commissioner of the Department of Commerce and
19 Economic Development;

20 (C) the commissioner of the Department of Community and
21 Regional Affairs;

22 (D) the commissioner of the Department of Environmental
23 Conservation;

24 (E) the commissioner of the Department of Fish and Game;

25 (F) the commissioner of the Department of Natural
26 Resources; and

27 (G) the commissioner of the Department of Transporta-
28 tion and Public Facilities [PUBLIC WORKS].

1 (2) establish continuing coordination among state agencies
2 to facilitate the development and implementation of the Alaska Coastal
3 management program; [IN CARRYING OUT ITS DUTIES UNDER THIS PARAGRAPH,
4 THE COUNCIL SHALL INITIATE AN INTERAGENCY PROGRAM OF COMPREHENSIVE
5 COASTAL RESOURCE PLANNING FOR EACH GEOGRAPHIC REGION DESCRIBED IN
6 AS 44.19.155(a)(1);]

7 * Sec. 3. AS 44.19.155(d) is amended to read:

8 (d) Each member of the council shall select one person to serve
9 as a permanent alternate at meetings of the council. If a member of the
10 council is unable to attend, he shall advise the alternate who may
11 attend and act in the place of the member. The alternate for a public
12 member appointed [AFTER JULY 9, 1978] under (a)(1) of this section shall
13 at the time of his designation and throughout the period of his service
14 as a permanent alternate, be the mayor or member of the assembly or
15 council of a municipality, or member of a coastal resource service area
16 board, within the region from which the permanent member is appointed.
17 The alternate for a designated member serving under (a)(2) of this sec-
18 tion shall be a deputy commissioner of the department, [OR] the director
19 of a division in the department or, for the division of policy develop-
20 ment and planning, the deputy director of the division. The names
21 of alternates shall be filed with the council.

22 * Sec. 4. AS 44.19.162 is amended to read:

23 Sec. 44.19 162. COUNCIL STAFF. The council shall utilize the
24 staff of the office of coastal management within the Department of Com-
25 munity and Regional Affairs [DIVISION OF POLICY DEVELOPMENT AND PLAN-
26 NING] in discharging its powers and duties. The commissioner of the
27 Department of Community and Regional Affairs shall employ the coordina-
28 tor of the office, with the concurrence of the council. The coordinate
29 of the office, with the concurrence of the commissioner [COUNCIL], may

1 contract with or employ personnel or consultants [HE CONSIDERS] neces-
2 sary to carry out the powers and duties of the council. The commis-
3 sioner and the council shall enter into an agreement for the joint
4 supervision of the office of coastal management.

5 * Sec. 5. AS 46.40.040 is amended by adding a new subsection to read:

6 (6) by regulation, adopt under the provisions of the Admin-
7 istrative Procedure Act (AS 44.62), consistency review procedures, in-
8 cluding time limitations, for use by state agencies in determining
9 whether specific proposals for land and water uses and activities which
10 are subject to state agency approvals are consistent with the applic-
11 able standards and guidelines adopted by the council under this
12 chapter and any applicable district coastal management program.

13 * Sec. 6. AS 46.40.050 is repealed and reenacted to read.

14 Sec. 46.40.050. ACTION AND SUBMISSION BY COASTAL RESOURCE DIS-
15 TRICTS. Each coastal resource district which, on the effective date
16 of this section, has not yet submitted to the council a district coast
17 management program and received the council's approval of the district
18 program shall, within six months of the effective date of this section
19 or within six months of the certification of the results of the first
20 coastal resource service area board election under AS 46.40.140, which
21 ever is later, submit to the council a schedule for the development
22 of the district coastal management program. The schedule shall in-
23 clude dates for the completion and submission of the district program
24 to the council. After consultation with the district, the council
25 shall determine whether to approve, reject, or modify the district's
26 schedule for development of the district program. The district shall
27 submit progress reports to the council during the development of the
28 district coastal management program annually or more frequently as
29 determined by the council.

1 * Sec. 7. AS 46.40.060(a) is amended to read:

2 (a) If, upon submission of a district coastal management program
3 for approval, the council finds that the program is substantially con-
4 sistent with the provisions of this chapter and the guidelines and
5 standards adopted by the council and does not arbitrarily or unreason-
6 ably restrict or exclude uses of state concern, the council may grant
7 summary or conditional approval of the district coastal management
8 program, or may approve portions of the district program which are
9 consistent.

10 * Sec. 8. AS 46.40.140(a) is amended to read:

11 (a) Each coastal resource service area, upon organization, shall
12 have an elected board representing the population of the service area.
13 The board shall have the powers and duties and perform the functions
14 prescribed for or required of coastal resource districts in the devel-
15 opment and submittal of the district coastal management program, or an
16 amendments to the district program, to the council for its approval.
17 The board shall assist state agencies in their implementation of the
18 approved district program under AS 46.40.090(a). Where public notice
19 is otherwise required by law or regulation, a state agency initiating
20 or reviewing land and water uses and activities within the coastal are
21 shall notify the board of the proposed use or activity and provide a
22 reasonable opportunity for comments and recommendations by the board
23 concerning the application of the district program to the use or
24 activity. The board will, in its discretion, respond with comments an
25 recommendations to the state agency on the proposed use or activity.

26 * Sec. 9. AS 46.40.140(b) is repealed and reenacted to read:

27 (b) Coastal resource service area board members shall be elected
28 at large by the qualified voters of the coastal resource service area.
29 The board shall consist of five, seven, nine or eleven members. The
30

1 commissioner of the Department of Community and Regional Affairs shall
2 determine the number of board members before the first board election,
3 in consultation with the residents of the coastal resource service area

4 * Sec. 10. AS 46.40.170(b) is amended to read:

5 (b) At the request of the council, the Department of Community and
6 Regional Affairs shall complete the district coastal management program
7 in accordance with this chapter and the guidelines and standards adopted
8 by the council for a coastal resource service area which has been organized
9 but which has failed to make substantial progress in the preparation
10 of an approvable district coastal management program within the
11 time limitations approved by the council for completion and submission
12 of the district program under AS 46.40.050 [18 MONTHS OF CERTIFICATION
13 OF THE RESULTS OF AN ORGANIZATION ELECTION OR WHICH HAS NOT SUBMITTED
14 FOR APPROVAL TO THE COUNCIL A PROGRAM WITHIN 30 MONTHS OF CERTIFICATION
15 OF THE RESULTS OF ITS ORGANIZATION ELECTION]. Preparation of the program
16 shall be conducted in consultation with the coastal resource service
17 area and shall, to the maximum extent consistent with this chapter
18 reflect the expressed concerns of the residents of the service area.

19 * Sec. 11. AS 46.40.170(c) is amended to read:

20 (c) Before requesting the department to complete the district
21 coastal management program under (b) of this section, the council shall
22 meet with the members of the coastal resource service area board to
23 determine whether the board is able to complete a district coastal management
24 program within the time limitations established by the council
25 [IN THIS SECTION].

26 * Sec. 12. AS 46.40.190(b) is amended to read:

27 (b) Nothing in this chapter restricts or prohibits cooperative or
28 joint administration of functions between a municipality and a coastal
29 resource service area organized under the provisions of this chapter

1 upon initiation of a mutual agreement for the purpose. A city which
2 elects to be excluded from an adjacent coastal resource service area
3 under (a) of this section shall establish procedures, as appropriate,
4 for the mutual exchange of information concerning the development and
5 implementation of the district program [ENTER INTO A MUTUAL AGREEMENT
6 FOR COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS] with the coastal
7 resource service area board from the adjacent coastal resource service
8 area.

9 * Sec. 13. AS 46.40. is amended by adding a new section to read:

10 Sec. 46.40.195. CONTINUANCE OF DISTRICT PROGRAMS. A district
11 coastal management program which is approved by the council continues
12 in effect as the district coastal management program for the coastal
13 resource district, or a portion of the district, which organizes as a
14 new local government under AS 29.18 which has and exercises planning
15 powers, is reclassified to assume planning powers in accordance with
16 AS 29.08.040, or alters its municipal boundaries in accordance with
17 AS 29.68 or other lawful means. However, nothing in this section pro-
18 hibits a new local government which is formed from all or a portion of
19 a coastal resource district from amending the district program for the
20 coastal area contained within its boundaries in accordance with this
21 chapter and the standards and guidelines adopted by the council.

22 * Sec. 14. Coastal resource service areas which have organized and
23 elected a coastal resource service area board as of the effective date of
24 AS 46.40.140(b), enacted in sec. 9 of this Act shall, within six months of
25 the effective date of this Act, choose whether to decrease or increase the
26 existing number of board members to five, nine, or eleven members. If
27 proposed by the board, the reduction or expansion of the number of board
28 members is subject to approval by a majority of the qualified voters voting
29 on the question in the coastal resource service area at the next regular

election or at a special election called for that purpose. If approved by the voters, the change in the number of board members takes effect at the next regular election of members of the coastal resource service area board. Notwithstanding AS 46.40.140(d), if the number of board members is to be increased or decreased under this section, the terms of office for all board members shall expire upon the election and qualification of their successors at the board election following a decision to increase or decrease the number of board members. However, nothing in this section prohibits the reelection of board members at the election held following a decision to increase or decrease the number of board members under this section.

ACMP Improvements Package

Summary of Proposed Changes to Regulations

November 1981

Several significant problems with the Alaska Coastal Management Program (ACMP) have been identified by the Legislature and the Coastal Policy Council. Some of these problems are best addressed through changes to the ACMP regulations. This paper lists problems with the ACMP, states objectives to be met by changing regulations, and describes proposed changes to the regulations.

I. Time Required for Consistency Reviews -

Some people feel that it currently takes the State too long to complete consistency determinations and that this causes delays in proposed projects.

Objective - To ensure that consistency reviews are conducted in a responsible manner and completed in a timely fashion without imposing delays on proposed projects.

Proposed change - Add a new section to the regulations containing procedures for consistency reviews, including workable deadlines. (Such a section could also include clarification of the role of the Office of Coastal Management (OCM) and the Coastal Policy Council (CPC) in monitoring the consistency review process.)

II. Local Control Over Uses of State Concern -

The ACMP provides for consideration of both state and local interests in the development of district programs and requires districts to consider, and not unreasonably restrict, uses of state concern. Yet, there is no provision requiring consideration of new or unanticipated uses of state concern that are discovered after district program approval.

Objective - To ensure that new or unanticipated uses of state concern are addressed by districts, when appropriate, after completion and approval of local programs.

Proposed change - Add a new section that would outline (1) an ongoing process by which the State may identify uses of state concern; (2) a mechanism by which the State could inform the CPC of new or unanticipated uses of state concern. The CPC would then determine whether the uses needed to be addressed by districts, which could potentially result in amendments to district programs. Districts would develop the amendments and submit them to the CPC.

III. Impacts of the ACMP on Title 29 Authorities -

Title 29 offers powers to local government that are different from those available under the ACMP. Title 29 powers are, in general, exercised solely by the local government, without the requirements for coordination and consultation that are part of the ACMP. At the same time, the scope of Title 29 is more limited than that of Title 46 and is oriented only toward restricting land use, rather than encouraging appropriate land uses.

Some local governments have been concerned that participation in the ACMP could jeopardize their autonomy under Title 29.

Objective - To ensure that coastal districts may develop and implement their coastal management programs without subjecting actions under other authorities to state scrutiny.

Proposed Changes - Revise provisions for implementation of district programs to ensure that districts clearly declare what their coastal rules are and how they will administer those rules. Adoption of a "coastal ordinance" by each district to house its coastal rules would be encouraged. Use of special ordinances dedicated only to coastal management rules ensures that districts' other ordinances would not be subject to CPC review in the event of changes to those ordinances that might occur after the district program has been approved. (The option of using existing ordinances, such as zoning ordinances, as the coastal rules would still be available to the districts.)

IV. Increasing the Focus of District Programs on Significant Land and Water Use Issues -

Some district programs have been criticized for vagueness and for not focusing on the key land and water use issues that are at the heart of the ACMP.

Objective - To increase the extent to which districts are able to focus their resources and efforts on the issues that are important in their areas by allowing each district, when initiating a new program or an amendment, to adopt an approach specifically suited to its own needs.

Proposed Change - Revise the steps comprising the district program development process to add an opportunity for districts to specify the issues it seeks to focus on and to communicate this to the CPC early in the program development or amendment process.

V. Local Administrative Control After District Program Approval -

Under the ACMP, coastal districts may adopt locally-controlled administrative systems to implement their approved programs.

Current regulations provide for CPC review of the substantive provisions of these programs to ensure that an acceptable balance between State and local interests is achieved. Current regulations do not require that the CPC review procedural systems to ensure that they are not unduly cumbersome or prone to delay.

Objective - To define guidelines for acceptable local administrative and regulatory procedures to prevent arbitrary or unreasonable impacts on developmental proposals, including uses of State concern, after local programs have been approved.

Proposed changes - Expand and clarify the regulations on implementation of district programs to require that any direct administrative control mechanism created by districts under the ACMP, such as a local permit system, provides for timely deadlines for decisions, limits discretion of local officials, and is conducted pursuant to clear and specific regulations set forth in the district program.

VI. Responsibilities of state agencies to districts and to the ACMP -

The responsibilities of state agencies to respond to districts developing programs and to participate in the ACMP are not clearly stated in the regulations. References are scattered, and some functions outlined in the ACMA are omitted.

Objective - Clarify state agency responsibilities in coastal management so that ACMP participants, as well as the individual agencies themselves, clearly know what is expected of them.

Proposed change - Gather the existing duties and tasks that are presently located in several places in the regulations, the Alaska Coastal Management Act, and that exist in practice, and provide a complete and coherent list of the responsibilities in a new section.

VII. Organization of the Regulations -

While using the AMCP regulations since they were adopted in 1979, OCM staff and other ACMP participants have identified ways in which the organization and structure of the regulations could be improved.

Objective - To make the ACMP regulations easier to understand and to use.

Proposed changes -

- A. Place all requirements currently in the standards that pertain to district program development in the chapter containing the guidelines. Also move the requirements placed on districts for designation of Areas Meriting Special Attention to the guidelines chapter.

AGENDA ATTACHMENT E

Revised Findings and Conclusions
on
Sitka Coastal Management Program

OFFICE OF COASTAL MANAGEMENT

Summary of Revised Findings & Conclusions

November 25, 1981

District Program: City & Borough of Sitka

This summary of OCM's revised findings and conclusions is based on comments received during the review period from October 1, 1981 thru November 16, 1981, and certain actions of the City & Borough of Sitka, as well as anticipated official Borough Assembly action on certain program changes. All comments postmarked by November 16, 1981 were considered in this review.

Attached to this summary is a chart form display of each ACMP standard and guideline together with findings of fact on the district program and OCM's recommendations. The format presents the preliminary findings and conclusions followed by the revised findings and conclusions. Also attached is a synopsis of comments received and OCM's responses. Readers should refer to specific standards or guidelines for exact wording of recommendations OCM is suggesting the Coastal Policy Council adopt. Below is OCM's summary of these findings and conclusions.

OCM concludes that the district program is substantially consistent with the ACMP Statutes and Regulations and hereby recommends approval of the program. This recommendation of approval is contingent on the expected Sitka Borough Assembly action officially amending the policy section with the addition of a policy to indicate the intent of the district to use the recommendations and policies of the document in its entirety when making consistency recommendations and when issuing local permits and other approvals, to the greatest extent practicable; and a change in the policy on public access to assure that access is maintained and future access encouraged. As well, Assembly action is expected on the adoption by reference of Title 19, Building Code, the 1981 Parks and Recreation Plan, and the addition of the ACMP standards to be used in conjunction with TLMP in evaluating land and water uses and activities outside Urban Sitka. It is highly probable that these changes will be approved by the local governing body prior to CPC action on the proposed program, and in light of this expectation, OCM recommends approval.

OCM, in its preliminary Findings and Conclusions, concluded that the district program has not adequately addressed the standard on Mining and Mineral Processing, 6 AAC 80.110. This conclusion remains unchanged. To resolve this inadequacy, OCM recommends the district fulfill its intent to develop an in-depth gravel resource study and management plan to be completed within eight months from the date of CPC approval of the district program. In the interim, 6 AAC 80.100 shall remain the applicable authority. It should be noted that the district has prepared a draft work program to complete this study which they are reviewing. It is expected this draft will be finalized and submitted to the Department of Community & Regional Affairs prior to December 14, 1981. It should also be noted that the district has agreed to include OCM's

recommendation, pg. 8 of these Revised Findings and Conclusions attached, in the work program the timeline for completion of this effort will be finalized at the time the grant contract is negotiated between the district and DCRA and may be modified at that time within reason. OCM will provide periodic status reports to the Council.

Upon approval of the Coastal Policy Council, the concept approved draft together with a transcript of the actions of the Coastal Policy Council shall be forwarded to the district. Within 90 days of Coastal Policy Council approval, the district is requested to adopt the district program by ordinance.

OCM also strongly recommends the district prepare a detailed summary of applicable ordinances, regulations, policies and other enforceable provisions of the program that are intended to be used to implement the district program. The district has incorporated into its district program several documents in which the provisions are intended to be used to implement the district program. Additionally, the district intends to use the recommendations and policies contained throughout the district program itself. As a result, OCM believes that the program would be enhanced through improved clarity and ease in reference by preparing a summary document of the applicable provisions.

Readers should note that the changes since the distribution of the concept approved document will be developed into an addendum and distributed to interested persons.

OCM views the Sitka program as a commendable effort and appreciates the cooperative spirit in which it was developed. OCM also thanks the district for the time spent over the past few weeks to resolve concerns resulting in, what we believe, is an approvable program of high quality. OCM has previously stated its support in Sitka's attempts to attain certain General Permits from the Corps of Engineers. We reiterate this support here and offer whatever assistance we can provide to result in the issuance of these permits.

Sitka Coastal Management Program

Revised Findings & Conclusions

Exhibits

November 25, 1981

- I. Exhibit I Concept Approval of City & Borough of Sitka, Appendix A of Exhibit II
- II. Exhibit II Sitka Coastal Management Program Phase I Report, including Coastal Habitat Evaluation of the City & Borough of Sitka
- III. Exhibit III Sitka Coastal Management Program, including Sitka Coastal Habitat Evaluation Final Project Summary with Management Recommendations
- IV. Exhibit IV Sitka District Record File
- V. Exhibit V Title 22, Land Use Zoning Code, City & Borough of Sitka
- VI. Exhibit VI Title 21, Subdivision Code, City & Borough of Sitka
- VII. Exhibit VII Department of Fish & Game Site Specific Studies
 - a. Wetland Habitat Investigations in Sitka Sound, Alaska
 - b. Marine Biology and Circulation Investigations of Sitka Sound, Alaska
- VIII. Exhibit VIII Swan Lake Recreational Area, a proposal for an AMSA, prepared by Department of Fish & Game

COMMENT SUMMARY

OCM RESPONSE

GENERAL - Information provided district not earlier expressed.

Some comments received during this review period provided information & agency viewpoints not earlier brought to the attention of this office or the district. This information has been forwarded to the district to be considered in future planning efforts; however, it should be pointed out that the draft currently being reviewed is the district's concept approved draft, not a draft of a program in its development stage. OCM encourages participants in the ACMP to increase their involvement in district programs at earlier stages in order for districts to adequately consider the information and viewpoints expressed. At this point in the development of a district program, the district should have received all input from interested parties and the review of this document should only be considering two points: (1) the manner in which the district treated information provided to it earlier; and (2) the recommendations of the Office of Coastal Management.

Department of Transportation & Public Facilities,
Morton J. Cook, P.E., Regional Planning Manager,
Southeast Region, 10/26/81

Indicate Sitka Program (Habitat Evaluation Report) contradicts the Sitka Dock & Port Facility Reconnaissance Report (May '81) in the recommendation in the Reconnaissance Report that a site at Tarrigavan Bay be reserved for port and marine industrial development. DOT/PF recommends Sitka consider designating a marine industrial area in the Tarrigavan Bay area in the vicinity of the ferry terminal.

Comments forwarded to the district for their use in future coastal management program amendments or other planning efforts.

DOT/PF also recommends the incorporation of Rodman Bay road as a use of state concern.

Nothing in the district program restricts or excludes a use of state concern.

COMMENT SUMMARY

OCM RESPONSE

National Marine Fisheries Service, U.S. Dept. of Commerce, NOAA
Robert W. McVey, Director, Alaska Region, 11/4/81

Well done program. Referencing objectives, page 96 to be consistent with ACMP, deepwater frontage must be maintained for water dependent and water related uses.

Comments accepted & forwarded to district. See Revised Findings & Conclusions for 6 AAC 80.040.

Suggest rewarding Policy #8, page 99: Whenever previous construction activities have made a stream unusable or unsuitable for aquatic life, the problem must be considered for correction whenever routine maintenance is scheduled.

Comments forwarded to district.

Referencing Sitka's application for General Permits, NMFS recommends exclusion of areas within 100 foot distance from any water body for the placement of rock fill material, rather than 50 feet (page 102).

Comments regarding criteria for General Permits will be considered at time of the General Permits' public review.

U.S. Coast Guard, H.E. Stanley, Captain, District Planning Officer, 11/5/81

Provided current status of oil spill contingency planning efforts, and information on permitting requirements for float houses.

Comments accepted & forwarded to district.

Department of Commerce & Economic Development, Division fo Economic Enterprise, Office of Minerals Development, John Sims, Director, 11/12/81

Provided information on mineral potential of Sitka Borough and stresses opinion that level of future mineral activity has been underestimated as well the contribution to be made to the community.

Comments forwarded to district for their use in future coastal management program amendments or other planning efforts.

COMMENT SUMMARY

OCM RESPONSE

U.S. Dept. of Commerce, NOAA, OCZM, William Brah,
Acting Pacific Regional Manager, 11/13/81

Commend Sitka for undertaking the difficult task of developing a coastal management program tailored to Sitka's unique needs. Recommend revision prior to State approval of the program to include policies & authorities that are sufficiently comprehensive to cover all areas and uses in need of management; that are sufficiently specific to provide an adequate level of predictability in permit decisions; and that authorities and organizations are adequate to implement and balance the enforceable rules of the program.

See revised findings & conclusions for 6 AAC 85.090. and 6 AAC 85.100.

Alaska Oil & Gas Assn., William W. Hopkins, Exec.
Director, 11/12/81

Commends district in developing a program which reflects the intent of both state and federal coastal management laws and regulations.

Comment accepted.

U.S. Fish & Wildlife Service, Department of the
Interior, Melvin A. Monson, Acting Regional
Director, 11/13/81

Compliment district for excellent compilation and inventory of fish and wildlife resource information.

Comment accepted.

Recommend clarification on intent of habitat recommendations as to their use in decision making process.

Comment accepted. See revised Findings and Conclusions for 6 AAC 85.090. and 6AAC 85.100.

Indicate proposal to obtain General Permits from COE has merit and can be used to reduce time and effort required by both applicants and agencies who must review individual permit applications.

Comments regards General Permits will be considered at time of the General Permits' public review.

District Program: Sitka

Date: November 23, 1981 Page: 4

COMMENT SUMMARY

OCM RESPONSE

Recommend Program clearly state priority use of waterfront land should be given to water dependent and water related activities.

Department of Community & Regional Affairs, Lee McInerney, Commissioner, 11/20/81

Find program consistent with standards and guidelines.

Believe inconsistencies cited in preliminary findings and conclusions of a technical nature and should not hinder approval of the program.

Comments accepted. See Revised Findings and Conclusions for 6 AAC 80.040.

See Revised Findings and Conclusions.

See Revised Findings and Conclusions.

051



City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

RECEIVED

OCT 15 1981

O.C.M.

October 13, 1981

Murray Walsh, Director
Office of Coastal Management
Pouch AP
Juneau, AK 99811

RE: OCM FINDINGS AND CONCLUSIONS

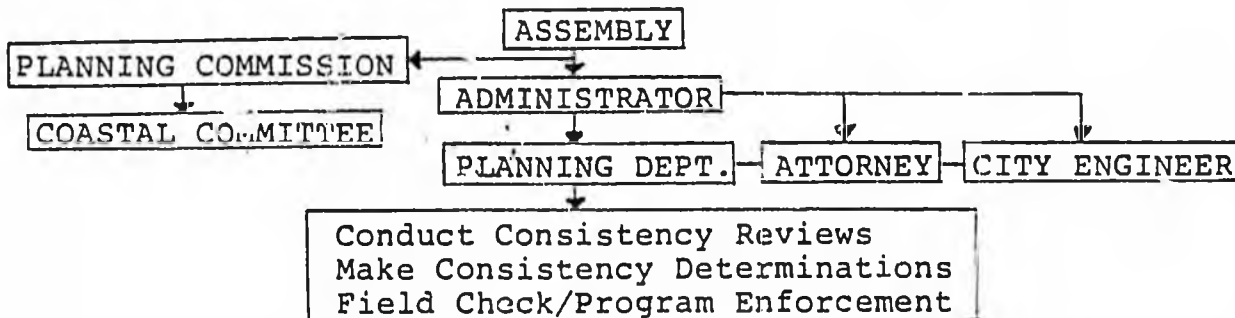
Dear Mr. Walsh:

The enclosed is the Municipality's response to the findings and conclusions prepared by Michelle Shook, of your office. For the most part, we have no problems and have enclosed our proposed corrections or additions.

I look forward to working with your office in any manner to allieviate major problems.

6 AAC 85.030 ORGANIZATION

We had neglected to actually include or indicate an organizational chart although the program document did state we anticipated no additional staff. Below is a proposed chart I feel would be relevant to this item.



Mr. Murray Walsh
Office of Coastal Management
OCM FINDINGS & CONCLUSIONS
October 13, 1981
Page 2

The paper work flow would also be arranged as follows:

- A. Material to Administrator
- B. Route to Planning Department
- C. Determination of Process
 - 1. In house review
 - 2. Public hearing
- D. Notices
 - 1. Hearing Date
 - 2. Field Review
 - 3. Recommendations
- E. Action
 - 1. Appeal
- F. Response to Agency
Applicant

HOPED FOR TIMEFRAME OF 30 - 45 DAYS SIMILAR TO
GENERAL PERMITS PROPOSED

6 AAC 80.040 COASTAL MANAGEMENT

Pages 96 and 99 include our objectives and policies which address coastal development. OCM is concerned that #2 "encourage water dependant and water related uses of urban land with deep water frontage" - does not really say anything or detail how we are going to accomplish this goal.

While I understand your concern, many other policies also state words like encourage. A policy is just that. It is not a regulation, a section in our code or any other rule of law.

I agree with the proposed changes in the Act that would require districts to present their implimentation methodology. I also agree, we can indicate which portions of our Zoning, Subdivison, Building Codes, etc., we will amend.

We still basically have a problem with Policies do not impliment a plan, but codes or ordinances do.

6 AAC 85.090 POLICIES

OCM has concluded that our policies, overall, do not reflect specificity and enforceability. The regulations state that our policies and procedures must be consistant and meet said criteria.

Mr. Murray Walsh
Office of Coastal Management
OCM FINDINGS & CONCLUSIONS
October 13, 1981
Page 3

The last policy on page 99 states "to utilize existing governmental structures, authorities and regulations to the maximum extent feasible to achieve the objectives of this district coastal management program."

Our subdivision, zoning and building code revisions are therefore, our specific procedures and the actual documents that provide the comprehensiveness, specificity and enforceability desired to impliment our program.

Same comment as above under .040.

In terms of protecting public access (page 99), I believe OCM has a good point. Change to read:

- ° Existing points of public access to the shoreline and tidelands shall be maintained by the appropriate government unit of ownership. Additional access shall be obtained wherever feasible.

6 AAC 85.100 IMPLIMENTATION

CCM has prepared a list of recommended actions which they feel will make our program consistant and approvable.

1. Prepare a summary of all applicable ordinances, regulations, policies and other enforceable rules intended to apply to land and water uses and activities:

Ordinances/Regulations

Subdivision Ordinance
Zoning Ordinance
Uniform Building Code 1979
Uniform Fire Code 1979
Uniform Plumbing Code 1979
National Electrical Code 1981

Policies - those included in the

Comprehensive Plan
Park & Recreation Plan
Coastal Management Program

2. Prepare procedures that describe when proposal will require consistency review/manner to be evaluated:
 - A. State initiated activities and regulatory permits.
 - B. Local activities where written findings prepared.
 - C. Check list to be used/program rules applicable.

Mr. Murray Walsh
Office of Coastal Management
OCM FINDINGS & CONCLUSIONS
October 13, 1981
Page 4

While our consultant is working on this at present, I do have the following observations:

Written Findings

1. Federal actions/actions on Federal Lands - consistent with TLMP.
 2. State or state initiated actions.
 3. Tidelands permits/actions by DNR - especially for float home coverage.
 4. Pavitt/Kyle working on check list at present.
1. OCM has also asked for a specific clarification as to the status of the recommendations of the habitat study.

Comments: Mr. Sundberg himself, on page 53, specifically states that the 25 to 50 foot stream buffers are general guidelines and should be followed by site specific evaluations. I do not believe we can adequately enforce this general recommendation and have asked Kim for a budget/time breakdown for the site specific studies. The majority of the rest of his recommendations are listed in the policies (page 99) on other areas.

This ties in strongly with the recommendation on Page 114 for a fund to purchase properties, where public benefits outweigh private use.

The Coastal Policy Council specifically needs to address the State fund question.

2. Need clarification on status of Building Code and Park and Recreation Plan. I recommend adding the following changes:

- ° Title 19, City and Borough of Sitka Code, the Uniform Building Code, 1979 version, along with local amendments, is hereby adopted, by reference, as a part of the Sitka Coastal Management District Program.
- ° The 1981 Sitka Parks and Recreation Plan, is hereby adopted, by reference, as a part of the Sitka Coastal Management District Program.

Mr. Murray Walsh
 Office of Coastal Management
 OCM FINDINGS & CONCLUSIONS
 October 13, 1981
 Page 5

OCM then asks us to prioritize the various studies recommended in the SCMP, either by time or some other manner for clarification.

I have gone through all the various suggested studies and have listed them as follows:

Studies/Projects

<u>Page</u>	<u>Study</u>	<u>Priority</u>
108	Landfill/Incinerator Project	Funding DEC Assistance - Underway
109	Sand Gravel Study/Management Plan	Funding DCRA Assistance - III
110	(Staff) Float Housing Study & Requirements	DNR Assistance
111	Zoning Ordinance Update a. No. dev. at anadromous streams b. Oil spills on wetlands c. Flood plain	II
111	ADF&G Site Specific Stream Studies	A.D.F.&G.
111	Subdivision Ordinance Update a. Flood plain b. Geo. hazards c. Clearcuts	Funding DCRA Assistance - I
112	Swan Lake Biological Studies (See 119/120)	
113	Urban Forestry Plan a. Clearcuts b. Tie into subdivision/zoning ordinance.	Funding DNR Assistance - I, II
113	Water Availability Study - Indian River	Underway
114	Oil Spill Contingency Plan	DEC Assistance

Mr. Murray Walsh
Office of Coastal Management
OCM FINDINGS & CONCLUSIONS
October 13, 1981
Page 6

<u>Page</u>	<u>Study</u>	<u>Priority</u>
114	Comprehensive Plan Update (Staff disagrees - would like to eliminate this one.)	DCRA Assistance
114	State Fund for Property Purchase	Actively Lobby AML Policy
119/120	Swan Lake AMSA	ADF&G Assistance

6 AAC 80.110 MINING AND MINERAL PROCESSING

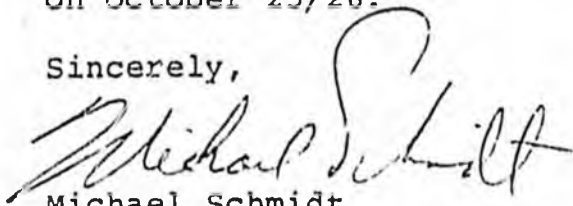
OCM appears concerned about mining and our proposed gravel study.

For 99% of the entire Municipality - Federal mining regulations, fully controlled by EPA and USFS are the standards which must be met.

1. The results of the Comprehensive Sand and Gravel Study, shall be presented to the Planning Commission and Assembly for approval.
2. As adopted, the recommendations contained for study shall become a part of the Sitka Coastal Management District Program and further gravel leases or other implimentation shall follow said guidelines.
3. Existing upland source at Granite Creek as well as any identified upland sources shall be carefully viewed and given priority over wetland and intertidal sources whenever practicable.

I look forward to discussing the above proposals with you on October 25/26.

Sincerely,



Michael Schmidt
Planning Director

MS:glb

cc: Gutierrez
Hallgren

057



City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

November 17, 1981

Murray Walsh, Executive Director
Office of Coastal Management
Pouch AP
Juneau, Ak. 99811

Dear Mr. Walsh,

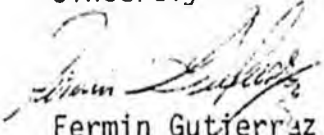
On Tuesday, November 17, 1981, the City and Borough of Sitka was verbally requested to comment on ~~the~~ items. OCM has asked for clarification of the role of the objectives and policies contained in the Sitka Coastal Management Program.

In terms of judging proposals for development, the policies are geographically broader and stringent, and are to be used in conjunction with existing regulatory codes and ordinances to determine consistency with the district program. The objectives are principally statements of intent and are to be utilized to give direction toward capital improvements, planning for future development and serve as a guide for incorporating needed language into our codes. They would indicate areas of concern and of interest on the part of the Municipality for further action.

OCM has also been requested to comment on equal weight being given to both water dependent and water related uses and activities. Specifically the question relates to our program position regarding residential uses.

It is the position of the City and Borough of Sitka that minimal upland alternatives exist with the urban area of the City and Borough of Sitka. Therefore both water dependent and water related uses and activities, including residential uses, are to be considered appropriate within the urban coastal area of Sitka.

Sincerely


Fermin Gutierrez
Administrator

cc: Michael Schmidt

FG:gh

RECEIVED
NOV 20 1981

O.C.M.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.040. COASTAL DEVELOPMENT. (a) In planning for an approving development in coastal areas, districts and state agencies shall give, in the following order, priority to</p> <ul style="list-style-type: none"> (1) water-dependent uses and activities; (2) water-related uses and activities; and (3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity. <p>(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations, (Vol. 42 of the Federal Register, pp. 37133--47 (July 19, 1977)).</p>	<p>Ex. III, pg. 96 and pg. 99 include objectives and policies addressing this standard:</p> <p>Objectives:</p> <ul style="list-style-type: none"> 1. Develop & improve Sitka's port facilities including boat harbors & water related tourist facilities. 2. Encourage water-dependent & water related uses of urban land with deep-water frontage. 3. Maintain opportunities for residential use of waterfront lands. <p>Policies:</p> <ul style="list-style-type: none"> 4. To give priority to water-dependent and water-related uses 5. To not arbitrarily or unreasonably exclude or restrict residential use of private waterfront land. <p><u>SUPPLEMENTAL INFORMATION</u></p> <p>Correspondence dated 11/17/81, Gutierrez to Walsh, provides clarification of relationship of water dependent/related objective and water dependent/related policy, the former to be used "to give direction toward capital improvement planning for future development and serve as a guide for incorporating needed language into our codes." The policies are "to be used in conjunction with existing regulatory codes and ordinances to determine consistency with district program."</p>	<p>OCM concludes that the district program is not consistent with 6 AAC 80.040. Any inconsistency may be resolved by rewording objective # 2 in Findings to require uses of urban land with deepwater frontage to be water-dependent or water-related.</p> <p><u>REVISED CONCLUSION</u></p> <p>OCM concludes that the district program is substantially consistent with 6 AAC 80.040.</p>

059

11/25/91

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
090	<p>Due to limited upland alternatives available, water dependent and related uses, including residential, are to be considered appropriate uses within the urban coastal area of the district.</p>	

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.050. GEOPHYSICAL HAZARD AREAS.</p> <p>(a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.</p> <p>(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided.</p>	<p>(a) Ex. II, pg. 6-7 describe geophysical hazards prevalent in the area which are further described on pgs. 34-35 of this exhibit.</p> <p>Ex. III, pgs. 18-21 provides additional description & analysis of the risk to life & property of those hazards identified.</p> <p>(b) Ex. III, pg. 111 indicates the district intends to further address potential geophysical hazard problems:</p> <ul style="list-style-type: none"> - that the Flood Insurance Study, City & Borough of Sitka be incorporated into the Subdivision Regulations to guide the development of new land subdivision design in areas of flood hazard. - that in light of the geophysical hazards present in the community, the local building code will be reviewed to assure that it reflects Uniform Building Code requirements for seismic zones, prohibition of building construction on stump fills; and engineering design of foundations in areas of muskeg or volcanic ash. <p>Ex. III, pg. 103 states that Title 21 & 22 of the Code of the City & Borough of Sitka are elements of implementation strategy of the district program. Ex. V (Title 21) and Ex. VI (Title 22) require "compliance with all applicable laws" and impose the more restrictive standards where requirements differ, respectively.</p> <p>Title 19, Building & Construction Code, requires a permit of land excavation under</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.050.</p> <p>The following recommendation is cross-referenced with 6 AAC 85.100 and will be considered under that guideline:</p> <ol style="list-style-type: none"> 1. Include Title 19, Building Code, within the implementation strategy of the district program. This action will provide an adequate structure to implement 6 AAC 80.050 (b).

061

FINDINGS AND CONCLUSIONS Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC. 80.050. Geophysical Hazards (Cont'd)	certain conditions (19.24.020). Within this permitting structure, applicants are required "to make adequate provision for safety of persons & property affected." (19.24.050). Title 19 (19.04.010) also adopts the 1979 Edition of the Uniform Building Code by reference, save certain modifications noted, none of which relate to the UBC's coverage of construction in hazard areas. Title 19, however, is not specifically referenced in the district program.	

062

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.060. RECREATION. (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are</p> <p>(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or</p> <p>(2) the area has potential for high quality recreational use because of physical, biological, or cultural features.</p> <p>(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water.</p>	<p>(a) Ex. II, pg. 31 includes discussion of existing recreation facilities & other recreation opportunities available in the district as well as proposed development of recreation facilities. Further discussion of future demands & needs for recreation facilities is found on pgs. 37-38 of Ex. II.</p> <p>(a)(b) Ex. III, pgs. 92-93 references an adopted Parks & Recreation Plan (1981) & states that "the majority of the significant outdoor recreation...are under the jurisdiction of the US Forest Service" & "urges cooperation among governmental agencies in the protection of areas for dispersed & wilderness recreation, & in the development of such facilities as cabins, mooring buoys and marine parks."</p> <p>(b) Program objectives, pg. 96 of Ex. III, assures the maintenance of adequate public access to the shoreline & tidelands; & policies, pg. 99, declare the intent of the district to develop means of protecting points of public access to the shoreline & tidelands. *</p> <p>"As a prime recreational area", the district program designates Swan Lake as an AMSA (see 6 AAC 80.160 findings for further discussion.)</p> <p>Ex. III, Urban Area Map (back of document) plots points of existing public access to the shoreline.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.060. However, it is not clear how the 1981 Parks & Recreation Plan interfaces with this district program. Clarification is recommended.</p> <p>The following recommendation is cross-referenced with 6 AAC 85.090 and will be considered under that guideline:</p> <p>1. In order to meet the criteria of 6 AAC 85.090, the means of protecting points of public access (policy referenced*) needs to be addressed.</p> <p>The following recommendation is cross-referenced with 6 AAC 85.100 and will be considered under that guideline:</p> <p>2. Consider incorporating pertinent portions of the 1981 Parks & Recreation Plan in this document, if applicable; or incorporating Plan by reference. At a minimum, a statement to clarify the relationship of this Plan with the district program is needed.</p>

063

FINDINGS AND CONCLUSIONS Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.070. ENERGY FACILITIES. (a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.</p> <p>(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:</p> <ol style="list-style-type: none"> (1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements; (2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs; (3) consolidate facilities; (4) consider the concurrent use of facilities for public or economic reasons; (5) cooperate with landowners, developers, and federal agencies in the development of facilities; (6) select sites with sufficient acreage to allow for reasonable expansion of facilities; (7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements; (8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions; (9) encourage the use of vessel traffic control and collision avoidance systems; (10) select sites where development will require minimal site clearing, dredging and construction in productive habitats. 	<p>Ex. III, pg. 90 describes the Green Lake Hydroelectric project presently under construction. Map on page 91, Ex. III identifies existing & potential hydroelectric developments in the district.</p>	<p>No other facilities, other than hydroelectric power generation, are planned or anticipated within the foreseeable future that will directly or significantly affect the district.</p> <p>OCM concludes that the district program is substantially consistent with 6 AAC 80.070</p>

FINDINGS AND CONCLUSIONS

Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.070 (continued)</p> <p>(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;</p> <p>(12) site facilities so that the design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;</p> <p>(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;</p> <p>(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;</p> <p>(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and</p> <p>(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.</p> <p>(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern.</p>		

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.080. TRANSPORTATION AND UTILITIES. (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs.</p> <p>(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility.</p>	<p>Ex. III, pg. 76-83 addresses current & future transportation & utility routes and facilities in the district. Objectives on pg. 96 support improved port facilities.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.080.</p>
<p>6 AAC 80.090. FISH AND SEAFOOD PROCESSING. Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing.</p>	<p>Ex. III, pg. 88-89, addresses existing fish & seafood processing industry & potential for a bottomfish industry located within the district. Pg. 88 states the processing industry will continue to be a contributor to the local economy, but growth of any significance cannot be determined at this time. Two seafood processors currently operate in the district.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.090.</p>

066

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.110. MINING AND MINERAL PROCESSING. (a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.</p> <p>(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand and gravel.</p>	<p>Ex. II, pg. 87 states "with the exception of sand and gravel extraction, there is presently no significant mining activity in the Sitka area."</p> <p>The issue of supply & demand of sand and gravel resources is discussed in Ex. III, pgs. 13-14, stressing the limited availability of gravel sources within the district.</p> <p>Pg. 109 indicates the intent of the district to pursue an in-depth planning/engineering/economic survey & inventory of all possible sand & gravel sources available in the area in order to develop a comprehensive program of resource allocation & coastal resource protection. A management plan will be included in this project that will address (pg. 109):</p> <ol style="list-style-type: none"> 1. Operating plan that will prevent sediment flow into streams; 2. Recontouring plan showing "beginning" and finished topography; and 3. Land re-use plan for further beneficial use of the site following resource extraction. <p>Discussions with DCRA (9/25/81) indicate a work program and contract are currently being prepared to allow the district to proceed with this study.</p>	<p>OCM concludes that the district program has not adequately addressed 6 AAC 80.110, however that nothing in the district program negates or detracts from this standard.</p> <p>Any inadequacy may be resolved by fulfilling the district's intent to develop an in-depth gravel resource study and management plan to be completed within 8 months from the date of Coastal Policy Council approval of the district program. In the interim, 6 AAC 80.100 shall remain the authority applicable to mining and mineral processing in the district.</p> <p>OCM recommends the inclusion of the following in the work program to assure compliance with this standard:</p> <ol style="list-style-type: none"> 1. A statement that the resulting product will comply with ACMP standards, in particular 6 AAC 80.110 (a) & (b); 2. A statement that this project, once completed and approved by the district, will be a part of this district program, and duly adopted by the district; and 3. The work program require that upland gravel sources be addressed prior to other sources.

067

FINDINGS AND CONCLUSIONS

Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.120. SUBSISTENCE. (a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.</p> <p>(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.</p> <p>(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.</p> <p>(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.</p> <p>(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management.</p>	<p>Ex. III, pg. 90 addresses subsistence activities in the district. Pg. 96 includes an objective to maintain opportunities for subsistence harvest of fish & game resources.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.120.</p>

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.130. HABITATS. (a) Habitats in the coastal area which are subject to the Alaska coastal management program include</p> <ul style="list-style-type: none"> (1) offshore areas; (2) estuaries; (3) wetlands and tidelands; (4) rocky islands and sea cliffs; (5) barrier islands and lagoons; (6) exposed high energy coasts; (7) rivers, streams, and lakes; and (8) important upland habitat. <p>(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources.</p> <p>(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:</p> <ul style="list-style-type: none"> (1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery; <p>069</p>	<p>(a) Ex. II, App. A states that all the habitats listed in 80.130 are found within the district with the exception of (5), barrier islands & lagoons.</p> <p>(b) & (c) Ex. III, pg. 96 provides general objectives which address management of habitat types.</p> <p>Ex. II, III, VII & VIII provide data & management recommendations for habitat management.</p> <p>Ex. III, pg. 100-101 states that "the <u>Final Project Summary with Management Recommendations of the Sitka Coastal Habitat Evaluation</u> is an integral part of this Phase II Report (pgs. 22-72) and provides the data needed for the district organization to make informed coastal management decisions in the overall public interest."</p> <p>(see 6 AAC 85.050, Resource Inventory for further discussion relating to habitats)</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.130.</p> <p>The following recommendation is cross-referenced with 6 AAC 85.100 and will be considered under that guideline:</p> <ul style="list-style-type: none"> - Clarification of the status of the 'Final Project Summary with Management Recommendations of the Sitka Habitat Evaluation as an implementation tool.

FINDINGS AND CONCLUSIONS

Prepared By: Office of Coastal Management

ACMP REQUIREMENTS

FINDINGS

CONCLUSIONS

6 AAC 80.130 (continued)

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat;

(3) wetlands and tidelands must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

070

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>5 AAC 80.130 (continued)</p> <p>(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.</p> <p>(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:</p> <p>(1) there is a significant public need for the proposed use or activity;</p> <p>(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and</p> <p>(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.</p> <p>(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in sec. 30(b) of this chapter.</p>		

FINDINGS AND CONCLUSIONS

Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.140. AIR, LAND, AND WATER QUALITY. Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes.</p>	<p>Ex. III, pg. 96 includes an objective to:</p> <ul style="list-style-type: none"> - maintain a high standard of air and water quality. 	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.140.</p>

072

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES. Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory.</p>	<p>Ex. II, pgs. 10-12 includes identification of sites listed on the state's Heritage Resource Survey and those sites listed on the National Register of Historic Places.</p> <p>Ex. III; pgs. 93-94 provides discussion of sites of historic importance in the district. Urban Area Map (back of document) maps 12 historic areas within urban Sitka currently listed on National Register of Historic Places.</p> <p>Objectives, pg. 96 of Ex. III, encourage preservation, protection & interpretation of Sitka's rich historical heritage.</p> <p>Policies, pg. 99 Ex. III, places high value on historic and cultural resources and encourages economic enterprises that are consistent with the historic & cultural interests of the district.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.150.</p>

073

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION. (a) Any person may recommend to a district or to the council areas to be designated as areas which merit special attention. Districts shall designate in district programs areas which merit special attention. Areas which are not in districts and which merit special attention shall be designated by the council with the concurrence of appropriate state agencies, municipalities, and villages affected by the designation. Designations must include the following information:</p> <p>(1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;</p> <p>(2) a map showing the geographical location, surface area and, where appropriate, bathymetry of the area;</p> <p>(3) a description of the area which includes dominant physical and biological features;</p> <p>(4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities;</p> <p>(5) the existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities;</p> <p>(6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and</p>	<p>Swan Lake, a 22.25 acre freshwater lake located in the urban Sitka area, has been designated an AMSA in this district program, Ex. III, pg. 115-120.</p> <p>(a)(1) Bases for designation (pg. 115) as "...unique, and contains fragile & vulnerable habitat of significant cultural value & social importance..." and as "a prime recreational area."</p> <p>(a)(2) pg. 116 provides a map indicating the geographic area of the AMSA.</p> <p>(a)(3) pg. 117 provides a narrative description of the AMSA boundary & a brief description of the physical features. Ex. VIII, <u>Swan Lake Recreational Area</u>, a proposal for an AMSA prepared by DF&G, pgs. 6-9 provides a further description of the physical & biological features.</p> <p>(a)(4) pg. 117 and Fig. 2, pg. 118 include description of land ownership & jurisdiction & the management practices applicable to the AMSA. Ex. VIII, pgs. 10-11 provides additional information on existing management status, & pgs. 12-13, Ex. VIII, provides description of existing uses & activities within the AMSA.</p> <p>(a)(5) Fig. 2, pg. 118, Ex. III, indicates the ownership & jurisdiction of adjacent lands, and Ex. VIII, pg. 13 provides a description of adjacent uses & activities.</p> <p>(a)(6) Ex. VIII, pgs. 15-16 discusses present & anticipated conflicts within the AMSA designation. Development surrounding the Lake has resulted in biological conflicts with the Lake's values.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 80.160.</p> <p>OCM strongly supports the district's intent to further study Swan Lake to design an effective rehabilitation program and to define sites contributing unacceptable pollutant loads to the Lake and its tributaries.</p> <p>In order to provide the public & decision makers with specificity and predictability in the management of uses & activities within the designated AMSA, the following items are recommended to be addressed in the intended study:</p> <p>1. Detailed map delineating the AMSA boundary within which this management scheme applies.</p> <p>2. Site specific enforceable rules that would lead to fair and balanced management decisions, rather than policies that may be open to interpretation.</p>

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>3 AAC 80.160 (continued)</p> <p>(7) a proposed management scheme, consisting of the following:</p> <p>(A) 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 land and water within the area;</p> <p>(B) a summary or statement of the policies which will be applied in managing the area; and</p> <p>(C) an identification of the authority which will be used to implement the proposed management scheme.</p> <p>(b) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention may include the following:</p> <p>(1) areas important for subsistence hunting, fishing, food gathering, and foraging;</p> <p>(2) area with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and</p> <p>(3) potential estuarine or marine sanctuaries.</p> <p>(c) Management schemes for areas which merit special attention must preserve, protect, enhance, or restore the value or values for which the area was designated.</p> <p>(d) As used in this section, "areas which merit special attention" has the same meaning as in AS 46.40.210(1).</p>	<p>i.e., degraded water quality, loss of fish & wildlife, and reduction in the overall aesthetic beauty of the Lake & creek system.</p> <p>The goal of this AMSA designation, pg. 115, Ex. III, states: "...to insure that this valuable lake will continue to support healthy fish & wildlife populations, as well as providing esthetic & recreational enjoyment for the people of Sitka.</p> <p>(C) Ex. III, pgs. 119-120 identifies the Sitka Zoning Ordinance and Corps of Engineers Sec. 10/404 permitting processes as implementing authorities.</p> <p>Ex. VIII, pgs. 26-31 provides additional recommendations for enhancement alternatives for the AMSA.</p> <p>Ex. III, pg. 112 adopts an intent to pursue further study of Swan Lake prior to initiation of capital projects intended to rehabilitate the Lake's aquatic values.</p>	

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>AAC 85.020. NEEDS, OBJECTIVES, AND GOALS. Each district program must include a statement of the district's overall coastal management needs, objectives, or goals, or the district's comprehensive land and resource use plan.</p> <p>6 AAC 85.030. ORGANIZATION. Each district program must include a description of the district program organization for coastal management. Budgetary and staff needs and, where appropriate, a schedule for necessary reorganization must be included.</p>	<p>Ex. III, pg. 95 states overall goal of the district program:</p> <p>"It is the goal of the Sitka Coastal Management Program to achieve wise use of the land and water resources of the coastal area -- balancing ecological, cultural and economic values so as to maintain and protect Sitka's coastal resources for the beneficial use and enjoyment of this and future generations."</p> <p>Program objectives are listed on pg. 96, Ex. III.</p> <p>Ex. III, pg. 2-3 describes general organizational structure of the district. Pg. 3 states that no additional personnel are anticipated to be needed to administer the district program.</p> <p><u>SUPPLEMENTAL INFORMATION</u></p> <p>Correspondence dated 10/13/81, Schmidt to Walsh, includes organization chart together with an indication of who is responsible for functions requested in OCM's preliminary conclusions. A description of the paper flow for consistency reviews is also provided.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.020.</p> <p>OCM concludes that the district program has not adequately addressed 6 AAC 85.030. Any inadequacy may be resolved by including the following within 30 days of Coastal Policy Council approval of the program:</p> <ol style="list-style-type: none"> 1. An organization chart or description that clearly identifies who in the district is responsible for <ul style="list-style-type: none"> - conducting consistency reviews - making the consistency determinations - field checking & program enforcement 2. A flow chart or description of the paper flow involved in local, state and federal consistency reviews. <p><u>REVISED CONCLUSION</u></p> <p>OCM concludes that the district program is substantially consistent with 6 AAC 85.030.</p>

076

077

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.040. BOUNDARIES. (a) Each district must include a map of the boundaries of the coastal area within the district subject to the district program. Boundaries must enclose those lands which would reasonably be included in the coastal area subject to the district program if they were not subject to the exclusive jurisdiction of the federal government.</p> <p>(b) Before council approval of the district program, initial boundaries must be based on <i>Biophysical Boundaries of Alaska's Coastal Zone</i> (published by the Office of Coastal Management and the Alaska Department of Fish and Game, 1978, a copy of which is on file with the Office of the Lieutenant Governor, and which is available from the Office of Coastal Management) and must include the zone of direct interaction and the zone of direct influence.</p> <p>(c) Final boundaries of the coastal area subject to the district program may diverge from the initial boundaries if the final boundaries</p> <p>(1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water; and</p> <p>(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches.</p> <p>(d) If the criteria in (c) of this section are met, final boundaries of the coastal area subject to the district program may be based on political jurisdiction, cultural features, planning areas, watersheds, topographic features, uniform setbacks, or the dependency of uses and activities on water access.</p> <p>(e) The boundaries of the district must be sufficiently compatible with those of adjoining areas to allow consistent administration of the Alaska coastal management program.</p>	<p>Ex. III, pg. 97 describes landward and seaward boundaries of the district program. Map provided follows pg. 97. The boundaries delineated include the zones of direct interaction & direct influence as provided in <u>Biophysical Boundaries of Alaska's Coastal Zone</u>.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.040.</p>

FINDINGS AND CONCLUSIONS

Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.050. RESOURCE INVENTORY. Each district program must include a resource inventory which describes, in a manner sufficient for program development and implementation</p> <p>(1) habitats listed in 6 AAC 80.130 that are found within or adjacent to the district;</p> <p>(2) major cultural resources that are found within or adjacent to the district;</p> <p>(3) major land and water uses and activities which are conducted within or adjacent to the district;</p> <p>(4) major land and resource ownership and management responsibilities within or adjacent to the district; and</p> <p>(5) major historic, prehistoric, and archaeological resources which are found within or adjacent to the district.</p> <p>078</p>	<p>(1) Ex. II, App. A states that all the habitats in 80.130(a) are found within the district with the exception of barrier islands & lagoons. These habitats are depicted for the entire district on Fig. 4 on a map scale of 1:250,000 and for the district urban area on Fig. 5 on a map scale of 1:1/2 mile. Distribution of wildlife & fish & shellfish populations are depicted on Fig. 2 & 3 c. a 1:250,000 map scale. (These maps are located in the pocket behind Appendix A, Ex. II.)</p> <p>A narrative description of the habitats within the district is also provided in Ex. II, App. A, including identification of each habitat & analysis based on habitat characteristics and past, present & potential future impacts, together with recommendations for mitigating negative impacts on habitats. Site specific data & analysis including recommendations of the wetlands & marine & estuarine habitats of Sitka Sound is provided in Ex. VII.</p> <p>(2) Ex. III, pgs. 73-94 addresses the cultural inventory for the district, including data on population, industry, employment, services, & recreation & historic resources.</p> <p>(3) Descriptions of major land uses & activities is provided in Ex. III, pgs. 76, 81-94, including timber harvesting & processing, gravel extraction, government facilities, seafood processing, & recreation.</p> <p>(4) Ex. III, pg. 101 describes land</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.050.</p>

FINDINGS AND CONCLUSIONS

Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.050. Resource Inventory (cont'd)</p>	<p>ownership & jurisdiction of the district: "With the exception of several small state selections & a few private tracts, land ownership and control ... outside of the urban area is exclusively federal, and is managed under the officially adopted Tongass National Forest Land Management Plan."</p> <p>(5) Ex. II, pgs. 10-12 includes inventory & sites listed on the state's Heritage Resource Survey & those sites listed on the National Register of Historic Places. An Urban Area Map (back of Ex. III) plots general location of National Register Historic sites.</p> <p>Ex. III, pg. 93-94 provides additional discussion on sites of historic importance in the district.</p>	

079

ALASKA COASTAL MANAGEMENT PROGRAM

District Program: City & Borough of Sitka Date: 10/1/81 Page: 21

FINDINGS AND CONCLUSIONS Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.060. RESOURCE ANALYSIS. Each district program must include a resource analysis which describes, in a manner sufficient for program development and implementation</p> <p>(1) significant anticipated changes in the matters identified under sec. 50 of this chapter;</p> <p>(2) an evaluation of the environmental capability and sensitivity of resources and habitats, including cultural resources, for land and water uses and activities; and</p> <p>(3) an assessment of the present and anticipated needs and demands for coastal habitats and resources.</p> <p style="text-align: center;">030</p>	<p>(1-3) Ex. II, App. A provides analysis of past & present impacts on habitat types present within the district. Recommendations are also included for mitigating measures to decrease negative impacts. Detailed site specific data was gathered through a special contractual effort with the Department of Fish & Game for Sitka Sound and Swan Lake. The resulting products, Ex. VII and VIII, contain this data together with evaluation of the environmental capabilities & sensitivities of the resources & recommendations for management of uses & activities for sites within these areas. A summary of the results of these studies and specific recommendations for habitat management is contained in Ex. III, pgs. 22-72. These recommendations are based on general guidelines for protecting habitat values and on present & potential future demands on these habitats.</p> <p>Ex. III, pg. 73-94 provides analysis of expected change in community growth and economic outlook including industrial activities, and discusses increased needs and demands on facilities and resources of the district.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.060.</p>

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.070. SUBJECT USES. Each district program must include a description of the land and water uses and activities which are subject to the district program. The uses and activities mentioned in ch. 80 of this title are, if applicable, subject to the district program.</p>	<p>Ex. II, pg. 13-14 describes land uses in the district.</p> <p>Ex. III, pg. 98 states:</p> <p>"All residential, commercial, industrial & governmental uses of land & water within the coastal area, whether public or private property, shall be subject to the provisions and policies of the Sitka Coastal Management Program."</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.070.</p>
<p>6 AAC 85.080. PROPER AND IMPROPER USES. Each district program must include a description of the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of state concern, that will be considered improper within the coastal area, including land and water use designations. This description must be based on the district's statement of overall needs, objectives, or goals, or the district's comprehensive land and resource use plan, under sec. 20 of this chapter, and must be consistent with the standards contained in ch. 90 of this title.</p>	<p>Ex. III, pg. 100 addresses proper & improper uses and states:</p> <p>Proper uses are "those land & water uses and activities which are compatible with the goals, objectives & policies of the Sitka Coastal Management Program & which comply with the regulations of the federal and/or state agencies...and with the applicable ordinances and regulations of the City & Borough of Sitka."</p> <p>Improper uses are "those uses...which are found to be incompatible with the goals, objectives or policies...or which cannot be modified to meet the lawful requirements of agencies..."</p> <p>Ex. V, Chaps. 22.20 - 22.70 classifies urban land use districts for the district and details permitted and prohibited uses within each district.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.080.</p>

FINDINGS AND CONCLUSIONS

Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.090. POLICIES. Each district program must include a summary or statement of the policies that will be applied to land and water uses and activities subject to the district program and the process which will be used to determine whether specific proposals for land and water uses and activities will be allowed. It shall be the general policy of the district to approve specific proposals for uses and activities within areas designated for those uses and activities under sec. 80 of this chapter. Districts shall use existing means appropriate for the evaluation of specific proposals to the greatest extent feasible and prudent. Policies and procedures under this section must be consistent with the standards contained in ch. 80 of this title and must meet the following criteria:</p> <p>(1) comprehensiveness, so as to apply to all uses, activities and areas in need of management;</p> <p>(2) specificity, so as to allow clear understanding of who will be affected by the district program, how they will be affected, and whether specific proposals for land and water uses and activities will be allowed; and</p> <p>(3) enforceability, so as to insure implementation of and adherence to the district program.</p>	<p>Ex. III, pg. 99 lists the policies applicable to the district program.</p> <p>Pg. 106-107. Ex. III describes the procedures to be used for review of proposed projects.</p> <p>Ex. III, pgs. 100-101 discusses the Habitat Evaluation Project undertaken by the district under a MOCU with DF&G (pgs. 22-72 provides Final Project Summary of this project) and indicates that this Summary "provides the data needed for the district organization to make informed coastal management decisions in the overall public interest."</p> <p>For areas outside the urban area of the district, pg. 101 states that the district adopts by reference the Tongass National Forest Land Management Plan "for purposes of evaluating land & water uses & activities" for areas outside urban Sitka.</p> <p><u>SUPPLEMENTAL INFORMATION</u></p> <p>Correspondence dated 10/13/81, Schmidt to Walsh and other discussions between Sitka and OCM staff indicate two policy changes, subject to adoption by the district Assembly. These are:</p> <p>* Existing points of public access to the shoreline and tidelands shall be maintained by the appropriate government unit of ownership. Additional access shall be obtained wherever feasible.</p>	<p>OCM concludes that the district program is not consistent with 6 AAC 85.090; in that the included policies and procedures do not meet the criteria required in (1) thru (3) of this standard. Any inconsistency may be resolved by the following:</p> <p>1. Review, and where appropriate, reword policies to provide enforceability and specificity as stated in (2) & (3) of this standard.</p> <p>OCM also concludes that certain portions of the district program have not adequately addressed 6 AAC 85.090. Any inadequacy may be resolved by the following:</p> <p>1. In order to meet the criteria of 6 AAC 85.090, the means of protecting points of public access need to be addressed within 8 months of approval of the district program. (cross-referenced with 6 AAC 80.060)</p> <p>See 6 AAC 85.100 for further conclusions relating to this guideline.</p> <p><u>REVISED CONCLUSION</u></p> <p>OCM concludes that the district program is substantially consistent with 6 AAC 85.090, conditioned on Assembly adoption of policy changes referenced in findings.</p>

082

ALASKA COASTAL MANAGEMENT PROGRAM

District Program: City & Borough of Sitka

Date: ~~10/1/81~~

Page: 23-A

FINDINGS AND CONCLUSIONS

Prepared By: _____

11/25/81

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
083	<ul style="list-style-type: none">* to maximum extent practicable, the recommendations and policies contained in the district program will be utilized in conjunction with applicable existing codes and regulations when making all consistency determinations and issuing local permits and other approvals. * Add "and ACMP standards" to page 101 to be used with the TLMP in evaluating land and water uses & activities outside urban Sitka.	

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.100. IMPLEMENTATION. Each district program must include a description of the methods and authority which will be used to implement the district program. Methods and authority must be adequate to insure program implementation, and any additional methods or authority which are required must be specified. Methods and authority include land and water use plans, municipal ordinances and resolutions, (including shoreline, zoning, and subdivision ordinances and building codes), state and federal statutes and regulations, capital improvement programs, the purchase, sale, lease, or exchange of coastal land and water resources, cooperative agreements, tax exemption for nondevelopment purchase of development rights, memoranda of understanding, and coordinated project or permit review procedures.</p>	<p>Ex. III, pgs. 100-114 discusses implementation methods and authorities. To implement the district program, the district states it will use the following:</p> <ul style="list-style-type: none"> - Final Project Summary with Management Recommendations of the Sitka Habitat Evaluation (pg. 100) - Tongass National Forest Land Management Plan (pg. 101) - Local regulatory ordinances (zoning, subdivision, building permit regulations, & mobile home park regulations) (pg. 102) - (once approved) US Army Corps of Engineers General Permit covering six uses & activities (pg. 102; see detailed discussion pg. 104-105) - Participation in coordinated review consistency procedures (pg. 102) <p>Additional measures intended to address specific district issues to achieve program goals & objectives are addressed on pgs. 107-114. These issues include solid waste disposal; sand & gravel resources; floathomes; zoning ordinance, subdivision regulation and building code review; beach logs; Swan Lake; urban forestry; Indian River Management Plan; oil pollution; Comprehensive Plan update.</p>	<p>OCM concludes that the district program is not consistent with 6 AAC 85.100. Any inconsistency may be resolved by the following:</p> <ol style="list-style-type: none"> 1. Prepare a summary of applicable ordinances, regulations, policies and other enforceable rules of the program that are intended to apply to land and water uses and activities within the district. (See 6 AAC 85.090) 2. Prepare detailed procedures that describe when specific proposals will require a consistency review and the manner in which proposals will be evaluated, including (a) identification of state initiated activities and state regulatory permits for which the district desires to participate in the consistency review process; (b) identification of the threshold of local activities for which written findings on the consistency of the project will be prepared; and (c) a checklist to be used to determine if a project requires written findings, and if so against which program rules the project will be reviewed. (see 6 AAC85.090) 3. Indicate in district program the methods the district intends to use to monitor & enforce the district program. <p>In addressing this standard, OCM recommends the district refer to <u>Implementing the District Program</u>, a document prepared by OCM to guide the effective implementation of district programs (this document in draft form is currently before the CPC for endorsement).</p>

084

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.100. Implementation (cont'd)</p>	<p><u>SUPPLEMENTAL INFORMATION</u></p> <p>Correspondence dated 10/13/81, Schmidt to Walsh, provides:</p> <ol style="list-style-type: none"> (1) Summary list of applicable ordinances, regulations, policies and other enforceable rules intended to apply to land and water uses and activities; (2) identification of the threshold for review for consistency for state and local actions and an indication of when written findings will be prepared; (3) inclusion of Title 19, Building Code, 1979 version, along with local amendments within implementation strategy (pg. 103 of document), subject to Assembly adoption by reference; (4) adoption by reference of the 1981 Sitka Parks & Recreation Plan as a part of the district program, subject to action by Assembly; (5) prioritization of various studies recommended in district program. <p>Subsequent discussions between OCM and the district has resulted in the preparation of material providing greater detail than provided in the 10/13/81 correspondence, discussed above, on the following:</p> <ol style="list-style-type: none"> (1) consistency review process; (2) monitoring procedures; (3) enforcement procedures; (4) checklist for making consistency recommendations. 	<p>OCM also concludes that certain portions of the district program have not adequately addressed 6 AAC 85.100. Any inadequacy may be resolved by the following:</p> <ol style="list-style-type: none"> 1. Clarifying the status of the Final Project Summary with Management Recommendations of the Sitka Habitat Evaluation as an implementation tool within 30 days of the approval of the district program. (cross-referenced with 6 AAC 80.130) 2. Although included in the list on pg. 102, pg. 103 only describes Subdivision Regulations & Land Use Zoning Code as elements of local implementing strategy. Clarification of status of building permit regulations & mobile home park regulations is needed. In order to provide adequate structure to implement 6 AAC 80.050(b), Geophysical Hazards specific inclusion of Title 19, Building Code, within the implementation strategy (pg. 103) is needed within 30 days of the approval of the district program. (cross-referenced with 6 AAC 80.050) 3. Consider incorporation of pertinent portions of the 1981 Parks & Recreation Plan in the district program, if applicable; or incorporating the Plan by reference. At a minimum, a statement to clarify the relationship of this Plan with the district program is needed within 30 days of the approval of the district program. (cross-referenced with 6 AAC 80.060)

085

ALASKA COASTAL MANAGEMENT PROGRAM

District Program: City & Borough of Sitka

Date: 10/1/81

Page: 26

1125181

FINDINGS AND CONCLUSIONS

Prepared By: _____

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<div style="position: absolute; left: -100px; top: 50%; transform: translateY(-50%); font-weight: bold;">980</div>	<p>Additionally, subject to Assembly adoption, the policy is to be included in the district program which states the intent of the district to use all policies and recommendations in the document in the decision making process (see 6 AAC 85.090 Findings).</p>	<p>As it is the intent of the district to address program goals & objectives by several issue specific studies or other actions, OCM recommends the district prioritize, in a timetable or some other form, these various intent items. This prioritization will provide planning guidance to not only the district, but also state & federal agencies, who are participants in many of those intent items. Additionally, it will provide a general structure as to the future direction of this district segment of the ACMP.</p> <p><u>REVISED CONCLUSION</u></p> <p>OCM concludes that the district program is substantially consistent with 6 AAC 85.100. OCM, however, strongly recommends the district prepare a detailed summary of applicable ordinances, regulations, policies and other enforceable rules of the program that are intended to apply to land and water uses and activities within the district. With the multiple documents that are intended to be used to implement the district program, such a summary would be of benefit to local as well as state decision makers in applying the applicable parts of the district program to land and water use decisions.</p>

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.110. PUBLIC PARTICIPATION. Each district program must include evidence of effective and significant opportunities for public participation in program development under sec. 130 of this chapter.</p> <p>087</p>	<p>Refer to 6 AAC 85.130 for findings and conclusions relative to this standard.</p>	

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.130. PUBLIC INVOLVEMENT. (a) No less than two public meetings must be held within the district during program development to inform the public and receive comments concerning the program. A brief summary or report of the matters considered at the public meeting held under this subsection must be prepared by the district, made available to the public, and retained for inclusion in the record file referred to in sec. 150(c) of this chapter.</p> <p>(b) At least 60 days before giving conceptual approval to the district program or significant amendment to the district program, the district shall give written notice to the council and any person who has requested notice in writing, as well as public notice of the proposed action by conspicuous advertisement in a newspaper of general circulation within the district. In addition, notice must be given by radio and by posting in villages and municipalities within the district. The notice must specify the time and place of a public hearing on the proposed action and the availability for review of the proposed district program document or significant amendment to the district program. The public hearing under this subsection may be held not sooner than 30 days after notice is given. At the public hearing, each person must be given the opportunity to present statements, arguments, or contentions, orally or in writing. Districts shall insure that, where appropriate, translation into the appropriate Native language(s) is provided. The district shall consider all relevant matter presented to it. A written transcript or electronic recording of the public hearing must be submitted to the council.</p> <p>(c) In addition to the requirements of (b) of this section, districts shall provide publicly advertised opportunities for public involvement in the development of all program elements contained in secs. 20 - 110 of this chapter.</p>	<p>Ex. II, App. B and Ex. III, App. A document the public participation efforts of the district.</p> <p>A 7-member Coastal Management Committee representing the various interests of the community was appointed by the Assembly. This committee held 14 public meetings during the development of the district program, other meetings with community civic organizations, and conducted two mail surveys.</p> <p>Ex. IV includes public meeting announcements and summaries of meetings held as well as minutes.</p> <p>Written public notification of proposed conceptual approval action was published in the <u>Sitka Sentinel</u> on 5/13/81 and periodically throughout the months of May, June & July, 1981. Notice was received at OCM on 5/15/81.</p> <p>Public hearings considering conceptual approval were held by the Citizens' Coastal Management Committee on 5/21/81 and 6/22/81, by the Planning & Zoning Commission on 7/8/81, and by the City & Borough Assembly on 8/11/81. Ex. IV contains minutes of these public hearings and a recording from the 8/11/81 Assembly hearing.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.130.</p>

ALASKA COASTAL MANAGEMENT PROGRAM

District Program: City & Borough of Sitka Date: 10/1/81 Page: 29

FINDINGS AND CONCLUSIONS Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.130 (continued)</p> <p>(d) Districts shall provide the public, in a timely manner and in understandable form, information explaining the district coastal management program, the requirements of public participation in program development, how and when the public may participate in program development, what information is available, and where that information may be obtained.</p> <p>680</p>		

ALASKA COASTAL MANAGEMENT PROGRAM

District Program: City & Borough of Sitka Date: 10/1/81 Page: 30

FINDINGS AND CONCLUSIONS Prepared By: Office of Coastal Management

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
<p>6 AAC 85.140. COORDINATION AND REVIEW. Districts shall provide opportunities for coordination and review by federal, state, and local governmental agencies, including adjacent districts, and other persons with a significant interest in coastal resources or who are conducting or may conduct uses and activities that have or are likely to have a direct and significant impact on the district's coastal area.</p>	<p>Ex. IV includes list of individuals, federal & state agencies, private corporations, environmental groups & affected native landholders that indicated an interest in the development of Sitka's coastal management program to whom notification of public hearings & draft programs were distributed.</p> <p>Ex. III, App. A contains documentation of coordination.</p> <p>On 6/5/81, a meeting of federal & state agencies was held with the district to discuss any concerns those agencies present had with the district program.</p>	<p>OCM concludes that the district program is substantially consistent with 6 AAC 85.140.</p>

060

AGENDA ATTACHMENT H

Memo from Murray Walsh

to

Council regarding OCM Move to DCRA

MEMORANDUM

State of Alaska

TO The Alaska Coastal Policy Council
and ACMP Participants

DATE Nov. 24, 1981

FILE NO

TELEPHONE NO

FROM Murray Walsh
Coordinator

SUBJECT Moving OCM and the Coastal Policy
Council to DCRA.

You will have noticed the proposed language in Agenda Item D, which would move both OCM and the CPC over to DCRA by statutory amendment. A question which remains is the idea of using an executive order of the Governor to accomplish the same purpose, and whether we should continue to pursue this avenue or not.

We believe that a proposed executive order should be devised and that it should provide as follows:

1. Reiterate the proposed provisions for moving OCM and the CPC that are now in the legislative package.
2. Provide that the positions in OCM will become classified and thus covered by the Alaska State Employees Union, except for the Coordinator and Deputy Coordinator positions.
3. Provide that all current employees in OCM have preferential rights in filling the newly classified positions.

The first item above would simply accomplish the move, in a manner agreed to by the CPC if, for some reason, the legislative improvements bill moves slowly in the Legislature. The second and third items are personnel matters that could not be dealt with in an agreement between the CPC and the Commissioner of Community and Regional Affairs, but which the Governor does have the authority to require, if the executive order technique is used.

Coastal Policy Council Location

AS 44.19.891(a) is amended to read:

(a) There is created in the Department of Community and Regional Affairs [OFFICE OF THE GOVERNOR] the Alaska Coastal Policy Council. The Council consists of the following:

Office of Coastal Management Location

AS 44.19.894 is amended to read:

The council shall utilize the staff of the Office of Coastal Management within the Department of Community and Regional Affairs [DIVISION OF POLICY DEVELOPMENT AND PLANNING] in discharging its duties and powers. The Commissioner of the Department of Community and Regional Affairs shall employ the coordinator of the office, with the concurrence of the Council. The Coordinator of the office, with the concurrence of the commissioner, [COUNCIL] may contract with or employ personnel or consultants [HE CONSIDERS] necessary to carry out the powers and duties of the council. The commissioner and the council

shall enter into an agreement for the joint supervision of the Office of Coastal Management.

Conditional Approval of District Coastal Management Programs

AS 46.40.060(a) is amended to read:

If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary or conditional approval of the district coastal management program, or may approve portions of the district program which are consistent.

Consistency Review Procedures

AS 46.40.040 (6) is amended by adding a new subsection to read:

(6) by regulation develop consistency review procedures including timeframes for use by state agencies to determine whether specific proposals for coastal land or water uses or activities are consistent with any applicable district coastal management program and applicable standards adopted by the Council under this section.

Negotiated District Program Completion Deadlines

AS 46.40.050 is repealed and reenacted to read:

Each coastal resource district without an approved district coastal management program shall, within six months of the effective date of this section, or within six months of certification of the results of the district's initial coastal Resource Service Area Board elections, whichever is later, submit to the council for its consideration and approval a schedule including dates for the completion and submission of the district coastal management program to the council. During the development of its coastal management program, each district shall submit progress reports concerning program development to the council annually, or more frequently, as determined by the council.

AS 46.40.170(b) and (c) are amended to read:

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to make substantial progress in the preparation of an approvable district coastal management program within the time limitations approved by the council for

completion and submission of the district program under AS 46.40.050.

[18 MONTHS OF CERTIFICATION OF THE RESULTS OF AN ORGANIZATION ELECTION
OR WHICH HAS NOT SUBMITTED FOR APPROVAL OF THE COUNCIL A PROGRAM WITHIN
30 MONTHS OF CERTIFICATION OF THE RESULTS OF ITS ORGANIZATION ELECTION.]

Preparation of the program shall be conducted in consultation with the coastal resource service area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established by the council [THIS SECTION].

Regional Planning

AS 44.19.161(2) is amended to read:

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; [IN CARRYING OUT ITS DUTIES UNDER THIS PARAGRAPH, THE COUNCIL SHALL INITIATE AN INTERAGENCY PROGRAM OF COMPREHENSIVE COASTAL RESOURCE PLANNING FOR EACH GEOGRAPHIC REGION DESCRIBED IN AS 44.19.155(a)(1);]

Coastal Resource Service Area Boards

AS 46.40.140(a) is amended to read:

(a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts. Once the district coastal management program for a coastal resource service area is approved by the council and in effect, the board shall be given notice of and may provide comments and recommendations on the interpretation of the district program as it applies to specific land and water uses and activities subject to approval by a state agency

implementing the district program in accordance with AS 46.40.090(a).

If the coastal resource service area, or a portion of the area, included within an approved district coastal management program organizes to assume planning powers as a unified municipality, borough, or home rule or first class city, as set out in AS 46.40.210(2)(A)-(C), or as a second class city which meets the requirements of AS 46.40.210(2)(D), the district program continues in effect as the district program of the new local government, subject to amendments adopted by the governing body in accordance with this chapter.

AS 46.40.140(b) is repealed and reenacted to read:

(b) Board members shall be elected at large by the qualified voters of the coastal resource service area. The board shall consist of five, seven, nine, or eleven members. The Commissioner of the Department of Community and Regional Affairs shall determine the number of board members in consultation with the residents in the coastal resource service area. Within six months from the effective date of this section, coastal resource service area boards for coastal resource service areas organized as of the effective date of this section may propose, to the Director of Elections, reduction of the seven-member board to five members, or expansion to nine or eleven members. Any reduction or expansion of the number of board members is subject to approval by a majority of qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect

at the next regular election of members of the coastal resource service area board.

AS 44.19.155(a)(1) is amended to read:

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality, or member of a coastal resource service area board in the region; one public member shall be appointed from each of the following general regions:

AS 44.19.155(d) is amended to read:

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, he shall advise the alternate who may attend and act in place of the member. The alternate for a public member appointed after July 9, 1978, under (a)(1) of this section shall, at the time of his designation and throughout the period of his service as a permanent alternate, be the mayor or member of the assembly or council of a municipality, or member of a coastal resource service area board, within the region from which the permanent member is appointed. The alternate for a designated member serving under (a)(2) of this

section shall be a deputy commissioner of the department, [OR] the director of a division in the department or, in the case of the division of policy development and planning, the deputy director of the division. The names of alternates shall be filed with the council.

AS 46.40.190(b) is amended to read:

(b) Nothing in this chapter restricts or prohibits cooperation or joint administration of functions between a municipality and a coastal resource service area organized under the provision of this chapter upon initiation of a mutual agreement for the purpose. A city which elects to be excluded from an adjacent coastal resource service area under (a) of this section shall establish procedures, as appropriate, for the mutual exchange of information concerning the development and implementation of the district program [ENTER INTO A MUTUAL AGREEMENT FOR COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS] with the coastal resource service area board from the adjacent coastal resource service area.

A SUMMARY OF THE
ANCHORAGE COASTAL MANAGEMENT PROGRAM

November 18, 1981

Prepared by the
Alaska Office
of Coastal
Management

Developing the Program and Improvements

Anchorage was one of the first coastal cities to begin development of a district coastal management program. An initial grant totalling \$38,500 signed in July 1977 was awarded by the Department of Community and Regional Affairs to start the program. The first year's effort (FY 77) was directed toward the design of a planning methodology and a conceptual framework that would adequately address the standards and guidelines of the Alaska Coastal Management Act. Both the planning methodology and conceptual framework permitted development of a biophysical/cultural inventory of the designated planning area which in turn permitted the identification of (1) coastal zone boundaries (2) permissible uses in the coastal zone (3) Areas which Merit Special Attention (AMSA) (4) recommendations and suggested objectives, policies and criteria for coastal management. This initial effort was completed for Turnagain Arm and for a portion of Eagle River.

The FY 1978 Work Program (total amount of grant: \$63,957) utilized the same methodology and conceptual framework and applied them throughout the remainder of the Municipality's coastal area. This effort included a biophysical/cultural inventory of metropolitan Anchorage and the lands occupied by the communities of Eagle River, Chugiak, Peters Creek and Eklutna. The developed methodology was then applied to those planning areas to identify (1) the coastal boundaries; (2) permissible uses; (3) AMSAs; and, (4) recommended objectives, policies and criteria for coastal management. Implementation mechanisms were also addressed.

The FY 78 grant effort culminated in a draft coastal program which was conceptually approved via resolution of the Anchorage Assembly in early fall of 1979. The program was subsequently approved by the Alaska Coastal Policy Council in January 1980 and by the Legislature in April 1980.

Included as part of the Anchorage Coastal Management program effort, was the development of a series of maps for the entire Municipality depicting physical, biological and cultural resources at a common map scale. The methodology developed allowed the landscape of the Municipality to be divided into a series of specific resource units - referred to as coastal resource policy units. A resource analysis was conducted for each of these resource policy units to determine its land use suitability. A thorough legal review was then conducted to identify major federal and state laws and regulations and Municipal ordinances and regulations applicable to each resource unit. Where deficiencies occurred, in terms of meeting the requirements of the Alaska Coastal

Management Act, new ordinances were proposed and areas in need of further study were further identified in the Anchorage Coastal Management Plan Hearing Draft. Anchorage subsequently received an FY 80 grant (total amount: \$450,810) to carry out the findings and recommendations of the public hearing on the draft program. These projects included:

- * Preparation and printing of the final Anchorage Coastal Management Program. The final Anchorage program was printed and distributed to all interested parties.
- * Formal adoption of the Anchorage Coastal Program by the Municipal Assembly. The Anchorage Coastal Management Program was adopted by ordinance by the Anchorage Municipal Assembly, and federally approved by the U.S. Department of Commerce, NOAA, Office of Coastal Management, in early 1981.
- * Federal and State A-95/ACMP Consistency and Compliance Reviews. Several joint meetings were held with appropriate federal and state agencies to set out procedures for conducting ACMP reviews using the Anchorage Program. Reviews have been ongoing.
- * Creation of an Urban Waterfront/Port District. The creation of an urban waterfront zone was accomplished when the Municipal Assembly adopted the Coastal Program. Changes have been made to the zoning ordinance as work has progressed on the Port Comprehensive Plan. The Port of Anchorage was designated an "Area Meriting Special Attention." In order to facilitate better planning for the urban waterfront area, the intent of the coastal management program was to create a zoning classification called "Port District." This designation would specify water-dependent and water-related uses. Again, however, because the Port Marketing and Planning Study is not complete, it is premature to designate and delineate a specific boundary for a Port District. This will be done following the study.
- * Coastal Access and Scenic Preservation Study. A comprehensive coastal access plan was prepared for the Anchorage Bowl. The plan includes a visual resource analysis and natural resource analysis, including the identification of locations for various activities. Site plans and a coastal trail plan were also included. The plan was completed and will soon be distributed for review.
- * Wetlands. The Planning Department contracted with ERTEC consultants for a wetlands management plan. The project was funded both with CZM grant funds and EPA funds. The plan is now in the final review stages. All wetlands have been mapped, classified and management strategies prepared for each wetland.

- * Coastal Resource Atlas. The Anchorage Bowl Coastal Resource Atlas was completed and distributed to the State for distribution. A set of 13 maps with appropriate text are included at a scale of 1:25,000.
- * Seward Highway Scenic Corridor Plan. A contract was let to a planning and architectural firm to prepare a Scenic Corridor Management Plan for the Turnagain Arm. The final draft was prepared and printed. Distribution was made to the State.
- * Municipal Coastal Management Compliance Manual. To facilitate a better understanding of coastal management by Municipal departments and to ensure that all departments are aware of Coastal Management policies, procedures and plans, a compliance manual was prepared, the purpose of which is: (1) to provide a means of identifying permitted and non-permitted uses; (2) to allow identification of direct and significant impacts that could occur so that they may be mitigated; and (3) to set forth both federal and state consistency and compliance provisions of the ACMP to allow municipal-wide overview of projects. The manual was distributed to the State.
- * Hazardous Lands Study. Mayor Sullivan created a municipal task force to research the issue of development in hazardous areas and requested preparation of a series of alternative approaches necessary to meet state requirements. A report was prepared and submitted to Mayor Sullivan for action, however, no decision was made as to which alternative approach should be taken. The Public Works Department prepared a report outlining existing regulations and methods for dealing specifically with seismic risk. The Anchorage Geotechnical Advisory Commission has participated in identifying approaches and methods for implementing this standard. As of this date no single approach has been selected or approved by the present administration, but efforts are ongoing to satisfy the requirements of the hazards standard.

Not all of the recommendations for improvement of the Anchorage Coastal Program were accomplished under the FY 80 grant. Consequently a subsequent FY 81 grant (total amount \$259,893) was received in the spring of 1981. The tasks included:

- * Preparation of a Coastal Resource Atlas for the Turnagain Arm From Potter Marsh to the Kenai Peninsula Borough boundary. This is a continuation project in that the Anchorage Bowl Atlas has been completed and the Eagle River Atlas is now in production. Since Fire Island is being transferred to Cook Inlet Region, Inc. and will no longer be in federal ownership, an atlas for Fire Island will also be produced as part of this effort. The atlas will include the following: surficial geology, soils, habitats, slope, slope stability, vegetation, wetlands, land use and the coastal management resource policy units.

- * Revision of maps for the Eagle River Atlas. Base maps supplied by U.S.G.S. for the Eagle River Atlas Project were found to be inaccurate. In order to provide adequate base mapping it will be necessary to compile new maps. This task will permit completion of base maps for the Atlas.
- * Eagle River Coastal Access Plan. The Municipality is presently completing the Anchorage Bowl Coastal Access Plan and the Seward Highway Scenic Corridor Plan. This task will permit completion of an areawide coastal access plan. The area covered by this plan will be from Ship Creek to Eklutna.
- * Site Design and Engineering Plans for the Potter Marsh Nature Center. Specific site plans, engineering specifications and construction plans for the proposed Potter Marsh Nature Center will be conducted.
- * Avalanche Study. The Anchorage Planning and Zoning Commission has requested that an avalanche study be conducted to identify the exact run-out zones, wind blast zones, and frequency of avalanches in various locations throughout the Municipality.
- * Natural Resource (Gravel) Extraction Study. The Municipality's gravel resources are limited, and increased pressure has occurred over the past year to continue to develop those sources that remain. Concurrently, strong pressures exist to minimize both the development of new sources of supply and to continue existing gravel pits/gravel resource areas. Many of these extraction areas are near or adjacent to sensitive residential, natural environment, and institutional areas. A need exists to inventory the current resources and prepare a 10-15 year management plan for their usage and/or discontinuance. This plan will analyze current natural resources, develop projections of potential use, identify alternative mitigation measures and design techniques for gravel extraction, and establish a management plan for future extraction activities.

It is the understanding of the Office of Coastal Management that the Anchorage Wetlands Plan, Coastal Scenic Resources and Public Access Plan, Seward Highway Scenic Corridor Plan, and the Port of Anchorage Strategic Marketing Plan will be submitted to the Coastal Policy Council as amendments to the Anchorage Program in January 1982.

The total amount of funds utilized by Anchorage for coastal management purposes to date is \$813,160 which includes a 20% match contribution by Anchorage of \$152,632. The 80% contribution comes from the State Coastal Management Program through a grants program administered by the Department of Community and Regional Affairs.

Implementation of Anchorage Coastal Management Program

The major thrust of the Alaska Coastal Management Act was to assist local governments in the development and implementation of coastal

management plans. Once a district program such as the Anchorage Coastal Program has been approved by the Coastal Policy Council and the federal Office of Coastal Zone Management, State and federal agency activities must be consistent with the district program.

As local, state and federal levels of government gain experience in operating under the Alaska Coastal Management Program, it is becoming apparent that local coastal management planning can resolve problems if district programs clearly describe what they want to achieve in managing their coastal areas and are willing to work with other governmental and private interests to accomplish the task. Implementation of the Anchorage Coastal Management Program has shown that problems can be resolved within the Municipality of Anchorage using the processes established in its program and in the ACMP.

Anchorage chose not to have a formal consistency review mechanism or an autonomous permit system, and instead sought to rely on commenting through existing State procedures. The Coastal Policy Council was assured that the Municipality would implement its program through the use of existing State and local procedures. As currently authorized by State law, the State makes consistency decisions on proposed State and federal activities with due consultation with the affected local government. Organizational changes have been made within the Municipality to accommodate comments and to present consolidated municipal responses to the State. If the local government is aggrieved, it may take its case to the Coastal Policy Council.

The following case examples demonstrate how the local coastal management planning process has been used to resolve problems in Anchorage.

Seward Highway Reconstruction:

This project occurring within the Anchorage Coastal Zone Boundaries involved rerouting the highway as it crossed an area which receives heavy recreational use. The Municipality and the State Division of Parks (the major land manager in the project area) expressed concern over maintaining the recreational usage which was specifically detailed in the approved Anchorage Coastal Management Program. The Department of Transportation and Public Facilities (DOT/PF) had applied for the Corps permit to do the reconstruction work but the public notice reflected none of the above concerns. The consistency process reinforced the Municipality's objections and the result was issuance of a Corps permit requiring the work to proceed with appropriate stipulations. Those stipulations and other agreements between the concerned parties, allowed the project to proceed while lessening the impact to a local sport fishery and maintaining recreational access. Thus, while it resulted in DOT/PF doing redesign work, the direction of the Anchorage Coastal Management Program was followed.

Viewpoint Ventures

This housing development was projected to occur in an area which the Anchorage Coastal Management Program designated as suitable for coastal development. However, the access road to the subdivision required a

Corps permit since it crossed wetlands. The wetlands were to be crossed in close proximity to Potter's Marsh, a state game refuge. After much interagency discussion, the State agencies certified the project based on the guidance for stipulations provided by Anchorage which would have allowed the project to proceed consistent with their program. Federal agencies, however, objected to the project. Due to the presence of the Anchorage Program and the Municipality's findings that the project as stipulated was consistent, the federal agencies eventually withdrew their objections and the project was allowed to proceed.

Knik Arm 62, Knik Arm 63, and Cook Inlet 250

These three subdivisions were projected to occur in an area in Turnagain Bog that was depicted in the Anchorage Coastal Management Program as a "preservation environment". The Municipality determined the projects were consistent and presented analysis supporting the interpretation of their program. However, the U.S. Environmental Protection Agency, who has the final jurisdiction over issuance of Corps permits disagreed with that interpretation and asked the Office of Coastal Management for a determination. OCM determined that Anchorage's interpretation of its program was both legally and environmentally supportable. As a result of OCM's letter, EPA withdrew its objection. The State agencies agreed to our certification of the projects because mitigation measures intended to reduce adverse environmental impacts and ensure protection of all the essential public interests were developed by the Municipality. Again, due to the presence of the Anchorage Coastal Program and the Municipality's findings that the projects, as stipulated, were consistent, all agencies, except one federal agency, eventually withdrew their objections and allowed the projects to proceed.

There is another situation pending which is illustrative of the State-Municipal relationship that exists under coastal management. This is generally known as the "Fish Creek Replat." The Anchorage Planning and Zoning Commission and Assembly approved the replatting of four lots bordering the mouth of Fish Creek. A strip of property was added to the rear of each lot. A group of nearby property owners believe the replat to be inconsistent with the Anchorage Coastal Management Program and has appealed the Municipalities Action to the Coastal Policy Council. The Council is obliged by Section 46.40.100 of the Alaska Coastal Management Act to hold a hearing on such appeals. As of the date of this report, the Governor is in the process of selecting a hearing officer to act for the Council and make a recommendation. The Council itself will make the final decision.

OCM will gladly provide more information, if needed, on the Fish Creek Replat or other matters described in this report.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



Senate

Committee on Resources

*copy memo
then
my
assist
file / Arch*

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

October 21, 1981

Mr. Murray Walsh
Coordinator
Office of Coastal Management
Pouch AP
Juneau, Alaska 99811

Dear Murray,

I have been following most of the interactions you've had with my staff during those times I have been out of the state. Res. King has informed me that you would appreciate resolving any difficulties between the Resource Committee, the Community and Regional Affairs Committee and your office prior to the discussion of the proposed amendments at the Municipal League meeting in November. I would like nothing more than that myself; however, I do not believe it will be possible since the proposed amendments do not fully address the problems which have been identified.

Generally, the amendments add more specific language (.030(4)), eliminate deadlines (.050), allow modification and conditions to local plans by the Council (.060), allow "less than comprehensive" planning (.035), and change provisions for C&RA planning for areas which choose not to organize (.170 (b) and (c)). But I do not find where the amendments actually correct any of the problems which have been identified throughout the hearings and the interim work on the coastal management program. Some of those problems, identified at our August meeting included: lengthy consistency review, statewide community planning vs. resource planning, too little or too much local control over land use decisions, and department affiliation for the office of coastal management. I don't see that any of these problems are addressed by the proposed amendments. In fact, the amendments appear to be housekeeping issues which may help the program run more smoothly but will not necessarily correct the complaints we've been hearing.

I am a firm believer in the need for planning. I believe it is essential that Alaska plan for the utilization and development of our resources. Coastal zone management may indeed be the answer to some of

these issues, but I find myself listening while people are getting bogged down with "great weight" and "consistency" and ignoring the basic issue. To me, the issue is how can we best plan for the future development of our resources without destroying those resources and the communities which neighbor them?

One of the initial purposes of the coastal management program, and one which has been voiced at many meetings, was to help communities plan for the impacts of offshore oil and gas leasing. It is evident that that purpose has not seen fruition, and, instead, we are faced with even greater amounts of federal interference than before.

Arguments for supporting the program are made without considering the real issue. One argument that has been raised in support of coastal zone management has been that sometimes these funds are the first a small community might see for planning of any kind. While this may be true, it is an argument for planning, not necessarily for the coastal management program. One benefit which was listed by the interim subcommittee report is that "ACMP can resolve resource management conflicts between competing users and different levels of government". Yet testimony before other committees has indicated great time gaps which were not prevented. We have to face coastal management in light of no SB 84. The complaints by local communities and agencies and industry cannot be ignored. Coastal zone management was not designed as a tool to stop oil and gas development, but as one to help local communities plan for growth in the event of some type of resource development.

Murray, I do not believe our differences are irreconcilable. I believe that we are basically searching for the same answer. However, I do not believe that the proposed amendments achieve that goal. If you are interested, I would be happy to ask Resa to send you a copy of my comments on the specific amendments. In the meantime, she and the rest of my staff will continue to work on resolving the issue of the problem in which we are all concerned.

Thank you for the opportunity to discuss this with you.

Sincerely,

Bettye Fahrenkamp by phone
Chairman

cc: Resource Committee ✓
Lidia Selkregg
Jim Souby
Jon Holliwill

MEMORANDUM

State of Alaska

TO: Murray Walsh, Coordinator
Office of Coastal Management

DATE: October 12, 1981

FILE NO:

TELEPHONE NO: 465-3600 ex 53

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Amendments to the ACMP

By: *Lauri J. Adams*
Lauri J. Adams
Assistant Attorney General

Attached are draft amendments to the Coastal Management Act which you requested me to prepare for the Coastal Policy Council's consideration.

If I can be of any further assistance please let me know.

LJA/jb

Attachments

Miss,
This is the first (rough)
set of amendments to ACMP.
Council mtg to discuss is
Oct 26

District Coastal Management Program Regulatory Provisions

AS 46.40.030(4) is repealed and reenacted to read:

specific implementing land and water use regulations, and additions or amendments to existing zoning and other controls over the use of resources within the coastal area which will be applied to manage the land and water uses subject to the district program;

Being worked on more -
the idea is to get a
small set of "guiding"
guidelines that need approval
& reapproval of change

Conditional Approval of District Coastal Management Programs

AS 46.40.060(a) is amended to read:

If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent. If the council finds that there are deficiencies in the district coastal management program as submitted, it may nevertheless approve the district program subject to modifications and conditions of approval which are specified by the council. Modifications and conditions of approval determined by the council take effect as part of the approved district program unless the coastal resource district rejects them by ordinance of the governing body within 90 days after the council's action. If the district rejects any council modifications of the district program or conditions of approval, those deficiencies in the program shall be mediated and adjudicated in accordance with (b), (c) and (d) of this section.

Flexible District Program Completion Deadlines

*near to do
away w/ inflex
some limit &
give council
authority to negotiate
reasonable limits*

AS 46.40.050 is repealed and reenacted to read:

Each coastal resource district shall, within six months of the effective date of this section, submit to the council for its consideration and its approval a schedule including dates for the completion and submission of the district coastal management program to the council. During the development of its coastal management program, each district shall submit progress reports concerning program development to the council annually, or more frequently, as determined by the council.

*Also sub: without appropriate data which might
have created some problems*

AS 46.40.170(b) and (c) are amended to read:

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to prepare [MAKE SUBSTANTIAL PROGRESS IN THE PREPARATION OF] an approvable district coastal management program within the time limitations approved by the council for completion and submission of the district program under AS 46.40.050. [18 MONTHS OF CERTIFICATION OF THE RESULTS OF AN ORGANIZATION ELECTION OR WHICH HAS NOT SUBMITTED FOR APPROVAL OF THE COUNCIL A PROGRAM WITHIN 30 MONTHS OF CERTIFICATION OF THE RESULTS OF ITS ORGANIZATION ELECTION.] Preparation of the program shall be conducted in consultation with the coastal resource service

area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established by the council [THIS SECTION].

Issue-specific district coastal management programs.

AS 46.40 is amended by adding a new section to read:

AS 46.40.035. ISSUE-SPECIFIC DISTRICT COASTAL MANAGEMENT PROGRAMS. A coastal resource district may, with prior council approval, develop a district coastal management program which is less than comprehensive in its coverage or which addresses only specific land and water uses and activities within the district. The council shall, by regulation, adopt standards for the approval of issue-specific district coastal management programs. To initiate an issue-specific district coastal management program, the coastal resource district shall present a detailed program proposal to the council for its approval. The council shall, if it approves the coastal resource district's proposal, establish a schedule including dates for the completion and submission to the council of an approvable issue-specific district coastal management program. During the development of its program the district shall submit progress reports concerning program development to the council annually, or more frequently, as determined by the council.

A few problems here that I'd like to point out to them. Generally, a way to allow OCS focus in several areas.

or addition to an existing approved program

OID - portion - (define)

Covered by hearings etc?

Council to locals?

New Uses of State Concern:

AS 46.40 is amended by adding a new section to read:

AS 46.40.075. NEW USES OF STATE CONCERN. If the council is informed by a state or federal agency^{crsd} of a new use of state concern within a coastal resource district which is not addressed in the applicable district coastal management program, and the council finds, after public hearing, that the new use of state concern is restricted or excluded by an approved district coastal management program, it shall approve a schedule for the district to address the new use of state concern through an amendment to its district program which is consistent with the provisions of this chapter and the standards and guidelines adopted by the council. If an amendment to the district program is not submitted to the council for its consideration within the time limitations approved by the council, or the council does not approve the district's treatment of the new use of state concern in its district program, the council shall direct that the deficiency be mediated and adjudicated in accordance with AS 46.40.060(b), (c) and (d). *Suggested addition*

State Agency Participation

AS 46.40 is amended by adding a new section to read:

takes the best of current practice (S.H.K.) (WSB) & cooperates

AS 46.40.037. STATE AGENCIES. Each state agency shall provide available technical resource information to coastal resource districts developing district coastal management programs and shall coordinate its planning efforts under other statutory authorities for resources within the coastal area with the development of district coastal management programs by affected coastal resource districts. State agencies shall identify at the earliest practicable time uses of state concern which must be addressed by each coastal resource district in its district coastal management program and shall participate through comments and technical resource information, where appropriate, in the development of each district coastal management program.

a more realistic approach

AS 44.19.161(2) is amended to read:

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; [IN CARRYING OUT ITS DUTIES UNDER THIS PARAGRAPH, THE COUNCIL SHALL INITIATE AN INTERAGENCY PROGRAM OF COMPREHENSIVE COASTAL RESOURCE PLANNING FOR EACH GEOGRAPHIC REGION DESCRIBED IN AS 44.19.155(a)(1);]

not being done

Coastal Resource Service Area Boards

AS 46.40.140(a) is amended to read:

(a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts. Once the district coastal management program for a coastal resource service area is approved by the council and in effect, the board shall be given notice of and may provide comments and recommendations on the interpretation of the district program as it applies to specific land and water uses under consideration by a state agency implementing the district program in accordance with AS 46.40.090(a).

If the coastal resource service area, or a portion of the area, included in a district coastal management program developed and adopted by a coastal resource service area board organizes to assume planning powers as a unified municipality, borough, or home rule or first class city, as set out in AS 46.40.210(2) (A)-(C), or as a second class city which meets the requirements of AS 46.40.210(2) (D), the district program continues in effect as the district program of the new local government, subject to amendments adopted by the governing body in accordance with this chapter.

Handwritten signature

AS 46.40.140(b) is repealed and reenacted to read:

(b) Board members shall be elected at large by the qualified voters of the coastal resource service area. The board shall consist of five, seven, nine, or eleven members. The number of board members shall be determined by the commissioner of the Department of Community and Regional Affairs, in consultation with the local communities in the coastal resource service area.

*ok -
but not
let to
article
which
would create
lots of problems*

AS 44.19.155(a)(1) is amended to read:

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality, or member of a coastal resource service area board in the region; one public member shall be appointed from each of the following general regions:

good

AS 44.19.155(d) is amended to read:

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, he shall advise the alternate who may attend and act in place of the member. The alternate for a public member appointed after July 9, 1978, under (a)(1) of this section shall, at the time of his designation and throughout the period of his service as a permanent alternate, be the mayor or member of the assembly or council of a municipality,

good

or member of a coastal resource service area board, within
the region from which the permanent member is appointed. The
alternate for a designated member serving under (a)(2) of this
section shall be a deputy commissioner of the department, [OR]
the director of a division in the department or, in the case of
the division of policy development and planning, the deputy
director of the division. The names of alternates shall be filed
with the council.

AS 46.40.190(b) is amended to read:

(b) Nothing in this chapter restricts or prohibits
cooperation or joint administration of functions between a
municipality and a coastal resource service area organized
under the provision of this chapter upon initiation of a mutual
agreement for the purpose. A city which elects to be excluded
from an adjacent coastal resource service area under (a) of this
section shall establish informal procedures, as appropriate,
for the mutual exchange of information or cooperative administration
of district programs in agreement [ENTER INTO A MUTUAL AGREEMENT
FOR COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS] with the
coastal resource service area board from the adjacent coastal
resource service area.

*ok
clarification
of the
word
agreement
in the
provision*

shall not use language

Draft #2

District Coastal Management Program Regulatory Provisions

AS 46.40.030(4) is repealed and reenacted to read:

specific implementing land and water use regulations,
and additions or amendments to existing zoning and other
controls over the use of resources within the coastal area
which will be applied to manage the land and water uses
subject to the district program;

*This will be discussed
at AEMC meeting w/
lots of staff comments
unknown now*

see draft 1

*This still needs
some work, struck*

oh

Conditional Approval of District Coastal Management Programs

AS 46.40.060(a) is amended to read:

If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent. If the council finds that there are deficiencies in a district coastal management program as submitted, it may nevertheless approve the district program subject to modifications and conditions of approval specified by the council at the time of program approval. Modifications and conditions of approval specified by the council take effect as part of the approved district program unless they are rejected by the governing body of the coastal resource district within 90 days after the council's action. if a coastal resource district rejects any council modifications of the district program or conditions of approval, the deficiencies in the program shall be mediated and adjudicated in accordance with (b), (c) and (d) of this section.

Flexible District Program Completion Deadlines

AS 46.40.050 is repealed and reenacted to read:

Each coastal resource district shall, within six months of the effective date of this section, or within six months of certification of the results of the district's organization elections, whichever is later, submit to the council for its consideration and approval a schedule including dates for the completion and submission of the district coastal management program to the council. During the development of its coastal management program, each district shall submit progress reports concerning program development to the council annually, or more frequently, as determined by the council.

ok

see draft 1

AS 46.40.170(b) and (c) are amended to read:

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to prepare [MAKE SUBSTANTIAL PROGRESS IN THE PREPARATION OF] an approvable district coastal management program within the time limitations approved by the council for completion and submission of the district program under 40.050. [18 MONTHS OF CERTIFICATION OF THE RESULTS OF AN ORGANIZATION ELECTION OR WHICH HAS NOT SUBMITTED FOR APPROVAL OF THE COUNCIL A PROGRAM WITHIN 30 MONTHS OF CERTIFICATION OF THE RESULTS OF ITS ORGANIZATION ELECTION.] Preparation of the program shall be conducted in consultation with the coastal resource service

ok

area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established by the council [THIS SECTION].

need
addition

Issue-specific district coastal management programs.

AS 46.40 is amended by adding a new section to read:

AS 46.40.035. ISSUE-SPECIFIC DISTRICT COASTAL MANAGEMENT PROGRAMS. A coastal resource district may, with prior council approval, develop a district coastal management program which is less than comprehensive in its geographic coverage or which addresses only certain specific land and water uses and activities within the district. The council shall, by regulation, adopt standards for the development of ^{geographic coverage} issue-specific district coastal management programs. To initiate an issue-specific district coastal management program, the coastal resource district shall present a detailed program proposal to the council for its approval. The council shall, if it approves the coastal resource district's proposal, establish a schedule including dates for the completion and submission to the council of an approvable issue-specific district coastal management program. During the development of its program the district shall submit progress reports concerning program development to the council annually, or more frequently, as determined by the council.

New Uses of State Concern:

AS 46.40 is amended by adding a new section to read:

AS 46.40.075. NEW USES OF STATE CONCERN. If the council is informed by a state or federal agency or a coastal resource district of a new use of state concern within a coastal resource district with an approved district coastal management program, and the council finds that the new use of state concern is (1) not addressed in the district coastal management program and (2) restricted or excluded by the district program, it shall approve a schedule for the district to address the new use of state concern in its district program. If the coastal resource district does not approve and submit to the council for its consideration, within the time limitations approved by the council, amendments to the district program which accommodate the new use of state concern in a manner consistent with the provisions of this chapter and the standards and guidelines adopted by the council, or the council does not approve the district's treatment of the new use of state concern in its district program, the council shall direct that the deficiency be mediated and adjudicated in accordance with AS 46.40.060(b), (c) and (d). OK

State Agency Participation

AS 46.40 is amended by adding a new section to read:

AS 46.40.037. STATE AGENCIES. Each state agency *ok* shall provide available technical resource information to coastal resource districts developing district coastal management programs and shall coordinate its planning efforts under other statutory authorities for resources within the coastal area with the development of district coastal management programs by affected coastal resource districts. State agencies shall identify at the earliest practicable time uses of state concern which must be addressed by each coastal resource district in its district coastal management program and shall participate through comments and technical resource information, where appropriate, in the development of each district coastal management program.

AS 44.19.161(2) is amended to read:

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; [IN CARRYING OUT ITS DUTIES UNDER THIS PARAGRAPH, THE COUNCIL SHALL INITIATE AN INTERAGENCY PROGRAM OF COMPREHENSIVE COASTAL RESOURCE PLANNING FOR EACH GEOGRAPHIC REGION DESCRIBED IN AS 44.19.155(a)(1);]

Coastal Resource Service Area Boards

AS 46.40.140(a) is amended to read:

(a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts. Once the district coastal management program for a coastal resource service area is approved by the council and in effect, the board shall be given notice of and may provide comments and recommendations on the interpretation of the district program as it applies to specific land and water uses and activities subject to approval by a state agency implementing the district program in accordance with AS 46.40.090(a). If the coastal resource service area, or a portion of the area, included in a district coastal management program developed and adopted by a coastal resource service area board organizes to assume planning powers as a unified municipality, borough, or home rule or first class city, as set out in AS 46.40.210(2) (A)-(C), or as a second class city which meets the requirements of AS 46.40.210(2)(D), the district program continues in effect as the district program of the new local government, subject to amendments adopted by the governing body in accordance with this chapter.

AS 46.40.140(b) is repealed and reenacted to read: all

(b) Board members shall be elected at large by the qualified voters of the coastal resource service area. The board shall consist of five, seven, nine, or eleven members. The number of board members shall be determined by the commissioner of the Department of Community and Regional Affairs, in consultation with the local communities in the coastal resource service area.

AS 44.19.155(a)(1) is amended to read: all

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality, or member of a coastal resource service area board in the region; one public member shall be appointed from each of the following general regions:

AS 44.19.155(d) is amended to read:

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, he shall advise the alternate who may attend and act in place of the member. The alternate for a public member appointed after July 9, 1978, under (a)(1) of this section shall, at the time of his designation and throughout the period of his service as a permanent alternate, be the mayor or member of the assembly or council.

or member of a coastal resource service area board, within the region from which the permanent member is appointed. The alternate for a designated member serving under (a)(2) of this section shall be a deputy commissioner of the department, [OR] the director of a division in the department or, in the case of the division of policy development and planning, the deputy director of the division. The names of alternates shall be filed with the council. ok

AS 46.40.190(b) is amended to read:

(b) Nothing in this chapter restricts or prohibits cooperation or joint administration of functions between a municipality and a coastal resource service area organized under the provision of this chapter upon initiation of a mutual agreement for the purpose. A city which elects to be excluded from an adjacent coastal resource service area under (a) of this section shall establish informal procedures, as appropriate, for the mutual exchange of information concerning the development and implementation of the district program [ENTER INTO A MUTUAL AGREEMENT FOR COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS] with the coastal resource service area board from the adjacent coastal resource service area. ok

FYI

"ACMP IMPROVEMENTS PACKAGE"

This paper is a list of improvements to the ACMP that have arisen from three sources: The CPC Subcommittee which worked over the summer of 1981; the joint efforts of Senators Fahrenkamp and Gilman during the same period; and some outstanding proposals that were discussed by the CPC during the 1981 session of the legislature. The changes would take the form of new legislation or amendments to the ACMP regulations, depending on the nature of the problem to be addressed.

A. Results of CPC Subcommittee Discussions:

One of the persistent areas of confusion in the ACMP is the appearance or perception that district coastal management programs are a surrogate form of comprehensive planning which the municipal districts already have the right to undertake. The Subcommittee felt that the ACMP should be viewed as a resource management and allocation program, rather than the traditional form of comprehensive planning.

1. Specificity: The Subcommittee thought there was a need to increase specificity and clarity in the district programs. This is important to ensure clear understanding as to just what the binding provisions of the district program are. To address this concern, some amendments to the Alaska Coastal Management Act ("Act" hereafter) are suggested:

(a) Amend AS 46.40.030 to specifically require the "binding" provisions of the district program to be separately and clearly identified in the district program document; and further that the binding provisions be specifically "adopted" by the CPC as part of the ACMP regulations, while the remainder of the district program submitted would be "approved" by the CPC as evidence of the adequacy of the district's attention to the Guidelines and Standards.

(b) Provide, in AS 46.40.070, the opportunity for the CPC to conditionally approve district programs so that deficiencies can be directed for remedy by the CPC without otherwise impairing the district program's approval.

(c) Add, in the ACMP regulations, a procedure by which districts can approach the CPC on an issue-specific basis and declare their intention to resolve the issue through the ACMP process by amending the district program.

2. Uses of State Concern: The Subcommittee also felt the need to provide better focus for identification and attention to uses of state concern. Some suggestions to do this are as follows:

(a) Amend the Act to provide for the possibility of an "unanticipated use of state concern." The CPC should be empowered to determine, on the basis of testimony by a state or federal agency, that a new use of state concern has been

CCM
6/26/81

districts can have a hearing

identified in a district, and to direct the district to consider the matter within a set period of time.

Strengthened
4/16/84
no subject
2a

(b) Revise the Act and the ACMP regulations regarding state agency responsibilities and "regional planning". The revisions could require coordination of state planning under other authorities with district coastal planning efforts, and to require identification of uses of state concern by the state agencies at strategic points in the district program development or amendment process.

B. Results of the Senate Effort During the Intersession:

1. Provide for Legislative oversight of ACMP.
2. Consider providing for a reliable funding vehicle for continued development and implementation of district coastal management programs.
3. Address the issues raised by the consistency process. Many of these issues will be dealt with in Senate Bill 84, but some sentiment was expressed for a more direct approach to the matter in amendments to AS 46.40 (the Coastal Act) rather than relying on just what SB 84 will do in AS 44.62 (The Alaska Administrative Procedures Act.)

C. Pre-Existing Proposals for ACMP Improvements:

1. Eliminate the districts program completion deadline. This deadline has been extended on an individual basis, and is unenforceable in any event. History has shown general desire on the part of districts to develop programs, but history has shown as well, that coastal management is a complex business and that good programs often take time. Leaving the deadline in place could cast a cloud of the "legality" of a local program that is late.
2. Change the provisions for Coastal Resource Service Areas to allow a more flexible number of service area board members and to clarify that the CRSA planning boards are to remain in existence after their programs are approved in order to oversee implementation of the plans. Eliminate the requirement for cooperative agreements between CRSA boards and first class cities.

Sept 14

Arliss,

Here is a CZM update. I spoke with Risa King. She tells me that Betty will not have anything drafted until after there is more input--they sent letters and are waiting to hear from AOGA, etc. and until after the Municipal League meets. She said Betty identified five areas of possible action:

1. definition of the coastal zone
2. possible inclusion of some sunset provision to "keep them on their toes"
3. permit/ consistency
4. legislative approval of programs
5. definition of state/local responsibilities.

And that Don will continue his Title 29 work.

Apparently, tho, Betty has had Risa attach the various suggestions people have made into draft language form and onto the statutes. I asked that Risa let me see the earliest drafts. She also said, when I pointed out the legislation deadline that the agencies have, that ~~these~~ "those guys could go ahead and do what they want" about drafting legislation--apparently without Betty's direction.

OCM might be interested in doing their own drafting and stealing a march on Betty, according to my friend Kurt.

What would you like to do? Do you want OCM to do it and for us to be involved? There will be a "workshop" on CZM legislation at the November 5 AML meeting in Anchorage.

Margo

* 9/17/81 talked to Margo
Sh. will pursue w/ OCM
drafting Handle carefully
so not to stepping on
Senr. - suggest
revisions. Determine
strategy later -

Interim Subcommittee Report Summary

Major Differences Between Title 29 & 46

1. Title 46 applies only in the coastal area.
2. Title 46 requires State agencies to participate in, and comply with, district coastal management programs.
3. Title 46 authorizes land use planning in the unorganized borough by either locally elected Planning Boards or the Department of Community and Regional Affairs.

Benefits of the ACMP

1. The ACMP can resolve resource management conflicts between competing users and different levels of government.
2. The ACMP can streamline the review of development projects for local, state and federal authorizations.
3. The ACMP can achieve cooperative resource planning and management among many single purpose planning efforts initiated by private industry or local, State and federal governments.
4. The ACMP is the only state authority recognized under federal law which can limit the power of federal agencies over land and water use decisions in Alaska.

Commonly Expressed or Perceived Problems With the ACMP

1. The ACMP weakens local control over surrounding land use decisions.
2. The ACMP gives local governments too much power over state and federal land use decisions.
3. District Coastal Management Programs are unclear in how they intend to influence state and federal land use decisions.
4. State and federal agencies are vague in defining for local governments what the state and national interest is with respect to various land and water use decisions.
5. The ACMP federal consistency review is duplicative and excessively lengthy.
6. The staff of the Coastal Policy Council is located in the Governor's Office, Division of Policy Development and Planning.

MEMORANDUM

State of Alaska

9/4/81 Arless
FYI
C2M

TO: Coastal Policy Council
Interim Subcommittee
and Interested Parties
(distribution list)

FROM: *Bill Ross*
Murray R. Walsby
Coordinator
Office of Coastal Management

DATE: August 21, 1981

FILE NO:

TELEPHONE NO:

SUBJECT: August 28, 1981
teleconference agenda

Attached is the agenda for the subcommittee's third teleconference hearing scheduled for August 28, 10:30 a.m. Juneau time. Also attached is a current draft of the report prepared by the Office of Coastal Management and the report on Title 29 and Title 46 done by the Department of Law for the subcommittee's review. If you have any questions please give Bill Ross or Kurt Fredriksson a call at 465-3540.

Distribution List

Jon Halliwill, Mayor City of Haines
Lidia Selkregg, Municipality of Anchorage
Abi Dickson, City of Unalaska
John Katz, Commissioner Dept. of Natural Resources
Ernst Mueller, Commissioner Dept. of Environmental Conservation
Jim Souby, Director Division of Policy Development and Planning
Lee McAnerney, Commissioner Dept. of Community and Regional Affairs
Mark Stephens, CRA
Reed Stoops, DNR
Margo Waring for Senator Arliss Sturgelewski
David Dye for Senator Don Gilman
Resa King, for Senator Bettye Fahrenkamp
Rick Harris, Sealaska
Dan Ogg, Mayor Kodiak Island Borough
Mike Jefferies, Alaska Legal Services
Lauri Adams, Dept. of Law
Legislative Teleconference Networks

Attachments

Remember
Sept 4 1:30 L10
C2M meeting

AGENDA

Alaska Coastal Policy Council

Interim Subcommittee

Third Teleconference Meeting

August 28, 1981

10:30 a.m. Juneau Time

8:30 a.m. Anchorage Time

A. Purpose

The third teleconference meeting of the Alaska Coastal Policy Council Subcommittee review of the Alaska Coastal Management Program will be held on August 28, 1981. The purpose of the meeting is to review the work done to date by the Office of Coastal Management (OCM) for the Subcommittee and to discuss any additional work which should be accomplished before the Subcommittee meets with Senators Betty Fahrenkamp and Don Gilman in early September.

B. OCM Reports

1. Subcommittee discussion or comments on the materials sent from OCM to the subcommittee on August 19.
2. Subcommittee discussion of additional research needed from OCM.

C. Interim Work Up-dates and Meeting Schedules

1. September 4, Anchorage meeting with Senators Fahrenkamp and Gilman,
2. October Coastal Policy Council Meeting.
3. November Municipal League Meeting.

D. Public Comments and Questions in Time Remaining

The teleconference is scheduled to last 90 minutes. All stations are welcome to listen in and make comments or ask questions after the Subcommittee has finished its discussions.

MEMORANDUM

State of Alaska

TO: Jon Halliwell
James M. Souby
Co-chairpersons, Coastal Policy
Council

DATE: August 24, 1981

FILE NO: J-66-132-82

TELEPHONE NO: 465-3600 ex 48

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Comparison of Local
Government Planning
Powers under Titles
29 and 46 of the
Alaska Statutes

By: *Lauri J. Adams*
Lauri J. Adams
Assistant Attorney General

As background information for the Coastal Policy Council's work with members of the State Senate on possible amendments to the Coastal Management Act, you have requested that this office provide you with a comparison of Titles 29 and 46 of the Alaska Statutes as they relate to local government comprehensive planning and land use controls. Title 29 sets out the powers and limitations on powers of municipal governments in Alaska. AS 46.40 is the authorizing legislation for the coastal management program. 1/

There are three major areas of differences between the two statutory schemes which I believe merit discussion in connection with the council's study of possible changes in the structure of the coastal management program. These are: (1) AS 46.40 applies only in the coastal zone of the state; (2) in those areas where it applies, AS 46.40 alters the traditional balance between state and local government legal authorities over land use decisions; and (3) AS 46.40 provides a comprehensive planning mechanism for the coastal areas of the unorganized borough which lack local government units exercising the municipal planning powers conferred by Title 29.

Coastal Zone Boundaries

The geographical limitation on the authority of the Coastal Management Act is a significant factor in the operation of the coastal program. The physical boundaries of the coastal area are not uniform throughout the state.

1/ Provisions governing the creation, membership, powers, and duties of the Coastal Policy Council, which has oversight responsibility for the coastal management program, are found elsewhere in the Alaska statutes. See AS 44.19.155-162.

The Federal Coastal Zone Management Act, under which Alaska's program was developed, describes the "coastal zone" functionally, as consisting of the coastal waters seaward to the limits of the United States territorial sea and shoreward to the extent necessary to control shorelands, including islands, transitional and intertidal areas, salt marshes, wetlands and beaches, the uses of which have a direct and significant impact on the coastal waters. 16 U.S.C. § 1453(a).

The State Coastal Management Act follows this functional approach in determining the ACMP boundaries, by emphasizing the general relationships between the marine and the terrestrial environments and developing physical boundaries based on the landward and seaward limits of coastal biological and physical processes which must be considered in order to accomplish effective long-term coastal management. 6 AAC 85.040. The initial biophysical boundaries of the coastal zone, which are identified on maps published by the Office of Coastal Management and the Department of Fish and Game, may be altered for areas subsequently included in district coastal management programs. However, any modified boundaries must continue to extend inland and seaward to the extent necessary to include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands and beaches, and to manage uses and activities that have or are likely to have direct and significant impacts on marine coastal waters. 6 AAC 85.040(c).

This definition of the coastal area subject to the provisions of AS 46.40 includes roughly 33,000 miles of state coastline, along with the adjacent shorelands and coastal waters which directly interact on a physical and biological level. Nevertheless, even larger areas of the interior of the state are not under the jurisdiction of the Coastal Management Act. The significance of these geographical limitations becomes apparent in considering the other ways in which the coastal program in AS 46.40 differs from the Title 29 land use planning provisions relating to municipal governments.

State and Local Land Use Prerogatives

1. Participation of state agencies in local comprehensive plans.

The coastal program includes a statutory mechanism for assuring formal participation of state agencies in the review of comprehensive coastal resource plans developed by

coastal resource districts pursuant to AS 46.40. The Coastal Policy Council has responsibility for initiating "an inter-agency program of comprehensive coastal resource planning for each geographic region" of the state. AS 44.19.161. It also reviews and approves district programs before they take effect as part of the body of state law governing the regulatory and proprietary decisions of both state agencies and affected local governments in the coastal zone. AS 46.40.040-060. The council consists of nine public members, who must be elected representatives from designated coastal regions of the state, and seven state agency members who are the chief executive officers of the state resource agencies primarily responsible for land use decisions at the state level. AS 44.19.155. Through the council, the state agencies affected by local coastal resource plans under the ACMP formally participate in the review and approval of each district program. This decisional role afforded state agencies in connection with district coastal management plans is a unique feature of the ACMP; municipal comprehensive plans developed under AS 29 are not subject to the approval of any statewide body. In addition, the Coastal Policy Council functions to "establish continuing coordination among state agencies to facilitate the development and implementation" of the ACMP. AS 44.19.161 2/

This discussion does not suggest that state agency participation in the comprehensive planning process established for local governments under Title 29 is not obtained by municipalities. However, Title 29 does not prescribe a statutory role for state agencies in the development of comprehensive plans. Thus, it is probably accurate to conclude that, under the Coastal Management Act, the incentives for state agency involvement in the local coastal resource planning process and the oversight role directly granted to state agencies both are significantly greater than under Title 29.

2/ In addition, with respect to the participation of federal agencies in the development of district programs, the Coastal Policy Council is similarly empowered to "develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the State." AS 46.40.040(5). Moreover, the United States Secretary of Commerce is prohibited from approving a management program submitted by a state unless the views of the Federal agencies "principally affected by such program have been adequately considered." 16 U.S.C. § 1456(a).

Important purposes of the ACMP are furthered by these differences in approach between Title 29 and AS 46.40 with respect to the role of state agencies in local comprehensive planning efforts. Once a district coastal management program is approved by the Coastal Policy Council, state agencies are required to take whatever action is necessary with regard to their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area, in order to facilitate full compliance with and implementation of the local program adopted by the council. AS 46.40.200. A state agency which fails to comply with a district coastal management program in exercising its regulatory authority over resources within the coastal area may be subjected to an adjudicatory hearing before the council. After the hearing, the council may order the state agency to take any action which the council considers necessary to implement, enforce or comply with the district coastal management program. AS 46.40.100.

2. State agency compliance with local land use controls under Title 29.

Unified municipalities and home rule, and first and second class cities and boroughs are authorized to adopt planning, platting, and zoning land use controls within their municipal boundaries. AS 29.33.070-190; 29.43.040. The regulatory powers granted to municipalities under these provisions are considerable. AS 29.33.085 provides that the comprehensive plan of a local government contains a compilation of general policy statements, goals, standards, and maps "guiding the physical, social, and economic development" of the municipality. Zoning regulations may restrict the permitted uses of land, building structure size, open space, and population density and distribution within the municipality. AS 29.33.090. Platting regulations may prescribe the overall configuration, design, and public utility facilities and improvements required for local subdivisions. AS 29.33.150. See generally Jefferson v. State, 527 P.2d 37 (Alaska 1974) (decisions of the state Supreme Court have favored the broad exercise of legislative powers by local government units).

Local land use controls adopted by municipalities under their Title 29 powers may be enforced to regulate private development within the municipality in a comprehensive manner. However, as a general legal principle, states and their agencies are held to be immune in substantial respects from the applicability of local land use controls, unless

the legislature expressly directs otherwise. E.g., In re Suntime Inn Motel, 563 P.2d 125 (Okla. 1977); City of Scottsdale v. Municipal Court, 368 P.2d 637 (Ariz. 1962). 3/ An example of where the Alaska legislature has affirmatively directed specific state agencies to comply with municipal zoning requirements is the "public projects" of the Department of Transportation and Public Facilities and the University of Alaska. AS 35.30.010-.040. Public projects are defined in the statute to include a "public building or other structure, public work, or other facility, highway, or local service road constructed or maintained by the department" AS 35.30.040(2). Such facilities shall, by statute, "comply with local planning and zoning ordinances and other regulations in the same manner and to the same extent as other landowners." AS 35.30.020.

3/ The Alaska Supreme Court has not yet had occasion to decide the scope of a state agency's "immunity" from local land use controls where the agency action would violate a local regulation and the statutes are silent on the required compliance of the agency with municipal laws. Courts in other jurisdictions have adopted a variety of approaches in resolving this question. Some have opted for a blanket immunity for state agencies and others have distinguished among types of state agency projects or the exercise of particular governmental powers. See Brown v. Kansas Forestry, Fish and Game Comm'n, 576 P.2d 230 (Kansas 1978); In re Suntime Inn Motel, 563 P.2d 125 (Okla. 1977); Rutgers State Univ. v. Piluso, 286 A.2d 697 (N.J. 1972); Bloomfield v. New Jersey Highway Authority, 113 A.2d 658 (N.J. 1955); Nowack v. Dept. of Audit and Control, 338 N.Y.S.2d 52 (N.Y. 1973); Davidson Country v. Harmon, 292 S.W.2d 777 (Tenn. 1956). A complete analysis of the "immunity" doctrine is beyond the scope of this memorandum. For purposes of the present discussion, it is sufficient to note that in the more recent decisions courts seem to be engaging in a balancing of the state and local interests at stake in determining whether the state is immune from the application of local regulations. We therefore must caution against concluding that the "immunity" rule has universal application to state projects whenever the legislature is silent on the subject of compliance with local ordinances.

Similarly, in the statutes governing disposal of the surface estate of state lands, the legislature has specifically required plats for state subdivisions to comply with local subdivision ordinances adopted pursuant to Title 29. AS 38.05.045. (But see AS 29.33.150 which limits the applicability of certain platting regulations requiring capital improvements.) Access road widths for these subdivisions also are required by statute to conform to subdivision control ordinances of the local government units. AS 19.30.080.

Conversely, at least up until the 1981 amendments to the lands disposal statute were enacted in Chapter 113, SLA 1981, it was clear that state subdivisions were not required to comply with municipal zoning requirements. See former AS 29.33.150(b), enacted in § 6, ch. 85, SLA 1979, which is also discussed in detail in a 1980 Opinion of the Attorney General, "Effect of Local Zoning on State Subdivision Sales," March 24, 1980. However, AS 29.33.150(b) was amended in the 1981 legislative session in such a way that it now may be argued that the statute should be read as explicitly requiring state subdivisions to comply with local zoning ordinances. This result is not clear, however, and the application of local zoning restrictions to state subdivisions might still have to be analyzed under the general immunity principles discussed above and in footnote 3, supra.

Even where the state and its agencies are not found to be broadly immune from municipal land use controls, it is necessary to analyze each exercise of municipal regulatory authority under Title 29 for any conflict, express or implied, with state law. The state Supreme Court has decided numerous cases on the issue of preemption of local authority and some general principles have emerged from those decisions. 4/ The court has consistently rejected the doctrine of local preemption by the state's "occupation of the field" through extensive legislation in the same area. Jefferson v. State, 527 P.2d 37, 43 n. 33 (Alaska 1974); Ruby v. City of Fairbanks, 456 P.2d 470 (Alaska 1969). The test most frequently applied by the court is found in Jefferson v. State, 527 P.2d 37, 43 (Alaska 1974):

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether

4/ The court has not always been uniformly consistent in its approach to local preemption problems, however. See Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 UCLA-Alaska L. Rev. 1 (1973).

the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. [footnotes omitted].

More recently, the court has stated that it will find a conflict which requires the invalidation of the local ordinance "only where an ordinance substantially interferes with the effective functioning of a statute or regulation or its underlying purpose." Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1122 (Alaska 1978). Application of these tests is necessarily dependent on the precise set of circumstances surrounding each alleged conflict between state and municipal law. Thus, it is difficult to generalize regarding the practical extent to which this preemption doctrine limits the exercise of local land use controls. However, it is clear that where the conflict with state law is not apparent from the express language of a statute, it is at least necessary to find that the local ordinance and the state statute are "substantially irreconcilable" under the Jefferson test, or that there is a "substantial interference" with the functioning of the state law or its purposes under Liberati, supra, in order to find an implied prohibition of the local ordinance.

3. Local land use regulatory authority under AS 46.40.

Even recognizing that the immunity and preemption doctrines discussed above are likely to be construed narrowly in this state to favor the broad exercise of municipal legislative powers, the Coastal Management Act still effects a substantive change from the traditional legal relationship between state and local government units. The ACMP requires a local comprehensive resource management plan in the coastal area, including adequate methods and authorities which will be used to implement the program, to be submitted to a statewide body for approval. However, once a local program is approved by the Coastal Policy Council, it becomes part of the body of state law with which state agencies must comply in carrying out their various statutory responsibilities in the coastal zone. AS 46.40.200. The effect of this requirement is that the doctrines of immunity and state preemption which might otherwise nullify the application of local land use regulations to potentially conflicting state activities,

have no force in the case of approved district coastal management programs. This is a significant alteration of the balance of state and local government authorities which differentiates the ACMP from the grant of municipal land use regulatory authority in Title 29.

In addition to the changed legal prerogatives of state and local governments under AS 46.40, the state's adoption of a coastal management program which has been approved by the United States Secretary of Commerce pursuant to § 306 of the Federal Coastal Zone Management Act, 16 U.S.C. § 1455, also effects a change in traditional principles of federal preemption. 5/ Federal agency activities "directly affecting" the coastal zone, federal permits and licenses, and federally authorized activities on the outer-continental shelf which may affect the state's coastal zone must be conducted consistently with a state's approved coastal program. 16 U.S.C. § 1456. These "federal consistency" requirements of the federal Coastal Zone Management Act do depend on the state program meeting certain substantive requirements of the Federal Act. Alaska's coastal management program is an approved program under 16 U.S.C. § 1455, however. The significance of this feature of the ACMP is that, through "federal consistency," the state program, which includes district coastal management programs which have been approved by the Coastal Policy Council and incorporated as state law, can serve to regulate activities of federal agencies on federal lands, including the OCS, which impact the state's coastal zone but which would not otherwise be subject to the state's jurisdiction. Federal consistency thus enhances the land use regulatory authorities of municipalities with approved district programs over that available under Title 29 with regard to federal as well as state agency activities affecting the coastal area.

5/ While generalization is difficult, the law on federal preemption of state and local government regulations does not appear to construe local land use prerogatives as broadly as state preemption law does. A state or local regulation will be found invalid under federal law whenever it "stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67, 85 L.Ed.2d 581 (1941). See also *Ventura v. Gulf Oil Corporation*, 601 F.2d 1080 (9th Cir. 1979), summarily aff'd, 445 U.S. 947, 63 L.Ed.2d 782.

Planning Mechanism in the Unorganized Borough

The final area of significant differentiation between Title 29 and AS 46.40 involves the Coastal Management Act's provisions for the unorganized borough. AS 46.40.110-170. Under Title 29, the application of local government planning and regulatory powers is generally confined within the boundaries of each municipality which exercises planning and zoning jurisdiction. The legislature recognized, however, that large areas of the coastal zone have no organized local governments capable of developing the comprehensive resource management programs contemplated by the Coastal Management Act. Therefore, in AS 46.40 the legislature authorized the organization of special coastal resource service areas in the unorganized borough. AS 46.40.110. These service areas are created after a favorable local vote by the people residing in the area and are governed by an elected board representing the population of the service area. AS 46.40.140. The service area, through its board, is empowered to develop a comprehensive regional plan for the management of significant coastal resources located found in the area. The plan, which must include methods and authorities for implementation of the same enforcability as district programs in areas exercising local planning and zoning powers, 6/ becomes part of the state coastal program once it is approved by the Coastal Policy Council. AS 46.40.200; 6 AAC 65.100. District programs in the unorganized borough are then required to be implemented by the appropriate state agencies "in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district." AS 46.40.090.

AS 46.40 effectively authorizes local land use planning and regulation in large areas of the state's unorganized coastal region where Title 29 has no general applicability. Thus, the coastal program's mechanism for facilitating regional planning and regulation of land use decisions in the unorganized borough is significantly different from the municipal planning powers exercised by cities and boroughs organized as local governments pursuant to the requirements of Title 29.

6/ In coastal resource service areas which do not have and exercise zoning and other land use controls on the use of resources within the coastal area, effective implementation must necessarily depend upon the existence of authorities of state agencies to regulate uses of coastal resources. The state agencies must incorporate the local provisions of each approved program as an additional set of rules under which it exercises its existing regulatory authorities. AS 46.40.090(a); 46.40.200.

Conclusion

Two central policy issues emerge from this comparison which will undoubtedly have to be addressed in connection with the council's consideration of the advisability of incorporating basic features of the coastal program into Title 29 local government planning provisions. The first question is the extent to which it is desirable to alter the existing relationship between the state and local governments in order to enhance local land use authorities on a statewide basis. In this regard, the ACMP offers a model for adoption of local comprehensive plans, and zoning and platting regulations as state law after review and approval by a statewide administrative body. State immunity from and preemption of local land use controls would largely be abrogated under this scheme of land use regulation applied statewide.

The second issue to be addressed is the extent to which comprehensive planning and land use regulations should be encouraged in the unorganized borough statewide without first requiring that a general purpose local government entity be formed under Title 29. This question in turn involves a consideration of the importance of continuing to provide the "local control" incentives for the creation of new local governments in the unorganized borough and the likelihood that the current system will, without changes, accomplish the statewide organization of additional regional local governments. 7/

7/ A note of caution is in order here regarding the possible expansion of coastal resource service areas for the purpose of providing land use planning and regulatory authorities in the unorganized borough. A principal purpose of the state constitution's local government article was to avoid a multiplicity of special purpose districts in the unorganized borough, each of which had its own governing body providing piecemeal local government services. See Alaska Constitution Art. X, §§ 1, 5 & 6. We perceive a potential for legal impediments in the future if special service districts in the unorganized borough multiply without any mechanism for unification of services, functions and control.

Jon Halliwell
James M. Sou...

August 24, 1981
Page 11

From this discussion of the significant differences between Title 29 and AS 46.40 with respect to the land use planning and control prerogatives exercised by local communities under each statutory scheme, it is possible to begin to formulate changes in the ACMP which the council and the Senate subcommittee agree would improve the overall functioning of the coastal program. I hope that this discussion has been useful in setting the stage for consideration of appropriate amendments to the Coastal Management Act. If I can provide further clarification or be of any additional assistance to the Council or the Senate Subcommittee please do not hesitate to contact me.

LJA/jb

DRAFT

Benefits Alaska and Other States Have Realized

DRAFT

Through Coastal Management

For two years now, the Division of Policy Development and Planning has conducted reviews of federally initiated or regulated projects in Alaska's coastal zone to determine whether these projects were consistent with the Alaska Coastal Management Program (ACMP). These reviews were based upon the interim (prior to district program approval) management structure of the ACMP passed by the Coastal Policy Council and approved by the legislature with input from local, state and federal agencies. Once a district program is approved, the procedure varies depending on the methodology chosen by the local government to implement its plan. The following discussion has two parts:

1. Case examples of federally regulated projects reviewed for consistency under the interim management system including two examples from other states; and
2. Case examples of projects where there is a district program being developed or in effect.

HOW FEDERAL CONSISTENCY HAS BEEN USED IN ALASKA

Waterflood

The waterflood project involved the construction of facilities to take in and treat sea water, transfer it to injection centers, and then inject it into the oil reserves of Prudhoe Bay. The resultant increase in reservoir pressure would increase total oil recovery. It was crucial from an economic standpoint for both the state and the oil industry to proceed with the project as quickly as possible. Current Prudhoe Bay production reduces the oil field's natural pressures and make the chances of recovering a meaningful percentage of the field's total reserves less likely. The project however, involved constructing a lengthy causeway into the Beaufort Sea which could impact fish migration patterns, entrap fish in the intake, and change nearshore erosion and sediment transport. Through the ACMP consistency process a monitoring program was developed that would allow the project to proceed while requiring the collection of data upon which to not only judge the impact of this project, but also to better guide future decisions on similar developments. While the monitoring program created additional costs for the applicants, it eliminated further regulatory delays and will provide the information necessary for both the oil industry and regulatory agencies to use in designing and authorizing future oil related projects in the Beaufort Sea.

Mud Sump

In another North Slope development project Sohio planned to construct a waste sump(pit) to contain used drilling muds and cuttings. The location chosen by Sohio for the Sump was extremely close to the shoreline. During the review process, it became apparent that while the

state agencies had developed stipulations which could allow the project to proceed in a manner consistent with the ACMP, the federal agencies were prepared to object to the issuance of the necessary Corps 404 permit. In light of this conflict, the Office of Coastal Management (OCM) used the ACMP interim management system to clarify, via stipulations, how the project could proceed and still satisfy the remaining objections. While the review process was lengthy, the federal agencies withdrew their objections based on the ACMP consistency determination and the permit was issued. Those objections, had they not been withdrawn, would have further delayed the permit's issuance or possibly resulted in the permit being denied.

Auke Bay

The Alaska Department of Transportation and Public Facilities plans to develop a floating breakwater and moorage facility at Auke Bay to help solve the need for more protected moorage in this part of Juneau. After the completion of the facility, the City and Borough of Juneau will take over management and ownership. A number of state and federal agencies, along with a few citizen groups, objected to the project on the grounds that significant impacts to Auke Bays natural resources were likely and not being adequately addressed in the permit application. OCM was able to resolve these concerns by facilitating an agreement between the applicant and the City and Borough of Juneau to prepare a Marine Development Plan for Auke Bay. This plan would include all of the planning efforts expended to date and would also specifically address all of the problems and concerns identified with the project as well as

any other facilities which may be needed at Auke Bay in the future. As a result of this coordinated effort, the state and federal agencies certified the permits in review, avoiding lengthy delays.

BENEFITS OTHER STATES HAVE REALIZED THROUGH COASTAL MANAGEMENT

Twenty-five coastal states have federally approved coastal management programs. Each program has been adopted to solve resource development problems experienced in their respective coastal areas. Two state programs which face resource issues familiar to Alaska are North Carolina and Maine. Development along North Carolina's shoreline and waterways often requires an individual Corps of Engineers section 10/404 permit, state 401 water quality certification and state coastal management consistency determination which together can impose significant time delays and procedural burdens on private developers. The State of Maine, like Alaska, is currently being called upon to support offshore oil and gas development operations in areas extremely important to the state's commercial fishery economy. The following are brief examples of how these two states have used their coastal management programs to help resolve these issues.

North Carolina and Section 10/404 Permits

North Carolina has used its state coastal management program in a very positive way to simplify the issuance of section 10/404 permits administered by the Corps of Engineers along North Carolina's coast.

In February 1981 North Carolina and the Corps of Engineers reached agreement on the issuance of a Corps General Permit whereby the Corps essentially defers to the state's coastal consistency determination on approximately 80% of all section 10/404 permits. The general permit shortens the normal permit review time by approximately three to four weeks.

Under North Carolina's system an applicant submits a joint state-federal application to the state's Office of Coastal Management and the Corps of Engineers. From that point on the applicant deals solely with the state. The state forwards its determinations of the projects consistency with the coastal management program and 401 water quality certification to the Corps who then sends a final General Permit acceptance letter to the applicant.

From OCM's preliminary analysis it appears North Carolina has successfully used its coastal management authorities in conjunction with its 401 water quality certification authorities to lessen the federal regulatory burden placed on state residents while still protecting national and state resource management interests.

For additional information contact: Kenneth Stewart, Director
North Carolina Office of
Coastal Management
(919)733-2293

Maine and NPDES Permits on the OCS

Maine used its coastal management program to allow OCS development to occur while protecting a valuable fisheries resource on the Georges Bank. Maine's coastal management program created a public review board of citizens who biweekly hear the staff's recommendations on projects. This board felt strongly that the draft National Pollutant Discharge Elimination System (NPDES) permit EPA had sent to Maine for its concurrence on consistency with Maine's coastal management program did not sufficiently protect maine's fisheries resources. The board developed stipulations which would make issuance of the permit to discharge drill muds and cuttings consistent with their program by requiring discharges into deeper water and greater dilution of the mixture. The applicant, Exxon, accepted these stipulations in order to proceed as soon as possible, since a lengthy lawsuit would have delayed the exploration project if EPA had not accepted the State's consistency determinations and then enforced the mitigating measures. Without the consistency requirement of the coastal management program, Maine would have had no input on the project and would have had to rely on EPA alone to protect the state's fisheries resources.

For additional information contact: Ann Pistell, Maine

Department of Environmental

Protection

207 289-2111

or

Rob Elder

Maine State

Planning Office

EXAMPLES OF HOW DISTRICTS HAVE USED THE ACMP TO RESOLVE ISSUES

The development of district coastal management programs provides several benefits to local governments in Alaska. Not only are funds made available for the inventory of local resources and planning, but the communities are provided a formal role in state and federal land use decisions. Once a district program is approved, OCM conducts an implementation workshop where the state and federal agency personnel are introduced to the new groundrules for resource use decision making in the area covered by the district program. The views of local governments must receive "great weight" in the balancing of views leading to a consistency determination by the state. The examples which follow describe the benefits achieved in the development stages of a district program and the last two describe how implementation of an approved program has benefited local needs.

Cordova - Eyak Lake AMSA

On February 9, 1981, the Coastal Policy Council approved the Cordova Coastal Management program as submitted by the City of Cordova. In its approval action, the Council recommended the preparation of a cooperative management plan for Eyak Lake, recognizing the Lake's natural resource values and the pressures on these values as land development adjacent to it increases.

The Eyak Lake project is a good example of a cooperative planning and management effort to deal with issues which transcend municipal boundaries and affect not only the municipality, but also state and federal interests and Native corporation land holdings. This is so because Eyak Lake is partly within the boundaries of the City of Cordova, and partly in the unorganized borough. In order to maintain the Lake's natural resource values while accomodating future development, a special management effort involving all the interested parties is underway.

A Study Team has been formed to formulate and guide the planning effort with the City of Cordova assigned the role of lead agency. The Study Team consists of the following groups: City of Cordova, Eyak Corporation, Alaska Office of Coastal Management, Alaska Departments of Community and Regional Affairs, Fish and Game, Environmental Conservation, and Natural Resources, the U.S. Fish and Wildlife Service, and the U.S. Forest Service.

Project Goals are to develop a cooperative management plan which will:

1. accommodate existing and future residential and commercial development within the planning area;
2. maintain and/or improve the water quality of Eyak Lake;
3. maintain and/or improve the fishery production of Eyak Lake;

4. maintain and/or improve the wildlife habitat values associated with Eyak Lake; and
5. maintain and develop recreational opportunities and maintain the scenic values associated with Eyak Lake.

A work program and contract has been endorsed by the Study Team and a private consultant hired to prepare a draft report, scheduled for completion by April 30, 1982.

For additional information contact: Perry Lovett, City Manager
City of Cordova
P.O. Box 1210
Cordova, AK 99574

Sitka - General Permits

The City and Borough of Sitka is a good example of a local government using its district program to lessen the time it takes for the U.S. Army Corps of Engineers to issue a 404 permit and increase the predictability of the Corp's decision for the permit applicant. Based on its coastal resource inventory and local public input, Sitka's program has proposed that six general permits be issued by the Corps of Engineers for portions of Sitka's roaded areas. If the proposal is successful, individual permits will no longer be needed for those development projects covered under the general permits. Developers could obtain the

necessary federal approvals at the local level in a fraction of the time it normally takes under the individual 404 permit review process.

Sitka's Coastal Management Program has recently been given conceptual approval by the City and Borough Assembly and received encouragement from the Corps of Engineers in its application for general permits. Review of the general permit proposals have also received strong support from other key federal and state agencies involved in the 404 permit review process. For example, the U.S. Environmental Protection Agency's June 1st, 1981, comments to the City and Borough of Sitka state:

"The Sitka Coastal Habitat Evaluation of the Draft Program is well done and provides precisely the kind of specific resource information needed to conduct reviews of Section 404 permit applications . . . we strongly support your implementation strategy calling for general permits."

Based on the favorable response received to date by state and federal agencies, Colonel Lee Nunn of the Corps of Engineers recently assured Sitka the Corps will expedite its processing of the general permits as much as possible to assist Sitka's Coastal Management efforts to streamline the 404 permit system for the residents of Sitka.

For additional information contact: Michael Schmidt

City and Borough of Sitka

Planning Director

747-3294

Summary:

There are currently six approved district coastal management programs in the ACMP with approximately twelve more expected to seek Coastal Policy Council approval during FY 82. As local, state and federal levels of government gain experience in operating under the ACMP it is becoming apparent that local coastal management planning can resolve problems if districts clearly describe what they want to achieve in managing their coastal areas and are willing to work with other governmental and private interests to accomplish the task.

Seward Highway Reconstruction

This project within the Anchorage Coastal Zone Boundaries involved rerouting the highway as it crossed an area which receives heavy recreational use. The Municipality and the State Division of Parks (the major land manager in the project area) expressed concern over maintaining the recreational usage which was specifically detailed in the approved Anchorage Coastal Management Program. The Department of Transportation and Public Facilities (DOT/PF) had applied for the Corps permit to do the reconstruction work but the public notice reflected none of the above concerns. The consistency process reinforced the municipalities' objections and the result was issuance of a Corps permit requiring the work to proceed with appropriate stipulations. Those stipulations and other agreements between the concerned parties, allowed the project to proceed while lessening the impact to a local sport fishery and maintaining recreational access. Thus, while it resulted in DOT/PF doing redesign work, the direction of the Anchorage Coastal Management Program was followed.

Viewpoint Ventures

This housing development was projected to occur in an area which the Anchorage Coastal Management program designated as suitable for coastal development. However, the access road to the subdivision required a Corps permit since it crossed wetlands. The wetlands are to be crossed in close proximity to Potter's Marsh, a state game refuge. After much interagency discussion, the state agencies certified the project based on the guidance for stipulations provided by Anchorage which would have allowed the project to proceed consistently with their program.

Federal agencies, however, objected to the project. Due to the presence of Anchorage's program and the Municipality's findings that the project as stipulated, was consistent, the federal agencies eventually withdrew their objections and the project was allowed to proceed.

Summary:

Almost 1000 federal consistency determinations have been made to date. Each involved the coordinated input of state and local concerns. Often through OCM's mediating procedures, the review was expedited or conflicts were resolved. The resulting discussions reflected the balancing aspects of both the ACMP standards and the approved district program to protect important natural resource values, while encouraging and allowing sound resource use and development.

DRAFT

Commonly Perceived Problems with the
Alaska Coastal Management Program

DRAFT

Over the last year the Coastal Policy Council has heard from a wide variety of people on what they feel is wrong with the ACMP. Based on its request at the last teleconference to analyze some of the major problems, the Office of Coastal Management (OCM) has reduced the array of concerns to six commonly perceived problem areas. The following provides background information on each problem and outlines possible solutions. This is not, however, an exhaustive listing of all stated problems. OCM would look to the next teleconference with the Coastal Policy Council subcommittee and the September meeting with Senators Fahrenkamp and Gilman for further guidance on this issue.

1. Loss of local autonomy

One of the most serious problems with the ACMP from the viewpoint of a few local officials is that a coastal resource district must submit its local coastal management program to the Coastal Policy Council for review and approval. Under conventional Title 29 planning authorities, local communities develop and approve their local plans independent of mandated state and federal involvement. The ACMP, on the other hand, requires local governments to involve state and federal agencies in both the development and approval of the district coastal management programs. Once approved, the district program is then legally binding on subsequent actions by

all levels of government. Plans approved without state and federal involvement under Title 29 are not legally binding beyond the local government levels.

Options:

While many local officials view the benefits of federal and state compliance with their district programs as worth the cost of state and federal participation in the district program development and approval process, some continue to object to requirements that other government agencies participate in approving the programs content.

Two options can be identified for responding to concerns with state and federal participation in district programs.

1. Amend the Alaska Coastal Management Act to make development of district programs voluntary instead of mandatory. Those few districts which object to state and federal participation could elect not to develop a program and thereby avoid working directly with state and federal agencies. These districts would of course lose the benefit of state and federal consistency with their local development and conservation plans, and their comments would not be given "great weight" in consistency reviews of federal actions by the state.

2. Amend the Alaska Coastal Management Act to do away with the requirements of state participation in the district program development and approval while maintaining the requirement of state compliance with the locally approved program. Although this option would solve the problem of state involvement in the district program there is no way in which the federal agencies can be excluded from the district approval process while still maintaining the requirement of federal consistency with the district program.

2. Too much local control

While some local officials feel the ACMP diminishes local autonomy, other participants in the ACMP feel the ACMP gives local government too much power, particularly the "great weight to local comment" provisions of the consistency review. The Alaska Oil and Gas Association (AOGA) has been the most vocal in claiming that great weight to district gives local governments far too much control over uses and activities of national and state importance. Basically, AOGA believes the views of local governments with approved district programs should not be given "great weight" by state or federal officials responsible for authorizing oil and gas development activities. Similar concerns have been expressed with respect to the protection of resources of national or state importance. Some state and federal officials fear the ACMP will give local governments too strong a voice in state or

federal decisions which are designed to protect important resources from development pressures.

Options:

The ACMP was created by the legislature to enhance the role of local governments in state and federal coastal use decisions beyond that already provided under Title 29 planning and zoning powers. It did not, however provide coastal communities with blanket veto power over uses or activities which are clearly in the national interest whether these uses or activities are either "development" or "protection" oriented.

Two options can be identified for responding to concerns with the role of local governments in state and federal resource use decisions.

1. Amend the ACMP regulations to explicitly define uses of state and national concern and establish criteria ^{for} when a local governments view must be overridden to protect the state or national interest.
2. Adopt the approach taken in the administration's proposed uniform permit procedures and Senate Bill 24, introduced in the 1981 legislative session. ^{SB 84} would grant the local government with an approved district program the right to review and comment on proposed state and federal resource use

decisions and give the local comments "great weight", but not a veto, in the decision when they do not arbitrarily or unreasonably restrict or exclude a use of state concern, and when the local comments provide findings and conclusions for their recommendations based on the district program.

3. District Programs take too long to complete and are unclear in what they intend to accomplish

District programs currently take from one and one half to four years to develop and approve. Many people feel these timeframes are too long. This concern is based partly on the fact that although the focus of the ACMP is on local planning and control, only six out of a possible 35 district programs have been approved to date. When viewed against the time it takes to develop comparable local or state land use plans, however, the two to four year time period for district programs does not appear unusual. For example, it took approximately four years for the Alaska Water Study Committee to complete the South Central Level "B" Study and approximately two years for the Department of Natural Resources to complete the Haines-Skagway Regional Land Use Plan.

A more serious problem ~~That~~ has been raised by several state and federal agencies relates to the failure of some district programs to clearly describe how they will accomplish their management objectives, or to clearly describe what resource conflicts the program intends to address. Agencies are reluctant to support programs which lack clear statements of the resource development issues facing the community. The

agencies are hampered in their implementation of those programs which are missing clear policies, standards or other enforceable provisions for making specific resource use decisions.

Options:

Concerns over the length of time it takes to develop a district program are closely related to the eventual usefulness of the approved program. Many might feel two years is too long a period to develop a program which resolves no serious coastal issues in the community and makes no attempt to clearly state its coastal policies and specific management procedures. On the other hand, four years might seem a reasonable period of time for a district program which chooses to identify and solve a number of major coastal development issues which demand detailed management objectives, policies and standards capable of being used by local, state, and federal decision makers.

The following options are identified for resolving problems with the timing and quality of district programs.

1. Amend the Alaska Coastal Management Act to make development of district programs voluntary instead of mandatory. Those districts with few significant coastal issues or with little desire to guide state and federal resource use decisions in their boundaries would not be forced to develop a mediocre program of little benefit to the community or state and federal agencies.

2. Revise the ACMP so that a district can come before the Coastal Policy Council early in their program development to formally identify the specific resource management issues it intends to address through its program, the timeframe it feels is reasonable to accomplish the job and how the state and federal agencies involved in the particular resource issue can assist the district in developing a useful program. This approach would allow all ACMP participants to know early in the district program development process what issues the district intends to work on and how long it can reasonably be expected to take.

4. Duplicative and Excessively Lengthy Coastal Consistency Review

Some observers and participants in the ACMP believe that having the Office of the Governor (through the Division of Policy Development and Planning) make consistency determinations is duplicative of existing review processes and therefore more time-consuming for applicants. The contention is that existing review processes are adequate to incorporate the consistency determination and thus the need for a separate coastal consistency review by DPDP can, and should be, eliminated.

Since DPDP's review is a coordinated review which relies on the technical expertise from state agencies and local districts prior to decisions, DPDP's determination often is the final State decision an applicant receives. DPDP, for example, awaits all

other regulatory decisions, such as DEC's Certificate of Reasonable Assurance under Section 401 of the Clean Water Act, prior to issuing the consistency determination. Awaiting all such decisions is required by ACMP regulation and ensures that DPDP issues a coordinated response. Often in the process of consolidating these responses, DPDP expedites the project review by encouraging agencies to complete their review in a timely manner, especially if an applicant requested an expedited review due to emergency conditions. Thus, the consistency review is the last decision, but its timeliness is largely dependent upon the timeframes of other agencies.

The Alaska Coastal Management Act does encourage the use of existing mechanisms to implement the ACMP. The Administration has agreed that the Office of the Governor should not have extensive regulatory powers which could be accomplished by a line agency. The consistency review process should, however, remain a coordinated review which results in a comprehensive regulatory action. In this way, both the balancing aspects and the conflict resolution aspects of the ACMP can be fulfilled. (See the section on environmental mediation for more discussion on this point.)

Options:

Both the Administration, through the Uniform Permit Procedures regulations, and the Legislature, through the various versions of SB 84, have addressed the issue of regulatory reform. Both efforts set

definite timeframes for the issuance of state permits, including consistency determinations. Each effort has sought to find the appropriate line agency which has an existing review system that could incorporate necessary consistency reviews on appropriate projects. This would result in DPDP doing consistency reviews only on those projects for which no prior existing regulatory review process was available, such as federal grant's direct federal actions, and activities on the Outer Continental Shelf, (as well perhaps for projects which are of such a magnitude as to justify Governor's Office coordination and decision.)

1. The Legislature could pass SB 84 in its current form. The Uniform Permit Procedures regulations would then be revised to reflect the law, and re-adopted by the Coastal Policy Council.
2. If SB 84 does not pass, the Administration would implement the Uniform Permit Procedures regulations.

Either option will remove DPDP as the decision-maker on those projects which can be reviewed by other existing regulatory procedures, while setting definite time-limits for the issuance of all regulatory decisions, including consistency determinations.

5. The ACMP's Jurisdiction is Geographically limited to the Coast

A frequent criticism of the ACMP has been its failure to benefit state or local governments outside of the coastal zone. The ACMP provides for

the election^{of} planning boards (Coastal Resource Service Area Boards) in coastal areas of the unorganized borough and requires state and federal agencies to be consistent with district coastal management programs when authorizing coastal uses and activities. Outside the coastal zone, however, there are no formal local planning bodies in the unorganized borough nor any requirement for state and federal consistency with local programs, be they in the unorganized or organized area of the state.

Two factors led to creation of a strictly coastal oriented program. First, the federal Coastal Zone Management Act requires only those federal land use activities in a state's coastal zone to be consistent with the state program. There is no legal requirement for federal land use decisions to be consistent with state programs outside of the coastal zone. The second factor supporting a strictly coastal oriented program is that the majority of Alaska's population and natural resource wealth reside within Alaska's coastal areas. Approximately three-fourths of Alaska's population live within ten miles of the coast. It is also along the coast where major economic development activities like commercial fisheries, timber production, oil and gas development, tourism, and transportation systems are most intense and diversified.

Options:

Two options can be identified for expanding the benefits of the ACMP to areas outside of the coastal zone.

1. Amend Alaska Title 29 local planning and zoning authorities to allow the election of Local Planning boards in both coastal and interior areas of the unorganized borough.

2. Amend Alaska Title 29 local planning and zoning authorities to require all state agencies to be consistent with local land use plans when authorizing or conducting uses or activities under the state agencies existing authorities. Federal consistency with local plans can not be extended to areas outside of the coastal zone without major changes to the federal Coastal Zone Management act or entirely new federal legislation.

6. Staff to the Coastal Policy Council are located in the Office of the Governor

The Alaska Coastal Management Act created the Office of Coastal Management (OCM) to serve as staff to the Coastal Policy Council. For administrative purposes, the Legislature placed OCM within the Division of Policy Development and Planning in the Governor's Office. Many individuals have expressed the opinion that having the Council's staff in the Governor's Office is inappropriate. Major resource policy issues frequently come before the Council that may conflict with the Administration's policy. Having OCM within the Administration's Executive Office has the potential for creating a dual loyalty question for the Council's staff to support the Council or to support the administration. If OCM's location does not rigidly bind it to follow

Administration policy, then it can investigate and advise on behalf of both state policy and other council members' viewpoints.

The Council has considered this issue in the past and unanimously declared that OCM should be a free-standing entity which would be connected to the Governor's Office for Administrative purposes only. During the 1981 Legislature SB 84 also attempted to legally transfer OCM to the Department of Community and Regional Affairs but failed to pass. Finally, in approving state general fund appropriations to the ACMP, the Legislature transferred the appropriations from the Governor's Office to the Department of Community and Regional Affairs.

Options:

1. Amend the Alaska Coastal Management Program to place OCM in the Department of Community and Regional Affairs.

DRAFT

Conflict Resolution through the ACMP

DRAFT

The ACMP federal consistency process when used as a way to resolve land and water use disputes has been pointed out as one of the major advantages of the ACMP. The Coastal Policy Council interim subcommittee has been asked whether or not any other review processes exist in the State which can perform this important function if the ACMP were repealed, or in those areas of the State not covered by the ACMP.

To answer this question, it is necessary to understand what factors allow the ACMP federal consistency process to be successful in conflict resolution. There are three areas in which a conflict resolution process needs to have authority and competence in order to operate effectively.

(1) Institutional: The mandate or underpinnings of the process must specifically acknowledge the need for compromise, negotiation, and dialogue. The heart of ACMP decision-making is that it fosters balanced comprehensive resource management. Balancing resource allocations among competing user groups is an essential component of the ACMP. When a conflict arises in the course of a federal consistency determination, the ACMP is capable of being applied in a manner which addresses the multiple uses and resource allocations possible. The conflicting parties, generally an applicant for a federal permit and a state or federal agency, can use the ACMP as a framework for resolving the dispute.

Of additional importance here is the respect that the institutional framework has with the involved parties. Though often based on the personnel involved (see #2 below,) the process itself must be seen as having an integrity which is stronger than the individuals involved. In the case of the ACMP consistency process, many observers view it as an "umbrella" which can provide coordinated governmental decision-making at the state level. Thus applicants, once they learn that the ACMP can mediate difficult resource conflicts, and agencies have been willing to let OCM attempt to work out an acceptable compromise which applies the ACMP standards in a balanced manner.

(2) Interpersonnel: The skills of the people involved cannot be discounted. At one level, the need for technical knowledge is obvious. Lack of knowledge in a particular area is seldom a prerequisite for excellence. However, experience has shown that thorough technical knowledge comparable to the resource experts one is mediating between is not always necessary. Of crucial importance is the ability to reason accurately and to communicate conflicting and occasionally emotionally laden positions to the other side. Interpersonnel skills which can facilitate dialogue and develop compromise solutions often are more beneficial than in-depth technical knowledge. Just as someone who is technically at a loss to comprehend the issue at hand will not be successful, the most informed observer will not succeed if he or she cannot communicate well with others, and more importantly, help the disputant parties to communicate with each other.

(3) Legal: The legal basis of the process can be different than the institutional one. In the case of the ACMP, the consistency determination is a legally binding decision. Hence the mediation services offered are not merely to resolve other people's disputes. Rather, the mediation becomes necessary when parties disagree over what the consistency determination should be. In some sense it is more appropriate to talk about this process as binding arbitration rather than mediation, since the ACMP consistency determination, while appealable, is a binding legal action. Thus legally it is important that the rules for how the consistency determination is eventually made be clearly understood and accepted by each party. These rules need to be specific enough to eliminate the perception of "ad hoc" decision-making; broad enough to ensure that more than one resource (e.g., economic alone or habitat protection alone) will influence the final decision, and clearly identify that "balancing" is an integral part of the decision-making process. The ACMP standards accomplish all of these. They comprehensively outline minimum standards for major land and water resource uses, while allowing for necessary deviation on the basis of a lack of feasible and prudent alternatives. This is why the consistency determination always quotes the ACMP standards and gives the rationale whenever it stipulates a particular project, so that all involved know how and why the decision was reached.

If the ACMP were repealed, or in order to create the same process for the areas of the State outside the coastal zone, there would need to be then, a process which (1) has the institutional recognition of being responsible to and able to resolve disputes, (2) has the qualified

personnel to resolve disputes, (3) and if it was a decision maker itself, has sufficiently detailed substantive rules for decision-making which also include balancing as a factor.

It is difficult for OCM to say whether or not other existing state regulatory procedures could replace the ACMP in this role. The major resource agencies such as ADF&G, DEC and DNR are seen by many observers to have specific mandates to address and constituencies to foster. It is not OCM's position to ascertain if those agencies would be perceived as giving the legitimate parties involved a fair shake on overall resource management decisions. The key question agencies other than OCM face is whether or not they can, without the ACMP, consider and mediate land and water use conflicts legally and competently beyond those specific interests for which they have clear statutory responsibility. The next question is whether they have substantive rules which give enough guidance on how to decide, so that the appearance of total discretion is eliminated. Only in this way will the conflict resolution personnel have the stature and trust to successfully settle environmental and resource allocation disputes.

A word should be said here for the ACMP consistency process when SB 84 passes and/or the Uniform Permit Procedures regulations are adopted, provided that the ACMP is not repealed. Both of these would authorize DNR or DEC or DPDP to make conclusive consistency determinations, after interagency review, giving great weight to appropriate comments and balancing competing factors. These agencies will then have the legal benefit of the ACMP, with its substantive rules for decision-making and

criteria for when and how to balance, and will have the sole responsibility for making the conclusive consistency determination for a particular project. Provided that these agencies do indeed consider all the applicable standards (and not just those with which they had a prior legal affinity), and that a full range of input is available prior to the balancing, their employees, if qualified, should be able to successfully mediate disputes in the coastal zone. The fact that their reviews are conclusive should enhance their position to negotiate with all parties. Of course, OCM could always be available (as a "true mediator," since the final decision would rest with the deciding agency) to assist in this task when requested.

Coastal states plan to be withdrawn

Associated Press

Washington — Facing a possible defeat in Congress, the Reagan administration is withdrawing a proposed regulation that coastal states say would have given Interior Secretary James G. Watt too much control over offshore oil drilling.

The administration's decision was announced Monday by Rep. Norman D'Amours, R-N.H., chairman of the House Merchant Marine subcommittee on oceanography. He called it "a major victory for the coastal states."

The move also was applauded by Michael L. Fischer, executive director of the California Coastal Commission, as "a significant victory for state rights, certainly in the coastal states."

The full Merchant Marine Committee passed a resolution of disapproval 20-15 last week despite heavy administration lobbying against the measure, which was sponsored by Reps. Gerry Studds, D-Mass., and Joel Pritchard, R-Wash. A similar resolution was pending in the Senate Commerce Committee.

D'Amours said the administration withdrew the regulation "because it did not want to suffer defeat on the House floor. I think it was obvious that this was not a partisan issue, where the administration could count on House Republicans for support."

The National Oceanic and Atmospheric Administration confirmed the action but said it would have no im-

mediate comment on the reason the regulation was withdrawn.

The regulation, proposed in July, would have said decisions on offshore oil leasing do not "directly affect" state coastlines until drilling rights are actually sold.

The definition of "directly affecting" is the legal trigger that requires federal actions to be consistent with state coastal management plans. It mandates consultation with state officials to the "maximum extent practicable."

The "directly affecting" section was the basis for a federal judge's order earlier this year blocking Watt from offering environmentally sensitive tracts off the coast of California for drilling. The judge said Watt's pre-leasing decisions "directly affected" the California coast and invoked the state consultation requirement.

Officials from California, Maine and Massachusetts, representing the nation's coastal states, told the House subcommittee in hearings that the proposed regulation would mean states would have no voice in the long-term planning for their coastlines.

The states would be blocked from having any effective voice until the coast had been carved up and sold and oil companies had millions of dollars invested, the states complained. By then, it would be difficult to reverse or influence federal decisions, they said.

We
root
larg
liv r
killci
fenc
\$132.
ERA