

KENAI PENINSULA BOROUGH PLANNING COMMISSION
ASSEMBLY CHAMBERS
BOROUGH ADMINISTRATION BUILDING
144 NORTH BINKLEY STREET
SOLDOTNA, ALASKA 99669

April 11, 2005 7:30 P.M.

APPROVED MINUTES

AGENDA ITEM K. COASTAL MANAGEMENT PROGRAM CONSIDERATIONS

1. Coastal Management Program 2005 Draft Update

Mr. Best introduced Gabrielle LaRoche from LaRoche & Associates who gave an update on the Coastal Management Plan. He also introduced Gary Williams who is the Coastal Coordinator for the Borough.

Commissioner Johnson referred to the letter that was in the packet, which gave the appearance that; the State was softening their position. He felt it looked encouraging.

Commissioner Foster asked if Mr. Williams had any comments on habitat policies. Mr. Williams commented that the State is taking a hard line on habitat policy and doubts that they will move off of it. There will have to be another way found to get at that issue. They feel that the recreational aspect of Coastal Zone Management will be the vehicle to get there. There has been lots of hard work on this area but will need more work to strengthen it. Mr. Williams stated that what becomes of that will depend upon how strict the State will be in reviewing their legislative requirements.

Ms. LaRoche stated that the Commissioners received the draft Volumes of 1 & 2 of the Coastal Management Plan. Volume 1 is the complete plan and Volume 2 contains the maps. She hit the highlights of what is in the plan. The intent is to release this plan for public review process tomorrow. Ms. LaRoche gave the timeline of what is required for the State and what can be expected next.

The biggest change in this plan is with the Enforceable Policies and has been affected in both number and scope. The biggest reason for reduction for number of policies is the statutory requirements that any matters that are regulated by the Department of Environmental Conservation cannot be the subjects of the Enforceable policy. A lot of policies have come out as the result of that.

Ms. LaRoche commented that in order to have policies within a number of subjects, uses and activities they would have to have designations. Designations are challenging for a number of reasons because there is mapping and documentation required. The most challenging with the designations has been trying to deal with the abbreviated timeline. In order to do designations there is an anticipated public process. There isn't time to go out for public process given the timeline that they are faced with. There have been notices, newsletters, flyers and a web site to try to get public comment but the public process that is being used now is the one twenty-one day review. They have tried to convert existing designations within the new plan.

Ms. LaRoche stated that one big exception was with recreation in that there has been a shift in the Coastal Program. The previous program did not talk about recreational use areas. It turns out that it probably is the most flexible and workable topic under the new Coastal Management Program because policies can be written to protect the physical, biological and cultural resources upon which the recreation depends. The criteria for designating recreation are a really well threshold when compared to habitat or subsistence. The threshold for recreation is that it is partially used or has the potential for being used.

Ms. LaRoche and Mr. Williams came up with the concept of designating the entire Coastal Zone for the Borough as a recreational use area. The Mat-Su Borough is also taking this approach. Drawing boundaries for areas that might have the potential for recreation almost becomes arbitrary. The other issue to remember is that in the old plan there was the ability to talk about activities that occurred adjacent to a use that was concerned about. Now it has to actually be the activity or the proposed project needs to be within the designation.

It seems justified when they looked at the DNR Plan and at Kenai since it is adjacent to the largest population center in the state with cruise ships, tourism and recreational sports fishing. It allows building back in a number of policies that were otherwise lost in the shift to the Coastal Management program with this broad designation. Ms. LaRoche reminded the commission that other uses are not excluded even though the entire Borough is designated as recreation. It allows that use to be addressed within the Borough. The recreation discussion begins on page 186 and goes through the application, gives a brief justification of why that broad designation.

Ms. LaRoche would like to put this out for a 21 day public review process until May 5 then bring it back to the May 23 meeting with a summary of comments and recommendations for a final submittal. The Commission would then recommend to the Assembly for approval, which would then be in line to be submitted to the State on or before July 1, 2005.

Chairman Bryson opened the meeting for public comment.

1. Ilene Bechtol

Ms. Bechtol is a Planner who lives between Homer and Anchor Point. She has been working on a few smaller district plans. Ms. Bechtol complimented Mr. Williams and Ms. LaRoche for developing a well put together plan for the Borough. There has been a lot of discussion regarding the Coastal Management Plan.

The new regulations and program does not have the same local input and control that they use to have. She suggested that the commission think about adopting the Alaska Coastal Management Program under the Title 29 authority. The Kenai Peninsula is a second-class borough and can do planning, zoning and land use. She realized that they cannot be stricter than the State regulations but can be more specific. Under Title 29 there could be Coastal Management regulations within the Borough Code.

Ms. Bechtol is concerned if the Coastal Management Plan goes away then there would be no zoning or environmental protection with local input. She felt the Borough is ready and could pick up where the State leaves off in having their own Coastal Management Program. Ms. Bechtol realized it takes money and resources. She urged the Commission to continue working with staff and consultant in working with the State.

Commissioner Johnson asked Ms. Bechtol who would pay for it. She stated it would have to be the Borough taxpayers and is a matter of priority. Commissioner Johnson commented it would be a good idea but at the time the Borough is trying to cut the budget. Ms. Bechtol referred to herself as just the dreamer and the commissioners are the ones who make it happen.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public hearing and opened the discussion among the Commission.

Commissioner Massion asked if it is being proposed to designate the entire coastline as recreation. Ms. LaRoche stated that is correct. Commissioner Massion asked if it was all coastlines in the Kenai Peninsula. Ms. LaRoche stated it is all the areas that are within the Coastal Zone, which is pretty much the entire Borough. Commissioner Massion asked if it was going to fly. Ms. LaRoche stated that it is defensible and there is an immediate perception that is all that can be done there. She commented that it allows this to address the issues of recreation, tourism and coastal access with much greater flexibility under that designation. Commissioner Massion asked if any other state has tried this. Ms. LaRoche stated that this is only for the Kenai Peninsula Borough. The Mat-Su Borough is also trying this but at the same time as this Borough. Commissioner Massion asked if there was any other state in the United States that has tried this. Ms. LaRoche stated that programs are different and hard to compare because other state programs don't have this requirement for designation in order to address the uses and activities.

Commissioner Clark asked if Ms. LaRoche thought there was any conceivable chance that the recreation designation would be enforced as a regulation or used as a regulation in any capacity that would eliminate, prohibit or cause undue regulation. Ms. LaRoche stated not with the enforceable policies that are currently being presented. At sometime in the future the Commission might want to adopt more strict policies. She commented it does not preclude any other use with the policies currently being presented. There are tables that show the types of uses and activities that are occurring in certain regions. This is basically saying that this use happens here along with other ones and they want to recognize it and provide it to continue.

Commissioner Troeger stated he has no questions but has some comments. He is disappointed on how the State is

proceeding with the Coastal Management program. His comments are that if this has to go through the back door approach to protecting the Coastal Resources then that is the way it will need to be done. This Borough has some important fisheries and industrial uses. Commissioner Troeger stated that tourism is great but a bunch of t-shirts and sweatshirts for sale at the tourist shop is not going take care of the fisheries or industrial uses of Coastal Zone. He is disappointed that the emphasis cannot be put on the natural resources and protection of the coastline for fisheries, subsistence use, habitat, etc.

Commissioner Hohl asked about the 21-day timeline, which makes it tough for the municipalities to review this. The City of Seward planning commission, per Code, is suppose to provide recommendations on the plan. Commissioner Hohl felt there wouldn't be time to have a meeting to provide recommendations. She asked if comments and recommendations could be submitted later as it goes through the process. Ms. LaRoche stated that they could be received but it could be a problem in incorporating them within the plan. It would be better to receive those during the public comment period. Ms. LaRoche and Mr. Williams have not discussed an alternative schedule to try to extend that deadline to accommodate.

Commissioner Hohl stated they don't meet until May 5, 2005. She commented that it could be introduced at that meeting and discussed at a work session to make recommendations to the Coastal Management program.

Chairman Bryson asked if Commissioner Hohl was talking about the City of Seward Planning Commission. Commissioner Hohl stated that's right because they are to provide recommendations to the Coastal Management Plan per the Code.

Ms. LaRoche stated they could extend the deadline to get some preliminary comments in. She commented that before the Borough Assembly completes a resolution to submit it to the State, it would come back to the Cities for resolution of support. At that point, the cities would be supporting the submittal of the plan to the State by July 1, 2005.

Mr. Williams stated he couldn't see why the comment period couldn't be extended longer. He suspected that there wouldn't be an overwhelming amount of comments. There will be ample time to accept comments from the City of Seward beyond May 5, 2005 and would be willing to incorporate them.

Commissioner Foster stated that the whole north side of Kachemak Bay is considered an erosion prone area. He asked if that is discussed in the text and if so, how far back does that erosion prone area go. Ms. LaRoche stated that it is not discussed which was a challenge they faced in complying with the new law. The existing plan had a number of policies dealing with erosion but in order to retain those policies they had to designate them a natural hazard area.

Commissioner Foster also asked about the flood areas. He commented that FEMA has their minimum standards and the Borough has higher regulatory standards in which some deal with fish and wildlife habitat. Another one deals with storm water protection. He asked if those could be included as enforceable policies in flood areas even though FEMA already suggests those. Ms. LaRoche stated that technically, if there were a direct overlap then they would be precluded from having those. Commissioner Foster stated that they are not required at this point in time by FEMA. They get awarded if a Borough or Municipality does adopt those but are not required. Mr. Williams stated it would be worth looking into. According to Mr. Williams they need to encourage meeting the spirit of the law. The State will tell them if it is not acceptable. Ms. LaRoche guessed that they might be able to include some of it in. The problem they would run into with storm water is not with FEMA but with DEC.

Commissioner Johnson echoed Commissioner Troeger's comments. The gutting of the current Coastal Zone Management Policy happened because the Governor is balanced between pro-development and cost cutting. It is between those two things that he is trying to streamline the system. Commissioner Johnson is not totally against that philosophy but is uncomfortable with someone who is in the commercial fishing industry to see the whole area designated as recreation. He felt that the area designation, recreation, as extremely dangerous for an industry that is already on the ropes because recreation thinks there is no room for commercial fisheries. Commissioner Johnson is enthused about anything that protects the Coastal Zones but not enthused about designating everything recreation.

Commissioner Massion asked how he is to explain to the professional fishermen in his town how labeling coastal zone as recreation is going to sustain their livelihood. Ms. LaRoche stated that she would say that recreation depends on the same resource that they are harvesting. It is because of having the sport fishery as well as the commercial fishery and the wonderful habitats for bird and wildlife viewing that all contribute to a healthy ecosystem that makes for good commercial fishing. This plan is trying to ensure that those resources are sustainable because commercial fishing

and recreation fishing depends upon it. Ms. LaRoche appreciated the comments and concerns and doesn't disagree with what anyone has said. This is one way of protecting the resources that the commission is concerned about.

Commissioner Massion stated that this is serious that it is just going to be labeled and therefore assimilated over the years of being labeled recreation. He asked how to keep that from happening.

Commissioner Foster stated this loophole is also with subsistence, which doesn't include commercial. Ms. LaRoche stated the subsistence has a very specific definition, which is the same as that which is used by the Department of Fish and Game. It would not include commercial fishing. There are some areas that are designated for subsistence particularly Tyonek, Port Graham and Nanwalek areas and do overlap the recreation designation. Ms. LaRoche stated there is not a provision of designating areas for commercial fishing. She doesn't think she can get where the commission wants to go.

Chairman Bryson asked for other comments and if it concludes the presentation.

Ms. LaRoche stated it concludes what she has to say other than the commission needs to send this plan out for public review. Mr. Williams would be happy to extend the comment deadline for a week's period. He would also like to point out that they needed to establish a public hearing date for April 25, 2005.

Chairman Bryson stated the public comment period for the plan is to be extended 28 days.

MOTION: Commissioner Troeger moved, seconded by Commissioner Tauriainen to submit the draft Coastal Management Program to the public for public comment with a public hearing to be held April 25, 2005.

Commissioner Troeger complimented the work that is being done on the plan. He commented that his negative comments were not directed towards Ms. LaRoche. It is important to address views and comments.

Commissioner Clark is completely uncomfortable with the recreational designation. He thinks someone in the future will come back and point out that this is a plan and this is what they had in mind. There has been some disagreement expressed with how the State is handling the issue. He is pleased that the State is standing up to the Feds because he doesn't feel that the Feds have this State's best interests as heart.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS ABSENT	HOHL YES	HUTCHINSON YES	ISHAM YES
JOHNSON YES	MARTIN ABSENT	MASSION YES	PETERSEN ABSENT	TAURIAINEN YES	TROEGER YES	10 YES 3 ABSENT

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April 25, 2005 7:30 P.M.

APPROVED MINUTES

AGENDA ITEM F. PUBLIC HEARINGS

5. Coastal Management Program Plan Public Hearing

Mr. Best referred to the letter from Gary Williams that was in the desk packet. The governor announced that DNR and NOAH had come to an agreement as to the State's policies, which gives an extension of six months to get the plan in order. Staff recommends continuing the public process by postponing until brought back by staff.

Chairman Bryson opened the meeting for public comment.

1. Eileen Bechtol, 70365 Original Drive

Ms. Bechtol stated that the Legislative is supposed to act by May 10, 2005 on Coastal Management. It looks like granting the six-month extension will pass. She expressed concerns regarding the Recreation designation in that it is valid but doesn't see how that will get pulled into the commercial versus the sport fishing issues. She stated that perhaps it could be made clearer so that it can't be used for an argument. Ms. Bechtol asked that her comments from the last meeting be kept in mind regarding that the Coastal Management Program since it is not what it use to be. She felt that establishing Title 29 regulations that deal with Coastal Management issues would be a good use of Borough time and money.

Chairman Bryson asked if there were questions for Ms. Bechtol.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment and opened the discussion among the Commission.

Chairman Bryson asked if staff recommended postponement. Mr. Williams stated that the public process is good and can certainly use the comment period until May 12, 2005. He commented that there are a few comments coming in and invited more. They are taking up the issue involving recreation and commercial and plan on bringing that back to the commission at a later date. Staff recommended continuing public process and hopefully brings back a fine document.

Commissioner Troeger stated the commission needed to continue since action was supposed to be taken at tonight's meeting. Mr. Williams stated there would be more public meetings since the six-month extension was given.

MOTION: Commissioner Troeger moved, seconded by Commissioner Gross to continue the Coastal Management Public Hearing until brought back by staff.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HOHL ABSENT	HUTCHINSON YES	ISHAM YES
JOHNSON YES	MARTIN YES	MASSION YES	PETERSEN ABSENT	TAURIAINEN ABSENT	TROEGER YES	10 YES 3 ABSENT

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February 13, 2006 - 7:30 P.M.

UNAPPROVED MINUTES

AGENDA ITEM F. PUBLIC HEARINGS

5. Coastal Zone Management Plan Update

Staff Report read by Gary Williams

PC Meeting: February 13, 2006

The draft of the Coastal Management Plan is ready to be submitted to the Assembly on February 21st for conceptual approval. At your February 13th meeting, I recommend the Planning Commission give its conceptual approval to the document. Your approval will be taken with the understanding that changes to the document may be made until the final plan is returned for consideration by the Assembly. We expect the document to return for final review by the Assembly in the fall of 2006.

Our obligation under terms of current legislation is to create a document that complies with the law. To conform to the law we consulted extensively with staff in the Department of Natural Resources and as a result have a reduced scope in the evaluation and comment on projects in the Borough that require state or federal authorizations. This condition may change as the implementation of the Alaska Coastal Management Program occurs. According to the ACMP Director, Randy Bates, it is likely that unintended gaps in the program's coverage will occur. Therefore, we should expect the CMP to undergo amendment in the future as these gaps are found.

The essential feature of the ACMP and why the Borough should continue its 15 year participation, is that this vehicle is a means that guarantees the Borough a seat at the discussion table when activities are proposed that will have an effect on socio-economic and environmental conditions we must live with on the Peninsula.

A summary sectional analysis was provided to the Planning Commissioners on January 20, 2006.

End of Staff Report

Chairman Bryson opened the meeting for public comment. Seeing and hearing no one else wanting to testify, Chairman Bryson closed the public hearing and opened discussion among the Committee.

MOTION: Commissioner Clark moved, seconded by Commissioner Massion to grant the Coastal Zone Management Plan conceptual approval and recommend the Planning Commission's conceptual approval to the Assembly.

Commissioner Hohl commented it helped her when they went through the Comprehensive Plan section by section and would like the opportunity to do the same with the Coastal Zone Management Plan. She stated that the City of Seward Planning Commission did not recommend approval because they saw many holes in the plan regarding the eastern peninsula. Commissioner Hohl asked if there was a plan for revisions. She would hate for this to have to be approved in November without having spent the time going through it as a group. Mr. Williams replied it was their plan to have this to the Planning Commission by the first of the year. They are almost exactly six weeks from that time which is almost exactly the same amount of time that the consultant took trying to help her ill mother. It is an unfortunate consequence and is something that staff couldn't deal with. That is why Mr. Williams is recommending conceptual approval with the idea that there will be changes. He stated errors will be corrected and a record of those changes will be communicated to the commissioners. The plan is due to DNR by the first of March so there is little time unless work sessions are scheduled to go over it.

Commissioner Hohl asked if work sessions could be scheduled in the coming months so they can have discussion regarding the different points in the plan. Mr. Williams stated he is completely open to that now that they have something to work with.

Commissioner Massion asked if the Borough planned to retain the same consultant. Mr. Williams replied, yes. Commissioner Massion asked if Mr. Williams was happy and comfortable with the services of the consultant. Mr. Williams replied, yes.

Commissioner Johnson referred to *6.0 Commercial Fishing and Seafood Processing. Timber Harvest and Processing no longer exists*. He asked if that meant that the stream buffers from logging no longer exist. Mr. Williams replied that it means that the State of Alaska is now dictating what those buffers will be and has taken the Borough out of the discussion process when timber permits come up for review. Commissioner Johnson stated that they are trying to make sure gravel operations don't hurt streams but are going to allow timber operations to hurt streams. Mr. Williams replied he was right.

Commissioner Hohl asked if a conditional use permit still applies if it is an anadromous stream only for Coastal Zone Management. Mr. Williams replied, yes, that is true. Commissioner Hohl suggested the more anadromous streams be identified.

Commissioner Foster asked how riparian areas would be covered in the Coastal Zone Management Plan. Mr. Williams commented a positive thing that came out of the State's rewrite of the law is that it gave additional riparian area management to DNR. Previously it was bank to bank. Under the new regulations, it is 100 feet on either side of the bank. That was the State's offering in taking the Borough out of the habitat area and managing the riparian area, which is 100 feet from edge in the riparian zone.

Commissioner Clark was disappointed that the archeological and historical resources policy couldn't be retained.

Commissioner Massion asked if the Material Site Ordinance would be the sand and gravel extraction policy once it was adopted. Mr. Williams replied no, the ACMP regulations are quite different than what the Borough's ordinance calls for. The ACMP regulations only come into affect when there is a state or federal permit required for the creation of a material site extraction permit in which case the Borough is given the opportunity to comment. CZM regulations are stricter regarding cumulative impacts than the Borough Ordinance.

Commissioner Massion asked if the Borough has protection if the State grants the permit. Mr. Williams stated they do under the ACMP because there is a tier process. First they look at any available existing gravel pits that are productive. If that is not the case then there are two other tiers that are looked at in terms of making a determination about whether this particular material extraction site is in the Borough's best interest.

Commissioner Isham asked for a short recess. Chairman Bryson called for a ten-minute recess at 9:55 p.m. Chairman Bryson reconvened the meeting at 10:04 p.m.

Commissioner Foster asked how the coastal hazards are addressed in the plan and if they are as appropriate as they could be. Mr. Williams replied that the coastal hazards section is one that had suffered under the new regulations because the State specifically said that there has to be science to back up any claim regarding coastal erosion. There is very good science that has been provided by the Kachemak Bay Research Reserve. There is an assemblance of science for other parts of the peninsula bluffs. It is not in the form of science and hasn't been validated yet. They expect that to happen in the near future but until it does the only science that can be provided is from the Kachemak Bay Reserve. Once the science comes forth there could be an amendment of an enforceable policy regarding coastal erosion go forward to the ACMP.

Commissioner Hohl asked if the Borough was at risk of the State coming back saying that changes couldn't be made later. Mr. Williams replied no, that was reinforced in conversations with the ACMP Director in which he acknowledged there would be gaps that will need to be filled through amendments. It is provided for in the ACMP regulations.

There being no further discussion or comments, Chairman Bryson called for a roll call vote.

VOTE: The motion passed by majority consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HEIMBUCH YES	HOHL NO	HUTCHINSON ABSENT
ISHAM YES	JOHNSON YES	MARTIN YES	MASSION YES	PETERSEN YES	TAURIAINEN ABSENT	10 YES 1 NO 2 ABSENT