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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

AGENDA ITEM P2 *c

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April 18, 2005

Coastal District Representatives

Re: Update to the Coastal Districts Following Receipt of Office of Coastal and Resource Management's (OCRM) Letter Addressing Preliminary Approval of the Amended Alaska Coastal Management Program (ACMP)

Dear Coastal District Representatives:

I am pleased to share with you a landmark letter issued by OCRM on April 14, 2005. That letter responds favorably to the State of Alaska's December 16, 2004, submission of *The Alaska Coastal Management Program, As Amended*, and concludes an arduous, detailed, comprehensive, and collaborative effort by the State of Alaska and OCRM on the approvability of the state's coastal program.

On February 23, 2005, I wrote OCRM a letter that took a firm position regarding our state's right to manage our coastal uses and resources in a manner consistent with our best judgment. OCRM took a hard look at the issues I identified and re-evaluated their position, as characterized in their January 28, 2005, letter. I appreciate OCRM's flexibility in reviewing the Coastal Zone Management Act (CZMA) and other approval criteria that resulted in a significantly modified list of requirements for Alaska's amended ACMP to be federally approved. OCRM's modified position truly assists our state in developing a coastal program that appropriately **addresses the management** and protection of Alaska's coastal uses and resources, **balances the rights** of stakeholders, and does so in a manner fully **compliant with the CZMA** and its implementing regulations.

Our discussions have culminated with OCRM's April 14, 2005, letter, which identifies the few remaining technical regulatory amendments necessary for the amended ACMP to meet the requirements of the CZMA. The state has agreed to make those revisions identified in the letter as required by law, but will not make further changes which OCRM sought as a policy directive but which had no legal basis.

Once the amended regulations have been adopted in accordance with Alaska's Administrative Procedures Act, OCRM will issue preliminary approval

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of the amended ACMP. The revisions are discussed in detail in the OCRM letter and are briefly summarized below.

1. Pursuant to 16 U.S.C. 1455(d)(4) and 15 C.F.R. 923.82(a), the state must hold a public hearing on the amended ACMP before OCRM can make a preliminary approval decision. This public hearing is an opportunity for interested persons to provide oral and/or written testimony on the state's amended ACMP.
2. The Department of Natural Resources (DNR) will make regulatory revisions to the ACMP's state standards at 11 AAC 112 to accommodate the CZMA "effects test" for federal consistency reviews which is required by federal regulation. As described in DNR Commissioner Tom Irwin's April 7, 2005, letter to OCRM, this "effects test" applies to (a) federal agency activities if the federal agency determines that effects to any land or water use or natural resource of the coastal zone are reasonably foreseeable and the state has an enforceable policy addressing the use or resource; and (b) federal license or permit activities that are located within the state's defined coastal area or on the outer continental shelf.
3. The state will make regulatory revisions to the subsistence use standard to allow the state to designate subsistence use areas. This revision will address the potential gap between the effective date of the new state standards at 11 AAC 112 and the implementation of the revised coastal district plans.
4. The state will update the ACMP program description by incorporating into that document all of DNR's existing published guidance pertaining to district planning and implementation.

To secure timely preliminary approval of the amended ACMP, and to assure continued federal funding of the ACMP in state fiscal year 2006, DNR intends to expeditiously revise the regulations to satisfy these procedural requirements. The proposed schedule for accomplishing the above listed tasks and securing preliminary approval from OCRM is as follows:

- April 20, 2005 – DNR releases all proposed regulatory revisions for public review and comment, and provides public notice of the hearing on the amended ACMP;

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- May 20, 2005 – DNR conducts a public hearing on the amended ACMP in Anchorage;
- May 23, 2005 – DNR closes the public review and comment period on all proposed regulations;
- May 25, 2005 – Having considered all comments on the regulations and incorporated appropriate changes, DNR finalizes and adopts the revised regulations, and submits them to the Department of Law (DOL) for legal review;
- May 31, 2005 – DOL transmits regulations to the Lieutenant Governor for filing, establishing an effective date of July 1, 2005;
- June 1, 2005 – DNR submits to OCRM: (1) the adopted revised regulations, (2) the summary of the public hearing on amended ACMP, and (3) the revised program description;
- July 1, 2005 – OCRM responds to the state, preliminarily approving the amended ACMP; OCRM initiates the NEPA process; and
- December 31, 2005 – OCRM completes the NEPA process and approves amended ACMP, such that the state standards at 11 AAC 112 become effective on January 1, 2006.

Over the past several months, coastal district representatives have told us that while all districts will be able to submit a revised district coastal management plan by the July 1, 2005, deadline, additional time would improve the quality of those plans and the public outreach process. Three bills currently before the Legislature have requested various formulations of the request for additional time and the districts have recently indicated that an additional six months would be invaluable to their efforts. I agree.

Therefore, I am announcing that DNR will work with the Alaska State Legislature on Senate Bill 102 and House Bill (HB) 186 to effect three deadline extensions within HB 191 (Chapter 24, SLA 2003). These three deadline extensions will:

- Amend Section 46(c) of HB 191 to extend by six months the district program sunset date;

Coastal District Representatives

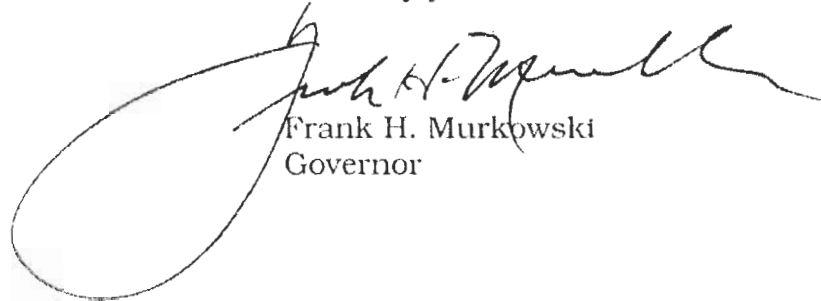
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- Amend Section 47(a) of HB 191 to extend by six months the revised district plan submission deadline; and
- Amend Section 49 of HB 191 to extend by six months the sunset date of the state standards at 6 AAC 80.010 – 6 AAC 80.90.

I hope you will join me in considering these developments a significant victory for all stakeholders in the ACMP process, and, most importantly for the coastal resources that we all work so hard to effectively manage. I am counting on your assistance and support as we complete the preliminary approval requirements and work through the deadline extension legislation you have requested, which will allow you to produce the best revised district plans possible.

Sincerely yours,

A large, stylized handwritten signature in black ink, which appears to read "Frank H. Murkowski". The signature is written over the printed name and title.

Frank H. Murkowski
Governor

Enclosure

-----Original Message-----

From: Williams, Gary
Sent: Friday, April 08, 2005 9:21 AM
To: Best, Max
Subject: FW: ACMP - Response Letter to OCRM

Max,

Within the past 15 minutes the attached letter from the DNR Commish arrived. Millie may want to look at this with regard to Assembly action inasmuch as the Commissioner is asking all parties to contact OCRM asking them to approve the State's revised position on the ACMP.

Gary

-----Original Message-----

From: Randy Bates [<mailto:randy.bates@dnr.state.ak.us>]
Sent: Friday, April 08, 2005 9:57 AM
To: DNR - ACMP Coastal District Contacts; DNR - ACMP staff Anchorage and Juneau; DNR - ACMPWG - State; Mckie Campbell; Fredriksson, Kurt; Edgar Blatchford
Cc: Michael L Black; James F Clark; Thomas Irwin; Marty K Rutherford; Richard A Lefebvre; Bruce Anders; Heather Brandon; Janet Burleson Baxter; DNR - DIR
Subject: ACMP - Response Letter to OCRM

The State of Alaska has issued a response to the Office of Ocean and Coastal Resource Management's (OCRM) March 25, 2005 letter regarding the remaining approval issues for the Alaska Coastal Management Program (ACMP). The State's response is attached, and is also available for downloading at the ACMP web site www.alaskacoast.state.ak.us.

The State is continuing to pursue federal approval of the amended ACMP. We believe this response satisfies the remaining approval issues that OCRM has identified, and with the proposed regulatory revisions and rationale included in the response, OCRM will be able to agree that Alaska has prepared a coastal program that is approvable. We intend to meet with OCRM next week to further our discussions on the approvability of the ACMP, and to reinforce our position and emphasize the points included within the response letter. To the extent you are able, we encourage you to immediately contact OCRM and urge, assist, and/or demand that they agree to the points in the letter and are able to offer preliminary approval on the ACMP.

If you have any questions on the letter, the approval process, or other, please do not hesitate to contact me. Thank you!

Sincerely,
Randy

April 22, 2005

The Honorable Frank H. Murkowski
Governor
State of Alaska
State Capitol
Juneau, Alaska 99801

Dear Governor Murkowski,

On behalf of the 27 coastal districts and over 200 communities represented in those districts, the Alaska Municipal League would very much like to offer support to the State of Alaska towards a negotiated settlement with OCRM and NOAA. Districts were very hopeful upon the conclusion of the Anchorage meeting with Chief-of-staff Clark and Commissioner Irwin and were unified in their strong support for the continuance of a federally approved ACMP. Notice that the four points of contention had been narrowed down to one (ref. Commissioner Irwin's April 7, 2005 letter) has also buoyed our hopes and we all believe that the last point of contention can and should be resolved, as well.

A commitment has been made by each district to meet the July 1, 2005 deadline for the submittal of revised local plans imposed by HB191. In turn, the districts have asked the state for a commitment to continue to be a part of the federally approved ACMP program.

Alaska's constitution calls for maximum local governance. To this end, each municipality and district within that municipality has a responsibility to wisely and responsibly manage coastal areas for its residents and the state of Alaska. Included in that responsibility are the needs of a large portion of our state's residents with relation to cultural, economic, nutritional and spiritual well-being. While recognizing that there have been problems, they are not insurmountable and can more quickly be resolved through an amended ACMP that complies with federal law and meets the needs of Alaskans.

Again, AML, Alaskan communities and especially Alaska's coastal districts would strongly urge you and your staff to work towards a preliminary approval of an acceptably amended ACMP.

Sincerely,

Mike Catsi, Chairman
AML Legislative Land Use Subcommittee

**The Alaska Coastal District Association
PO Box 311
King Salmon, Alaska 99613
907-246-3421**

April 12, 2005

Alaska Legislators
State Capitol
Juneau, Alaska 99801-1182

Subject: Alaska Coastal Management Plan Revisions and Deadlines

Dear Coastal Legislators:

Many of you have heard a great deal from the Administration regarding the status of the on going amendment of the Alaska Coastal Management Program (ACMP). Some of you have participated in three hearings held this session that have dealt with the program. If so, you have had the opportunity to hear a somewhat different version of events directly from some of the local coastal districts that under the ACMP represent more than 250 coastal communities within Alaska's coastal zone. Twenty-two of the state's twenty-seven active coastal districts are members of the Alaska Coastal District Association (ACDA).

I write to you today to correct the record on some key points, and specifically to respond to misplaced accusations, most recently reportedly expressed by the Chairman of the Senate Resources Committee, that the districts have in some way been "dragging their feet" in working to satisfy the 2003 mandate of House Bill 191 that revised local plans be submitted to the Department of Natural Resources (DNR) by July 1, 2005.

I am also writing to encourage all of you to consult with your local coastal district contacts and the communities they represent, and support legislation to extend the July 1 deadline. Senate Bill 102, which would have provided an extension for district plans to be revised, appears to be stopped in the Senate Resources Committee. Other bills that would also provide an extension are likewise stalled. I urgently ask that each of you do what you can to get SB 102 or another extension provision moving again.

To set the record straight, the timeline below will provide you a more accurate picture of the challenges faced by local districts as we have diligently worked to meet the July 1, 2005 deadline for plan revisions.

1. House Bill 191, passed in May of 2003, mandated significant revisions to all coastal management plans. The legislation required a revision of coastal

management regulations, which would then direct how district plans would be revised

2. Districts first saw a draft of the proposed regulations on February 11-13, 2004 at the Statewide ACMP conference in Anchorage.
3. These draft regulations were revised numerous times before they were signed into public law in July 2004. The final set of regulation revisions was not complete until October 29, 2004.
4. On October 5, 2004 DNR/OPMP submitted the proposed amendment to the Alaska Coastal Management Program to Office of Coastal Resource Management (OCRM.)
5. On October 20-22, 2004 DNR/OPMP held a workshop to provide direction to districts and provide a final copy of the regulations. The workshop was supposed to provide sufficient information and clarity for coastal districts and contractors to start writing plan revisions. It became clear, however, that because the draft regulations were so confusing and open to widely divergent interpretations, continuing with plan revisions would be pointless and wasteful of limited resources. Forty-five issues were identified by the workshop participants and DNR as being critical to a working understanding of the regulations. Particularly critical among unresolved issues and central to any effort to revise local plans, was clarity as to what types of enforceable policies could be included in those district plans.
6. On October 28 2004 DCCED provided grant funding to hire contractors to revise plans. Districts could not complete final contract agreements with contractors, until after this date, because some districts have ordinances that require a lengthy local approval process before hiring a contractor.
7. On October 29, 2004 a second round of regulations was amended by DNR and became effective.
8. On November 4, 2004 OCRM sent a letter to Commissioner Irwin informing him the States submission did not contain sufficient information for OCRM to make a finding of preliminary approval of the CZMA section 306(e)(3)(2).
9. On December 10, 2004 DNR finally provided written answers to the 45 questions from the October workshop. The answers, however, created additional questions that could not be answered consistently and clearly by DNR staff, and there remained a significant continuing need for clarification for districts and contractors.
10. On December 16, 2004 DNR/OPMP presented a revised amendment request to the federal oversight and approval agency, the Office of Ocean and Coastal Resource Management (OCRM). DNR held a teleconference to discuss outstanding district questions. DNR was still unable to clarify the meaning of the term "adequately addressed" within the context of HB 191's proscription that local district enforceable policies could not deal with a specific coastal use or resource unless it is not adequately addressed by state or federal law. It emerged that DNR's extraordinarily broad interpretation is that adequately addressed could mean anything conceivably under any agency's authority. It thus appeared, contrary to direct assurances given by the Administration during testimony on HB 191, that few if any subjects remained upon which districts could write local

enforceable policies. The next teleconference was scheduled for December 29th, 2004 and was changed to January 5, 2005.

11. On January 5, 2005 DNR held a teleconference to clarify answers to questions regarding the meaning of "adequately addressed", and suggested that earlier interpretations from the previous teleconference might be misleading. DNR also indicated that it was still working with OCRM on the highly significant issue of whether under the state's proposed regulations local districts could write policies affecting federal lands and waters. Districts also questioned why sample acceptable local enforceable policies that had been posted on the ACMP website had been removed, and asked that sample policies be reposted.
12. On January 19, 2005 sample policies were posted back on the DNR/OPMP web for use by districts and contractors.
13. On January 28, 2005 OCRM sent another letter to the State informing them the States amendment submission did not contain sufficient information for OCRM to make a finding of preliminary approval of the CZMA section 306(e)(3)(2).
14. On February 3, 2005 a teleconference was held by DNR to answer questions amid continued confusion.
15. On February 23, 2005 Governor Murkowski sent a letter to Dr. Spinrad, Assistant Administrator of NOAA informing him if OCRM does not abandon the new requirements and broken promises contained in the January 28, 2005 decision the ACMP will expire by operation of law in the summer of 2005.
16. On February 24 the House state of Affairs held an oversight hearing on the 2003 House Bill 191 and many districts testified to the problems this legislation has imposed.
17. On March 14, 2005 Senator Gary Stevens took testimony on Senate Bill 102 for the possible extension of the deadline requirements of 2003 HB 191 from July 2005 for one year. All districts that testified supported the extension. The only person testifying against the extension was Mr. Randy Bates of DNR/OPMP.
18. On March 22, 2005 Governor Murkowski invited all coastal district coordinators to attend a meeting with Mr. Jim Clark, Governors Chief of Staff, Commissioner Tom Irwin of DNR and Mr. Randy Bates of DNR/OPMP to discuss the status of the ACMP.
19. On March 31, 2005, 23 of the 27 coastal districts still participating in the ACMP meet with Mr. Jim Clark Governors Chief of Staff, Commissioner Tom Irwin of DNR and Mr. Randy Bates of DNR/OPMP and discussed the status of the ACMP.
20. On April 4, 2005 Senate Resources Committee took testimony on SB 102 for the possible extension of the July 1, 2005 deadline. Only three districts were allowed to testify all three supported the extension and the only person opposing the extension who testified was Mr. Randy Bates of DNR/OPMP.

While we appreciate the workshop, teleconferences, meetings and other efforts of DNR staff to assist the districts in the challenging task of revising our coastal management plans, the bottom line is simply that a lack of clarity in guidance from the agency, and in fact at times an acknowledged confusion on the part of the DNR staff themselves, precluded many districts from fully engaging in plan writing until February of 2005. The one year period for revising plans, which was unreasonably short from the beginning for

an effort of this magnitude, was effectively shortened to five months. A typical plan revision has historically taken a minimum of three years. In many cases, State funds have failed to cover the full cost of plan revisions, and districts have had to use their own funds.

The ACMP is an important program. It is highly valued by your constituents. The districts have in good faith been working for nearly two years now to understand and comply with the mandates of HB 191 and DNR regulations. We believe that the Administration's policy decision to greatly constrict the role of local districts in the ACMP was ill-conceived and is not in the best interests of the State. Nonetheless, each of us has expressed a commitment to meet the July 1, 2005 deadline for submittal of revised local plans to the State. We have to, or risk losing our local plans.

Our submissions will not be the complete revised plans that we hope for and our district residents deserve. We need more time to do the stakeholder outreach and consultation that you must understand is appropriate for a planning process of this consequence to so many coastal communities. DNR will also clearly need more time before beginning the onerous task of reviewing twenty-seven revised plans as it has just been announced that two of four staffers charged with the task have submitted resignations and a third has announced retirement later this year.

We recognize that HB 191 is the law, and now hope for an amended ACMP that complies with federal law and meets the needs of Alaska, and particularly the needs of the great many Alaskans whose cultural, economic, nutritional and spiritual well being are intimately tied to our state's vast coastal zone and bountiful coastal resources. If you share our desire for a continued, strong ACMP, we strongly urge you to seek movement of Senate Bill 102 or other bills extending the July 1 deadline a minimum of six months.

If you have any questions please do not hesitate to contact me at 907-246-3421.

Sincerely,

Marv Smith
Chairman, Alaska Coastal District Association

CC: All Coastal Districts