

SB

238

MEMORANDUM

State of Alaska

Department of Law

TO: Paul C. Rusanowski, Director
Division of Governmental
Coordination

DATE: March 3, 1993

FILE NO: 663-92-0618

TEL NO: 465-3600

SUBJECT: Alaska Coastal Policy
Member's Eligibility to
Hear Petitions Under
AS 46.40.100

FROM:

Elizabeth J. Kerttula
Elizabeth J. Kerttula
Assistant Attorney General

SUMMARY OF ATTORNEY GENERAL'S OPINION
ON CPC MEMBERS' ELIGIBILITY TO HEAR PETITIONS

At your request, we are providing you with a short summary of our opinion concerning CPC members' eligibility to hear petitions.

As the opinion notes in the background section, in 1977 when the legislature enacted AS 46.40.100, it created an ability for certain people to appeal issues to the CPC through "petitions." In 1984, when the CPC promulgated its regulations creating the consistency review process for consistency determinations in 6 AAC 50, it amended a section of the regulations that specifically allowed consistency determinations to be reviewed by the CPC, intending to have consistency determinations appealed to court rather than to the CPC. However, there was no commensurate statutory change to AS 46.40.100. Since a regulation cannot remove a statutory right, the ability to bring a petition from a final consistency determination to the CPC remains. This situation has created a dual appeal mechanism and conflicts have arisen.

Your questions involve important Administrative Procedure Act ("APA")-due process concerns and delegation issues. As a general principle, the APA and its due process implications require that when an agency is performing an independent adjudicatory review, the review must be impartial. Concerning the delegation of duties, although commissioners have general authority to delegate functions vested in their departments, specific statutory and regulatory requirements take precedence over this general authority. Using these general principles, we analyzed your specific questions.

Rather than repeat the questions again (which we do in the opinion) we have outlined our responses below.

1(a). If a commissioner participates in a commissioner-level elevation concerning a consistency determination, that commissioner may not participate in a CPC petition concerning the same consistency determination.

Paul C. Rusanowski, Director
Division of Governmental
Coordination

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1(b). If a CPC public member participates in a decision concerning a matter at a local level, that public member may not participate in a CPC petition concerning the same decision.

2. A commissioner may not delegate his or her responsibility to participate in a commissioner-level elevation of a consistency determination to a subordinate in order to allow him or herself the ability to sit on a petition on the consistency determination. Similarly, APA-due process concerns and the ACMP statutes and regulations do not allow a commissioner to delegate his or her authority to sit on a CPC petition if the commissioner has participated in an elevation. This creates a conflict between the ACMP statutes and regulations that should be resolved.

3. Neither a commissioner nor a public member (nor their alternates) may participate in a petition proceeding when the commissioner's department or the public member's municipality initiates the petition.

4. Neither a commissioner nor a public member (nor their alternates) may participate in a petition proceeding when the petition is against the commissioner's department or the public member's municipality (there is an exception noted in the opinion).

In conclusion, we hope this summary is of assistance to you.

EJK:smm

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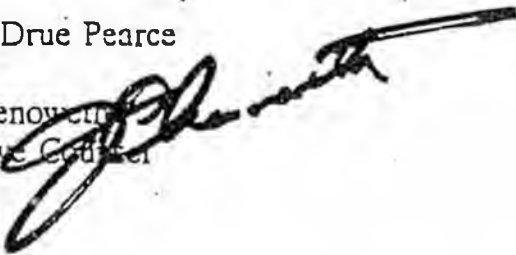
MEMORANDUM

January 4, 1994

SUBJECT: Coastal management consistency determination legislation
(Work Order No. 8-LS1442\K)

TO: Senator Drue Pearce

FROM: Jack Chenoweth
Legislative Counsel



A word about the bill, provided to you earlier today, and its specific provisions.

The measure substantially codifies the Coastal Policy Council's consistency review practices based upon suggestions provided by the Department of Law, the Division of Governmental Coordination (part of the office of management and budget), and, following a late December teleconference, the Coastal Policy Council.

Bill section 1: This provision amends AS 46.40.040, the section enumerating the duties of the Alaska Coastal Policy Council. It deletes a dated reference to the deadline for approval of the Council's initial program regulations and standardizes a reference to the applicability of the Administrative Procedure Act. Substantively, the bill section directs the Council to adopt regulations to establish a (project) consistency review and determination process that conforms to the requirements of AS 46.40.096.

Bill section 2: This bill section, adding a proposed AS 46.40.096, outlines the essential elements of the consistency review and determination process. Subsection (a) directs the council to adopt regulations for consistency determinations, whether those determinations are to be made by the council (coordinating the review of multiple agencies) or by a single state agency. Subsection (b)--a parallel provision to existing AS 44.19.145(a)(11)--clarifies that, when a consistency review is required for a project that requires a permit from but one state agency, that agency, rather than the office of management and budget's division of governmental coordination, has the responsibility to coordinate the consistency review. Subsection (c) sets out public notice and public comments in conjunction with consistency determinations; the council's regulations may distinguish as to notice depending on the circumstances

of the project, but the essential components of notice are set out. Subsection (d) sets out procedures for obtaining the comments of interested parties, directing preparation of proposed consistency determinations, allowing opportunity for parties to secure review of a proposed consistency determination, and directing preparation of the final consistency determination. Subsection (e) treats with the filing and handling of petitions for review of proposed consistency determinations, setting limits on who may petition and when the petitions may properly be considered. Subsection (f) authorizes the council to limit consideration of a review petition when the opportunity for full consideration of the petition might cause the state to miss a deadline set by federal law for submission of a federal consistency determination. Subsection (g) supplies definitions for terms used in the section.

Bill section 3: Existing AS 46.40.100 is captioned "Compliance and Enforcement." Within that section, AS 46.40.100(b) permits certain parties to file petitions seeking review of enforcement action. This bill section revises AS 46.40.100(b), amending it to permit the Coastal Policy Council to have a limited opportunity to ascertain whether a "reviewing entity" responsible for a consistency determination has fairly considered or not fairly considered comments received in the course of completing a proposed consistency determination. The principal addition on that point is set out in the subsection's proposed paragraph (1): the council is given a choice either to remand a determination so that the reviewing agency gives fair consideration to comments or the council may dismiss it--the council itself may not substitute its judgment for that of the reviewing entity on the merits of the consistency determination. The disposition of other petitions--enforcement petitions other than those relating to reviews of consistency determinations--are handled, as under current law, under the subsection's paragraph (2). In both instances, the petitioning process is no longer subject to the Administrative Procedure Act but rather to regulations of the Coastal Policy Council. The hearing requirement no longer calls for a "public hearing"--the hearing may be limited to participation by eligible parties--but notice is to be given, again, in all instances, under particular requirements of a later subsection, subsection (f). Because the petition process identified in this section may be used to secure review of consistency determinations and for other purposes, mention of specific parties who may file petitions in cases other than consistency reviews is removed from this subsection and restated in proposed subsection (g).

Bill sections 4 and 5: These provisions make parallel amendments to AS 46.40.100(c) and (d). The intent of the substantive amendments to both is to make sure that the specific requirements of the two subsections do not apply to the consideration and disposition of petitions seeking consistency review. Again, the council may dispose of petitions seeking consistency review only in the manner authorized by AS 46.40.100(b)(1)--that is, by remand or dismissal.

Bill section 6: The section adds two additional subsections to AS 46.40.100. Subsection (f) is a substituted notice provision applicable to consideration and

Senator Drue Pearce
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disposition of all compliance and enforcement provisions. It draws from the special notice provisions outlined in AS 38.05.945 that are applicable to certain land actions under the Alaska Land Act, with amendments and substitutions recommended by the Division of Governmental Coordination. Subsection (g) draws from material deleted in AS 46.40.100(b) to identify parties that may petition for the general compliance and enforcement remedies set out in AS 46.40.100(b)(2).

Bill section 7 sets out definitions for additional terms used in AS 46.40.010 - 46.40.210.

JBC:pl:mi
94-010.plm

Alaska State Legislature

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Senator Drue Pearce
District F

To: Senator Mike Miller, Chair
Senate Resources Committee

From: Senator Drue Pearce, Co-Chair
Senate Finance Committee

A handwritten signature in cursive script that reads "Drue Pearce".

Date: January 14, 1994

Re: Request for hearing on Senate Bill 238 in Senate Resources Committee.

I respectfully request that you consider hearing Senate Bill 238, Coastal Zone Management Procedures, in your committee as soon as possible.

Currently, the Coastal Policy Council coordinates State agencies and local coastal districts in a process of reviewing and issuing State permits for proposed development projects affecting natural resources in Alaska's coastal zones. Senate Bill 238 clarifies when and how certain parties can petition the Coastal Policy Council during an Alaska Coastal Management Program consistency review. These clarifications will ensure that complaints are heard and addressed in a timely manner. This bill will ensure that citizens, State agencies, and affected projects have a voice in the development policies of our state's coastal areas.

The bill as proposed is the result of intensive collaboration between the Alaska Coastal Policy Subcommittee, the Alaska Department of Law, Senator Drue Pearce, and other interested parties.

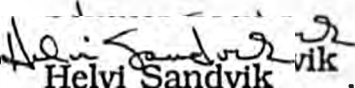
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AND PUBLIC FACILITIES**
OFFICE OF THE COMMISSIONER

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MEMORANDUM

TO: Senator Drue Pearce
FROM: 
Helvi Sandvik
Deputy Commissioner
DATE: January 31, 1994
SUBJECT: SB 238

It is with some interest to note that you are sponsoring work on Senate Bill No. 238 relating to coastal policy. The Division of Governmental Coordination now, by regulation, requires a consistency review and determination on all projects constructed in the State which includes Coastal Zone management.

During development of any project involving federal interest, the state is required to comply with 42 USC 4321-4347 (National Environmental Policy Act of 1972). The involved federal agency must certify that the total public involvement process has been met under federal law. Almost without exception, any DOT&PF project is subject to NEPA.

A typical Federal-Aid project will have at least one and sometimes two formal hearings. These are part of the department's Public Involvement Plan prepared for each project. If a bridge is involved in or over navigable waters, an additional hearing and public involvement is required by both the U.S. Corps of Engineers and the U.S. Coast Guard. During the development of a project, the public involvement process can involve up to four (4) opportunities for public involvement and hearings. To require an additional hearing by a state agency would, in our case, appear to be redundant. Each separate hearing or public involvement requirement adds a minimum of about three months to the project development process.

DOT&PF is presently in contact with coastal districts through the review process mandated by the Division of Governmental Coordination.

It would cut time and expense in the DOT&PF's project development process if a provision could be included that would exempt DOT&PF (and perhaps others) if public involvement had been accomplished during the Federal and/or State processes.

If there is any way to shorten the process while still maintaining intent of SB 238, we feel it would benefit the development of transportation projects in Alaska.

Senator Drue Pearce

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January 31, 1994

cc: J.K. Ginger Johnson, Legislative Liaison, DOT&PF

Alaska Coastal Policy Council
January 11, 1994

Public Members

Mr. Scott Novak, Cordova City Council (Public Member Co-chair)
Mayor Donald Long, City of Barrow
Mr. Robert Fagerstrom, Nome City Council
Mr. Al Unok, Kotlik City Council
Mayor Frank Kelty, City of Unalaska
Mr. David Arestad, Houston City Council
Mr. Drew Scalzi, Kenai Peninsula Borough Assembly
Ms. Lynda B. Walker, ~~Haines City Council~~
Ms. Phyllis Yetka, Ketchikan Gateway Borough Assembly

State Members

Shelby Stastny, Office of Management and Budget
Alternate: Dr. Paul Rusanowski, Division of Governmental Coordination (State
Member Co-chair)
Commissioner Paul Fuhs, Department of Commerce and Economic Development
Alternate: Mr. Chris Gates, Division of Economic Development
Commissioner Edgar Blatchford, Department of Community and Regional Affairs
Alternate: Mr. Bob Walsh, Division of Municipal and Regional Assistance
Commissioner John Sandor, Department of Environmental Conservation
Alternate: Deputy Commissioner Mead Treadwell, DEC
Commissioner Carl Rosier, Department of Fish and Game
Alternate: Mr. Frank Rue, Division of Habitat and Restoration
Commissioner Harry Noah, Department of Natural Resources
Alternate: Mr. Ron Swanson, Division of Land
Commissioner Bruce Campbell, Department of Transportation and Public Facilities
Alternate: Mr. Mike McKinnon, Division of Planning

MEMORANDUM

STATE OF ALASKA

To: Alaska Coastal Policy Council Date: January 12, 1994

File: ACMPBILL.94
 Telephone: 465-8800
 Telecopy: 465-3075

From: *MLC* Paul C. Rusanowski, Director Subject: ACMP Legislation:
 Division of Governmental Senate Bill 238
 Coordination

Senator Drue Pearce introduced ~~Senate Bill 238~~, which would amend the Alaska Coastal Management Act (AS 46.40) to clarify how and when certain parties can appeal, or "petition", the Coastal Policy Council during an Alaska Coastal Management Program (ACMP) consistency review (see attached legislation). Senate Bill 238 incorporates an approach recommended by the Alaska Coastal Policy Council at its October 27, 1993 meeting.

As directed by the Council, the Division of Governmental Coordination staff worked with a Council subcommittee, other interested parties, and Senator Pearce on the legislation. Senate Bill 238 includes many suggestions made by the Council subcommittee and other parties during a December 28, 1993 teleconference (see attached list of participants).

Why is Senate Bill 238 Needed?

Under the ACMP, State agencies and local coastal districts participate in a coordinated process for reviewing and issuing State permits for proposed development projects affecting natural resources and uses in Alaska's coastal zone. Proposed projects are reviewed to ensure they are consistent with the standards of the ACMP and the policies of a coastal district program. The commissioners of the Departments of Environmental Conservation, Natural Resources, and Fish and Game, on appeal as an "elevation", make the final decision on a consistency determination. The commissioners also sit on the Alaska Coastal Policy Council, which has heard petitions on a few consistency determinations made by commissioners in recent years.

Senate Bill 238 would correct the problems experienced with these recent petitions and the difficulties identified in a March 2, 1993 informal Attorney General opinion regarding due process and delegation when a petition occurs *after* a final commissioner-level

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decision on a consistency review.¹ Under the current ACMP statutes and regulations, the State resource agency commissioners may not delegate their responsibility to participate in a commissioner-level "elevation" of a consistency determination, nor may they delegate their authority to decide a petition when they have participated in the final consistency determination. However, as noted in the informal AG opinion, the commissioners cannot sit in both capacities. In a recent example, the State resource agencies were unable to participate in Council action on a petition affecting coastal resources and land uses.² General principles of due process and delegation under the Administrative Procedure Act dictate a change in the statute or regulations, or both to rectify the conflict.

How Would Senate Bill 238 Fix the Problem?

Senate Bill 238 would amend the Alaska Coastal Management Act (AS 46.40) to allow certain parties to petition the Coastal Policy Council when a preliminary, or "proposed", consistency determination is issued by a State agency. The petitioner would seek Council review of whether the petitioner's comments had been fairly considered by the State agency coordinating the ACMP consistency review. If the agency had done its job, the Council would dismiss the petition. Otherwise, the Council would remand the proposed consistency determination to the agency to give fair consideration to the petitioner's comments and to prepare a revised proposed consistency determination.

A final consistency decision would be made by the State resource agencies. Unlike the current situation, SB 238 would not allow a petition on a final consistency determination. Also, SB 238 resolves the due process and delegation concerns because the State resource agency commissioners — as members of the Coastal Policy Council — would only be reviewing a staff level *proposed* consistency decision, and therefore could still make the *final* State decision on the consistency review, if a further appeal (as an elevation) occurs after the petition process is completed.

¹March 2, 1993 Memorandum from Elizabeth Kerttula, Alaska Department of Law, to Paul Rusanowski, Division of Governmental Coordination, "Alaska Coastal Policy Council Members' Eligibility to Hear Petitions Under AS 46.40.100", 27 pp (see attached March 3, 1993 summary).

²The Timber Creek Trapping Cabin Permit petition, in Bering Straits Coastal Management Program and the Kovuk IRA Council v. Alaska Department of Natural Resources, was submitted to the Council on July 1992, heard by a hearing officer in May 1993, and dismissed by the Coastal Policy Council in October, 1993.

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Senate Bill 238 would, in effect, place the Coastal Policy Council in an intermediary role as a referee on the State's consistency review process, on petition from a coastal district, citizen of a district, State agency, or project applicant. The Council - with its statewide membership of locally elected officials and State agency commissioners - would provide oversight to ensure that State agencies follow procedures and give fair consideration to the broad interests commenting on proposed projects in Alaska's coastal areas (see attached Council membership).

What Would Senate Bill 238 Do?

Briefly, Senate Bill 238 would do the following:

Section 1. Amend AS 46.40.040 to add a new duty of the Alaska Coastal Policy Council to establish, by regulation, a consistency review and determination process.

Section 2. Amend AS 46.40 to add a new section (AS 46.40.096) which identifies the key elements of the consistency review process, including:

- the agency coordinating the review
- public notice requirements
- request for comments on a proposed project
- an elevation which can occur as a "subsequent review" of a proposed consistency determination (also, who can request an elevation and who reviews)
- the opportunity for certain parties to petition the Council about a proposed determination
- limitations on when a party may petition the Council
- flexibility to limit consideration of a petition when a federal law sets a deadline for the State of Alaska's response on a consistency determination for a federal agency permit or activity,
- the final consistency determination and
- definitions for "affected coastal resource district" and "reviewing entity."

Section 3. Amend the existing petition statute AS 46.40.100 (b) to:

- provide for a petition to the Council on a proposed consistency determination
- replaces the requirement for a hearing under the Administrative Procedure Act (AS 44.62) with a hearing established in regulation by the Council
- specify that the Council's standard of review is whether the agency coordinating the consistency review fairly considered the petitioner's comments submitted during the review period, and

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- provide for petition dismissal or remand of the proposed determination to the agency for a revised proposed consistency determination

Section 4. Amend the existing petition statute AS 46.40.100(c) to clarify that the subsection would continue to address a petition which might be submitted on general district actions regarding implementation of its coastal program, and not a petition about district actions on a State consistency determination under AS 46.40.096.

Section 5. Similar to Section 4, this section would amend the existing petition statute AS 46.40.100(d) to clarify that the subsection would not apply to a petition about State agency actions on a consistency determination under AS 46.40.096.

Section 6. Add new subsections under the existing petition statute AS 46.40.100 which:

- establish requirements for the notice of a hearing held by the Council to consider a petition
- identify, as in the current statute, the parties which have the opportunity to petition the Council on "general", non-consistency petitions.

Section 7. Amend AS 46.40.210 to add definitions for "consistency review" and "office."

* * *

The Division of Governmental Coordination will continue to work with Senator Pearce, the Council subcommittee, and other interested parties as this legislation proceeds. The bill is referred to Senate Resources Committee, but committee action is not yet scheduled. Please feel free to call me at 465-8800, or Gretchen Keiser of my staff at 465-3541 if you have any questions.

Attachments

cc: Alaska Coastal Districts
Senator Drue Pearce
Patty Bielawski, Accord Env.
Susan Braley, DEC
Janet Burleson, DNR
Jack Chenoweth, LAA
Raga Elin, Governor's Office
Kerry Howard, DGC
Jon Isaacs, Isaacs & Associates
Beth Kerttula, DOL

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John King, OCRM
Gabrielle LaRoche, DCED
Bob Laurie, DOTPF
Tom Loman, NSB
Mary McMahon, DGC
Steven B. Porter, Arco Alaska
Pam Rogers, DNR
Glenn Seaman, DFG
Chrystal Smith, AML
Nancy Wainwright, Anchorage
Nelda Warkentin, DCRA

ACMP CONSISTENCY REVIEW PROCESS OVERVIEW
Prepared for the Coastal Policy Council; February 9, 1993

Introduction

The Division of Governmental Coordination (DGC) administers the Alaska Coastal Management Program (ACMP). In addition to coordinating preparation of district programs and serving as staff to the Coastal Policy Council (CPC), DGC also coordinates State reviews of activities in the coastal zone involving State and federal permits. This overview provides a summary of this latter function, the consistency review process.

Consistency Review Process

The consistency review regulations, also known as 6 AAC 50, provide a streamlined, coordinated process for reviewing and issuing State permits for proposed development projects affecting natural resources in Alaska's coastal zone. A brochure entitled, "How to Apply for State Permits in Alaska's Coastal Zone", is attached. It provides a brief summary of most of the information presented in this overview. In addition to coordinating projects that require State permits, DGC is also responsible for coordinating consistency reviews for direct federal actions [e.g. Corps of Engineers (COE) dredging permit] and projects that require federal permits [e.g. an Environmental Protection Agency (EPA) NPDES permit].

Coastal development projects are reviewed to ensure they are consistent with the standards of the ACMP and the policies of approved local coastal district programs. Project decisions, absent an approved district program, are based on ACMP standards found at 6 AAC 80. If there is an approved district program, project decisions are also based on enforceable district policies contained in those programs.

For each project, the consistency review regulations provide a structure for project review, issue resolution and decision-making, with the full involvement of State agencies, local coastal districts and the project applicant. The public is always welcome to participate in an advisory role.

The regulations require that:

1. All appropriate permits for a project are included in a single review. When an applicant proposes a project in the coastal zone, they are first required to complete a Coastal Project Questionnaire (CPQ). The CPQ contains questions designed to help applicants and State agencies determine what permits will be needed from State and federal agencies. If requested by the applicant, the coordinating agency can also assist with a pre-application meeting to ensure that all necessary permits have been identified and all back-up material is in order. When a CPQ and associated permit applications

are submitted to the coordinating agency, the packet is examined for completeness. As soon as an application packet is determined to be complete, the coordinating agency distributes it and a review schedule to all reviewers.

A project, and all necessary permits, are reviewed in a single review and a conclusive consistency determination is issued to the applicant for the project and all related permits. Typically, an applicant has to obtain permission from several agencies to conduct a project. Federal and State agencies from which permits may be needed include the U.S. Army COE, the EPA, the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and the State Departments of Environmental Conservation, Fish and Game and Natural Resources.

2. A single State agency contact is designated to coordinate the State's review of coastal development projects. For projects requiring a federal permit, or permits from two or more State agencies, or for direct federal actions, DGC is the coordinator of the review. For projects requiring permits from a single State agency, the agency issuing the permits acts as coordinator of the review. The coordinating agency is responsible for the administrative process involved with the review and assisting the applicant with the permitting and consistency review process.

3. Regulatory deadlines are established for consistency reviews and state permit decisions. Projects are reviewed under a 30-day review schedule, or more typically a 50-day review schedule, when agency permits have public notice requirements. Deadlines are also established for the distribution of information to reviewers, receipt of comments from reviewers, requests for additional information, notice to the applicant on the proposed consistency determination and issuance of the final or conclusive determination. The deadlines are not discussed in detail here, but, for your information, they are listed in a chart that appears in the attached brochure. State agencies with permits required by the project must issue their permits within 5 days of the conclusive consistency determination, unless additional review is required by statute or regulation.

4. The applicant, affected coastal district and State resource agencies concur with the consistency determination for a project before it is issued. Project reviewers submit comments on the proposed project and permits to the coordinating agency. The comments may include proposed changes to the project, or recommend stipulations which, if incorporated into the project, would render it consistent with the standards of the ACMP. The coordinating agency gives due deference to the commentor within their area of expertise. "Due deference", as defined in regulation, means that deference which is appropriate in the context of the commentor's expertise and area of responsibility, and all the evidence available to support any factual assertions. A coastal resource

district is considered to have expertise in the interpretation and application of the enforceable policies of its approved program [6 AAC 50.120 (a)].

If an applicant, State resource agency or an affected coastal district consider a proposed consistency determination to be unacceptable, opportunities exist to elevate a decision to policy makers of state resource agencies for reconsideration. The regulations first provide for a 15-day elevation to division directors and, if necessary, a second 15-day elevation to the commissioners of the resource agencies.

Exceptions to the 6 AAC 50 Process

There are a few exceptions to the 30-day and 50-day review schedules worth noting. Regulations found at 6 AAC 50.050 require DGC to publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations which, with standard stipulations, are also consistent with the ACMP. The list of these approvals is known as the Classification of State Agency Approvals, and is more common known as the "ABC" list, where "A" stands for categorically approved projects, "B" stands for general concurrence projects and "C" contains a list of permits which are subject to an individual consistency review. Permits qualify for the "A" list if they are so de minimis that they will have no significant impact in the coastal zone. Projects qualify for the "B" list if they are for routine activities that can effectively be made consistent with the ACMP by imposing standard stipulations on the applicable permits. An example of an "A" list permit is a Fish Habitat permit for minor instream work to improve or restore fish habitat and an example of a "B" list activity is Surface Oiling of Roads (GC-11). Permits on the "A" and "B" list are not subject to further agency review against the ACMP standards or district enforceable policies, and permits can be issued once it is determined applicants qualify under an "A" or "B" list approval.

The 6 AAC 50 regulations (6 AAC 50) also provide for emergency expedited reviews, but these are limited to true emergencies as defined in the Disaster Relief Act of 1974 (U.S.C. 5122), a catastrophic oil discharge, or where an expedited review is necessary for the preservation of the public peace, health, safety or general welfare.

Statistics

In terms of statistics, DGC typically coordinates approximately 500 project reviews a year. In FY92, DGC coordinated the review of 517 projects, 84 of which were non-consistency reviews (a.g. National Environmental Policy Act (NEPA) reviews, Outer Continental Shelf (OCS) reviews, etc.). Detailed statistics aren't currently available for FY92, but in FY91 the average review time of our 30-

day and 50-day reviews, respectively, was 25 and 48 days. Other FY91 statistics show that 22% of projects reviewed were determined to be consistent as proposed, 77% were found consistent with stipulations, and less than 1% were determined to be inconsistent. In FY 92, 13 projects were elevated to the directors for further consideration, and 4 of the 13 were elevated to the Resource Agency commissioners for final decision.

Over the years, statistics have shown that the bulk of the projects reviewed for consistency are for Public Utilities or Facilities (20%), followed by Fisheries, including Aquatic Farming and Hatcheries (18%), Oil and Gas activities (15%), Miscellaneous Activities (13%), Private Residential (12%) and Mining and Commercial (both with 11%). The numbers and percentages of project reviews and types are fairly stable year-to-year, although aquatic farming reviews decreased in FY92.

Many projects that are reviewed for consistency include new, difficult, or interesting issues. Often times, as a result of consistency reviews, the ACMP working group, which is currently composed of representatives from the State resource agencies and coastal districts, is directed to prepare guidance to assist future reviews. For example, during previous years, the ACMP working group developed procedural guidance on how to implement the Coastal Development Standard (6 AAC 80.040), and on how to place stipulations that are needed for consistency but which are outside the purview of individual agency authorities (i.e. "homeless stips"). Guidance was also developed on how to interpret provisions of federal regulations regarding "associated facilities" (CFR 930.21). The ACMP working group is often called upon to clarify procedures to facilitate the 6 AAC 50 review process.

Conclusion

During the almost 9 years the consistency review regulations have been in place, they have provided an effective and predictable process for coastal development activities that has been well-received by State agencies, coastal districts, and applicants. A paper published in *Agroborealis* in 1990 entitled, "Permit Reform in Alaska's Coastal Zone", by Thomas Gallagher, provides a survey critique of the consistency review process. The paper concludes that the consistency review process is successful in achieving its primary goals of coordinating permits and involving local communities. Other benefits noted include a savings in time and money, helping applicants obtain their federal permits, and reducing conflict. A copy of that paper is also attached for your information.

If you have questions about this overview, or would like additional information about the consistency review process, please contact Kerry Howard, DGC Project Analyst, at 465-3562.

Participants in a Teleconference to
Consider a Work Draft of a Bill
Addressing AS 46.40.100 and Petitions under the Alaska Coastal Management Program

1:30 pm - 4:00 pm, December 28, 1993

Alaska Coastal Policy Council Subcommittee on Petitions:

Frank Kelty, CPC public member from Unalaska
Scott Novak, CPC public co-chair from Cordova
Frank Rue, Director, Division of Habitat/Restoration, DFG
Paul Rusanowski, Director, Division of Governmental Coordination, OMB
Ron Swanson, Director, Division of Land, DNR

Other Coastal Policy Council members:

Bob Walsh, Director, Division of Municipal/Regional Assistance, DCRA

Other Interested Parties in Working Group:

Coastal Districts Representatives

Sue Flensburg, Director, Bristol Bay Coastal Resource Service Area Program
Linda Freed, Planning Director, Kodiak Island Borough
Pat Galvin, Copeland, Landye, Bennett & Wolf, Anchorage (representing the
Northwest Arctic Borough)
Tom Loman, Wildlife Department, North Slope Borough
Darcy Richards, Director, Aleutians West CRSA Program

State Agency Representatives

Susan Braley, Division of Environmental Quality, DEC
Kerry Howard, DGC
Gretchen Keiser, DGC
Beth Kerttula, DOL
Gabrielle LaRoche, Division of Economic Development, DCED
Pam Rogers, Division of Oil and Gas, DNR
Glenn Seaman, Division of Habitat/Restoration, DFG
Nelda Warkentin, Division of Municipal/Regional Assistance, DCRA

Industry/Public Representatives and Private Individuals

Patty Bielawski, Accord Environmental, Anchorage
Jon Isaacs, Isaacs & Associates, Anchorage
Charles McKey, Anchorage
Steven B. Porter, Arco Alaska, Anchorage
Nancy Wainwright, Anchorage

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 238

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: Review of proposed projects under the BRU: Office of Management & Budget
ACMP and relating to petitions for compliance Component: Governmental Coordination
 Sponsor: Senator Pearce
 Requestor: _____ COMPONENT SERIAL NO. 0018

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	<2.0>	<2.1>	<2.2>	<2.3>	<2.4>	<2.6>
CONTRACTUAL	<27.9>	<29.3>	<30.8>	<32.3>	<34.0>	<35.7>
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	<29.9>	<31.4>	<33.0>	<34.6>	<36.4>	<38.3>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	<29.9>	<31.4>	<33.0>	<34.6>	<36.4>	<38.3>
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	<29.9>	<31.4>	<33.0>	<34.6>	<36.4>	<38.3>

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

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 Division: Governmental Coordination Date: 1/21/94
 Approved by Commissioner: [Signature] Date: 1/21/94
 Agency: OMB 1-21-94

PREPARER [Signature] LEGISLATIVE OFFICE

For

FISCAL NOTE: OMB

Fiscal Analysis of Senate Bill 238

The legislation would save money because the expenses associated with conducting a formal hearing process under the Administrative Procedure Act (AS 44.62) would be eliminated. These costs are: hiring a hearing officer, hearing room arrangements, staff travel to hearing, and transcribing the hearing proceedings. SB 238 would establish an informal hearing process before the Alaska Coastal Policy Council for petitions relating to proposed projects reviewed under the Alaska Coastal Management Program.

Assumptions:

1. The number of petitions in a given fiscal year (average: 1/yr) would not change.
2. As has occurred on a petition in the past year, the Coastal Policy Council would continue to meet via teleconference to consider future petitions.
3. The expenses for public notices of Council deliberations, teleconferencing, mailing, and supplies would remain substantially the same.

Savings The estimated FY95 savings in travel expenditures (\$2.0) are based on actual FY93 costs for staff and attorney travel to participate in a formal hearing. The estimated FY95 savings in contractual expenditures are based on an average of actual contractual expenditures for petitions during FY91 - FY93 for: hearing officer contract (\$25.0), hearing room fees (\$1.4), and transcription costs (\$1.5).

The Division of Governmental Coordination is staff to the Coastal Policy Council. The program Assistant Attorney General provides legal counsel to the CPC. SB 238 will reduce staff and attorney workload on petitions, and free up their time to address other Council work. No savings in personal services is estimated.

Fund Source Federal receipts under the Coastal Zone Management Act are the source of funding for travel and contractual expenditures for petitions under AS 46.40.100.