

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 80/2

1872 SRES COAL MARKETING - COASTAL ZONE MANAGEMENT 80/2

A port can make a major contribution to the economy of the region in which it is located. The Port of Vancouver recently commissioned a study of its impact on the Greater Vancouver area and the study found that Vancouver, a major loading port for bulk commodities:

- . directly and indirectly provided one job in ten in Greater Vancouver;
- . created 12½ percent of the region's payrolls; and
- . was responsible for, directly or indirectly, 16½ percent of sales and revenues in Greater Vancouver.

Although labour-intensive general cargoes have a greater economic impact than bulk cargoes such as coal, bulk cargoes are still very important and some comparative numbers for the Port of Vancouver adjusted to late 1980 price levels are:

- . coal, with a total port-related payroll of \$32 million per year and a volume of 14 million tons, or \$2.90 per ton;
- . other bulks such as copper concentrate and sulphur, with a payroll of \$150 million and a volume of 11 million tons, or \$13.00 per ton; and
- . general cargo, with a payroll of \$600 million, and a volume of 5,600,000 tons or \$107.00 per ton.

A new bulk port in Alaska will add to the economic health of the surrounding community and it will provide productive, high-income jobs in the port and terminal. Expenditures by these employees will create service jobs for others, with the port generally creating an economic activity that would not otherwise take place.

Ports such as we are considering can be funded and managed privately by one user or by a consortium of users or by a local public authority. If there is to be more than one user and I assume that this could be the case in an Alaskan bulk coal port, as well as possibly more than one product to be handled, then there is merit in considering an independent terminal operator either public or private, in order to avoid conflicts of interest by different users - which arise in the accommodation of different cargoes, and different arrival patterns. I mention this because in some cases where a government organization has initially funded the infrastructure development they have stipulated in the lease agreement with the terminal operator that the terminal must be made available to others for handling their products, providing that these other products are of a similar nature and have reasonable annual thruput volumes for practical reasons.

Finally as to coal's future why not look at the oil industry?

In a phrase the oil majors are betting on coal.

These oil companies have invested over the past few years several billion dollars in the acquisition of or in securing of important participation in companies and coal reserves around the world. The catalogue of all these activities would take a long time to read out, to name a few - Shell, Exxon, Continental, Mobil, Sohio, B-P, Standard Oil California, Gulf, Petrofina, Occidental, Atlantic Richfield, Total of France, etc., are all deep into coal mining and marketing on several continents which perhaps best of all demonstrates that they, as the energy leaders of the post war period each

know that coal is to be the base energy for industry over the next similar period (30 - 40 years) by which time the new generation of nuclear energy should be well and truly starting to share the full strain.

As a last point I thought we could share some thoughts on the pricing of coal and how it differs from oil. Now you do recall the difference which I emphasized between oil, which moves in a major way internationally and coal which does so traditionally in a relatively minor way. Right from the 1920's there has been a recognized pricing mechanism for oil recorded daily in the journal Platt's Oilgram. It still carries on today. Thus a concentrated yardstick for pricing crude oil did simplify OPEC's job when they elected to force up the global level of crude oil prices in 1973 and continued the action progressively ever since!

The important point is that the impact of increased crude oil prices is direct and international, we all know that - wherever we reside or in whatever country our business is mainly involved. Now coal in this regard is completely different. I said earlier that the size of the international coal trade is but marginal relative to production - say 5% today of global coal production. This means that almost all coal is produced and consumed within its own region. Russian coal in Russia, U.K. in U.K., USA mainly in USA, India in India, China in China, South Africa in South Africa and so on. Each of these is an example of what I am saying. What these countries pay internally for their coal - their own coal, whether this is high or low by another's standard has no bearing whatsoever on the price which a consumer will pay for coal from another economic region.

Take Egypt as a typical example, Egypt is buying coal from USA, USSR, Poland and Australia. How much coal from each supplier is Egypt's affair as well as the various costs of coal laid down at Egypt's ports from the supplying countries. This is free trading in coal with no fixed pricing structure. But this free trading which is typical is forcing coal producers to establish real mining efficiencies and first class transportation to ports, as well as efficient port operations. It is also causing ship owners to set themselves up with properly designed coal carrying vessels. At the other end consumers must match all this by their own capabilities in receiving coal efficiently and economically as a part of the total transportation system. When the final decision is made on the port selection, the land and marine access, and this may sound elementary, but we must remember that the coal buyer in effect has the last word for not only is he looking for security and reliability of supply but also for the safest possible marine access and secure facilities for his ships. To put this another way, ideally one should decide from a national standpoint where the best port location is, the railroad route, etc. because our real competition is not here in the "backyard" - it is from other countries.

This has been a broad-brush review of coal on a global basis and of some of the world bulk coal ports together with the components which would go into a bulk port such as could be developed here in Alaska.

Today we are seeing certain new coal mines being developed at about half the cost of developing some of our oil reserves in terms of equivalent energy units. Also, as a typical example, the Hong Kong Power and Light Authority who are today installing new large coal fired thermal power plants, estimate that the cost of coal as a fuel, which they must import to fire these plants, will be half that of oil.

And in conclusion, while we know that we must control our future energy diet and that some items on the menu will be expensive, I can assure you that for some years ahead one of the main dishes on this energy menu will be coal.

LEASING, ROYALTY, TAXATION POLICIES

Moderator: Phil Holdsworth, P.E.

The main points of the proposed new state coal regulations were presented by a representative of the State Department of Natural Resources. The "not less than 5% royalty" proposal was strongly opposed. Setting royalty rates and/or taxes at too high a rate can result in leaving reserves in the ground as uneconomic for current recovery, and impossible to recover at some future time after surface reclamation.

There was a strong feeling by many of those present, and several who presented their views after the session, that too much discretionary authority should not be left with the state administration--that firm guidelines should be set out by legislation. Otherwise, if the administration was not interested in the development of a substantial coal industry in Alaska, they could very well preclude such development by the adoption of unrealistic lease terms and regulations. It may be advisable to resurrect the final version of last year's marked-up coal leasing bill and reintroduce it in the current legislative session. Some finality of lease terms is necessary, in each proposed mining operation, before feasibility of operations can be determined.

There was a suggestion that royalties, rentals (advance royalty), and taxes derived from coal mining in Alaska should be deposited in a special fund for use in developing port facilities for moving coal to export markets which are just now materializing. This, of course, runs afoul of the "dedicated funds prohibition" of the state constitution. It was also pointed out that private enterprise has historically constructed these types of facilities.

Taxation--the mining license tax--was really not discussed in any detail. Apparently no changes in the present tax law are considered necessary.

FEDERAL REGULATIONS

Moderator: Jeff Lowenfels, attorney

Discussion centered about three areas of federal regulatory concern. These were: The Clean Air Act; Wetland determinations; and the Surface Mining Control and Reclamation Act of 1977.

Consensus was reached by the group regarding these three subjects, and the following recommendations were made:

Recommendation 1. The State of Alaska should concentrate on formulating a policy with regard to the changes needed in the federal Clean Air Act so the state can present a unified position during upcoming oversight hearings to be held on the Act in Congress this coming spring.

Alaska's coal is so low in sulfur content that emphasis should be placed on the futility of sulfur reduction standards applying to Alaskan coal in the same manner as these standards apply to high sulfur eastern coal.

Recommendation 2. Current U. S. Army Corps of Engineers administration of wetland use permits can cause delays in developing Alaskan coal. Thought should be given to developing Alaskan coal on a project wide basis, so general permits concerning wetlands involved with coal extraction may be given.

Recommendation 3. The State of Alaska should enact a Surface Mining Control and Reclamation statute during the current legislative session. Without such a state act there will be no new coal mines developed in Alaska, nor can existing mines expand. The urgency of this matter is highlighted by the fact that there is not now a place to submit a mining permit application. Also, there is the spectre of a federally imposed program giving jurisdiction over coal mine reclamation to the Federal Office of Surface Mining (OSM).

DEVELOPING MARKET STRATEGIES

Moderator: Richard Eakins

Following are the recommendations that originated out of the marketing strategy session of the coal conference.

Strong consensus. Unanimous agreement. It is observed that much of the world is ignorant or badly misinformed on Alaska, its products and its environment, which often gives a negative influence on the potential for the exchange of trade and commerce.

Recommendation 1: An aggressive promotion-information program should be conducted in Alaska's prime coal export market areas, and that it be a cooperative effort between private enterprise and government.

It is recognized that Alaska, to be world market competitive, has to overcome certain production cost handicaps. Industry can be competitive if:

- (A) it can be confident that those regulatory policies affecting costs are streamlined and minimized to their least-cost point to the industry.
(1) regulation; (2) permits; (3) environmental operating conditions; (4) taxation.
- (B) it can be assured that once regulatory costs are established, they are assured and constant for the long-term; short-term changes and instability of policy measures make it very difficult for industry to enter into long-term contract set prices.
- (C) it knows what infrastructure costs it will have to assume and the subsequent additional costs it imposes upon the product selling price.

Recommendation 2: Small producers be encouraged and assisted in entering the market by planning and providing infrastructure facilities that small producers could use.

Recommendation 3: It be a policy to provide a healthy, positive entrepreneurial market environment that encourages new investment and market activity.

Mixed consensus. Less than unanimous approval. It was observed that if Alaska can provide a skilled technically trained labor force, it will provide the most efficient labor and industrial research technology to the industry.

Recommendation 4: That it be a policy to determine the need for human resources for the emerging industry; that training and technical facilities be provided to maximize the utilization of Alaska human resources and provide technological development services.

Recommendation 5: That it be a policy to encourage exploration for new coal deposits and allowing the opening of coal leasing on State lands.

Recommendation 6: That it be a policy of the state to explore the economic potential for using coal to produce manufactured products in-state using processes such as distillation, gasification, etc.

STATE REGULATIONS

Moderator: Thomas Cook

The major topic of the session concerned the permitting process presently required to comply with various environmental safeguards under state law and regulations. In particular, the air and water quality standards enforced by the Alaska Department of Environmental Conservation, the habitat protection measures required by the Department of Fish and Game, and the consistency standards administered under the Alaska Coastal Management Program were discussed.

Other important aspects of state regulations, such as lease administration, taxation, royalty obligations, and state administration of the Federal Surface Mining Control and Reclamation Act were the focus of earlier work sessions.

It was generally acknowledged that the coal industry would be affected in an adverse way by the many regulatory requirements. Most participants agreed that there existed a fundamental need for reform of the regulatory process. The regulatory problems currently being imposed upon other industries--notably the oil and gas industry--are recognized as major obstacles to coal development.

Basically, the group supported legislative efforts to require agencies to administer regulations in a timely and reasonable manner. Legislation to reform the regulatory process has been re-introduced in the current session. The participants recommend the strong support of legislated regulatory reform.

The "wetlands" jurisdiction of the Corps of Engineers is too extensive in the general view of the group. An effort should be initiated to limit the overly extensive definition of wetlands. Moreover, the group felt that wetlands should be administered by the state rather than the federal government.

Virtually everyone agreed that there is a need for an undoing of the regulatory maze. Industry needs a stable regulatory climate. The rate at which new regulatory programs are being imposed creates a great uncertainty for companies contemplating the development of Alaska's coal resources.

The group recommended the following basic goals of regulatory reform:

1. Simplification of the regulatory process. Current requirements are redundant and unnecessarily complicated. Some agencies have requirements which conflict with the requirements of other agencies.
2. Environmental constraints should be reasonable and

justified by a real need. Such stipulations should be looked at in terms of a cost/benefit analysis.

3. Agencies should be required to act on permit applications in a specified time-frame. Proposed legislation would require review and approval within strict time limits. Agencies should be required to act on applications in a timely manner. Delay costs money.
4. Agencies should be held accountable for conditions imposed through the permitting process.

The group also acknowledged the need for protecting environmental values in the course of coal development. It was felt that much could be accomplished by further work sessions between industry and state regulatory agencies.

SOLVING TECHNOLOGICAL NEEDS

Moderator: Ross G. Schaff, State Geologist

Improving Scientific Data Base

This includes the spectrum of natural resource data that will be a necessary and integral part of coal development including expanded laboratory studies, geological mapping and resource evaluation, and hydrological studies. Our general recommendation is for state supported programs in all categories.

The importance of these data is twofold. First, specific and general knowledge of the coal resources and characteristics is a necessary factor in the marketability of Alaska coal. Second, coal operators will be hard pressed to obtain development capital without the assurance that the various permits for operation can be obtained. And permits cannot be obtained without hard baseline information on coal and the surrounding environmental conditions.

Two specific recommendations related to this category of scientific data collection were agreed to by the group:

Recommendation 1: Public Law 95-87 has a provision to establish university coal research laboratories in "each of the major coal provinces recognized by the Bureau of Mines, including Alaska." Unfortunately funding from the United States Government was not provided to establish any of the laboratories. The law authorized funding for construction of facilities, purchase of fixed and movable equipment and matching funds for operating expenses. In view of the fact that federal funding was not forthcoming at the time, it is recommended that state funds be utilized now to strengthen the laboratory activities of the School of Mineral Industry.

Recommendation 2: That funding for scientific data collection and research should be only for activities which are clearly defined in terms of objectives and products.

Mining Engineering/Production and Transportation Technology

This category speaks to the coal-related technologies which must be available if coal development can take place within the regulatory environment of state and federal law. These include, but are not limited to such topics as:

1. Small scale mining technologies for remote site utilization
2. Transportation methodologies for large and small scale operations
3. in situ gasification and in situ combustion for mine mouth power generation

4. Sulfur removal by bacteria and other innovative methods inclusive of regulatory reform
5. Coal/methanol processes
6. Coal briquetting for energy enhancement of lower rank coals
7. Seasonal impacts on mine constructions, operation, and product transportation
8. Utilization of coal waste as a platform for agriculture and other industries
9. Reclamation research
10. Mining in permafrost
11. Preparation of coal for transport

Additional research suggestions were listed in one of the resource papers "Coal Research Needs" included as a part of back-up material for the conference.

Recommendation 3: A pilot project which would demonstrate the viability of using coal on a small scale in an Alaska village should be instituted. The expression was made that while broad resource evaluation of coal in remote areas should continue, it was essential that something get started where the resource and need for cheaper fuel are known. This should be supported by the acquisition of baseline data sufficient to support economic projections.

Recommendation 4: There is a need to keep technological research coordinated by a single agency such as the University of Alaska (presumably the School of Mineral Industry) so that the benefactors of this research would be able to communicate easier with the researcher.

Again, a concern was expressed that the Legislature should fund only those projects which had a very specific set of purposes and products. Research should be directed more toward immediate application of findings as opposed to longer range basic research.

An expression was also made that the state support the concept and if necessary the operations which would refine coal in Alaska to secondary products such as methanol. There was a concern that export to foreign nations of coal in a primary state would not meet national needs and eliminate the possibility of additional employment opportunities for Alaskans.

Specifically, the state should be aware of the need for assistance to the Beluga methanol project currently funded by DOE at the initial stage.

There was also an expression that industry also has a responsibility to support its own interests through commitment of funds to research and development directed to developing Alaska coal resources.

INFRASTRUCTURE NEEDS

Moderator: C. H. Gates, Port of Anchorage

Recommendation 1: That the State of Alaska clearly define a policy regarding the development of transportation, community and human resource infrastructure to comply with the intent of Article VIII, Section 1 of the Alaska State Constitution. ("It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.")

Infrastructure definition: Any capital improvement investment to develop a resource. Types: mine, transportation, consumer.

Floor Comments:

State should stay out of the way - regulations will offer enough control. Allow industry to do its own thing.

State should assist industry by developing ports and transportation only. Royalties, etc., should go back into ports and transportation.

Railroads and hydro should be built - industry will "flock in" then.

Small coal operations are feasible.

Courts or Congress could take away Alaska's oil wealth. Use state funds immediately to improve country's energy position and keep the funds committed to infrastructure so Feds couldn't get it. Good sound projects only.

Surface mines "hamstrung" by regulations. Coordinate state regulatory and permit functions to streamline. Public sector should build ports; companies will then pay back to state on a delay basis to provide development incentive to capture our current opportunity.

Chicken and egg syndrome - private interests normally develop bulk infrastructure, not governments, but to have public access infrastructure must have a public element.

State should put 90% of effort into data collection and cutting red tape. These items will encourage coal development. Additionally, 10% of state's effort might be making money available for transportation-related infrastructure development.

Alaska should create a corporation to purchase the Alaska Railroad--totally owned by the state--contract-out supervision--expand railroad.

Floor Comments

State should immediately evaluate Anchorage (present port), Fire Island, Whittier, Seward for coal terminal. Also evaluate Regional Port Commission concept and a temporary multiple use bulk (coal/grain) facility at Anchorage.

Will industry pay for public facilities? Yes. They have and will only to the excess capacity of the facility. Then the public is out and the operator has total usage.

Private industry does not allow other operations - they'd never get development financing if transportation infrastructure was subject to cancellation. Would require expensive duplication of capital investments that could be avoided.

Regarding community support at Beluga, is a new community necessary at site? A transportation system to connect existing communities instead of developing a new community should be looked at to prevent major social disruptions across the Inlet.

An Alaskan policy should be to make job opportunities for Alaskans.

Recommended infrastructure would be investing in permit efficiency procedures at the state level and incentive financing of transportation projects to enhance development opportunities.

Alaska should invest revenues to develop infrastructure.

Japan and other Pacific Rim countries cannot build infrastructure in Alaska. (A) Because it is usually done by host governments. (B) They aren't experienced in going to other countries to build facilities. (C) Some countries like Korea can't take their country's money out of the country.

The Alaska Railroad international connection to Lower 48 is well on its way - don't blow it by accepting railroad from the Feds. Let Feds expand railroad for Alaska.

(Mr. Frank Jones, General Manager, the Alaska Railroad.) The U. S. Department of Transportation's position is that the State of Alaska should buy the Alaska Railroad. This is assumed in the U. S. Department of Transportation's FY '82 budget.

State should receive railroad - it's approaching viability, especially with coal resources. Currently the railroad cannot borrow against its assets to expand since it is not privately owned. It cannot expand under present ownership, especially in light of budget cutting at the federal level.

State should purchase railroad if private industry can't or won't.

If the state improves infrastructure at railroad ends and makes it more profitable, the Feds will want to keep it.

Floor Comments

International connection necessary so that Alaska can have markets in Lower 48.

Need the leverage that the federally owned railroad gives it when dealing with the federal government.

The state should establish a development corporation to run the Alaska Railroad - state as a stockholder.

Run the Alaska Railroad like the New York Port Authority with "a-political" Board of Directors. The state could establish a financial company to address these needs (development of non-renewable resources).

Establish a fund from royalties and lease revenues that can be invested in promising resource development project infrastructure. This would also help the small businessman of the state.

The human resources of the state should be trained in the first phase of resource development, not after implementation. Very important that Alaskans be skilled and trained for development to participate in natural resource benefits.

RESOLUTION

That the State of Alaska set up a corporation to purchase the Alaska Railroad. The only stockholder would be the State of Alaska to start with, and the state would invest enough money to do the following things:

1. Rehabilitate the physical plant of the railroad.
2. Make a rail connection to the Canadian railroads.
3. Construct a coal port large enough to handle the output of the Healy, Mat-Su, and Beluga coal fields.

RESOLUTION

That the State of Alaska pursue immediate efforts to streamline the regulatory process and firm-up taxation and royalty policies that will encourage private industry involvement in the development of the state's natural resources.

Time constraints prohibited formal action on the resolutions.

ALASKA COAL MARKETING CONFERENCE

January 23, 1981

Anchorage, Alaska

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Edward L. Miner Jeff C. Myers Sharon Mercer Thomas R. Marshall Bertha Midyett Einnar Meinig Robert J. Mitchell Kendall Moll Bill Miles Paul Metz Senator Bob Mulcahy Laurel Murphy Roy Mattson G. William Merritt Pepi Mejia John R. Messinger Howard Metaker Kenneth Maynard V.J. Mittenash Ralph Marsh	Bogle & Gates Anacanda Copper BLM Consultant Bertha's Brokerage Nikiski Marine Corp. Teamsters 959 American Mgt. Assoc. Chamber of Commerce U. of A. Mineral Ind. Research Alaska State Senate DNR/DMEM Cook Inlet Realty Co. Laborers Local 341 Preston, Thorgrimson-- U.S. Fish & Wildlife Maynard & Partch Exploration Supply & Equipment Touche Ross & Co.		York Steel Company Alaska Financial Consultants Alaska Pacific Bank Sourant & Strandberg Earth Resources Co. Diamond Shamrock Retherford Associates Alaska Community & Regional Affairs Teamsters 959

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 Mat-Su Borough
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 Sealaska Corp.
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 Anchorage Mun. Legal Dept.
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 DOWL Engineers

John Youngblood
 C.J. Zane
 Myles C. Yerkes

Tyonek Native Corp.
 Congressman Young's Office
 Anchorage Mun. Light & Power

ALASKA COAL MARKETING CONFERENCE

PURPOSE To understand and review the "framework" within which Alaska coal may be mined and marketed. To advise state and federal decision makers of the policies, research, regulations and capital improvements needed to enable the industry to move forward. To develop an informed citizen lobby that will work for necessary change.

THE PROGRAM

GENERAL SESSION

8:00 - 8:30

INTRODUCTORY REMARKS TOM FINK, President
Resource Development Council for Alaska, Inc.

CONFERENCE PROCEDURES DR. EARL BEISTLINE, Dean
University of Alaska, School of Mineral
Industry (Master of Ceremonies)

WORK SESSIONS

COMMODORE ROOM		KENAI-ALEUTIAN ROOM	
(1) LEASING, ROYALTY, TAXATION POLICIES Phil Holdsworth, Moderator	8:40 - 9:55	(4) SOLVING TECHNOLOGICAL NEEDS Ross Schaff, Moderator	
(2) FEDERAL REGULATIONS Jeff Lowenfels, Moderator	10:05 - 11:20	(5) INFRASTRUCTURE NEEDS Chris Gates, Moderator	
(3) STATE REGULATIONS Tom Cook, Moderator	11:30 - 12:50	(6) DEVELOPING MARKET STRATEGIES Richard Eakins, Moderator	

COCKTAILS AND LUNCHEON

1:00 - 3:00

KEYNOTE ADDRESS . . .

"ANATOMY OF A SUPERPORT—A LOOK AT ALASKA'S NEEDS"

Ian S. Ross, Chairman, Swan Wooster Engineering

CONFERENCE RECOMMENDATIONS Moderators of each work session
convey group actions to conferees

CLOSING REMARKS Commissioner Charles R. "Chuck" Webber

Our thanks to these individuals who assisted in developing the program format, submitted technical papers and/or served as advisors and moderators of the six work sessions.

Angle Dugick	Jim Wolfe	Chuck Hawley
Ross Schaff	Lloyd Pernela	Paul Metz
P. D. Rao	Frank McIlhargy	Harold Galliett
Benno Patsch	Agnes Brown	Ernest Wolf
Greg Edblom	Bob Fankhauser	Tom Cook
John Gray	Dick Barnes	John Paulson
Dave Sturdevant	Bill Coghill	Chris Gates
Ed Crittenden	Walt Parker	Starkey Willson
Cole McFarland	Chuck Becker	Dick Lanahan
Phil Holdsworth	Carl Probes ✓	Jim Wiedeman
David Rogers	Lionel Drage ✓	Dick Eakins
John Sims ✓	Glenn Akins ✓	Peter Hanley
Bob Huck	Frank Klett	Bill McKinney
William Ogle	Eari Belstline ✓	George Sillides ✓
Jim Johnson	Chuck Herbert	Wayne Reynolds
Howard Grey	Clarissa Quinlan	Lee Wyatt
Ethel "Pete" Nelson	Frank Jones	Jerry Allison
Roy Huhndorf	Fred Boness	John Jacobson
Blaine Porter	Jeff Lowenfels	Tom Fink ✓
Chuck Webber	Gillian Smythe	John Youngblood
Bill Noll	Laurel Murphy	Scott Goldsmith
Don McGee	Ralph Stelano	Claus Naske
Cleland Conwell	Bob Sanders	Don Triplehorn

And to the RDC staff and consultants:

Paula Easley	Terry Brady	Mary Holmes
Bob Fleming	Larry Hayden	Tracy Miller

And a fine group of volunteers:

Norma Swartzbacker	Joanne McMaster	Mary McKinnon
Fred Schentell	Shirley Heatwole	Joanne Hayden
Marilyn Carpenter	Elizabeth Lee	Pat Ryan
Dolly Fleming		Don Stevens

COASTAL
MANAGEMENT
BRIEFING
2-25-81

Alaska State Legislature

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



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
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Senate

Committee on Resources

February 25, 1981
1:30 p.m.

Senate Finance
5th Floor - Capitol

MEMBERS PRESENT

SENATOR FAHRENKAMP
SENATOR FISCHER
SENATOR STURGULEWSKI
SENATOR MULCAHY
SENATOR ELIASON
SENATOR GILMAN

The Committee was briefed by Jim Souby, Deputy Director, Division of Policy Development and Planning, Governor's Office, Murray Walsh, Program Coordinator, Office of Coastal Management, Bill Ross, Deputy Coordinator, Office of Coastal Management and Jon Halliwill, Mayor of Haines and Co-Chairman of the Coastal Management Council.

Jim Souby, stated that Mr. Walsh would outline the history, structure, status, issues and solutions of the Office of Coastal Management.

Murray Walsh, stated that the original purpose of the Coastal Management Program was outlined in the 1972 Federal Act. There are significant values in coastal resources and use of these values should be guided by a comprehensive resource management plan. Coastal Management is voluntary for the states. Thirty-four states have chosen to create an Office of Coastal Management (OCM). The incentive for the States to participate is funding from the federal government and also the fact that the Federal government will abide by the rules and requirements of the States. The State of Alaska has received \$7-8 million in grants for Coastal Energy Impact and \$50 million was placed in the Alaska Mutual Bond Bank for impact loans, \$10 million of which has been used. The funds in the Alaska Mutual Bond Bank can be used by communities for any part of the community structure that they can show would be impacted if development occurs. The communities have to repay the money but if development does not occur, the loan is forgiven.

In response to the question, what effect will President Reagan's eliminating CZM from the budget have upon Alaska's OCM? Mr. Walsh, stated that the federal budget dates are such that the Alaska OCM can carry on for another full year, then it would be faced with either going out of business or seeking State funding.

Mr. Walsh, stated that in 1977 the legislature passed the Coastal Management Act. In it the local governments are the primary managers of the coastal resources and draw-up plans with the guidance of the Coastal Policy Council. The main function of the Coastal Policy Council is to approve the local government's program. Once it is approved by the Council, the State and Federal governments abide by the local program.

In response to the question, does the Coastal Policy Council view itself as a regulatory body? Mr. Walsh stated that their function is to encourage the development of the local program and approve the local plan.

In response to the question, was not the intent of the Coastal Policy Act, that the Coastal Policy Council would recommend the local plans to the legislature, who was to approve the plans by resolution, but due to the ALIVE decision the Coastal Policy Council became regulatory? Mr. Walsh stated that the Attorney General issued a decision, April 1980, stating that the Coastal Policy Council is a regulatory body due to the ALIVE decision. (see attached).

In response to the question, has the Attorney General's decision placed a strain on the coastal Policy Council? Mr. Walsh said yes.

In response to the question, is it true that the Federal government has threatened to remove funding if a program is not done their way? Mr. Walsh said, yes, the state plan needed some improvements or the Feds would remove funding.

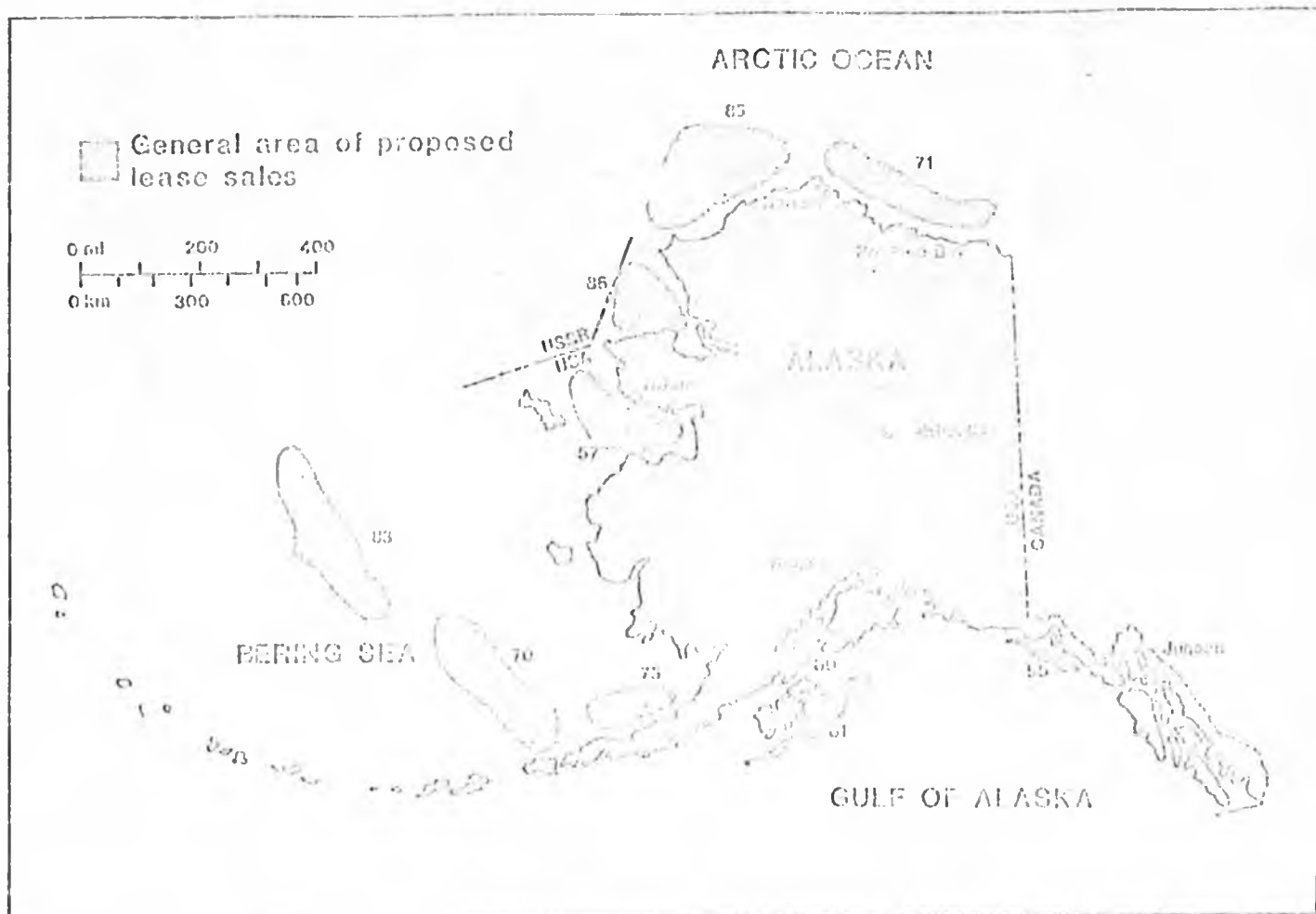
In response to the question, were not these to be local rules without undue pressure from the State or Federal government? Mr. Walsh stated that the Federal agencies do participate and try to influence the outcome of the plans.

Mr. Walsh stated he would request an amendment to the Act for legislative oversight and a narrower definition of "significant amendment to the plan."

Jon Halliwill, stated that the Coastal Policy Council acts as a buffer for the local communities, between them and the State and Federal activities in their area. He said that he thought it was unrealistic to eliminate OCM because there is a need for some type of planning for development. He further stated that consistency should be decided on a local level with State participation.

In response to the question, is there anything in the Haines Plan that could not have been accomplished as a City Council in a zoning ordinance? Mr. Halliwill said yes and no. The Haines area is in a borough that has no planning and zoning powers. The Haines plan encompasses these powers. It has no real authority outside the City limits but it does influence State and Federal concerns outside the City limits. The Plans real authority is only in the City limits.

In response to the question, as the City of Haines, was there anything that you have an implementation authority over that you could not have done under either your ordinances or under Title 29? Mr. Halliwill, stated no, with the exception of consistency.



Areas proposed for lease in Alaska, 1930-1935 (adapted from Benton, McDowell, and Conner, 1979; BLM, 1930a; and U.S. Department of the Interior, 1980 by Rogers, Golden & Halpern, 1980).

ALASKA LEASING SCHEDULES

YEAR	STATE		AREA	SALE No.	FEDERAL		AREA
	SALE No.	DATE			DATE		
1981	35	2nd Qtr	Upper Cook Inlet (onshore & offshore, including the Susitna Valley)				
	32	3rd Qtr	Cook Inlet south of Kenai River (exempt acreage sale)	60	9/81 12/81		Lower Cook Inlet NPR-A
1982	35	1st Qtr	Lower Cook Inlet (offshore & onshore)				
	34*	2nd Qtr	Prudhoe Bay Uplands				
	36*	2nd Qtr	2nd Beaufort Sea (submerged lands)				
	37	3rd Qtr	Middle Tanana Basin and Copper River Basin	57 70	9/82 12/82		Norton Basin St. George Basin
1983	38	1st Qtr	Norton Basin	71	2/83		Beaufort Sea
	39	2nd Qtr	3rd Beaufort Sea	61	4/83		Kodiak Shelf
	40	3rd Qtr	2nd Upper Cook Inlet (offshore & onshore, including the Susitna Valley)	75	10/83		North Aleutian Shelf
1984	41	1st Qtr	SW Bristol Bay Uplands				
	42	2nd Qtr	Minchumina Basin				
	43	3rd Qtr	4th Beaufort Sea	83	12/84		Navarin Basin
1985**	44	1st Qtr	Chukchi (nearshore & onshore)***	85	2/85		Chukchi Sea***
	45	2nd Qtr	Hope Basin	86	5/85		Hope Basin
	46	3rd Qtr	Holitna Basin				

* Same day Sales

** 1981 additions to the State 5-year lease schedule

*** The holding of the Chukchi Sales at this time is contingent upon a reasonable assumption that technology will be available for exploration and development in the lease sale area.

FIVE-YEAR OCS LEASING PROGRAM AND THE ALASKA COASTAL MANAGEMENT PROGRAM

January 30, 1981

Alaska's Coastal Management Program (ACMP) was approved on July 9, 1979 by the U.S. Department of Commerce, Office of Coastal Zone Management. This approval granted the State the authority to review and approve all federal activities occurring within Alaska's coastal zone for consistency with the ACMP. The issuance of licenses and permits related to OCS exploration, development, and production activities are included in this consistency review process.

In addressing OCS oil and gas leasing schedules, the State's position is that the Final Notice of Sale for each lease sale should be submitted to the State for an official consistency determination. However, the State has in the past and intends to continue providing written comments regarding consistency with the ACMP to the Department of the Interior for all major leasing steps leading up to the Final Notice. The purpose of these comments is to keep the Department completely informed of any concerns that the State may have relating to consistency with the ACMP.

The most significant adverse impacts that the State's consistency determination attempts to minimize include those to fin and shell fisheries, sea mammals, birds, water-dependent industries, water quality, and impacts to the residents and their local economies which are dependent on the coast for their well being. For purposes of federal consistency, the Guidelines and Standards of the ACMP are utilized by the State to assess these impacts. However, upon approval by the Alaska Coastal Policy Council, local district programs will provide the criteria by which oil lease sales in adjacent OCS waters will be measured for the purposes of consistency with the ACMP.

Status of District Coastal Management Programs in Areas to be Affected by the OCS Leasing Program

Below is a generalized description of the status of the local coastal programs in areas where an adjacent OCS lease sale is presently scheduled. The imminency of OCS leasing adjacent to several of the remote local districts is forcing an extremely rapid timeframe. The timeframe is particularly acute in the Bering Straits, Yukon-Kuskokwim, Bristol Bay, and Aleutian/Pribilof Islands Coastal Resource Service Areas (CRSA). Program completion dates do not reflect approvals by the Alaska Coastal Policy Council and the federal office of Coastal Zone Management - both of which are necessary before a program can be implemented.

1. North Slope Borough: The Coastal Management Program is scheduled for completion and approval in late 1982. The Chukchi Sea Sale 85 (February 1985) and the Beaufort Sea Sale 71 (February 1983) are in the vicinity of the Borough.

2. NANA Coastal Resource Service Area: The NANA region has organized into a district, elected a CRSA board, and initiated program development efforts. A resource inventory and analysis is expected in June of 1981. The program is not anticipated to be completed and adopted until early 1983. The Hope Basin Sale 86 (May 1985) tracts would lie offshore of the region.
3. Bering Straits Coastal Resource Service Area: The Bering Straits region has recently organized into a district and elected a CRSA board. The Bering Straits CRSA is scheduled to complete its program by the fall of 1983. The Norton Basin Sale 57 is currently scheduled for September 1982 and will affect the region before the program is completed.
4. City of Nome. The City of Nome lies within the Bering Straits region. The City is developing a coastal management program which is scheduled for completion and approval in early 1981. The Norton Basin Sale 57 will likely impact the city.
5. Yukon-Kuskokwim Coastal Resource Service Area: The Yukon-Kuskokwim Region has organized into a district, elected a CRSA Board, and developed a work program. A thorough issue identification process is underway. The CRSA program is anticipated to be completed and approved by early 1983. The Norton Basin Sale 57 (September 1982) could affect the northern portion of the Yukon-Kuskokwim region before the local program is completed. The Navarin Basin Sale 82, scheduled for December 1984, is in the vicinity of the St. Matthew Island which is within the Yukon-Kuskokwim CRSA. A Bristol Basin Sale, if held, could impact the southern portion of the region.
6. Bristol Bay Coastal Resource Service Area: The Bristol Bay Region has not yet organized into a district. Efforts are under way to organize, however, and a district may be formed as early as the spring of 1981. It is anticipated that a CRSA program could be completed late in 1983 if organization occurs this spring. The Bristol Basin Sale, if held, will impact the region.
7. Bristol Bay Borough: The Bristol Bay Borough lies within the Bristol Bay CRSA region and is developing a coastal management program. It has completed its resource inventory and analysis phase of its program. The program is scheduled to be completed in early 1982.
8. Aleutian/Pribilof Islands Coastal Resource Service Area: Educational efforts are underway concerning coastal management. Public hearings are scheduled in February to discuss subdividing the region into 3 sub-Coastal Resource Service Areas: 1) the Pribilof Islands; 2) the Aleutian Island chain west of Unimak Pass; and 3) the remainder of the chain east of Unimak Pass and including the lower portion of the Alaska Peninsula. If districts are organized this spring, it is anticipated that the programs could be completed by mid 1983. The St. George Basin Sale 70, scheduled for December 1982, will occur before the program is completed. The North Aleutian Shelf Sale 75 (September 1983), South Aleutian Shelf Sale (not currently scheduled), and the St. George Basin Sale (December 1982) will impact the region.

9. Kodiak Island Borough: The development of the Kodiak Island Borough program began in late 1980. The program is anticipated to be completed and adopted by late 1982. The Kodiak Sale 61 (April 1983) is in the vicinity of the Borough.
10. Kenai Peninsula Borough: The Kenai Borough has completed the resource inventory/analysis phase of its program. An extensive public participation effort is underway to refine these efforts. The program is scheduled for completion and adoption by late 1981. The Cook Inlet Sale 60 (September 1981) and the Kodiak Sale 61 (April 1983) could impact the area.

Effect of District Coastal Management Programs on OCS Planning

Many see the leasing process as only having two distinct phases: presale and postsale, with the act of leasing by itself initiating anticipated impacts. In fact, there are three distinct phases to the OCS leasing and development process, and State and local planning must be attuned to all of these. These are presale, postsale exploration, and postsale development, assuming there is a commercial find. The amount and type of information available to State and local decision-makers during each given phase differs dramatically. We do not believe that adequate information is available at the presale phase to plan for the entire OCS scenario that concludes with commercial development.

During the presale period, the information available is of a very general nature, particularly off Alaska's coast where huge frontier areas are being considered for leasing. It is difficult to anticipate specific onshore impacts when a much smaller number of tracts than those originally considered in the presale Environmental Impact Statement may actually be bid upon by the industry. After the sale itself, State and local decision-makers know which tracts have been leased, but they do not know which will be explored first and can only partially estimate the impacts of this second, exploration phase. There are impacts, of course, onshore as well as offshore, and to some extent these impacts can be planned for in a general manner.

During the presale phase, which is where all of western Alaska currently is in the OCS planning process, there is much pressure for coastal management planning to address the needs of all participants in the leasing process. There is also considerable pressure to resolve all conflicts at the time of local program adoption. This is unlikely to happen. The most likely type of coastal management planning we foresee being undertaken by a local government or coastal resource service area along the western coast of Alaska and the Aleutian Chain, during the current presale phase, is to identify areas where they do not want impacts to occur or physical activity to take place. This would involve preserving areas from impacts rather than selecting areas for impacts. The latter aspect of coastal resource planning is, by far, more encompassing and useful to the public and the industry, but there is simply not enough information at this time since it is by no means assured that the exploration will indeed result in a commercial find. Only a find of that quantity would justify the costs of both information gathering and resultant planning which could realistically select sites for impact.

Hence, during the current presale phase in the OCS planning process, the best local governments can do is to plan according to hypothetical scenarios. That is, they can develop a set of likely futures and prepare plans for each of them. This is expensive, time consuming, and potentially inefficient since the scenarios are based on limited data. A better option is to ensure that the three phases of OCS activity be clearly identified in local, State, and federal planning processes, and that adequate information requirements and funding is available to ensure that proper planning occurs at the right time. The key is to incorporate "local readiness" to handle the impacts associated with the actual phase of OCS activity in question into the federal decision-making process at this time.

For example, during the presale phase, readiness could mean the existence of local planning capacity with adequate sources of funding to prepare for exploration impacts, if indeed any tracts are leased by industry. To continue the example, readiness during the postsale exploration phase could be defined as local governments having the capacity to actively participate in the review and approval of the exploration plans and associated permits which industry must obtain prior to conducting exploration drilling.

The State of Alaska is attempting to support the development of local coastal management programs with this concept in mind. Adequate funding, as well as the close coordination of industry and all levels of governments, will be essential if local coastal plans can positively influence oil development at the right moment and properly mitigate community and coastal impacts.

MEMORANDUM

State of Alaska

TO: The Honorable Bettye Fahrenkamp
Chairman, Senate Resource Committee

DATE: February 25, 1981

FILE NO:

TELEPHONE NO:

FROM: Frances Ulmer, Director
Division of Policy Development
and Planning

SUBJECT: Summary of ACMP to date

Attached is a brief summary of selected pertinent information regarding the status and work efforts of the Alaska Coastal Management Program (ACMP). In order please find:

- (1) A description of district program development milestones, and a matrix showing the status of each district.
- (2) A map showing the proposed 5-year federal OCS lease schedule; a table describing both the federal and State 5-year lease schedules; and an analysis of the development of district programs impacted by these schedules.
- (3) A report of federal consistency determinations made by DPDP in fiscal year 1980, and an update to the present; a graphic of the type of consistency determinations made in DPDP.
- (4) A brief summary fact sheet on the special projects initiated in the last year for the ACMP.
- (5) An organization chart for the Office of Coastal Management, and a detailed analysis of OCM's FY 82 budget.
- (6) A copy of the correspondence between the Governor and Commissioner LeResche on the wisdom and need for any repeal of the Alaska Coastal Management Act.

Please feel free to contact Murry Walsh of Office of Coastal Management at 465-3540 if any further information is desired, or any clarification of the information presented is needed.

cc: Senate Resource Committee Members

FU/BR, 'lj

Dist. 4-15 2/25/81

TO: Murray Walsh
Coordinator
Office of Coastal Management
Office of the Governor

DATE: April 29, 1980

FILE NO: J-66-506-80

TELEPHONE NO: 465-3686

FROM: AVROM M. GROSS
ATTORNEY GENERAL

SUBJECT: Severability of
Coastal Management
Act legislative
approval require-
ments.

By: Jonathan K. Tillinghast
Assistant Attorney General

On February 25, 1980, you asked for our opinion as to the effect of State vs. A.L.I.V.E. Voluntary, P.2d ___ (Op. No. 2022, February 19, 1980) on the legislative approval requirements (AS 46.40.080) of the Alaska Coastal Management Act. On March 6, 1980, this office, through a letter from Rod Pegues to Senator Arliss Sturgulewski, concluded that various resolutions proposed under AS 46.40.080 were of no effect.

Subsequently, you orally requested us to expand on our March 6 opinion to discuss the effect of the invalidity of that section upon the remainder of the Act. In our opinion, AS 46.40.080 is severable from the remainder of the Alaska Coastal Management Act, and (1) council guidelines take effect upon their adoption under the Administrative Procedure Act (AS 44.62.180 et seq.); and (2) council action on a district coastal management plan takes effect upon final council disposition of the plan under 6 AAC 85.150 or AS 44.62.520.

The Alaska Coastal Management Act itself gives no indication of legislative intent with respect to the severability of any of its provisions. AS 01.10.030, however, creates a presumption that stricken portions of a statute are severable from the remainder. As the court noted in Lynden Transport, Inc. vs. State, 532 P.2d 700 (Alaska 1975), there has been "a consistent use of the general severability statute to preserve valid portions of the state legislature's enactments." Id. at 713.

As the court noted in that case, the test of whether a stricken portion of a statute is severable:

. . . is twofold. A provision will not be deemed severable 'unless it appears both that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand, in case others included in the act and held bad should fall.'

Id.

First, it is apparent that the remainder of the Coastal Management Act can stand alone without the separate provision of section 080. That section deals with the effective date of the Alaska Coastal Management program, and states that portions of the program become effective upon approval by concurrent resolution of the legislature. Since we have previously defined the Alaska Coastal Management program to include both the council's guidelines and district programs 1/, it might be argued that the excision of that section would provide no "effective date" for the regulations or local district programs. That, however, is not the case. Council guidelines must be adopted under the Administrative Procedure Act (AS 46.40.040(1)), and the pertinent portions of the Administrative Procedure Act (AS 44.62.180 et seq.) provide detailed standards for how, and when, regulations become effective. Similarly, the general "effective date" of particular agency quasi-adjudicatory actions -- such as approval of local programs -- is rather self-evident. Indeed, AS 46.40.060, which deals with approval of district programs by the council, contemplates that any dispute between the council and the submitting district will be resolved through an adjudicatory hearing held in conformance with the APA. AS 46.40.060(c). The pertinent provision of the APA (AS 44.62.520) provides for the effective date of agency decisions rendered after an adjudicatory hearing. Thus, excision of AS 46.40.080 creates no fatal mechanical gap which would prevent the statute from standing by itself. 2/

1/ 1978 Op. Atty. Gen., "Legislative Approval of Coastal Management Program, May 5, 1978."

2/ A textual excision to AS 46.40.100(a) will additionally be required. Bracketing the excised words, the subsection will read:

Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council [and the legislature] and in effect.

The fact that the severing of an invalid provision requires the deleting of particular words within a sentence does not make the statute any less capable of standing on its own. Indeed, excising particular words within a sentence was precisely that which the Supreme Court accomplished in Lynden Transport Inc. vs. State, supra.

A more weighty problem is posed by the second prong of the severability test -- whether the legislature would intend the Coastal Management Act to stand absent the removal of AS 46.40.080. Certainly, where, unlike State vs. A.L.I.V.E. Voluntary, supra, the legislature inserted a specific legislative approval mechanism in a particular statute, the provision was of obvious significance to the legislature. The legislative history of the Act indicates that the offending section was inserted as an addition to legislation prepared by the so-called "HCR 123" Committee. See HB 342, 10th Leg., 1st Sess. 3/ The administration tried, unsuccessfully, to excise the legislative approval requirement.

To say that the section was of some importance to the legislature, however, does not necessarily lead to the conclusion that the legislature did not desire that the state enact this coastal management legislation absent the exercise of a legislative veto. Over the past several years, the legislature has enacted several critical pieces of legislation containing "approval" provisions. The legislature knew, at least, that these approval provisions raised grave constitutional questions, and we cannot impute to the legislature a general intent to hang the fate of critical legislation on a provision of dubious legality. We have reviewed the legislative findings and policies with respect to the Coastal Management Act (§§ 1-2, ch. 84, SLA 1977), and find no indication that the legislature viewed its approval authority as an integral and indispensable component of the legislation. Indeed, although section 2(4) of the Act expresses a legislative concern for assuring the participation of all interested parties "in the development and implementation of the coastal management program," the language conspicuously excludes the legislature as an entity whose formal inclusion is necessary in the development of the program. Certainly, the remainder of the legislation, and the council's guidelines, provide for abundant opportunities for "public, local governments and agencies of the state and federal governments" (id.) to affect the development and implementation of the program. In this regard, the findings and policy statements contained in ch. 84, SLA 1977 are identical to those contained in the draft legislation proposed by the "HCR 123 Committee", which, as noted previously, was the starting point for Alaska's coastal management legislation, and which did not originally contain an overall legislative approval requirement.

3/ A joint legislative/executive committee was created by HCR 123 (9th Leg., 2nd Sess.) to prepare coastal management legislation.

Murray Walsh, Coordinator
Office of Coastal Management

April 29, 1980
Page 4

In sum, we believe that AS 46.40.080 is severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act. The effective date of council action on district programs is governed by the council's regulations, and AS 46.40.060.

If you have any further questions, please feel free to contact us.

JKT:dlm

MEMORANDUM

State of Alaska

TO: Murray Walsh, Coordinator
Office of Coastal Management

DATE: January 9, 1981

Thru: Michael Whitehead
State-Federal Coordinator

FILE NO:

TELEPHONE NO:

FROM: Rod Swope, Dave Haas
State Clearinghouse

SUBJECT: Annual Report Update
July 1, 1979 through
June 30, 1980

This document will serve as a brief summary of fiscal year 1979-80 (July 1, 1979 through June 30, 1980) activities under the Reimbursable Services Agreement (RSA) between the Office of Coastal Management (OCM) and the State Clearinghouse (SCH). For convenience and clarity, the information is presented in tabular and graphic form in separate sections, preceded by a brief explanation of the information contained within each section.

PROJECT REVIEWS

During the period from 1 July, 1979, to 30 June, 1980 (inclusive), a total of 521 projects were accepted and circulated for review by the State Clearinghouse. Additional projects were received and not reviewed when determined they were not within the coastal zone, exempt from ACHP review, or were determined not to have a significant impact on coastal areas.

On the average, the Clearinghouse receives several projects a month which contain insufficient information to conduct an adequate review. In these instances, the necessary additional information is requested of the applicant before the project review is officially initiated for review. Reviewing agencies also have access to additional sources of information or deal with the applicant directly which also serves to minimize requests for additional information.

The primary State agencies whose comments and expertise provide the basis for the consistency determination are the Departments of Environmental Conservation, Community and Regional Affairs, Fish & Game, Transportation & Public Facilities, Natural Resources and Commerce & Economic Development.

The Office of Coastal Management (OCM) analyzes comments received and provides a consistency recommendation to the Director of the Division of Policy Development and Planning (DPOP).

Federal agencies such as the U.S. Fish & Wildlife Service, National Marine Fisheries Service and the Environmental Protection Agency also provide substantial comments on a regular basis. Their concerns are frequently incorporated into federal consistency determinations.

Statistics indicating the disposition of those projects which underwent ACMP review in FY80 are as follows:

Projects determined to be <u>consistent</u> with the ACMP	
with stipulations.....	124
without stipulations.....	347
Projects determined to be <u>inconsistent</u> with the ACMP..	17
Projects withdrawn by the applicant.....	30
Projects requiring indefinite extensions.....	<u>3</u>
Total projects reviewed.....	521

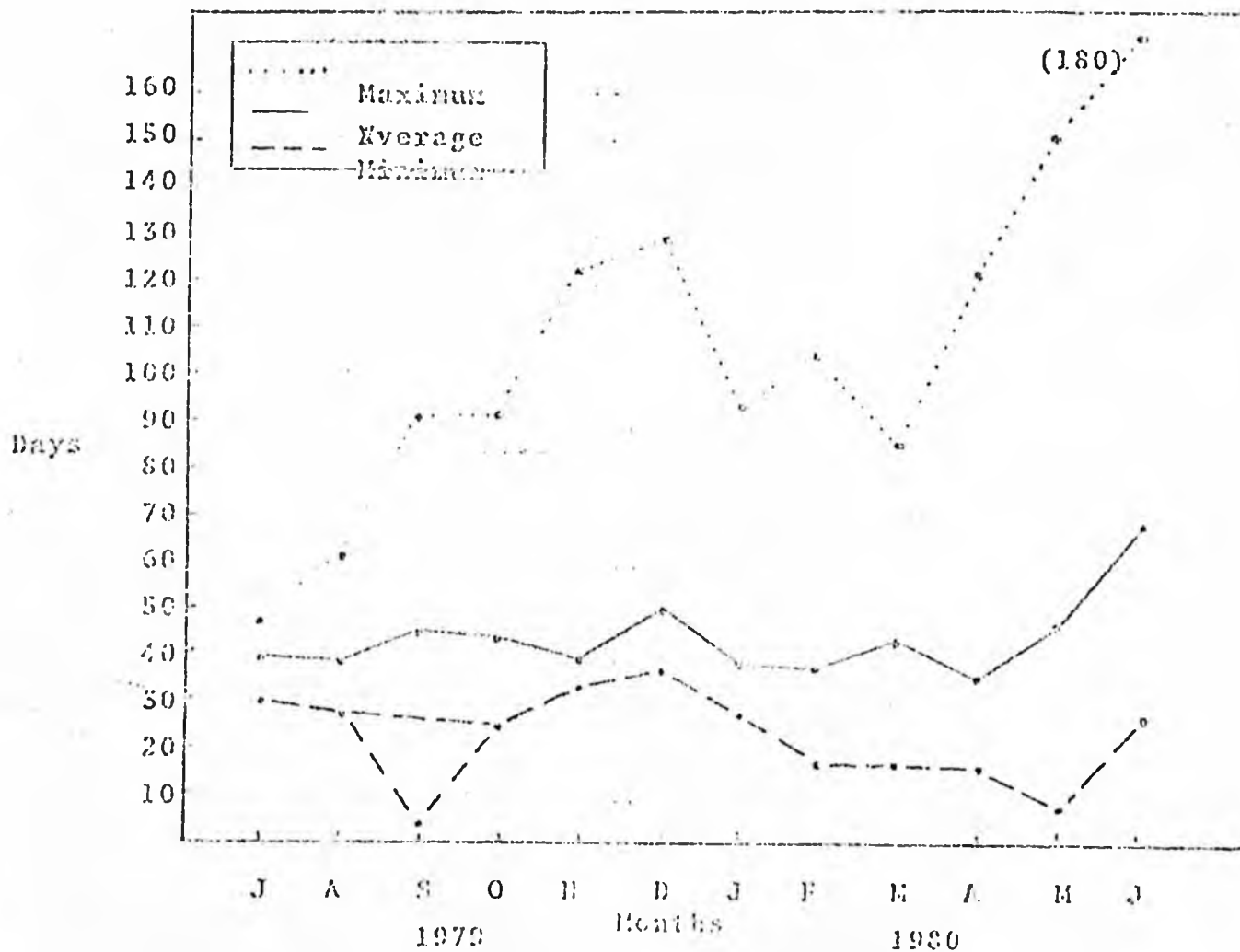
REVIEW PERIOD

The minimum length of time required to complete a normal ACMP review is 30 days from the time the project is logged (review officially begins) in by the State Clearinghouse. However, the overall average review period in FY80 required approximately 45 days to complete. This average 45 day review period appears to be steadily increasing as the result of a procedural change effected 15 May, 1980, requiring the receipt of a 401 Certification (Certificate of Reasonable Assurance) from the Department of Environmental Conservation on certain projects before issuing a consistency determination. DEC presently requires an average of 64 days to issue a 401 Certification on those projects requiring a water quality permit. The State Clearinghouse has the ability to accept an expedited review based on a reasonable request by an applicant, thus possibly reducing the time required to issue a consistency recommendation. The following table and graphic depiction shows, by month, the maximum, minimum and average time required to complete a normal review.

As indicated in the table, a greater volume of projects are submitted in the fall and spring in preparation for the summer construction period. The increase in permit applications does not appear to have much effect on the length of the review period, however.

The noticeable increase in average review period and maximum review time for May and June can be attributed to the procedural change requiring a 401 Certification from DEC before issuing a consistency determination. The low minimum review times for September and May reflect expedited review of a specific project.

	Number of Projects Submitted	Maximum Review Period (days)	Minimum Review Period (days)	Monthly Average (days)
FY79 July	8	47	30	39.7
August	31	60	27	38.6
September	36	90	3	41.7
October	47	90	22	40.0
November	32	116	30	38.2
December	49	124	30	41.1
FY80 January	50	93	27	38.8
February	52	104	17	37.8
March	47	85	16	41.6
April	70	120	15	34.8
May	63	150	7	48.2
June	36	180	25	66.4



ACMP CONSISTENCY STANDARDS

The Alaska Coastal Management Program has established a set of standards against which development activities in the coastal zone are reviewed. The following is a listing of these standards with an indication of the frequency to which each one has been cited in a consistency determination:

6 AAC 80.140	Air, land and water quality	121
6 AAC 80.130	Habitats	53
6 AAC 80.110	Mining and mineral processing	10
6 AAC 80.050	Geophysical hazard areas	8
6 AAC 80.040	Coastal development	8
6 AAC 80.100	Timber harvest and processing	8
6 AAC 80.070	Energy facilities	4
6 AAC 80.080	Transportation and facilities	4
6 AAC 80.120	Subsistence	4
6 AAC 80.060	Recreation	1
6 AAC 80.150	Historic, prehistoric and archaeological resources	1
6 AAC 80.160	Uses of state concern	1
6 AAC 80.090	Fish and seafood processing	0
	Total	224

FEDERAL AGENCY APPLICANTS

The State Clearinghouse has received proposals from 22 different federal agencies requiring ACMP review. The following is a listing of those agencies and the number of times each one has submitted a project requiring ACMP review:

Corps of Engineers (COE)	294
Office of Coastal Zone Management (OCCM-CEMP)	40
Department of Housing and Urban Development (HUD)	35
Heritage Conservation and Recreation Service (HCRS)	26
Federal Highway Administration (FHWA)	21
Farmers Home Administration (FHA)	19
Alaska Area Native Health Service (AANHS)	15
Environmental Protection Agency (EPA)	10
Federal Aviation Administration (FAA)	9
Economic Development Administration (EDA)	9
Municipality of Anchorage (MOA)	7
U.S. Coast Guard (USCG)	6
U.S. Fish and Wildlife Service (USFWS)	6
U.S. Forest Service (USFS)	5
Bureau of Land Management (BLM)	4
Federal Energy Regulatory Commission (FERC)	4
Department of the Army (DOA)	2
Department of Education (DOE)	2
National Oceanic and Atmospheric Administration (NOAA)	2
National Park Service (NPS)	2
U.S. Air Force (USAF)	1
Total projects reviewed	521

TYPES OF APPLICATIONS REVIEWED

There are four categories of federal functions which are reviewed under the ACFP: 1) direct federal activities, 2) federal licenses and permits, 3) OCS activities and 4) federal assistance programs. We have separated all ACFP reviews into these respective divisions in the following table.

federal licenses and permits ...	288
federal assistance programs	195
direct federal activities	34
OCS activities	4
	<u>521</u>

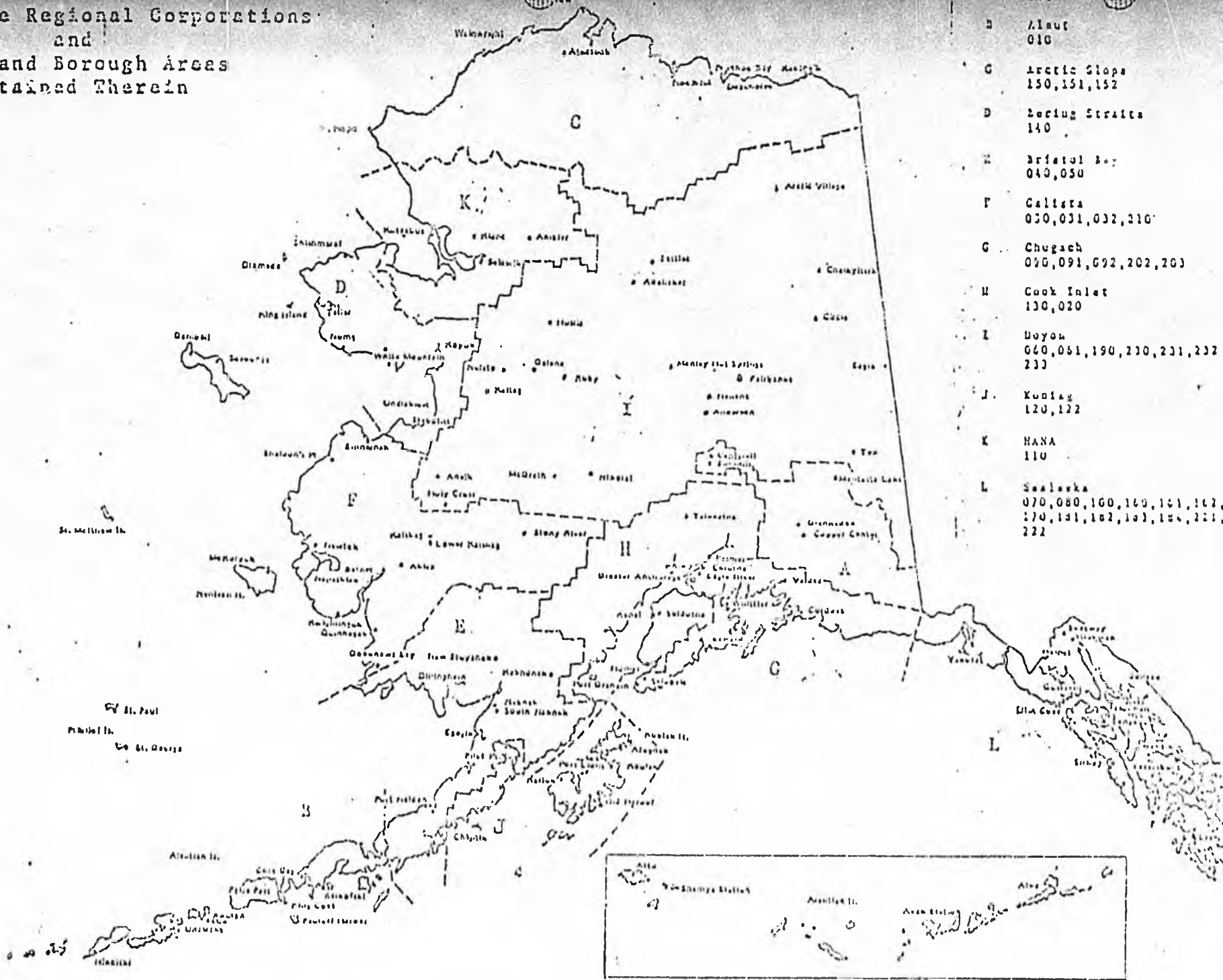
APPLICATIONS BY REGION

At your request we have also separated the ACFP applications into their respective land areas. Since our computer is only programmed to classify applications by native regions, we were not able to provide you with a computer print-out by ACFP region. These two types of regions are, however, very close if not identical in most instances. So we have enumerated the applications by Native region (see attached map) and projected the count by ACFP region:

<u>NATIVE REGION</u>			<u>ACFP REGION</u>		
<u>Letter</u>	<u>Name</u>	<u>Number</u>	<u>Letter</u>	<u>Native Region(s)</u>	<u>Number</u>
A	Ahtna	1	A	GNK	111
B	Alcut	25	B	D	17
C	Arctic Slope	98	C	EMF	48
D	Bering Straits	17	D	BAJ	46
E	Bristol Bay	26	E	H	107
F	Calista	22	F	H	
G	Chugach	34	G	G	34
H	Cook Inlet	107	H	L	133
I	Doyon	0	I	L	
J	Koniag	21		Abasco	1
K	NANL	13		Withdrawn	24
L	Sealaska	133			
	Withdrawn	<u>24</u>			
	Total	521		Total	521

A map of the native regions is attached for your convenience.

Alaska Native Regional Corporations
and
Census and Borough Areas
Contained Therein



- B Aleut 016
- C Arctic Slope 150,151,152
- D Bering Straits 140
- H Bristol Bay 040,050
- F Chukotka 050,031,032,210
- G Chugach 070,091,092,202,203
- H Cook Inlet 130,020
- I Doyon 060,051,190,230,231,232,233
- J Koniag 120,122
- K NANA 110
- L Sealaska 070,080,160,161,162,170,181,182,183,184,221,222

MEMORANDUM

State of Alaska

TO: Murray Walsh, Coordinator
Office of Coastal Management

DATE: February 19, 1981

Thru: Bruce Baker
State-Federal Coordinator

FILE NO:

TELEPHONE NO:

FROM: Rod Swope, Dave Haas
State Clearinghouse

SUBJECT: Special Report Request
July 1, 1979 through
February 15, 1981

This document will serve as a brief summary of activities under the Reimbursable Services Agreement (RSA) between the Office of Coastal Management (OCM) and the State Clearinghouse (SCH). As requested by OCM, this summary is for the period from July 1, 1979 through February 15, 1981.

PROJECT REVIEWS

During the period from 1 July, 1979, to 15 February, 1981 (inclusive), a total of 940 projects were accepted and circulated for review by the State Clearinghouse. Additional projects were received and not reviewed when determined they were not within the coastal zone, exempt from ACMP review, or were determined not to have a significant impact on coastal areas.

On the average, the Clearinghouse receives several projects a month which contain insufficient information to conduct an adequate review. In these instances, the necessary additional information is requested of the applicant before the project review is officially initiated for review. Reviewing agencies also have access to additional sources of information or deal with the applicant directly which also serves to minimize requests for additional information.

The primary State agencies whose comments and expertise provide the basis for the consistency determination are the Departments of Environmental Conservation, Community and Regional Affairs, Fish & Game, Transportation & Public Facilities, Natural Resources and Commerce & Economic Development.

The Office of Coastal Management (OCM) analyzes comments received and provides a consistency recommendation to the Director of the Division of Policy Development and Planning (DPPD).

Federal agencies such as the U.S. Fish & Wildlife Service, National Marine Fisheries Service and the Environmental Protection Agency also provide substantial comments on a regular basis. Their concerns are frequently incorporated into federal consistency determinations.

Statistics indicating the disposition of those projects which underwent ACMP review from the inception of the program in July of 1979, to the present time (February 15, 1981) are as follows:

Projects determined to be <u>consistent</u> with the ACMP	
with stipulations.....	234
without stipulations.....	495
Projects determined to be <u>inconsistent</u> with the ACMP..	27
Projects withdrawn by the applicant.....	45
Projects remaining in review	<u>139</u>
Total projects	940

REVIEW PERIOD

The minimum length of time required to complete a normal ACMP review is 30 days from the time the project is logged (review officially begins) in by the State Clearinghouse. However, the overall average review period since July of 1979, has required approximately 45.9 days to complete. This average day review period appears to be steadily increasing as the result of a procedural change effected 15 May, 1980, requiring the receipt of a 401 Certification (Certificate of Reasonable Assurance) from the Department of Environmental Conservation (DEC) on certain projects before issuing a consistency determination. DEC has indicated that they presently require an average of approximately 64 days to issue a 401 Certification on those projects requiring a water quality permit. The State Clearinghouse has the ability to attempt an expedited review based on a reasonable request by an applicant, thus possibly reducing the time required to issue a consistency recommendation.

The majority of time required to conduct an average review is accountable to field inspections and/or actual effort involved in reviewing project material. Other factors, contributing to the extension of a review are as follows:

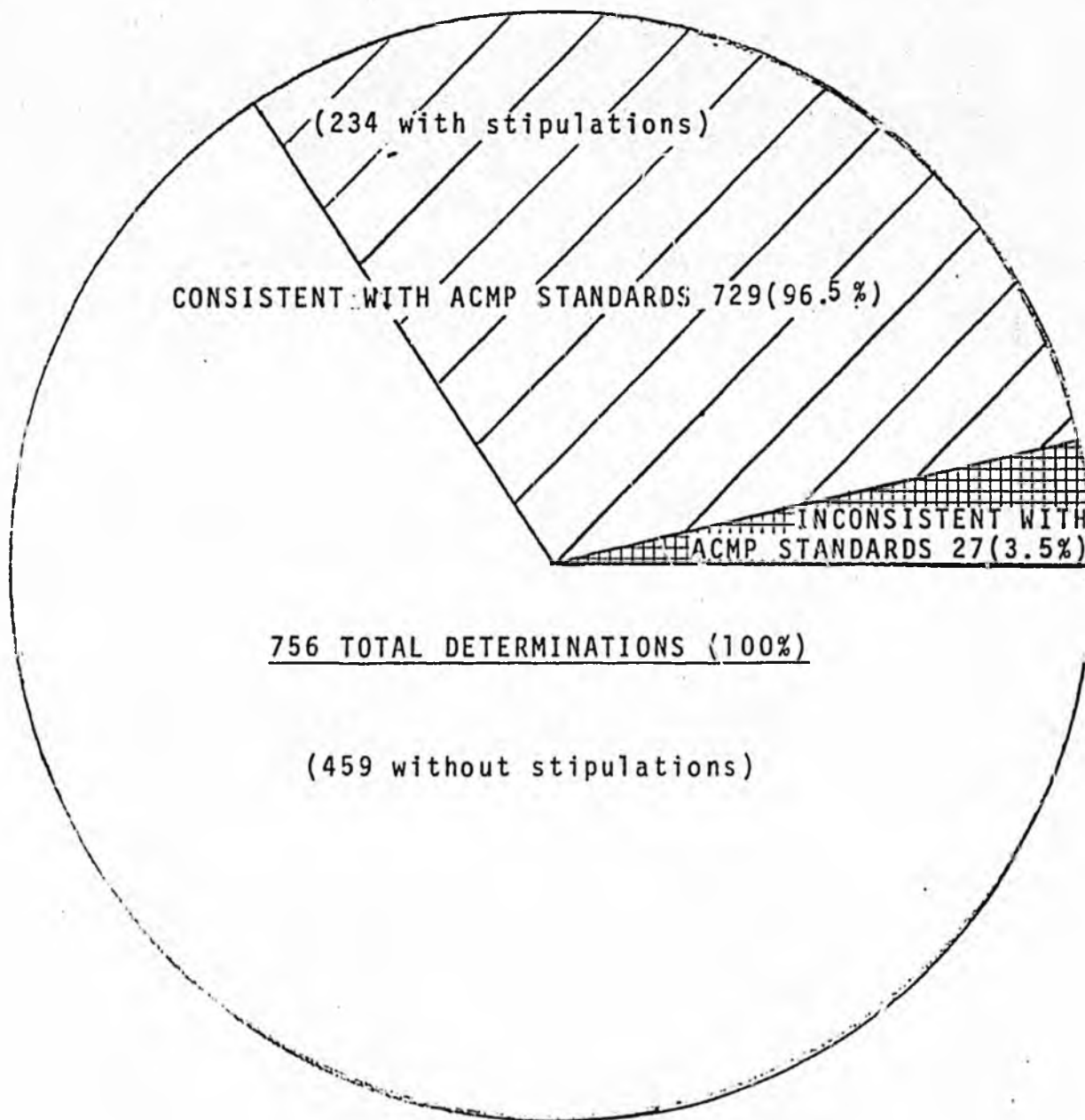
- 1) The average length of time which elapses between the date DEC's 401 Certification is signed and the date it is received by DPDP is approximately 2.9 days. This average figure is based on a random sample of fifty 401 Certifications received by DPDP during the past several months.
- 2) The average length of time required by DPDP to complete the ACMP consistency determination after a 401 Certification is received, is approximately 5.8 days. This average figure is based on the same random sample of projects (50) as discussed above.

- 3) Once DPDP has completed the ACMP consistency determination, an additional one to five days normally elapses (due to mailing time) before an applicant receives notification. All consistency determination letters requesting the applicant to adhere to certain stipulations, are mailed directly to the applicant via registered return receipt mail. OCM also extends the courtesy of contacting an applicant to discuss any stipulations, prior to DPDP mailing the consistency letter.

In special circumstances where an applicant is facing time constraints, DPDP will contact the Corps of Engineers to inform them of our consistency determination, prior to mailing. This allows them to initiate their permit issuance process and thus minimize any time delays due to mailing.

ALASKA COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS

MADE BETWEEN JULY 1979 & FEBRUARY 1980



SPECIAL PROJECTS

Since the Alaska Coastal Management Program was approved, the Office of Coastal Management (OCM) has worked with local, state, and federal officials to investigate major coastal management issues beyond the immediate scope of any single district coastal management program. Special projects supported with funds from the Alaska Coastal Management Program (ACMP) focus on problems of regional or statewide importance and seek to fully involve local, state, federal, private and public interests in arriving at reasonable approaches to their solution. Where problems are of a more localized or regional nature, the support and endorsement of local communities directly affected by the issue proposed for review is a prerequisite to funding by the ACMP. To date, special projects have included the following:

1. Wetlands Planning and Regulation: Regulation and development in wetlands is a growing statewide issue with significant regional implications in areas like the Kenai Peninsula and North Slope Boroughs. At the request of the Coastal Policy Council, OCM prepared a wetlands management report which includes a strategy for improving wetlands management and regulation. Using locally developed wetlands management plans to satisfy state and federal legal requirements and guide state and federal wetland development decisions is part of the strategy. OCM is currently seeking agreement between the City of Kenai, and appropriate state and federal agencies to test the feasibility of this approach along the Kenai River. The Coastal Policy Council has endorsed this approach as have state and federal members involved in Wetlands regulation.
2. Uniform Permit Procedures and Appeals: Duplicative permit reviews, excessive processing times, and inefficient administrative procedures have all been cited as problems with the way in which governmental resource development authorizations have been administered. The Department of Law, with assistance from OCM and Departments of Natural Resources, Environmental Conservation and Fish and Game, has reviewed these issues and promulgated uniform procedures for permits and appeals in response. Legitimizing the role of local governments to influence state and federal land and water use decisions is one major feature of the regulations. Assuring a single lead agency is responsible for determining a project is consistent with the ACMP another important aspects of the regulations.
3. Offshore Oil and Gas Information Programs: As state and federal oil and gas leasing increases in offshore areas adjacent to Alaska's western region, it is becoming increasingly important that local and state officials be supplied with relevant and timely information on how oil and gas development can best be conducted in the region. OCM has prepared a report with the support of the U.S. Geological Survey which identifies issues associated with the collection and dissemination of information pertinent to oil and gas operations in Alaska's Bering Sea region. The report describes current state and federal information collection and distribution systems, identifies problems with the current systems, and suggests approaches to

solving some of these problems. The Coastal Policy Council will review and consider the merits of these approaches at its April or May meeting.

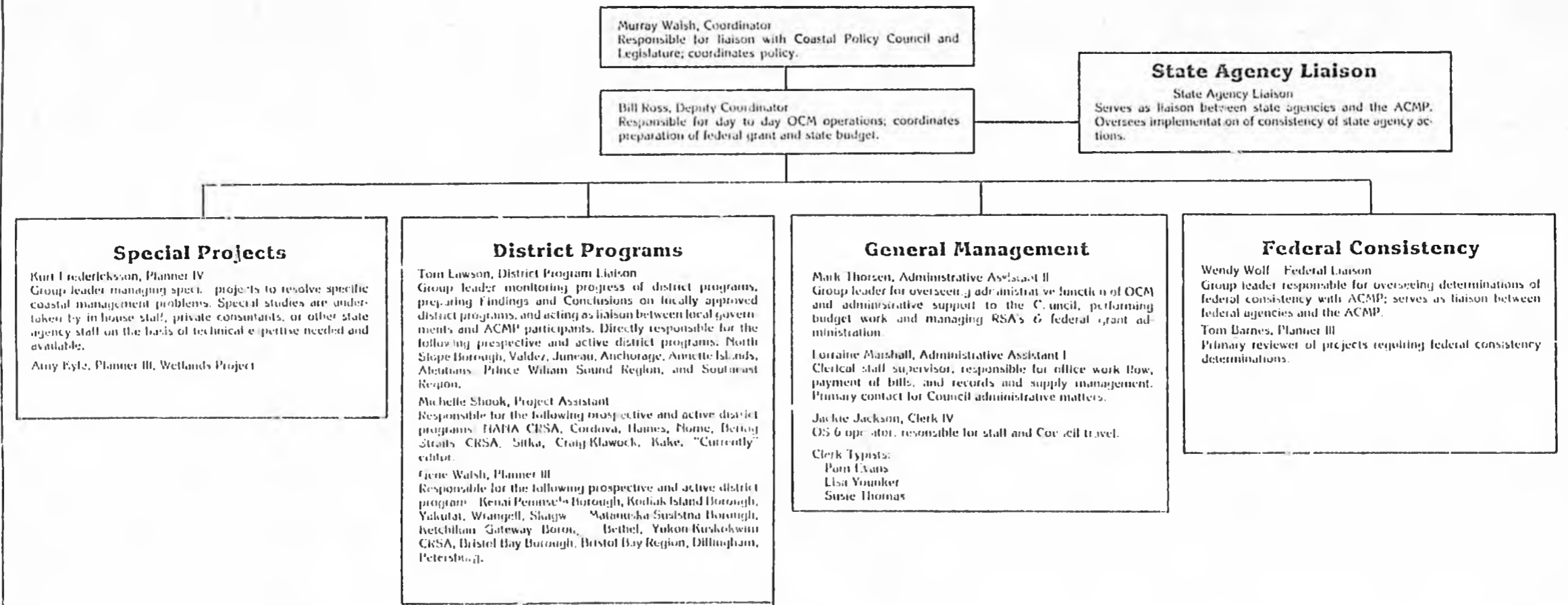
4. Unorganized Borough Management Alternatives: Recent legislative and administrative studies have identified a number of problem areas related to service delivery in the Unorganized Borough. To work on possible solutions to identified problem areas, the Department of Community and Regional Affairs, with funds from the ACMP and U.S. Department of Housing and Urban Development, sponsored a three-day symposium Nov. 17-19, 1980 in Anchorage. As background to the symposium, DCRA summarized issues and problems in a report entitled, Problem Analysis: Service Delivery and Government in the Unorganized Borough. In addition, a follow-up to the symposium is being conducted where eight specialists from outside Alaska who attended the symposium are being asked to prepare and submit papers addressing specific problem area(s) related to service delivery and government in Alaska.

5. Bristol Bay Resource Inventory: By November, 1983, major resource management plans and decisions affecting the Bristol Bay region will be completed by state and federal agencies. These plans and decisions include; federal OCS oil and gas lease sales in the Saint George Basin and North Aleutian Shelf, state oil and gas lease sales in the Bristol uplands, a Bristol Bay Cooperative Management Plan mandated in the Alaska Lands Act, and an area plans for management of state land and resources. In order to maximize its influence on pending state and federal plans and decisions, the Bristol Bay Coastal Resource Service Area needs to prepare its district coastal management program at least at the same time the state and federal plans and decisions are being made. The purpose of this project is to provide the soon to be elected coastal resource service area board with the data and information required for coastal management planning by June, 1982. The Department of Natural Resources will lead the data collection projects and coordinate the efforts of other state and federal agencies. Local representatives are expected to participate in work groups organized to administer specific work efforts.

Additional information on any of the projects described above is available directly from the Office of Coastal Management, Special Projects section.

Organization of the Office of Coastal Management

Over the last year, the Office of Coastal Management has undergone minor reorganization. With the addition of staff since federal approval of the ACMP a year ago, reorganization became necessary to more clearly define areas of responsibility. To provide you with an overview of who is responsible for what within our organization, the following chart is provided. As a section of the Division of Policy, Development & Planning in the Office of the Governor, OCM is currently operating under this structure.



Murray Walsh, Coordinator
Responsible for liaison with Coastal Policy Council and Legislature; coordinates policy.

Bill Ross, Deputy Coordinator
Responsible for day to day OCM operations; coordinates preparation of federal grant and state budget.

State Agency Liaison
State Agency Liaison
Serves as liaison between state agencies and the ACMP. Oversees implementation of consistency of state agency actions.

Special Projects

Kurt Fredericksen, Planner IV
Group leader managing special projects to resolve specific coastal management problems. Special studies are undertaken by in-house staff, private consultants, or other state agency staff on the basis of technical expertise needed and available.

Amy Eyle, Planner III, Wetlands Project

District Programs

Tom Lawson, District Program Liaison
Group leader monitoring progress of district programs, preparing Findings and Conclusions on locally approved district programs, and acting as liaison between local governments and ACMP participants. Directly responsible for the following prospective and active district programs: North Slope Borough, Valdez, Juneau, Anchorage, Admette Islands, Aleutians, Prince William Sound Region, and Southeast Region.

Michelle Shook, Project Assistant
Responsible for the following prospective and active district programs: HABA CRSA, Cordova, Haines, Nome, Bering Straits CRSA, Sitka, Craig Klawock, Kake. "Currently" editor.

Gene Walsh, Planner III
Responsible for the following prospective and active district program: Kenai Peninsula Borough, Kodiak Island Borough, Yakutat, Wrangell, Sitka, Matanuska-Susitna Borough, Ketchikan Gateway Borough, Bethel, Yukon-Kuskokwim CRSA, Bristol Bay Borough, Bristol Bay Region, Dillingham, Petersburg.

General Management

Mark Thorzen, Administrative Assistant II
Group leader for overseeing administrative functions of OCM and administrative support to the Council, performing budget work and managing RSA's & federal grant administration.

Lorraine Marshall, Administrative Assistant I
Clerical staff supervisor, responsible for office work flow, payment of bills, and records and supply management. Primary contact for Council administrative matters.

Jackie Jackson, Clerk IV
OS & operator, responsible for staff and Council travel.

Clerk Typists:
Pam Evans
Lisa Younker
Susie Thomas

Federal Consistency

Wendy Wolf - Federal Liaison
Group leader responsible for overseeing determinations of federal consistency with ACMP; serves as liaison between federal agencies and the ACMP.

Tom Barnes, Planner III
Primary reviewer of projects requiring federal consistency determinations.

The Fiscal Year 1982 Budget - Summary
The Alaska Coastal Management Program (ACMP)

This summary is presents the ACMP budget by standard line item categories, but contains annotations to show which agencies and entities will actually receiving and using the funds from various line items. Except as noted for line 700, the line item totals are the same as shown on page 5 of the Operating Budget for the Development Category. All figures are in thousands of dollars.

Line 100 - Pers. Serv.	598.6	This figure is salaries and benefits for the Office of Coastal Management (OCM) only. Other state agency participants in ACMP have salaried positions as well that the program pays for, but these appear under line 300 in this BRU, and will be explained in more depth below. OCM has sixteen permanent positions, three of which are new in FY 81 and must be ratified by the Legislature for FY 82. OCM is staff to the Coastal Policy Council, lead agency for the program overall, and responsible for a great deal of liaison with the 35 participating local governments, 10 participating state agencies, and about 25 federal agencies.																
Line 200 - Travel	118.7	The travel figure includes the travel costs of the 16 member Coastal Policy Council, which meets about eight times a year, and the OCM staff which must travel extensively because of the liaison responsibilities.																
Line 300 - Contractual	2180.9	This figure combines three different types of contracts important to ACMP: i. Office service contracts for OCM, like copying machines; ii. Special study or consultant contracts directly to OCM, which can either be outside consultants or temporary personnel; and, iii. Contracts with other State agencies to provide a variety of services. A more detailed breakdown of the contracts is shown below.																
Office Service Contracts:		<table border="0" style="margin-left: 20px;"> <tr><td>34.6</td><td>Telephone, Postage, Telegrams</td></tr> <tr><td>46.1</td><td>Printing</td></tr> <tr><td>55.2</td><td>Office space, utilities, janitorial</td></tr> <tr><td>3.5</td><td>Typewriter service agreements</td></tr> <tr><td>9.7</td><td>Copier rental, quick-copy</td></tr> <tr><td>10.9</td><td>Typewriter rental</td></tr> <tr><td><u>3.5</u></td><td>Freight, conference registration</td></tr> <tr><td>163.5</td><td>Total Office Service Contracts</td></tr> </table>	34.6	Telephone, Postage, Telegrams	46.1	Printing	55.2	Office space, utilities, janitorial	3.5	Typewriter service agreements	9.7	Copier rental, quick-copy	10.9	Typewriter rental	<u>3.5</u>	Freight, conference registration	163.5	Total Office Service Contracts
34.6	Telephone, Postage, Telegrams																	
46.1	Printing																	
55.2	Office space, utilities, janitorial																	
3.5	Typewriter service agreements																	
9.7	Copier rental, quick-copy																	
10.9	Typewriter rental																	
<u>3.5</u>	Freight, conference registration																	
163.5	Total Office Service Contracts																	

Line 300 Continued

Special Study Contracts: 207.5 These studies are performed at the behest of the Coastal Policy Council, and at this point, represent something of a contingency fund. The Council has approved the OCM wetlands report however, which calls for investigation into ways and means to arrange land trades for the public to acquire wetlands. This is an example of of the type of activity OCM might contract for. Contractors can be outside consultants, state agencies, or temporary personnel at OCM.

State Agency Program Service Contracts:

These figures do not include office service contracts performed by state agencies such as printing, so the total is not the same as the Inter-Agency Transfer total in the BRU. These contracts are for state agency services obligated by the Coastal Policy Council, existing law, or demand from the coastal local governments.

	400.0	Dept. Natural Resources
	134.9	Dept. Transportation and Public Fac.
	95.8	Dept. Commerce and Economic Development
	225.7	Dept. Environmental Conservation
	362.4	Dept. Fish and Game

Numbers to the right are OCM estimates based on level funding plus inflation. A quick survey of some of the BRUs which will receive some of these funds showed no specific estimates that were clearly indicated as ACMP funds in the Revenue Detail forms (form 22).

All five of the agencies above are represented on the the Coastal Policy Council, and all five have roughly similar responsibilities which break into three categories: i) Coordination inside and outside the agency on ACMP matters, including staff support to the agency's representative on the Council (app. one-fifth of the amount shown for each agency is devoted to this); ii) Assistance to the local governments in development of their local coastal plans (two-fifths); and, iii) assurance of consistency of agency actions with ACMP (two-fifths). These three functions are recurring and routine. Each year, an RSA is negotiated to define the extent of the service that year, and to make general improvements. Each recipient agency provides a 20% match to the RSA face value.

Line 300 Continued

State Agency Program Service
Contracts Continued:

293.6 Dept. Community and Regional Affairs

DCRA is the pass-through agency for the grants to local governments using the funds shown in line 700 below. The figure shown here pays for coordination and support for DCRA's representative on the Coastal Policy Council, but the bulk of the funds are used to administer the pass-through program.

54.4 Dept. of Law

The Coastal Policy Council and ACMP in general require the services of a full time attorney. The Dept. of Law acts as a contractor for this service.

92.6 Univ. of Alaska, Arctic Environmental Information and Data Service (AEIDC)

AEIDC provides a coastal resource information service to ACMP participants, and is capable of providing short-turnaround small-scale research projects for local governments.

7.8 State Library

The State Library manages the coastal management collections at OCM and duplications in other locations for the benefit of all ACMP participants.

1809.9 Total State Agency Program Service
Contracts

Line 400	Commodities	8.1	This figure is OCM commodities only
Line 500	Equipment	3.7	This figure is OCM equipment only
Line 600	Lands/Bldgs	-0-	
Line 700	Grants/Claims	2070.0	This is the sum that is passed through to local governments for the purpose of developing and implementing local coastal management programs. There is a distinction between development, or the planning phase, and implementation or the more tangible and visible phase. The switch usually occurs at the time of Coastal Policy Council approval of a local program, but grants for implementation-type purposes have been made

Line 700 Continued

in advance of approval of the local plan when the circumstances warranted. This is usually to meet an urgent need at the local level, and where the outcome of the local plan will not be harmed by pre-implementation in certain areas. As might be expected, as the years pass, the emphasis for local pass-through funding will shift more and more to implementation. A table below shows the history in general percentages, as well as a forecast, of the split between general coastal resource planning and implementation actions. (Forecast below dashed line)

	<u>General Planning</u>	<u>Implementation</u>
FY77	95%	5%
FY78	90%	10%
FY79	80%	30%
FY80	75%	25%

FY81	65%	35%
FY82	55%	45%
FY83	40%	60%
FY83	20%	80%

Total Expenditures: 4910.0

Revenue: 4450.0 Federal Coastal Management Program
 460.0 State General Fund Match

Note: The federal grants must be matched one State or local dollar for every four federal dollars. The 460.0 shown is match that is used by OCM. The other State agencies and local governments supply their own match for the federal funds they receive. This has caused a problem for the local governments, especially those which have no local taxing powers such as the Coastal Resource Service Areas (of which there are now three, but three more are expected to be formed by December of 1981). In light of this, the Coastal Policy Council has asked for an additional 250.0 of state funds in order to offset half of the local match obligation for taxing districts, and all of the local match obligation for non-taxing districts. An amendment to the Governor's budget will be forthcoming in late February or March to include this amount, which should be added to line 700.


MEMORANDUM

State of Alaska

TO The Honorable Robert E. LeResche DATE December 5, 1980
Commissioner
Department of Natural Resources FILE NO.

TELEPHONE NO. 465-3500

FROM Jay S. Hammond SUBJECT Repeal of the Alaska
Governor Coastal Management Act



The purpose of this memorandum is to unequivocally reject your suggestion that I advocate repeal of the Alaska Coastal Management Act. The suggestion that I announce my intent to do so on Friday without either the opportunity to carefully evaluate the program or to discuss such an evaluation with the Coastal Policy Council, other commissioners, local governments, other participants in the Alaska Coastal Management Program and the public, is clearly unacceptable. I cannot envision a situation in which I would take such drastic action without undergoing a thorough analysis of the program and alternatives to the program, and a substantial public review process. Certainly you would not advocate such a drastic measure for other important programs, such as oil and gas leasing and land disposal.

Although I am supportive of evaluating all state programs for their effectiveness, efficiency and continued usefulness, I believe that a thorough review is the appropriate first step, not a widely circulated memorandum trumpeting one commissioner's opinion of a program. If there is one thing this Administration stands for it is our commitment to analysis and evaluation before action, and to a fair opportunity for all to be heard on any issue. The public interest is best served by this approach.

You list several reasons for your suggestion to wipe out the Act, however, none of them are substantiated with examples or facts that have come to my attention. Several of your assertions conflict with my own understanding of the program's operation and impact.

I have been advised that nearly 800 consistency reviews have occurred since August of 1979, and that in two-thirds of the cases, the review has culminated in stipulations or conditions that did indeed affect the outcome of the decision. These reviews all involved notice, multi-agency participation, affirmative recordkeeping, and balanced results. Whether the permits and decisions thus issued would have been the same is a matter of conjecture. Certainly, however, the quality of the decisions have been improved as a result of

the process. In point of fact, some of these decisions have been contrary to your own initial recommendations, notably the March 31 drilling deadline that has been applied in several cases. Conversely, your department's position has been accorded greater weight in state positions than might otherwise have occurred if each agency was responding to federal initiatives independently.

You say that coastal management consistency decisions create an additional step or stage in the decision-making process. My understanding is that in all but one of the 800 federal cases, the consistency decision was rendered at the same time or before other state agency decisions on the same project. As for direct state agency actions, the coastal management rules are simply additional rules to follow, and in most cases, have been incorporated into routine agency decision-making processes. While there was some concern and confusion initially by agency personnel and those affected by the process, you are the only commissioner who has complained to me about this process or your agency's ability to incorporate standards into your decision-making.

I can appreciate your concern about procedures which lengthen review periods or decision-making timeframes, but as long as the additional time which may be required for interagency reviews is not unreasonable, I think it is a price worth paying to assure the best and most balanced decisions possible. I believe that on balance we will make better ones if we involve sister agencies which have appropriate expertise, and if we clarify the criteria on which we base our decisions, as the coastal management standards attempt to do.

The agreement to which you refer regarding the authority to make federal consistency determinations has been briefly described to me. I would like to remind you and others who participated in "the agreement" that it is I who have the responsibility and authority for those consistency decisions, and I will be the one who decides which agency or agencies will make those decisions for me. Although I intend to give great weight to your collective judgment on the issue, I reserve the right to make changes in that "agreement."

If you can be more specific about the problems you believe your agency has encountered with the program and if you would make some specific suggestions with regard to changes in either statutory mandate or program administration, I am willing to analyze your ideas and obtain comment from other participants in this program. However, I am not willing to single-handedly dismantle programs based on perceived problems.

My real concern in this entire issue is that personality disputes may be overriding substantive problems which should be addressed. The objective of the permit reform effort which I unveiled today is to attack problem areas and develop solutions to those problems. If key members of my Administration are unwilling to assist me in this effort, I am willing to unilaterally impose those solutions on the agencies. However, I will only take this action after the completion of the public review process I launched today, and if key officials in my Administration cannot agree on a mutually acceptable program.

cc: Lieutenant Governor Terry Miller
Frances Ulmer, Director, Division of Policy Development
and Planning
Ron Skoog, Commissioner of Fish & Game
Ernst Mueller, Commissioner of Environmental Conservation
Lee McAnerney, Commissioner of Community and Regional
Affairs
Wilson Condon, Attorney General

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 program 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 Koliak-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.

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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

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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.