

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1874 SRES COASTAL ZONE MANAG - CFAB BRIEFING 2/20/81

1874

MEMORANDUM

State of Alaska

TO: Murray Walsh, Coordinator
Office of Coastal Management

DATE: October 12, 1981

FILE NO:

TELEPHONE NO: 465-3600 ex 53

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Amendments to the ACMP

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

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

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

LJA/jb

Attachments

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

District Coastal Management Program Regulatory Provisions

AS 46.40.030(4) is repealed and reenacted to read:

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

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

Conditional Approval of District Coastal Management Programs

AS 46.40.060(a) is amended to read:

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

Flexible District Program Completion Deadlines

*near to do
away w/ inflex
some limit +*

AS 46.40.050 is repealed and reenacted to read:

*give Council
authority to negotiate
reasonable limits*

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

*Also sub: without approval date which might
have exceeded legal deadline*

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

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

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

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

Issue-specific district coastal management programs.

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

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

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

or addition to an existing approved program

OID - portion - (define)

Covered by hearings etc?

Council to locals?

New Uses of State Concern:

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

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

State Agency Participation

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

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

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

a more realistic approach

AS 44.19.161(2) is amended to read:

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

not being done

Coastal Resource Service Area Boards

AS 46.40.140(a) is amended to read:

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

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

3-11-11
H
L
OK

OK

Handwritten signature

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

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

*ok -
but not
letting
outside
which
would create
lots of problems*

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

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

good

AS 44.19.155(d) is amended to read:

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

good

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

AS 46.40.190(b) is amended to read:

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

*ok
clarification
of the
word
agreement
in the
provision*

will not use language

Draft #2

District Coastal Management Program Regulatory Provisions

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

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

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

see draft 1

*This still needs
some work, struck*

oh

Conditional Approval of District Coastal Management Programs

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Flexible District Program Completion Deadlines

AS 46.40.050 is repealed and reenacted to read:

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

ok

see draft 1

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

ok

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

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

need
addition

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New Uses of State Concern:

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

State Agency Participation

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

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

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

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

AS 46.40.190(b) is amended to read:

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

FYI

"ACMP IMPROVEMENTS PACKAGE"

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

A. Results of CPC Subcommittee Discussions:

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

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

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

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

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

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

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

CCM
6/26/81

districts can have a hearing

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

Strengthened
4/16/84
no subject
2a

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

B. Results of the Senate Effort During the Intersession:

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

C. Pre-Existing Proposals for ACMP Improvements:

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

Sept 14

Arliss,

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

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

And that Don will continue his Title 29 work.

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

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

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

Margo

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

Interim Subcommittee Report Summary

Major Differences Between Title 29 & 46

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

Benefits of the ACMP

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

Commonly Expressed or Perceived Problems With the ACMP

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

MEMORANDUM

State of Alaska

9/4/81 Arless
FYI
C2M

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

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

DATE: August 21, 1981

FILE NO:

TELEPHONE NO:

SUBJECT: August 28, 1981
teleconference agenda

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

Distribution List

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

Attachments

Remember
Sept 4 1:30 L10
C2M meeting

AGENDA

Alaska Coastal Policy Council

Interim Subcommittee

Third Teleconference Meeting

August 28, 1981

10:30 a.m. Juneau Time

8:30 a.m. Anchorage Time

A. Purpose

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

B. OCM Reports

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

C. Interim Work Up-dates and Meeting Schedules

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

D. Public Comments and Questions in Time Remaining

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

MEMORANDUM

State of Alaska

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

DATE: August 24, 1981

FILE NO: J-66-132-82

TELEPHONE NO: 465-3600 ex 48

FROM: WILSON L. CONDON
ATTORNEY GENERAL

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

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

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

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

Coastal Zone Boundaries

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

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

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

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

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

State and Local Land Use Prerogatives

1. Participation of state agencies in local comprehensive plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Local land use regulatory authority under AS 46.40.

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

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

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

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

Planning Mechanism in the Unorganized Borough

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

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

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

Conclusion

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

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

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

Jon Halliwell
James M. Sou...

August 24, 1981
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From this discussion of the significant differences between Title 29 and AS 46.40 with respect to the land use planning and control prerogatives exercised by local communities under each statutory scheme, it is possible to begin to formulate changes in the ACMP which the council and the Senate subcommittee agree would improve the overall functioning of the coastal program. I hope that this discussion has been useful in setting the stage for consideration of appropriate amendments to the Coastal Management Act. If I can provide further clarification or be of any additional assistance to the Council or the Senate Subcommittee please do not hesitate to contact me.

LJA/jb

DRAFT

Benefits Alaska and Other States Have Realized

DRAFT

Through Coastal Management

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

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

HOW FEDERAL CONSISTENCY HAS BEEN USED IN ALASKA

Waterflood

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

Mud Sump

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

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

Auke Bay

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

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

BENEFITS OTHER STATES HAVE REALIZED THROUGH COASTAL MANAGEMENT

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

North Carolina and Section 10/404 Permits

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

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

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

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

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

Maine and NPDES Permits on the OCS

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

For additional information contact: Ann Pistell, Maine

Department of Environmental

Protection

207 289-2111

or

Rob Elder

Maine State

Planning Office

EXAMPLES OF HOW DISTRICTS HAVE USED THE ACMP TO RESOLVE ISSUES

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

Cordova - Eyak Lake AMSA

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

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

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

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

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

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

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

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

Sitka - General Permits

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

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

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

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

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

For additional information contact: Michael Schmidt

City and Borough of Sitka

Planning Director

747-3294

Summary:

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

Seward Highway Reconstruction

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

Viewpoint Ventures

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

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

Summary:

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

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Commonly Perceived Problems with the
Alaska Coastal Management Program

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

1. Loss of local autonomy

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

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

Options:

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

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

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

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

2. Too much local control

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

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

Options:

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

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

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

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

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

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

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

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

Options:

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

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

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

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

4. Duplicative and Excessively Lengthy Coastal Consistency Review

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

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

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

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

Options:

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

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

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

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

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

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

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

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

Options:

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

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

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

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

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

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

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

Options:

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

DRAFT

Conflict Resolution through the ACMP

DRAFT

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

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

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

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

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

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

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

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

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

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

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

Coastal states plan to be withdrawn

Associated Press

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

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

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

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

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

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

mediate comment on the reason the regulation was withdrawn.

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

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

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

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

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

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COMMERCIAL
FISHING &
AGRICULTURE
BANK (CFAB)
BRIEFING

2-20-81

Alaska State Legislature

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



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

Senate

Committee on Resources

February 20, 1981
1:30 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

SENATOR FAHREMKAMP
SENATOR FISCHER
SENATOR BRADLEY
SENATOR STURGULEWSKI
SENATOR MULCAHY
SENATOR ELIASON
SENATOR GILMAN

The Committee was briefed by Mo Mathews and Austin Ward, Office of the Federal Inspector, Alaska Natural Gas Transportation System and Gary Anderson, President, Alaska Commercial Fishing and Agriculture Bank, Frank Homan, Chairman, Alaska Commercial Fishing and Agriculture Bank and Joe Carter, President, Spokane Bank of Cooperatives.

Mo Mathews stated that the responsibilities of the Office of Federal Inspector are:

1. Coordinate the scheduling and issuance of all Federal permits and related activities to assure timely and unified decisions;
2. Monitor activities to assure that cost control, safety, and environmental protection objectives are fulfilled while still meeting the project completion schedule;
3. Keep the President and Congress informed on project progress, including potential delays or problems;
4. Establish a joint surveillance and monitoring agreement with the State of Alaska; and
5. Enforce all Federal Statutes which affect the project, assuring that the builders are complying with all conditions or stipulations attached to any Federal approval.

In response to the question, Is the outlined schedule for the completion of the pipeline reasonable? Mr. Mathews stated that the real key to the schedule is the financing plan which he has no responsibility for.

In response to the question, are the impacts on communities in Alaska being taken into consideration? Mr. Mathews stated that there is an

agreement with the State that they will conduct the community impact studies. The impact will be mostly on communities that are close to the gas pipeline.

In response to the question, what is the outlook for the financing problems? Mr. Mathews stated that Northwest was the only proposal that stated they could construct the line without Federal aid. There may be some need for removal of antitrust provisions to allow North Slope producers to become financially involved. Federal aid is a long way off and even then only as a last resort.

Frank Homan, stated that the 1978 legislature created the Alaska Commercial Fishing and Agriculture Bank (CFAB). The State provided seed money to the bank and it is to be repaid to the State in 20 years. Customers and borrowers become members of the bank, with dividends payable to them in proportion to the amount interest they pay annually. CFAB is an alternative to direct state financing of fisheries and agriculture. CFAB can draw upon other sources of money, and can leverage its money with the Federal Farm Credit System.

The purposes of CFAB are:

1. Provide sources of credit for Alaskan agriculture and fishing industries;
2. Encourage utilization of the fisheries off the coast of Alaska that have been underutilized in the past by local fishermen;
3. Encourage harvesting, processing and marketing of underutilized fish species;
4. Encourage technological development in the harvesting and processing of underutilized fish species; and,
5. Promote the more rapid development of agriculture.

He stated that CFAB is not involved in venture capital. CFAB loans money to farmers and fishermen that have demonstrated an ability to repay the loan.

Joe Carter stated that the Bank of Cooperatives was founded in 1933. The initial funding was from the Federal government, the loan was repaid and now is owned by the users of the Bank. He indicated that a problem arose after the capital loan was paid off - the members thought since the capital loan was paid off they could do what ever they wanted with the funds of the Bank. He stated that he felt that government overview was important in order to insure the original intent is being carried out.

What CFAB Can Mean To You

What We Do

2/60

The cooperative structure of the Bank provides a special benefit to you which are not available in any other financial institution in Alaska.

1. Proprietary Interest
As a member/borrower with CFAB, you gain a piece of the pie, so to speak. Our goal is to maximize the earnings of the fishing and agriculture industries, not to maximize our profits.

2. Dividends
Any profits we receive over and above operating costs, reserves and monies needed to pay debts, revert to our members in the form of dividends. Dividends are declared and paid at the discretion of the Board of Directors, and are distributed on the basis of interest paid by the borrower. In effect, your cost of borrowing is reduced by the amount of your dividend.

3. Voice in Administration
As a member of the cooperative, you have a direct vote in the election of the Board of Directors. Your selection of the Board and the Board's management decisions that you participate in are yours.

4. Financial Strength
We have a strong financial base, loan limits, and a sound operating policy. We are a member of the Alaska Federation of Cooperatives, and we are a member of the National Federation of Cooperatives. We are a member of the National Agricultural and Food Cooperative Bank.

CFAB provides financial support and business expertise for the **COMMERCIAL FISHING** and **AGRICULTURE** industries in Alaska. We deal only with these two industries and only in Alaska.

Financial support is in the form of loans for most aspects of the fishing and agriculture industries. These loans are made at competitive rates with terms designed especially to suit the peculiar nature of these businesses. The inserts accompanying this brochure give you the details.

For the fishing industry, CFAB provides money for vessel construction; vessel purchase; gear; working capital for seasonal supplies; real estate; processing equipment; inventories; and receivables.

The agriculture industry is provided with revolving credit for crops as well as longer term loans for equipment, dairy animals, cattle and capital improvements.

How We Operate

As a cooperative, CFAB is concerned with meeting the needs of its customers/members. Applying for financial assistance, therefore, has been made as simple as possible.

We have or will have offices in Anchorage, Ketchikan, Cordova, Sand Point, Homer, Dillingham and Seattle, staffed with people who know the **FISHING** and **AGRICULTURE** industries. They are business people first, bankers second; they know your special needs and how CFAB can meet them.

We have adopted the state format for vessel loan applications. This format is straight forward and familiar to most of the people in the industry.

We have one Specialist assigned to Agriculture to meet your needs.

Our service office personnel can help you organize the necessary information, such as surveys and photographs, to speed the approval process. In most cases, your application can be processed within 30 to 45 days.

In addition, our personnel are there to listen to you. We realize how difficult it is to maintain communications with lending institutions and still tend to the job at hand. We make every effort to be available when you need us; to listen to your problems and suggestions; and to follow up as necessary to see a solution through.

Who We Are

5. Expertise In the Field

Because we are business people like you, we know your special needs and interests. In addition, the Bank is specializing in commercial fishing and agriculture; no other industries are involved. This specialization leads to (a) expertise in the industry; and (2) an aggressive approach to marketing the bank's services so you and your business receive prompt attention.

6. Competitive Rates

The money used by CFAB comes through sales of bonds. Because of this, the interest rates and other costs of borrowing money are reduced. Often times, this provides you with money at rates that are substantially lower than those prevailing at conventional financial institutions.

7. Longer Terms

Depending on the type of loan you receive, you may take from seven to twenty-five years to repay it. Nowhere else are terms like these available for your business.



An Invitation

Take the time to read through the information provided with this brochure, information which applies specifically to your industry. We think you will be impressed with the services available through CFAB.

Then give us a call. We'll be happy to sit down and discuss your plans and needs, and how CFAB can go to work for you.



The Alaska Commercial Fishing & Agriculture Bank (CFAB) was created in 1978 by the Alaska State legislature to fulfill the need for financial services in the COMMERCIAL FISHING and AGRICULTURE industries in Alaska.

It is important to point out that the bank is not part of a 'soft-money' state loan program, but a private financial institution designed to work with and for these important Alaska industries.

CFAB was initially capitalized at \$2.0 million. In March of 1980, the Alaska legislature increased that capitalization to \$32.0 million. This money is loaned to CFAB and must be repaid over 20 years.

CFAB is a cooperative bank. That is, customers and borrowers become members of the bank, with dividends payable to them in proportion to the amount of interest they pay annually. In addition to dividends, members have voting rights in the election of the board of directors. In this way, the bank's condition is controlled by its members, and members holding their interest above all else.



CFAB
P.O. Box 4-2070
2550 Denali Street, Suite 1201
Anchorage, Alaska 99509

ALASKA COMMERCIAL FISHING
AND AGRICULTURE BANK
FINANCIAL STATEMENTS
DECEMBER 31, 1980 AND 1979



101 WEST BENSON BOULEVARD
ANCHORAGE, ALASKA 99503
907-279-1424

January 28, 1981

To the Shareholders and Board of Directors
Alaska Commercial Fishing and
Agriculture Bank

In our opinion, the accompanying balance sheets and the related statements of income, of changes in capital and allocated undistributed patronage earnings and of changes in financial position present fairly the financial position of the Alaska Commercial Fishing and Agriculture Bank at December 31, 1980 and 1979, and the results of its operations and the changes in its financial position for the year ended December 31, 1980 and for the period from May 4, 1979 (inception) through December 31, 1979, ^{and} in conformity with generally accepted accounting principles consistently applied. Our examinations of these statements were made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Price Waterhouse & Co.

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

BALANCE SHEET

ASSETS

	<u>December 31,</u>	
	<u>1980</u>	<u>1979</u>
Cash	\$ 168,240	\$ 41,386
Investments at cost, which approximates market value	9,056,237	200,000
Trust account, State of Alaska		1,727,674
Loan to officer		65,000
Loans, net of allowance for loan losses of \$400,000	24,876,124	
Accrued interest receivable - Investments	231,409	
Loans	568,847	
Organization costs, net of amortization of \$42,595 and \$14,198 at December 31, 1980 and 1979, respectively	99,387	127,784
Bank furniture and equipment, net	390,656	45,172
Other assets	<u>33,691</u>	<u>3,397</u>
	<u>\$35,424,591</u>	<u>\$2,210,413</u>

See accompanying notes to financial statements

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

BALANCE SHEET

LIABILITIES, CAPITAL AND PATRONAGE EARNINGS

LIABILITIES

	<u>December 31,</u>	
	<u>1980</u>	<u>1979</u>
Accounts payable and accrued expenses	\$ 127,426	\$ 27,404
Accrued interest payable	116,497	
Note payable	500,000	
Federal income taxes payable	35,000	1,374
Obligation under capital lease	23,916	30,300
	<u>802,839</u>	<u>59,078</u>

CAPITAL AND PATRONAGE EARNINGS

Share capital -		
Class C special preferred stock, authorized 4,000 shares, \$10,000 par value; 3,200 shares and 200 issued and outstanding at December 31, 1980 and 1979, respectively	32,000,000	2,000,000
Class B preferred stock, authorized 400,000 shares, \$100 par value; 22,995 shares issued and outstanding	2,299,500	
Class A membership stock, authorized 10,000 shares, \$10 par value; 79 shares issued and outstanding	790	
Capital in excess of par value	6,480	
Contributed capital	<u>144,626</u>	<u>144,626</u>
Total capital	34,451,396	2,144,626
Allocated undistributed patronage earnings, net of tax effect	<u>170,356</u>	<u>6,709</u>
Total capital and allocated undistributed patronage earnings	<u>34,621,752</u>	<u>2,151,335</u>
	<u>\$35,424,591</u>	<u>\$2,210,413</u>

See accompanying notes to financial statements

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

STATEMENT OF INCOME

	For The Year Ended <u>December 31, 1980</u>	For The Period May 4, 1979 (Inception) To <u>December 31, 1979</u>
<u>INTEREST INCOME:</u>		
Interest on loans	\$1,773,656	
Interest on short-term invest- ments	1,454,554	\$ 6,654
Interest on State of Alaska Trust Account		<u>121,250</u>
	<u>3,228,210</u>	<u>127,904</u>
<u>INTEREST EXPENSE:</u>		
Interest on note payable, net of patronage dividends of \$39,412	285,489	
Interest on State of Alaska loan	480,205	
	<u>765,694</u>	
Net interest income	2,462,516	127,904
Provision for loan losses	<u>400,000</u>	
Net interest income after provision for loan losses	<u>2,062,516</u>	<u>127,904</u>
<u>NON-INTEREST EXPENSE:</u>		
Salaries and benefits	996,692	41,050
Occupancy expense	121,593	4,818
Professional fees	148,018	5,220
Directors' fees	32,479	5,550
Depreciation and amortization	76,852	14,316
Supplies	127,087	6,086
Travel, lodging and meals	170,499	33,370
Advertising and promotion	107,834	2,015
Telephone and postage	40,656	1,340
Miscellaneous	42,159	6,056
Total non-interest expense	<u>1,863,869</u>	<u>119,821</u>
Patronage earnings before tax effect	198,647	8,083
Federal income tax effect	<u>35,000</u>	<u>1,374</u>
Allocated undistributed patronage earnings	<u>\$ 163,647</u>	<u>\$ 6,709</u>

See accompanying notes to financial statements

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK
STATEMENT OF CHANGES IN CAPITAL AND ALLOCATED UNDISTRIBUTED PATRONAGE EARNINGS
FOR THE PERIOD MAY 4, 1979 (INCEPTION) TO DECEMBER 31, 1980

	<u>Share Capital</u>	<u>Capital In Excess Of Par Value</u>	<u>Contributed Capital</u>	<u>Allocated Undistributed Patronage Earnings</u>	<u>Total</u>
Issuance of stock during the period					
200 shares of Class C stock	\$ 2,000,000				\$ 2,000,000
Contributed capital - State of Alaska			\$144,626		144,626
Allocated undistributed patronage earnings				<u>\$ 6,709</u>	<u>6,709</u>
Balance, December 31, 1979	<u>2,000,000</u>		<u>144,626</u>	<u>6,709</u>	<u>2,151,335</u>
Issuance of stock during the year:					
3,000 shares of Class C stock	30,000,000				30,000,000
22,995 shares of Class B stock	2,299,500				2,299,500
79 shares of Class A stock	790	\$6,480			7,270
Allocated undistributed patronage earnings				<u>163,647</u>	<u>163,647</u>
Balance, December 31, 1980	<u>\$34,300,290</u>	<u>\$6,480</u>	<u>\$144,626</u>	<u>\$170,356</u>	<u>\$34,621,752</u>

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

STATEMENT OF CHANGES IN FINANCIAL POSITION

	For The Year Ended December 31, 1980	For The Period May 4, 1979 (Inception) To December 31, 1979
Sources of Financial Resources:		
From Operations -		
Allocated undistributed patronage earnings	\$ 163,647	\$ 6,709
Items not requiring funds -		
Depreciation and amortization	76,852	14,316
Provision for loan losses	<u>400,000</u>	<u> </u>
Total from operations	640,499	21,025
Capital contributed by the State of Alaska		144,626
Proceeds from stock issuance	32,306,770	2,000,000
Increase In -		
Accounts payable and accrued expenses	100,022	27,404
Accrued interest payable	116,497	
Note payable	500,000	
Federal income taxes payable	33,626	1,374
Obligation under capital lease		30,300
Decrease In -		
Loan to officer	65,000	
Trust account, State of Alaska	<u>1,727,674</u>	<u> </u>
	<u>\$35,490,088</u>	<u>\$2,224,729</u>
Uses of Financial Resources:		
Increase In -		
Cash	\$ 126,854	\$ 41,386
Investments	8,856,237	200,000
Trust account, State of Alaska		1,727,674
Loan to officer		65,000
Loans	25,276,124	
Accrued interest receivable	800,256	
Organization costs		141,982
Bank furniture and equipment	393,939	45,290
Other assets	30,294	3,397
Decrease In -		
Obligation under capital lease	<u>6,384</u>	<u> </u>
	<u>\$35,490,088</u>	<u>\$2,224,729</u>

See accompanying notes to financial statements

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 1980 AND 1979

NOTE 1 - OPERATIONS AND ACCOUNTING POLICIES:

Operations -

The Alaska Commercial Fishing and Agriculture Bank (CFAB) was incorporated on May 4, 1979. The purposes of CFAB are to:

- provide sources of credit for Alaskan agriculture and fishing industries;
- encourage utilization of the fisheries off the coast of Alaska that have been underutilized in the past by local fishermen;
- encourage harvesting, processing and marketing of underutilized fish species;
- encourage technological development in the harvesting and processing of underutilized fish species;
- promote the more rapid development of agriculture.

CFAB intends to accomplish its purposes primarily by making loans to individuals who are residents of Alaska and are engaged in commercial agriculture or fishing, or to corporations, partnerships or joint ventures primarily engaged in commercial agriculture or fishing, the majority of whose owners are residents of the State of Alaska. A loan recipient must be a member of CFAB.

CFAB is a cooperative corporation and intends to refund any allocated undistributed patronage earnings at such time as the Board of Directors finds that the financial condition of CFAB will so permit.

Accounting Policies -

Investments and investment income - Investments are stated at cost, adjusted for amortization of premium and accretion of discount. Investment income is recorded as earned.

Interest on loans - The accrual of income on loans is discontinued when, in management's opinion, there is doubt as to the collectibility of such income.

Patronage dividends - Patronage dividends received from Spokane Bank for Cooperatives (SBC), of which CFAB is a member, are shown as a reduction of interest expense to SBC (see Note 7) in the year in which those dividends are declared by SBC.

Allowance for loan losses - Additions to the allowance for loan losses are provided from charges to income based on management's evaluation of the loan portfolio under existing economic conditions.

Bank furniture and equipment - Bank furniture and equipment is stated at cost less accumulated depreciation and amortization. Depreciation and amortization is charged to operations by use of the straight-line method over estimated useful lives of five to ten years. Expenditures for maintenance and repairs are charged to operating expenses as incurred. Expenditures for renewals or improvements which extend the life of an asset are capitalized at cost and depreciated as stated above. Upon sale, retirement or other dispositions of property, the cost and accumulated depreciation are removed from the respective accounts and the resulting gain or loss is recorded in income.

Organization costs - Certain costs related to the feasibility, capital needs and incorporation phases of CFAB have been deferred and are being amortized over sixty months. Such costs consist of legal and advisory fees.

Income taxes - Under Alaska Statute 44.54.170, CFAB is exempt from all taxes and special assessments of the State. The federal income tax effect of patronage earnings is based on patronage earnings reported for financial statement purposes rather than amounts currently payable under tax laws. The Bank uses the flow-through method of accounting for investment tax credits, which results in a reduction of income taxes in the year credits are utilized. Investment tax credits utilized in 1980 amounted to approximately \$36,000.

Reclassifications - Certain amounts included in the comparative financial statements have been reclassified to conform to current classifications. Such reclassifications had no effect on previously reported patronage earnings.

NOTE 2 - INVESTMENTS:

Investments held are as follows:

	<u>December 31,</u>	
	<u>1980</u>	<u>1979</u>
Time Certificate of Deposit:		
@ 13.125%, maturing January 18, 1980		\$ 100,000
@ 11.5%, maturing March 16, 1981	\$3,000,000	
@ 12.1%, maturing January 14, 1981	2,500,000	
@ 12%, maturing January 14, 1981	2,500,000	
Repurchase agreement	1,000,000	100,000
Spokane Bank for Cooperatives:		
Class C capital stock	46,384	
Equity in allocated surplus	9,853	
	<hr/>	<hr/>
Total investments	<u>\$9,056,237</u>	<u>\$ 200,000</u>
State of Alaska Trust Account interest bearing		<u>\$1,727,674</u>

Investment activity through December 31, 1980 has been limited to the deposit of funds in the interest earning State of Alaska Trust Account, the purchase of repurchase agreements and certificates of deposit, the purchase of SBC Class C capital stock in accordance with a loan agreement (described in Note 7) and the receipt of SBC Class C capital stock and equity in SBC's allocated surplus received as patronage dividends.

NOTE 3 - RELATED PARTY TRANSACTIONS:

In the ordinary course of business, CFAB has made loans to members who also serve on CFAB's Board of Directors or are CFAB employees. Total loans to these members at December 31, 1980 were \$484,000.

A \$65,000 loan was made to the President of CFAB in October, 1979, to provide funds for the purchase of a residence in Alaska prior to the sale of his previous residence. The note was interest bearing

at 12% and was due upon the sale of his previous residence. The loan, with accrued interest, was fully repaid on January 3, 1980.

NOTE 4 - LOANS:

The following represents a classification of CFAB's loan portfolio by major category at December 31, 1980:

Fish processors	\$16,738,521
Vessels	6,086,708
Gear, entry permits and other	<u>2,450,895</u>
	25,276,124
Less: Allowance for loan losses	<u>(400,000)</u>
Net loans	<u>\$24,876,124</u>

Under the State of Alaska senate bill 140, portions of certain of the fish processor loans included above are guaranteed by the State.

As this is the first year of lending activity for CFAB, there is no past loan loss experience nor is there a similar lending institution on which to base an allowance for expected loan losses. CFAB has no delinquent loans at December 31, 1980. Management, however, has established the allowance for loan losses at 1.5% of the total loan portfolio at December 31, 1980. Additionally, there has been included a specific allowance for one borrower who is currently operating under Chapter 11 Bankruptcy (reorganization) status.

NOTE 5 - BANK FURNITURE AND EQUIPMENT:

The following represents a classification of bank furniture and equipment by major category at December 31 in each of the past two years:

	<u>December 31,</u>	
	<u>1980</u>	<u>1979</u>
Furniture, fixtures and equipment	\$343,079	\$ 4,776
Leasehold improvements	65,850	10,214
Equipment under capital lease	<u>30,300</u>	<u>30,300</u>
	439,229	45,290
Less - Accumulated depreciation and amortization	<u>(48,573)</u>	<u>(118)</u>
	<u>\$390,656</u>	<u>\$45,172</u>

NOTE 6 - LEASE OBLIGATIONS:

During 1980, CFAB entered into certain long-term operating type lease agreements for buildings and equipment. Rental expense under these leases was \$103,681 for the year ended December 31, 1980. At December 31, 1980 these leases require minimum annual payments as follows:

<u>Year ending December 31,</u>	<u>Amount</u>
1981	\$178,461
1982	\$156,423
1983	\$149,474
1984	\$149,474

CFAB has determined that a photo copy machine lease entered into during the prior year meets the criteria for capitalization under Statement of Financial Accounting Standards No. 13 which provides that such a lease be recorded as a purchase of an asset with an accompanying obligation based upon an interest rate implicit in the lease. The resulting asset in the amount of \$30,300 has been recorded in equipment under capital lease and is being amortized over its lease life. Interest expense is provided on the declining balance of the recorded lease obligation at the rate of 10%.

NOTE 7 - NOTE PAYABLE:

On May 14, 1980 CFAB executed an agreement with SBC establishing a credit line whereby CFAB can borrow up to \$15,000,000 to finance current lending activity. The agreement is for a term of one year from June 1, 1980, bearing interest at a floating rate prescribed by SBC, with interest payable on the last day of each calendar quarter. Further, as required by SBC according to the Farm Credit Act, CFAB must invest in Class C stock of SBC a sum equal to 15%, or such lessor amount as may be prescribed by SBC (10% through December 31, 1980), of quarterly interest payable to SBC during the year. The amount of CFAB's investment in SBC's Class C stock was \$46,384 at December 31, 1980. The loan is secured by all CFAB notes evidencing loans to members. The line of credit is to be renegotiated annually.