ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

March 29, 2010

Honorable Lyman Hoffman
Honorable Bert Stedman
Senate Finance Committee
Capitol Building
Juneau, AK 99801

Re: CSSB-4(CRA), Changes to Alaska Coastal Zone Management

Dear Senators Hoffman and Stedman,

The mining industry has been involved in the Alaska Coastal Zone Management Program (ACMP) for many years. Several companies have raised concerns regarding CSSB-4(CRA) (referred to as SB-4 in this letter) and its companion bill in the House, HB-74. They agree that ACMP is not working well but they cannot support the changes being proposed. The bottom line is that this bill would create an administrative quagmire for the state permitting process and would create tremendous uncertainty for all permittees. The Alaska Miners Association opposes SB-4.

We have numerous concerns with SB-4 and the major ones are discussed below:

Section 1 establishes a Coastal Policy Board (CPB) (previously called the Coastal Policy Council) whereby the Coastal Districts would control selection of the majority of the members that would then have control over the Alaska Coastal Management Program. The CPB would have 5 public members and 4 state agency (DNR, DF&G, DEC, & DCEED) members. The governor would choose the public members but must select them from a list supplied by the Coastal Districts. The effect is that the districts would control the outcome of the selection process and would therefore control any decisions before the CPB. This is not good for management of coastal resources and is bad public policy.

Section 2 would require consistency determinations and certifications for every permit issued by any office within DNR. This would include items now on the "A,B,C List" that have been determined to be of minimal possible impact to coastal resources. The "A,B,C List" would no longer have any relevance and every activity that required a permit would require a consistency determination.

Section 3 would transfer ultimate authority over regulations from DNR to the CPB. The Coastal Policy Board (CPB) would be the ultimate decision making authority due to the requirement that the CPB must approve the regulations. This too is bad public policy to have an appointed board having control over the regulatory process.

Section 4 would transfer various powers from DNR to the Coastal Policy Board. These powers would include contracting for services and "taking any reasonable action necessary to carry out the provisions of Coastal Zone Management". This is extremely broad power and does not include the numerous checks, reviews and balances that are imposed on DNR. If the CPB decided DNR was not following or interpreting the policies the way they want, it would have the authority to make changes.

Section 5 defines the duties of the CPB and at the same time would make DNR effectively a staff agency for the CPB. DNR would be responsible for developing the coastal management plans but the CPB would have the authority to approve or reject those plans. The CPB would have authority to require coastal management plans that would extend to the off-shore continental shelf (OCS) or inland as far as they believed was "reasonable".

The combined impacts of Sections 1, 3, 4, 5, 6, and 7 would be to give authorities now held by DNR to the CPB. Again, the CPB is an appointed board not elected by the public, nor confirmed by the Legislature.

Section 9 specifies how the district coastal management plans and enforceable policies will be developed and because of the authorities given to the CPB, the CPB will be able to dictate all requirements. This would eliminate the requirement for district plans to meet a set of consistent statewide standards. This would eliminate certainty and be a nightmare for the regulated public, and eventually for the Administration and the Legislature due to the havoc it would create.

One of the several problems with ACMP before the passage of HB-191 in 2003 was that districts were allowed to create so-called "homeless stipulations". These were stipulations that were outside existing statue and regulation that could be added to a permit. SB-4 gives authorization for districts to go beyond state or federal law and this would again be allowing "homeless stipulations". In effect, this means that if the legislature will not pass a statute to require some action, the district would be able to do what the legislature would not approve and thereby go beyond state or federal law. In 2003, and for many years before that, this was a tremendous problem for permittees. Oftentimes due to project schedules and the approaching construction season, permittees could not take the time to challenge these homeless stipulations.

Section 10 would allow the CPB to define the boundaries of the coastal districts as far inland as they wished. Decisions over projects in Interior Alaska could be impacted by the Coastal Management Program and Coastal Districts. This would effectively give the coastal districts authority over any activity in the state. This would include permits for homesites, water wells, water rights, roads, culverts, roads, mines, gas lines, oil wells, etc. anywhere in the state. Rather than the Coastal Management Program applying to the "coastal" areas, the boundaries could, and likely would, be defined hundreds of miles up stream. This compares to some other states where coastal management programs are generally limited to the areas affected by salt water and tidal action.

Section 10 would also allow the coastal districts to designate "special management areas" that, based on Section 9, would have their own set of enforceable policies. These special management areas could be anywhere the districts wished.

One conclusion is that SB-4 would effectively negate "state law". State regulations would no longer be no consistent but could rather be different for Costal Districts. If a coastal district wanted something different from existing regulation, the district could require it and DNR would have to comply or be unable to act without legal challenge. In whatever the situation, if a coastal district wished to regulate something the legislature has not given DNR, the district could simply require it to be in the coastal management plan.

A second conclusion is that many of the items mentioned above would raise constitutional questions. Because the CPB has the authority to go beyond state law, the bill has the effect of delegating legislative law-making to a public-dominated board. Similarly, it removes interpretation of state regulations from the administrative branch — where the interpretations constitutionally belong — and gives this authority to the CPB. While some constitutional issues existed before passage of HB-191 in 2003 (specifically the homeless stipulations), SB-4 greatly magnifies and expands these legal problems.

A third conclusion is that the bill essentially does away with the concept of state interest. There are some decisions — whether and how a gasline should be constructed, expansion of the railroad, oil & gas development on state lands and waters, and oil & gas development in the OCS — that should be decided by the state, without being subject to veto by coastal districts. It is critical that local land-use issues and local concerns be taken into account by the permitting agencies, but some issues affect the entire state and must be determined on a state-wide basis. SB-4 essentially does away with this concept.

A final conclusion is that the changes proposed would create tremendous uncertainty for the regulated public. There is no way to escape a great deal of uncertainty if coastal districts were to be given the authorities contemplated in SB-4.

Thank you for the opportunity to address our concerns to you.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Cc: Committee Members