Alaska Oil and Gas Association

AOGA

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To the Members of the Senate Finance Committee:

We are writing today to express our strong opposition to and grave concerns with SB 4. During this session, many legislators have expressed a desire to create a better environment for investment in Alaska. Make no mistake, AOGA's members believe that passage of SB 4 would achieve the exact opposite.

If passed, this legislation will have a chilling and negative impact on the oil and gas industry statewide, stifling exploration and development in the Cook Inlet and on the North Slope. We believe offshore exploration and future development would be stopped dead in its tracks. If passed, SB 4 will significantly reduce potential production, and could cost the state significant revenue, billions of dollars in needed industry investment and consequently thousands of jobs.

Because virtually all operations of the members of AOGA take place within, or adjacent to, Alaska's coastal zone, we have been actively engaged in development and implementation of provisions of the Alaska Coastal Management Act (ACMA) and the subsequent Alaska Coastal Management Program (ACMP) since the program's inception in 1977.

AOGA also has long been an advocate of and contributor to sound legislation and regulations which balance resource development with environmental protection. AOGA input to achieve these goals has included support of a timely, smooth functioning and predictable State permitting regime. Prior to the 2003 reforms, experience with the former ACMP demonstrated that it had become a complex, duplicative program with uncertain standards and open-ended review periods, creating an unworkable permitting process. We strongly supported the legislative initiative in 2003 which made major reforms to the ACMP that resulted in significant improvements in Alaska's permitting system.

Unfortunately, SB 4 not only eliminates all those permit streamlining reforms of 2003 but creates, if passed, a permitting regime that is again unpredictable and unworkable. We cannot overemphasize our concern that the impacts of SB 4 to responsible development in Alaska will be chilling; this legislation will be perceived as sending strong signals that Alaska is not open for business. This is at a time of declining oil production and the need to get a gas pipeline and other projects moving.

While we recognize the local concerns that this legislation tries to address, for the reasons we set forth below we do not believe that SB 4 is the right answer. The current permitting system provides a predictable and workable process with numerous opportunities for public input and local review. SB 4 would instead create a duplicative, untimely, and unworkable permitting system far worse than the pre-2003 ACMP.

For example, DEC technical permits are already routinely subject to public review and comment. Bringing hundreds of such DEC permits back into the ACMP for duplicative review under multiple undefined new local standards will add no additional value. It will instead create huge delays and inefficiency while undermining the statewide environmental standards the legislature has directed DEC to establish and enforce.

Our principal concerns and the likely impacts of SB 4 are discussed in more detail below. In summary, these are as follows:

- SB4 would create a new, far reaching, and duplicative ACMP process with unpredictable consequences and open ended timelines for permitting of projects in Alaska.

- State control and management of its lands, air and waters would be relinquished to a largely locally nominated Coastal Policy Board (Board) with extraordinary but standard-less regulatory powers. DNR's role in the ACMP and its constitutional authority over natural resources would be subordinated to the Board, as would the authority of other state resource agencies. The Board and its staff (which would be required to administer its extensive functions) would comprise a duplicative new bureaucracy to administer the ACMP on top of and in addition to the current DNR administration of the program. This would raise significant practical questions about how the system could work.

- Existing state and federal environmental standards would be supplanted by prescriptive or programmatic new local requirements. In effect, local standards would trump existing Federal and state environmental regulatory programs with respect to what permit applicants would have to comply with. The powers vested in the coastal districts and Board to draft and approve new enforceable policies in addition to existing state and federal requirements are without meaningful standards or limitation. These local enforceable standards would expressly no longer be subject to any statewide standards but nevertheless have the force of state law.

- Since the inception of ACMP, and as made explicit in the 2003 reforms, ADEC air, water and other standards in their regulatory and permitting programs were deemed to be the standards in those areas for consistency reviews. Those typically complex, technical permits and lengthy review processes were appropriately "carved out" of the ACMP review, thereby streamlining and shortening permitting time frames. Now under SB 4 consistency reviews and

permitting time frames would be significantly lengthened by inclusion of ADEC permits in consistency reviews.

- Schedule deadlines of the current ACMP would be eliminated for federally permitted projects and weakened for all reviews. This again threatens an indeterminate and open-ended schedule for ACMP reviews, especially in light of the exclusion of the DEC "Carve-out."

- The reach of the ACMP would be vastly but unpredictably expanded inland of the defined coastal zone. Any project anywhere in Alaska could be brought into ACMP's orbit, and a consistency review required, if it were believed to have impacts on a coastal use or resource. The threshold for such determinations appears to be very low given the overall provisions of SB 4.

- SB 4 presents very serious constitutional concerns including the standard-less delegation of legislative and administrative authority to the Board and coastal districts. The vast authority delegated would not only disregard state ACMP standards but create new enforceable local policies which go beyond existing state and federal law. Other serious questions include whether the process for appointments to the Board would improperly interfere with the constitutional power of the governor, and whether the Board's authority to disapprove DNR regulations would in effect comprise an unconstitutional "legislative veto." We strongly recommend that SB 4 be subject to legal review by the legislature and the Attorney General's Office prior to further legislative action to review these and other legal issues. SB 4 otherwise seems certain to give rise to not only permitting uncertainty and delay but extensive new litigation over project reviews on a case by case basis .

BACKGROUND

As you consider this legislation it is important to recall the historical problems with the ACMP that led to the passage of HB 191 in 2003.

In the late 1990's it became apparent to State regulatory agencies and the regulated community that the ACMP was broken both in terms of process and substantive scope. Among the problems, which are documented in Chapter 10 *Program Description for the Alaska Coastal Management Program* (DNR 2005), in testimony on HB 191, and in other documents, were:

- A complex program tiered upon a diverse federal and state permitting system;
- Lack of clarity on the applicability and scope of the ACMP review to a project;
- Lack of clarity and inconsistency on information requirements to support consistency reviews;
- Unpredictable and often lengthy time frames for consistency reviews due to numerous stop clocks and requests for information and interagency disagreements;
- Lack of clarity and inconsistent application of the standards that apply to the consistency review projects;

- Conflicts between permit regulatory conditions and ACMP standards and enforceable policies as a result of duplicative or overlapping requirements;
- Application of "homeless stipulations" to consistency determinations that have no statutory basis;
- Duplication of administrative and ACMP appeals processes;
- Abuse of the ACMP elevation/appeals processes to delay or stop projects.

A very important factor in the problems arising in the ACMP in the 1990's and early part of this decade is the significant evolution in federal and state environmental laws and regulations that occurred after the passage of the ACMA in 1978. Given a more complete and rigorous regulatory environment, much of the scope of consistency reviews, statewide standards and district enforceable policies had become redundant or duplicative. This also created the complexities in the program (characterized in testimony to the legislature in HB 191 hearings as an ACMP "maze" that could not be mapped out) because of the conflicting requirements between the ACMP and individual state and federal permitting programs.

The revisions to the program adopted by the Legislature in 2003 resolved these challenges and transformed the program into one that provides certainty for the State, local districts and the regulated community. The 2003 changes made the consistency review process more efficient and interactions with federal and state permitting programs more certain and consistent. These changes (1) established clear triggers for applicability of the ACMP; (2) identified the information necessary for a complete application and established deadlines for requesting additional information; (3) established the applicable standards for consistency review, removing duplication and subjectivity; and (4) established firm deadlines for completion of consistency reviews.

Unfortunately, SB 4 effectively eliminates the certainty put into place by the Legislature in 2003.

Elimination of the "DEC Carve-Out"

One of the most problematic provisions of SB 4 is elimination of the DEC Carve-out. This provision in existing law implements the original intent of the ACMP…that the air, land and water standards and permits administered by the State are inherently consistent with the ACMP and therefore the additional step of securing a consistency determination is not necessary or required. These standards were developed after years of technical evaluation, and they continue to evolve as science and experience help us better protect the environment, and most importantly, they are implemented through permit processes that are comprehensive and time-consuming, carrying with them statutory and regulatory requirements for extensive public comment. The time periods for these existing permit processes fall well outside of the ACMP review schedules. The ADEC carve-out in no way diminishes a coastal district's opportunity to comment and provide input on a specific ADEC and federal permit applications. ADEC and federal permits have public comment provisions associated with them and both ADEC and federal agencies routinely furnish copies of permit applications and/or draft permits to coastal districts, boroughs and municipalities.

Elimination of the Carve-out will result in consistency determinations on projects being held up until permits with long lead times are finalized, resulting in considerable delays in projects moving forward and a tremendous amount of uncertainty as to final approval for applicants to move forward.

The practical result of ADEC permits being part of the consistency review (the situation prior to passage of HB 191) was:

- ADEC permits had to be submitted with all other state and federal permit applications in order to initiate the consistency review. However, the ADEC permit applications (e.g. air permit, C-plan) are typically the most technical demanding applications requiring very mature engineering and project planning. Thus, the ACMP review schedule was entirely dictated by the applicant's progress on detailed engineering needed for the ADEC permit applications.
- ADEC permit applications, particularly those relating to air emissions and spill response, take significantly longer than most other federal and state permits to process. As a result all permit issuance was held up until ADEC had concluded its processing. This severely limited the flexibility of an applicant with respect to scheduling engineering and project construction and typically extended the project time frame with resultant cost increases.

The ADEC Carve-out in HB 191 eliminated the above problems. Let us provide you with a hypothetical example. Virtually every single oil and gas project in Alaska involves various state and federal permits. For example an ADEC air permit is required for new drill rigs and upgraded power equipment. To satisfy an air permit, often times, one year of ambient air quality data must be collected before the permit application can be submitted. While this data is being collected, other State and federal permit applications, including the ACMP consistency review, have to be submitted and processed. Because of the HB 191 changes, by the time the ADEC air permit is ready for issuance, the consistency review is complete and construction permits are ready to be issued. The project and permitting processes are therefore not delayed by the long lead time of the ADEC air permit, as the ADEC permitting process can occur simultaneously with other applications. However, there is still ample opportunity for public input to ADEC's air quality permit decision on projects and the overall quality of the airshed was still protected by the rigor of the ADEC regulations.

It is also important to realize that DEC issues hundreds of air, water, and contingency plan permits and approvals. These permits are already subject to public review and input. A requirement for such a permit does not even necessarily reflect a new "project "or "activity" in the coastal zone, as they apply to innumerable existing businesses, facilities and vessels. In addition, these are technical permits administered on a statewide basis, often under complex existing federal and state standards administered by ADEC. There is no need or added value to require ACMP review of such State environmental permits. Bringing these permits into ACMP review would simply create a vast and duplicative new work load for businesses and facilities throughout Alaska, as well as for the ACMP itself.

Offshore exploration would also be seriously impacted by removal of the ADEC Carve -out. For example, air permits are typically necessary for exploration operations, These are extremely technically complicated air permits – in fact, EPA has not issued a major source air

permit for the offshore in 10 years. As with this and the two dozen other permits necessary for exploration drilling, many permits are received just prior to activities commencing and the proposed open-ended ACMP review process will begin after EPA has completed its work. The impact of this would be to curtail or cancel programs by placing one additional and repetitive process in place.

Simply put, the ADEC Carve-out avoids duplication of process and effort, eliminates inconsistent and conflicting permitting results, and improves the efficiency of the consistency review process with no adverse impact to the environment. If the State is to have a clear and predictable permitting regime, this provision must be retained.

Finally, if the ADEC Carve-out were to go away each local district would need to resolve the technical issues ADEC's technical staff currently address. Unless considerable local funding of such a capability was to occur local districts could not realistically address the technical complexities they would face.

Creation of a Coastal Policy Board

We are very concerned about the proposed duties and extensive responsibilities that would be vested with the establishment of the Coastal Policy Board. SB 4 empowers the Board to approve all district programs and enforceable policies, changes to the coastal zone boundaries, statewide standards and changes to the program. The Department of Natural Resources (DNR) may still adopt regulations, but only after approval of the Board, which will result in endless back-and-forth as DNR attempts to mesh its requirements under the Administrative Procedure Act with Board approval. Ultimately, however, SB 4 gives the Board veto power over DNR's (and other state resource agency) legislatively mandated authorities.

Further, experience under the previous Coastal Policy Council demonstrates that insertion of a Board with this magnitude of duties into this process will result in considerable delays in program implementation because of the time required for action, given the infrequency of Board meetings, and the addition of another layer of approvals.

Predictability in timelines is eliminated

One of the most challenging aspects of any permitting program is the ability to rely on timelines for decision-making and the inherent risks to a project proponent for a timely decision based on predictable standards. This is especially true for operations in Alaska which often are faced with limited operating seasons where a delay in securing permits may result in multi-year delays in a project proceeding forward. In the offshore environment, the ACMP legislation threatens, even before it begins, any chance of operating during the brief 100-day open water period by placing control of the permitting process in jeopardy with contrasting regional 'open-ended' language and review timeframes that would run into the summer. Critically, SB 4 exempts activities proposed by a federal agency and activities permitted by a federal agency from the required deadlines for decisions. Virtually every project requires at least one federal permit, so the impact of this provision is dramatic. Further, oil and gas and other resource development activities are not the only activities that will be affected. Given the abundance of wetlands in Alaska's coastal zone, almost any

activity, from homebuilding to construction of public facilities, will require a permit from the federal Corps of Engineers and therefore will be subjected to this timeline uncertainty.

Performance based enforceable policies are allowed

SB 4 allows coastal districts to adopt performance-based enforceable policies. Applicants and districts are better served by clear and concise requirements based on sound science because it eliminates the potential for misinterpretation and disagreements between parties as to whether a particular action proposed by the applicant will meet the performance based policy. Further, this will be especially challenging for districts with minimal resources to administer their program because they typically do not have the in-house engineering and scientific expertise for every single type of development that may occur within their districts.

The coastal zone boundary will be expanded

SB 4 expands the reach of review of activities from not only the coastal zone but also to "inland of the coastal zone if the activities would cause direct and significant impacts to a coastal use or resource". During testimony at previous hearings on SB 4 we heard a coastal district representative state that it is their desire to weigh in on projects adjacent to their district even if it means "over the mountain". Such an expansion of the coastal zone boundary was never envisioned by the federal Coastal Zone Management Program or the ACMP. Any project proponent whose project lies inland of the coastal zone now faces the risk of a significant delay of the project; this is a major risk because SB 4 does not offer clear standards on the determination to include a project outside the coastal zone in a consistency review. This is contrary to both the intent of the federal CZMA and the ACMA. Furthermore, a quick review of the current, official ACMP Coastal Boundary Atlas shows that the coastal boundary already extends far inland (in some places over one hundred miles) along Alaska's coast from Southcentral to the North Slope.

Additionally, although over 81% percent of Alaskans support development in offshore areas, officials from several coastal communities and regions are officially opposed to such development. If the Legislature, through passage of the proposed changes to the Alaska Coastal Zone Management Program contained in SB 4, gives local districts the power to veto or delay projects or the ability to place more restrictive conditions on permits than federal and state agencies place on offshore activities, Alaskans will not see the promising OCS development opportunity materialize.

It is that simple – offshore exploration and development will not happen and Alaskans will not benefit from the thousands of jobs, billions of dollars in investments and 20-30 years of oil for the Trans-Alaska Pipeline System.

SUMMARY

To be successful and serve all entities in Alaska, any permitting program, and in particular the Alaska Coastal Management Program, as with any permitting program, must embody the following principles:

- Provide benefit for all Alaska residents
- Contain clear and concise requirements
- Be unambiguous and avoid opportunities for misinterpretation
- Provide predictable and firm timelines
- Provide predictability regarding applicable requirements and scope
- Avoid duplication of other state and federal permitting programs
- Contain clear limits so that district policies not require agencies to implement authorities that were not granted them by the legislature or that contradict agency regulations.
- Not allow special interests to derail development that otherwise meets all state and federal criteria.

SB 4 threatens each and every one of these principles.

We encourage you, in the strongest possible terms, to consider the direct negative impact this legislation will have on the ability of the State of Alaska to develop its resources for the benefit of all Alaskans. This legislation would severely hinder the ability for increased oil production on the North Slope and gas development in the Cook Inlet, at a time when both are desperately needed. Additionally, offshore development, often characterized as the "next Prudhoe Bay", will not occur. Alaska is at a crossroads. We cannot afford the lost jobs, the lost revenue and the lost investment that would result from SB 4.

Sincerely,

Marilyn Crockett

MARILYN CROCKETT
Executive Director