

**MAYOR ALSWORTH'S TESTIMONY FOR HOUSE STATE OF
AFFAIRS COMMITTEE OVERSIGHT HEARING ON COASTAL
MANAGEMENT PLANS
02/24/2005**

Questions for 2/24/05 (8:00 a.m. to 10:00 a.m.) House State Affairs Committee Oversight hearing on the Coastal Management Plan district plan revisions.

As there is only two hours for this oversight hearing, we felt that the best thing to ensure that testimony would be short and to the point would be to provide you with a list of questions pertinent to the oversight hearing. Please limit responses to ten minutes so that we can fit all testifiers within the two-hour time period.

- 1. Please provide an example for the committee of an enforceable policy that was utilized in your coastal district prior to the revision process, and how the revision will affect the activity that the policy was used to enforce.**

Answer: The example I will use is L&P Borough Policy A-6 Disposal of Dredge Spoil. First I will read you the existing policy and then I will read you the revised version trying to utilize the new regulations and statutes as explained by DNR staff.

A-6 Disposal of Dredge Spoil

Existing Policy

Dredged materials disposed of in shoreline landfills shall not cause significant alternation of important habitats or significant adverse impacts to coastal processes such as circulation, sediment transport, and coastal erosion and

deposition patterns. On shore disposal sites for dredged material shall be contained and stabilized to prevent erosion and leaching into adjacent waters. Off shore disposal of dredged spoil shall avoid important marine habitat and be conducted in compliance with state and federal water quality regulations.

New Revised Policy

Dredged materials disposed of in coastal water shall not cause significant adverse impacts to coastal processes such as circulation, sediment transport, and coastal erosion and deposition patterns.

The new policy would not have any power nor the detail and exact identification as the old policy and has zero local control over off shore disposal of dredged material.

Another example is Policy A-7 which we have used on numerous consistency reviews requiring compliance for project approval.

A-7 Navigation Obstructions

Existing Policy

Uses and activities in coastal waters shall meet the following requirements:

a) Structures and buoys placed in navigable waters shall be visibly marked and placed in a manner to minimize navigation hazards or obstructions to other uses of coastal habitats; and

b) To the extent feasible and prudent, all developments, structures, and facilities in marine and estuarine waters of the Borough shall be sited, constructed, operated, and maintained in a manner that does not create a hazard or obstruction to marine transportation or commercial fishing operations.

New Revised Policy A-7

Structures in navigable coastal waters shall be visibly marked and placed in a manner to minimize navigation hazards or obstructions to other uses including marine transportation or commercial fishing operations.

The Borough Planning Commission used this policy on several occasions in the last five years to enforce safety issues. Recently it was used on projects in Lake Clark and the Ugashik River. In both cases because of this policy we were able to require the project to be modified and in one case required the applicant to remove the structure because it was a navigational hazard. If this policy is lost the borough will have to depend on other state and federal agencies to police local safety issues.

2. Why is the program important to your district and how has it been used to address specific issues. For programs managed by a municipality with planning powers, what does the ACMP give you above what you can do in your municipal code under Title 29 powers? For programs in the unorganized borough, Coastal Resource Service Areas (CRSA), how is this program useful considering the CRSA does not have planning and zoning powers?

Answer: The Alaska Coastal Management Program has been very helpful to the Lake and Peninsula Borough. Through this program we have been very successful in getting grants from such programs as the Coastal Impact Assistance Program (CIAP) which was instrumental in helping the Borough accomplish Community Profile Mapping of all 18 of our communities. We applied for grants directly from the ACMP that also contributed to this very successful mapping program. However the coastal management program is most important to the Borough because it allows local input on development matters. For example under the States new revised regulations Lake Iliamna would no longer be within the newly defined “coastal zone” because Lake Iliamna is not salt water affected. The Lake and Peninsula Borough has the five largest fresh water lakes in Alaska within its boundaries. Lake Iliamna, Becherof Lake, Naknek Lake, Lake Clark and the Ugashik Lakes. All of our communities are located on either a saltwater coastline or a freshwater river or lake. The coastline whether it is salt or freshwater is very vital to our citizens

subsistence life style. We depend on the ocean and the freshwater lakes within our Borough for a large portion of our food. Lake Iliamna is the largest fresh water lake in Alaska and is one of the largest natural red salmon hatcheries in the world. It is also home to fresh water harbor seals, one of only two lakes in the world with this distinction. Lake Iliamna must remain protected under our coastal management program. A lot of work by a lot of local residents went into the current plan. The Lake and Peninsula Borough spent five years writing our last coastal management plan and held public meetings in all 18 of our communities to get buy in by the local citizens. The public process within our Borough is very important because the men, women and children of our Borough are the Borough. We think the removal of Lake Iliamna from the coastal management program can be compared to requiring the Great Lakes to be removed from the coastal management program in the lower 48 states. But because Iliamna, Becherof, Naknek, Lake Clark and the Ugashik Lakes are not within the newly defined coastal zone we will have no local say on development on their shorelines.

Infancy of Borough: *The L&PB is a relatively new Borough and as such our title 29 powers are still in the development stage. We have ordinances for development permits, subdivision and flood insurance that have enforced Title 29 to some degree. We know the new Community Profile mapping and future GIS system we are building will serve us well into the future. However, the current Borough coastal management plan provides a vital tool for managing the coastal zone, critically important to a young borough such as ours. Many of our coastal management policies are interwoven throughout our Borough ordinances and will prove to be a challenge to sort out and effectively change.*

Federal Consistency: *It is however more important to note that the ACMP provides the only tool that requires federal agencies to be consistent to the maximum extent practicable with the ACMP and L&PB CMP. This was one of the main reasons Alaska chose to participate in the program back in the 70's. In the L&PB, as with many parts of Alaska, vast areas are under federal management. The ACMP is the only way to ensure that activities conducted on federal lands and waters address local issues and*

concerns. This is a critical tool that must be safeguarded. L&PB is very concerned with the manner in which the State is proposing to implement the ACMP. It pretty much cleans out our tool box. For example within Katmai National Park, a recent project by the Park Service to dredge an area used for barge landing came through the Borough for review. Under the new program we would not even be at the table.

3. What are the main problems that you are experiencing with the enforceable policy revision process mandated by HB 191 and associated regulations?

Answer:

A major problem we are experiencing with the revision process is exactly what HB 191 set out to resolve. An objective of House Bill 191 was to provide clear and concise guidance. To date we have not received either clear or concise guidance from DNR and the Office of Project Management and Permitting. The Bill also directed to provide uniformity in coastal management throughout the state. However, the new regulations and the new statutes have created uniform confusion through out all the coastal districts. The bill further directed that the ACMP should relate to matters of local concern. We live in these affected coastal districts and we have expressed dire concern over how this program is being changed at the local level and how we will no longer have the voice our current plan provides us over projects within our borough boundaries.

Guidance for revising the district coastal management plans has been confusing, imprecise, and subject to regular changes by DNR staff. New ACMP regulations were adopted in July 2004, revised in August 2004 and will likely be revised again this spring.

During the House Resources Committee testimony on 4/28/03, DNR provided nine “model enforceable policies that addressed specific locations within particular districts and generally defined portions. DNR stated that these policies allow “for quite a lot of breadth in local enforceable policies . . . They allow a great deal of flexibility within local enforceable policies. They just simply require that they be more concise.” Since that time DNR has removed the sample enforceable policies provided to the legislature in 2003 from its website, but has yet to explain why the policies are no longer applicable.

Again during testimony on HB 191 on 4/23/03 House Resources Committee, Marty Rutherford stated “HB191 does not eliminate the district’s place at the table. They will be at the table. They will have due deference on their enforceable policies, and that is something that the districts need to hear again, because it’s important to them and we recognize it”.

Another example: Senate Resources Committee, April 28, 2003:

[MARTY RUTHERFORD] ... the Murkowski administration feels, after looking at these district enforceable policies [nine examples provided by DNR], that the districts put a great deal of effort into establishing them. The Administration’s strategy is to have the resource agencies review all of the local enforceable policies as they are being rewritten to be more concise and non-duplicative, as well as to see if they should be developed into statewide standards. She said the policies demonstrate that districts have a great deal of room to develop policies that address issues of local concern.

However, guidance from the DNR staff has truly indicated the opposite because the state OPMP continues to address any policy with the term “the field is covered” meaning we cannot write a policy on that subject or issue and in turn because the field is covered we have no due deference on that subject. Simply put we’ve lost our voice!

Regulations Conflict with Intent of HB 191: *The new regulations contradict testimony by the Administration on HB 191. In contrast to what was promised to the Legislature, interpretation of the new regulations by DNR impose extreme limitations on enforceable policies, remove the ability for districts to address air and water quality matters not addressed by DEC, diminish the effectiveness of statewide standards, remove the ability for district policies to apply to federal land and waters, and add to regulatory confusion. It appears that DNR will be revising the ACMP regulations, but the agency has not explained to the districts exactly what it intends to address in the new revisions.*

Wasted Time & Money: *The state Coastal Management Program must be approved by the federal Office of Ocean and Coastal Resource Management (OCRM). Based on the recent letter from OCRM dated January 28, 2005 it is very likely that state program changes will need to be made for federal approval. These changes will directly impact requirements for local district plans. The federal process will not be completed before district plan revisions must be submitted to DNR. In that same letter OCRM stated the environmental Impact Statement is not expected to be completed until December 2005 In our opinion this is a waste of time, money and effort for districts to revise their plans before the state's program is federally approved and any necessary changes have been made. Simply put, we think the State has put the cart in front of the horse by requiring the Districts to complete their plans before the State has an approved amendment from the Federal Government. [This is not good long range planning.] The state has not even developed final guidance on the existing regulations, and may still develop new regulations. The EIS cannot even be started until OCRM approves the State's program.*

Changes Will Stop or Delay Development: *According to DNR, certain district policies may only "disallow" uses. This will force districts to prohibit certain kinds of development rather than establish criteria to allow it.*

Insufficient Time: *The timeline for coastal districts revising their plans began July 2004 when DNR first adopted regulations implementing the coastal program changes; district plans must be submitted for review by July 1, 2005. Due to the confusing regulations and varying interpretations by DNR, most districts are still unclear how to proceed with plan revisions. Once the direction is made clear, there appears to be insufficient time for districts to meet the regulatory process requirements for district plan revisions, i.e. July 1, 2005. Extending the time period for plan approval would spread DNR's present work load out over a more manageable time period, which will assist DNR in their plan review. The current DNR staff cannot possibly adequately review and approve 26 district plans in 12 months. Look how long it has taken them to write the regulations, regulations that to date, raise significant questions within most districts and within OCRM.*

4. How has removal of air and water quality issues affected the ability of your district to manage coastal resources and uses?

DNR has said that districts cannot develop any air or water quality policies even for matters not addressed by DEC. Under this interpretation, there will be gaps that the districts cannot address. Specifically the removal of mining from the enforceable policies directly affects our ability to be at the table in regards to air and water quality issues related to mining as related to our current coastal management plan. By removing Air, Land and Water Quality the process to approve, consistency reviews will follow a double track. The most direct impact on our districts ability to manage coastal resources is we will not even be able to comment or even review many projects thus eliminating our seat at the table. The opportunity to be at the table was repeatedly promised in public testimony during the passing of HB 191. For Example: Marty Rutherford to the 4/28/03 House Resources Committee. Because the DEC “air and water quality standards do not address some things, in those areas, the local communities would be able to develop their own local policy . . .”

Another example: Pat Galvin told the House Finance Committee that “[t]he language was changed to make specific references to statutory provisions so not to presume that air, land and water quality are the exclusive product of that Department.” He said that Section 11 is specifically designed to reference only statutes that DEC is actually regulating. (5/3/03)

However based on the new regulations and interpretation of the new regulations by DNR staff we cannot write any such policy on any Air, Land and Water Quality issues thus removing our seat at the table on that issue.

5. What kinds of policies are you able to develop under the current regulations?

Answer:

The ability to write effective enforceable policies is very difficult if not impossible if we follow the guidance we have been given from the DNR staff. Through January 2005, DNR has unofficially provided ever-changing interpretations of the regulations; interpretations we think conflict with the legislative intent of HB 191. If followed, DNR's directives would reduce local communities' role in coastal development. For example when the first draft of the regulations was presented to the districts in February of 2004 the draft regulations stated that a district may develop an enforceable policy that addresses a matter of local concern, including:

- (1) setbacks and siting criteria;*
- (2) wetlands management; and*
- (3) nonpoint source pollution controls.*

This has since been removed from the final version of the regulations.

Another example, during the October 2004 workshop in Anchorage the guidance for writing a policy was that it could be written only if there was not a State or Federal law that covered the subject. Now the most recent guidance from DNR is that a policy must now flow from State law. Moving targets are hard to hit. Additional time for this process would allow the legislature to review the progress of this issue and hopefully make some adjustments. We strongly encourage the legislature to reevaluate HB 191. Many promises were made during the passage of that bill. Promises were made for instance, that subsistence would not be affected when in fact, we are now told by DNR, and that no policies may be written on subsistence because of the language in the regulations. We have deep concerns that the new regulations affectively eliminated input into development of mines, oil and gas resources and the opportunity for locals to weigh in on Air, Land and Water quality issues on projects in their own backyards.

6. What do you foresee as the impact to your coastal district if the ACMP disappears?

Answer:

The elimination of the local voice. Uncontrolled and unmonitored development of the salt and freshwater coastlines within our Borough. Loss of funding for coastal planning. No

local government likes to see the loss of funding. Our Borough has been very productive with the funds we have received from coastal management and combined them with other grants to accomplish a very large and productive mapping and GIS project that will benefit local government, the Borough, State and the Federal Government for many years to come. Now due to the proposed changes we fear the increased possibility of impure water in our fresh water, lakes, rivers and streams. Freshwater and salt water are directly related to each other. Both tie directly back into the ecosystem of our region, our State and the world. We think the dilution or elimination of the coastal management program is a very poor decision by the State. We strongly urge this committee to consider rethinking what HB 191 has done to the program and how opposed the coastal districts of Alaska are to their resulting program revisions and most especially to the perceived "Heavy Handed" manner of DNR.

I kindly thank this committee for the opportunity to testify on behalf of the Lake and Peninsula Borough.

Thank You!

Glen Alsworth

Mayor