SCOMM

93:13

Alaska State Legislature

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DISTRICT 10

CHAIR, OIL & GAS COMMITTEE
VICE CHAIR, LABOR & COMMERCE COMMITTEE
JUDICIARY COMMITTEE
RESOURCES COMMITTEE
INTERNATIONAL TRADE & TOURISM COMMITTEE

ECONOMIC TASK FORCE

Representative Joe Green

Sponsor Statement

HB 401
Alaska Coastal Management Program Revisions

HB 401 clarifies how and when certain parties can petition the Coastal Policy Council during an Alaska Coastal Management Program (ACMP) consistency review. The Coastal Policy Council (CPC) coordinates the review of State permits for proposed development projects affecting natural resources in Alaska's coastal zones. The Alaska Coastal Management Program is the set of statutes and regulations which guide development in Alaska's coastal areas.

Problem: It is common for state commissioners to delegate their authority to deputies and assistants to attend meetings in their stead when the commissioners are unable to attend. Yet, under current law the resource commissioners cannot delegate their authority to hear a consistency determination appeal under the ACMP process.

If the project applicant is not satisfied with the resource commissioner-level decision they can appeal to the CPC. The problem is compounded here because the resource commissioners - as CPC members - cannot sit in review of their own decision. This "stacks the deck" as it were because the council is then not adequately represented by state officials.

Solution: Currently, the CPC is petitioned after a *final* consistency determination. HB 401 amends the ACMP (AS 46.40) to allow petitions to the CPC after a state agency issues a *preliminary* consistency determination. Under this new scenario state resource commissioners would only be reviewing proposed decisions, and would therefore not be in conflict when they vote on a final decision.

AMENDMENT #2

February 7, 1994

IN THE HOUSE

OIL & GAS COMMITTEE

Pg. 5, Ln. 10, after "authorized under" insert AS 46.40.096(e)(1) or...

ACMP 5/CPC
Amendment

AMENDMENT #1

February 7, 1994

IN THE HOUSE

OIL & GAS COMMITTEE

Pg. 4, Ln.6, after "subsection." and before "Under this subsection," insert <u>But not more than 30 days shall elapse between the filing of the petition and the decision by the Council.</u>

Steve
Porter's
Amendment

Proposed Amendment to House Bill 401

Submitted by the Division of Governmental Coordination
February 2, 1994

An amendment to Section 3 of House Bill 401 is proposed. At page 5, line 10, the following language would be added:

> "(b) A party that is authorized under AS 46.40.096(e)(1) or (g) of this section may file a petition showing..."

* * *

The amendment would correct the language which specifies who is eligible to petition the Alaska Coastal Policy Council under AS 46.40.100(b). Depending on the *type of action* under petition, different parties would be eligible:

- for a petition on a **proposed consistency determination** allowed under AS 46.40.100(b)(1), the eligible parties are identified at AS 46.40.096(e)(1) [HB 401, page 4, lines 7-14]

OR

- for a petition on a **general matter of district program implementation, enforcement, or compliance** allowed under AS 46.40.100(b)(2), the eligible parties are identified at AS 46.40.100(g) [HB 401, page 7, lines 24-27].

While there are some similarities, the eligible parties are slightly different in the two cases. To be clear, the opening sentence in AS 46.40.100(b) should specify both sets of potential petitioners identified elsewhere in the statute.

Fiscal Analysis of House Bill 401

Estimated Savings of $29,900. HB 401 would eliminate travel and contractual expenses associated with conducting a formal hearing process under the Administrative Procedure Act (AS 44.62). Instead, HB 401 would establish an informal hearing on a petition before the Alaska Coastal Policy Council. The estimated FY95 savings in travel expenditures ($2,000) are based on actual FY93 costs for staff and attorney to participate in a formal petition hearing. The estimated savings in contractual expenditures are based on average actual expenditures during FY91 - FY93 for: hearing officer contract ($25,000), hearing room fees ($1,400), and transcription costs ($1,500). Other expenses for Council teleconferences, mailings, and supplies are assumed to remain roughly the same. The number of petitions (average: 1 per year FY89-FY93) is assumed to remain unchanged.

Estimated New Costs of $22,050 for DGC and State Resource Agencies. Additional costs would be incurred to meet public notice requirements in Section 2 of HB 401. The legislation would require that a public notice occur for all coastal projects reviewed for consistency with the Alaska Coastal Management Program. However, the majority of coastal projects are currently public noticed under existing State agency mandatory requirements or cooperative arrangements under mandatory federal requirements. HB 401 would not impose an additional, duplicative notice requirement.

In effect, the estimated annual numbers of coastal projects coordinated by State agencies which would fall under a <u>new</u> public notice requirement because of HB 401 are: DEC (0), DFG (125), DGC (150), and DNR (130) -- for a subtotal of 405 projects (out of an estimated 1,500 total consistency reviews annually). Coastal projects currently <u>not</u> public noticed are often shorter, 30-day reviews and include: oil production pad expansion, winter tundra travel, seismic exploration, barge mooring, dock installation in river, culvert installation, floathouse mooring, bank stabilization, tideland uses, and temporary water uses. Many of these projects are considered minor activities without significant impacts.

The Department of Law interprets HB 401 (Section 2) to grant to the Coastal Policy Council the regulatory authority to direct various public notice requirements depending on project type and anticipated effects. Posting notices in local post offices, publication in the Alaska Administrative Journal, and posting by the local coastal district are considered appropriate for coastal projects where anticipated impacts would be minimal. Conservatively, it is estimated that only 205 of the 405 coastal projects would fall under this lesser public notice requirement, at an average cost of $10 per notice for certified mailings (or $2,050). The remaining 200 estimated projects would require one newspaper notice (following current DGC practice), at $100 per notice (or $20,000).

Net Savings of $7,850.

Travel		<$ 2,000>	
Contractual	+	<<u>$ 5,850</u>>	[Note: $27,900 - $22,050]
Total:		<$ 7,850>	

HB401.fa

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. Kertzula
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.

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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

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 401

Revision Date:
Title: Review of proposed projects under the ACMP and relating to petitions for compliance
Sponsor: House Special Committee on Oil & Gas, Resources
Requestor:

Dept. Affected Office of the Governor
BRU: Office of Management & Budget
Component: Governmental Coordination
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	<5.9>	<6.2>	<6.5>	<6.8>	<7.2>	<7.5>
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	<7.9>	<8.3>	<8.7>	<9.1>	<9.6>	<10.1>
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	<7.9>	<8.3>	<8.7>	<9.1>	<9.6>	<10.1>
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	<7.9>	<8.3>	<8.7>	<9.1>	<9.6>	<10.1>

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)

(See attachment)

Prepared by: Paul C. Rusanowski, Director
Division: Governmental Coordination
Phone: 465-3562
Date: 2/4/94

Approved by Commissioner: Patrick P. Rogan
Agency:
Date: 2-4-94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Coastal Policy Council
February 2, 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

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

Proposed Amendment to House Bill 401

Submitted by the Division of Governmental Coordination
February 2, 1994

An amendment to Section 3 of House Bill 401 is proposed. At page 5, line 10, the following language would be added:

> "(b) A party that is authorized under AS 46.40.096(e)(1) or (g) of this section may file a petition showing..."

* * *

The amendment would correct the language which specifies who is eligible to petition the Alaska Coastal Policy Council under AS 46.40.100(b). Depending on the *type of action* under petition, different parties would be eligible:

- for a petition on a **proposed consistency determination** allowed under AS 46.40.100(b)(1), the eligible parties are identified at **AS 46.40.096(e)(1)** [HB 401, page 4, lines 7-14]

OR

- for a petition on a **general matter of district program implementation, enforcement, or compliance** allowed under AS 46.40.100(b)(2), the eligible parties are identified at AS 46.40.100(g) [HB 401, page 7, lines 24-27].

While there are some similarities, the eligible parties are slightly different in the two cases. To be clear, the opening sentence in AS 46.40.100(b) should specify both sets of potential petitioners identified elsewhere in the statute.

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 (e.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.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 4, 1994

SUBJECT: House Bill 401 -- Sectional Analysis (Work Order No. 8LS-1598\A)

TO: Representative Joe Green
Attn: Jeff Logan

FROM: Jack Chenoweth
Legislative Counsel

House Bill 401 makes a series of both substantive and technical amendments to statutes relating to the Alaska Coastal Policy Council and to the consistency determinations and to the compliance and enforcement actions that are authorized as part of the Alaska coastal management program.

Bill section 1, an amendment adding to the duties of the Alaska Coastal Policy Council, directs the council to adopt regulations that establish a consistency review and determination or certification process for projects for which that process is applicable.

Bill section 2, adding a new section, AS 46.40.096, sets out the requirements that are the framework for the consistency review and determination regulations. More specifically--

-- Subsection (a) reiterates the requirement that the council develop relevant program regulations;

-- Subsection (b) directs that project consistency reviews that are premised on obtaining an authorization from a single state agency are to be handled or coordinated by that agency;

-- Subsection (c) enumerates specific notice requirements and provides latitude for the council to frame regulations that more closely fit the notices to be given to the variances in project type;

SECTIONAL ANALYSIS

-- Subsection (d) outlines the procedural steps that the "reviewing entity," either the single agency under (b) or the office of management and budget for other consistency reviews, must follow;

-- Subsection (e) circumscribes the right to petition to review proposed consistency determinations, describing who may petition for review and under what constraints that petition may be accepted and acted upon or refused;

-- Subsection (f) authorizes the council, by regulation, to set limits on the consideration of a petition for review in conjunction with a required federal consistency determination if a limit is necessary to meet a deadline set by federal law for receipt of that consistency determination;

-- Subsection (g) supplies definitions of terms used in the section.

Bill section 3 revises AS 46.40.100(b) by amending requirements relating to petitions for compliance and enforcement of district coastal management programs under the Alaska coastal management program by

-- limiting the parties who may submit petitions asserting that comments offered in the course of a proposed consistency determination have not been fairly considered, and

-- limiting the scope of the inquiry that the coastal policy council may make and the nature of the remedy that the council may order in response to those consistency review and determination challenge petitions.

Bill sections 4 and 5, amending, respectively, AS 46.40.100(c) and (d), except from the general implementation and enforcement action provisions the handling of consistency review determination appeal petitions.

Bill section 6, adds new subsections, subsections (f) and (g), to AS 46.40.100. The material in subsection (f) sets out the minimum notice and hearing requirements on petitions submitted to the council seeking its review of a question of implementation or enforcement of an approved district coastal management program. Subsection (g) identifies the parties who may properly petition the council to take implementation, enforcement, or compliance action in instances not involving project consistency reviews.

Bill section 7 supplies definitions for two terms used in the material in AS 46.40 amended by this measure.

JBC:pl
94-101.plm

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

MEMORANDUM

TO: Representative Joe Green
Chairman
House Oil & Gas Special Committee

FROM: Helvi K. Sandvik
Deputy Commissioner

DATE: February 4, 1994

SUBJECT: HB 401, Coastal Zone Management Procedures

It is with some interest to note that you are sponsoring work on House Bill No. 401 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 HB 401, we feel it would benefit the development of transportation projects in Alaska.

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

DOT LETTER OF SUPPORT