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3 0 8

April 27, 1994

Honorable Brian Porter
Honorable Members of the House Judiciary Comm. Room 120
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: SB 308

Dear Chairman Porter and Honorable Members
of the House Judiciary Committee:

The undersigned coastal districts request that the Judiciary Committee not take action on SB 308 until additional language changes are discussed relative to the items identified below. We have been involved in the significant effort that was devoted to a Working Group on SB 308 in the Senate. We supported the efforts of the Senate Finance committee to develop a consensus on this bill. Unfortunately, there was not adequate time in the Senate to resolve the remaining issues. We anticipated having the opportunity to resolve the remaining issues, in a similar fashion, in the House, and hope that the Judiciary Committee can help us to do so. We believe that passage of this legislation, as currently drafted, will leave these legal and procedural questions unanswered, and will leave the interpretation of problematic wording to the courts.

We respectfully request that the House Judiciary Committee afford us the opportunity to address these remaining issues with a continuation of the previous Working Group. We look forward to working with members of the House of Representatives or their staff to facilitate the resolution of these issues.

Remaining Issues in SB 308

- Phasing of all land disposals under Title 38

Throughout the review of SB 308, municipalities and coastal districts have identified a fundamental problem with this legislation that arises under Title 38, which proposes to allow phasing for all land disposals. While the provisions of section 38.05.035(g) afford the necessary guidance to DNR to

phase oil and gas lease sales, that same guidance is not provided for phasing of other types of disposals (timber, mining etc.) We support the development of specific standards, against which each Director will examine the decision to phase disposals. Without such standards there is no assurance that important local and public concerns will be met.

- Phasing under Title 46 (ACMP)

SB 308 states that the phasing of projects for ACMP consistency review is to be based on facts pertaining to the use or activity "for which the consistency determination is sought" and which are "material" to the consistency determination. There is no definition of what issues are "material" and that word does not appear elsewhere in the ACMP. The addition of this undefined language could result in litigation on the specific meaning of the word "material." Some municipalities, coastal districts, fishing groups and environmental groups are concerned that this language leaves too much discretion in the administrative agency to limit review by deeming certain facts or issues as not "material." These groups have recommended that the word "material" be deleted.

There has also been a recommendation that the language "use or activity for which the consistency determination is sought" be reexamined. The language, as written, implies that only effects of the particular phase will be examined, and this approach to phasing does not appear to conform with the federal model for how the review of phased projects in the coastal zone should be conducted. The original language of the bill which addressed review of the entire "project" was deleted without consultation of the working group.

- Standing to Request Reconsideration/Appeal

The issue of standing is one that significantly affects public participation under this legislation. DNR has altered the requirements for how the public must participate, in order to later be able to challenge a DNR action in court. DNR has stated that the intent of this legislation is to provide that any person who has submitted written or oral comments during the comment period will be allowed to request reconsideration. There is confusion in the bill as to whether the commenting person may raise any issue that has been identified during the public comment period, or whether

the person will be limited to those issues that he or she personally raised. Many coastal districts and fishing groups have expressed support for the concept that a commenting person may raise any issue that was raised during the administrative review, by any person. This ensures that the commenters will be able to draw on the comments of other public agencies and private individuals, in seeking reconsideration of DNR's decision.

There has been a further suggestion that the SB 308 requirement that a person may only appeal/request reconsideration if he is "affected by the decision" be deleted from the bill. The current language would result in a limitation on the public's right to seek administrative or judicial review and does not comport with the existing Alaska law on standing as established by the state Supreme Court.

- Clarification of "Economic Feasibility"

Section 4 of the bill states that the director may not be required to speculate about the "economic feasibility" of ultimate development. That provision has been questioned by the SB 308 Working Group and others because "economic feasibility" is not defined, and has implications for disposals that affect coastal districts. It has been suggested that the bill would be improved by the addition of clarifying language stating that the best interest finding shall consider the potential economic benefits and potential economic detriments to the state from a disposal, and that a definition of "economic feasibility" be provided.

- Changing the words "may address only" to "shall address"

The language in Section 2 states that the scope of review and finding of the Director "may address only" reasonably foreseeable significant effects. The use of the word "may" means that the director is not obligated to address those effects. The addition of the word "may ...only" implies that there is no ability to look further if, in the Director's discretion, there are other effects that should be analyzed. It also results in the conferring of discretion on the Director as to whether or not to address reasonably foreseeable significant effects. It is suggested that the language be changed to read: "The Director shall, at a minimum, address reasonably foreseeable significant effects....." This will result in a mandatory requirement to consider

"reasonably foreseeable significant effects" and will allow the flexibility to the Director to consider other effects.

Conclusion

As coastal districts who are committed to developing the best public policy through consensus, we have been highly successful in the past in developing legislation which has passed both houses without significant opposition. SB 238 (this session) and HB 99 (last session) are two examples of how divergent interests can come together to successfully resolve such issues. We are committed to this same process for SB 308, a bill which significantly affects local governments and coastal districts, as well as other interests. We request that the House Judiciary Committee give us the opportunity to resolve these remaining issues, so that this legislation may be as broadly supported as our past efforts. Without a consensus, the result will be a bill which is divisive and generates controversy in the communities of Alaska.

Respectfully submitted,

Kodiak Island Borough

North Slope Borough

Northwest Arctic Borough

Bering Straits Coastal Resource Service Area

Bristol Bay Coastal Resource Service Area

Cenaliuriit Coastal Resource Service Area

* Due to abbreviated schedule for this bill, and the geographic distance of the signatories, we were unable to provide the actual signatures for this letter. Signatures will be provided at a later time.

cc: Hon. Governor Walter Hickel



Kodiak Island Borough

710 MILL EAY ROAD
KODIAK, ALASKA 99615-6340
PHONE (907) ~~452-1111~~

April 15, 1994

VIA FAX 465-3872

Senator Drue Pearce
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: SB 308 version X and proposed amendments (April 14, 1994)

Dear Senator Pearce:

Due to time constraints this letter of necessity will be brief. After careful consideration of the recent amendments proposed for version X of SB 308, the Kodiak Island Borough feels we can work with you to gain passage of this legislation.

We want to thank you and your staff, especially David Rogers, and the administration, especially Jim Eason for your efforts to resolve issues surrounding this bill. Such effort, on all sides, has improved this bill dramatically.

As you are aware, the Kodiak Island Borough previously objected to the inclusion of phasing, as a concept, in this bill. It is evident to us that the Senate intends to include phasing in this bill and to that end we have worked to make the language of the bill acceptable. We believe the most recent amendments, for the most part, accomplish this.

There are five sections of the bill that continue to contain language that is unclear to us. We believe that we have conceptual agreement on the intent of this language, however, we would like to continue discussions about the implications of this language. The language in question is: the meaning of "may address only" on line 22, page 9; the implications of "aggrieved" and



Kodiak Island Borough

Senator Drue Pearce

Page 2 of 2

April 15, 1994

"affected" on lines 13 and 27 of page 9, respectively; the meaning of "economic feasibility" on line 9 page 9; the meaning "material" on line 23 page 13; and the meaning of "for which the consistency determination is sought", to be added on page 13. We hope to continue productive, informative dialog about this language; at the same time we applaud and support your efforts to resolve the other issues we have identified in previous versions of the bill.

Again, please accept our thanks for working with us to improve the language of this bill.

Sincerely,

Linda L. Freed, Director
Community Development Director

c.c. Jerome Selby, Borough Mayor
Kodiak Island Borough Assembly



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 389 • Kenai, Alaska 99611 • 0389

(907) 283-3600 • FAX (907) 283-3306

April 26, 1994

SENT BY TELEFAX

Representative Brian Porter,
Chair, House Judiciary Committee
State Capitol, Room #120
Juneau, AK. 99801-1182

SUBJECT: HB474 / CS SB308 (FIN) am
UCIDA POSITION: Opposed

Dear Representative Porter,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

UCIDA Opposes the CS SB308 (FIN) am which is to be considered by your Committee. Even though SB308 has undergone many amendments, neither of our two initial primary concerns have been resolved by any version of this legislation. These concerns are:

- 1) The inappropriate "phasing" of best interest and consistency findings that allow the initial disposal of the state's resources to be treated as a paper transaction, and
- 2) The inclusion of non-oil and gas disposals in this legislation.

Finally, I should note that SB308 was amended on its last day in the Senate to include the current Section 4 which:

- A) Will allow DNR to speculate freely about the benefits of a disposal while ignoring even reasonably foreseeable significant detriments of the disposal in making its "best interest finding", and

Representative Porter
April 26, 1994
Page 2 of 2

B) Drastically alters the public's standing to file an administrative appeal or request for reconsideration.

In conclusion, UCIDA can not support CS SB308 (FIN) am unless:

- A) Non-oil & gas disposals are deleted from the bill.
- B) Phasing is deleted under both Title 38 and Title 46. On the other hand, it should be noted that commercial fishing groups and other concerned user groups, have committed to forming a working group to work on this concept and drafting appropriate statutory language, and
- 3) Section 4 should be deleted in its entirety.

I have taken the liberty to include relevant UCIDA testimony and/or correspondence on this legislation. Unfortunately, most of our previous comments and concerns are as relevant to SB308, as amended in the Senate, as they were at the time they were submitted.

I would appreciate it if this letter and our previous comments could be distributed to the members of your Committee.

Sincerely,



Theo Matthews
Administrative Assistant

CC Governor Hickel
Representative Phillips
Representative Davis
Representative Navarre
Senator Little
Senator Salo
Alaska Environmental Lobby, Inc.
Trustees For Alaska
United Fishermen of Alaska

April 28, 1994

Testimony of Jon Isaacs
Jon Isaacs and Associates

Honorable Representative Brian Porter
Chair, House Judiciary Committee

Thank you for the opportunity to testify today; in my testimony, I am representing myself and do not speak for any coastal districts.

As a member of an informal coastal district working group, I have been participating in the review of Senate Bill 308 with representatives of the Department of Natural Resources, coastal districts, environmental groups, fishing groups, and a representative of the Senate Finance Committee. Over the last two months, I have participated in several Senate Finance Committee Meetings and workgroup discussions to develop a bill that addresses the concerns of the Department of Natural Resources without creating significant problems for the coastal districts and other municipalities.

I greatly appreciate the efforts of Jim Eason and other members of the administration, the Senate Finance Committee, coastal districts, fishing groups, and environmental groups in trying to reach consensus. While not a perfect bill that makes everyone happy, the language changes have addressed some major concerns.

On the afternoon of April 15, a small group of individuals worked on the significant outstanding issues identified by the informal coastal district working group. I should mention that this group does not represent or speak for all coastal districts, many of whom have other valid concerns regarding this legislation. In this meeting, we came to consensus on many of the major issues, with a few exceptions. Issues where there is still some differences regarding language or resolution include:

- use of "may address only" vs. shall address reasonably foreseeable significant effects related to the use in Section 2 (A) of AS 38.05.035(e). DNR's verbal intent is that, at a minimum, reasonably foreseeable significant effects related to the use will be addressed. The appropriate language needs to be used.
- standing to request appeal or reconsideration of a best interest finding; I understand that DNR is looking into what language may be more appropriate
- in Section 8, page 13, line 22, the concept of material to the consistency determination has not been previously used or defined; I would prefer the term relevant be used in its place or material defined
- finally, I understand that some municipalities are still concerned about the lack of guidance regarding other best interest findings besides oil and gas, mining, timber, and commercial recreation; while language in the bill requires

addressing reasonably foreseeable significant effects related to the use, and the basis of phasing can be appealed, I strongly suggest that DNR continue to consider other solutions.

The language of the current bill is a major improvement over where the administration started. If some of these concerns can be addressed, it will be improved further. Thank you all for your efforts.

Sincerely,

Jon Isaacs

NATIVE VILLAGE OF TUNUNAK

Tununak IRA Council
DEPARTMENT OF NATURAL RESOURCES
P.O. Box 107
Tununak, Alaska 99681
(907)652-6527 / Fx. 652-6011

April 25, 1994

HONORABLE BRIAN PORTER
HONORABLE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Subject: House Bill 474/CSSB308(Fin)

Chairman Porter and Honorable Members of the House Judiciary Comm.:

The Tununak IRA Council has grave concerns about the unfairness of House Bill 474 and CSSB 308(FIN)am, and its conflict with federal coastal zone requirements and the Alaska Coastal Management Program's guided principles to protect us from the dominance of some agencies' bureaucratic dilemmas and their decision making process to dispose state land for development under these bills.

Subject to the State's Best Interest amid amendments to dispose land as described in CSSB308(FIN)am, nevertheless, provide the opposite of the legislature's intent to permit development in the best intelligent manner. We find inconsistencies and controversy that conflict with the original intent of the Coastal Zone Management requirements.

PHASING

We will discuss CSSB308(FIN)am, passed by the Senate. We wish to caution that, phasing under this bill limits the ability to require Alaska's Department of Natural Resources (DNR) to consider all costs and impacts of proposed projects from the beginning.

At the *"director's discretion"* (Page 3, Line 17) the state would only assess one phase, and *"may address only reasonably foreseeable significant effects..."* (Page 3, Line 22). Thus, avoid argument to address impacts by the first phase of development. Depletion of fish and

wildlife resources and their habitat from cumulative effects caused by the first phase gives the Director unfair judgment and discretion to reject any argument, and determine new resource information immaterial and nonexistent. Moreover, it accelerates and binds the process to continue with development, despite imbalances, by rendering phasing (Page 12, Lines 22-31, and Page 14, Lines 1-6).

RECOMMENDATION: Delete "*may address only*" to "*shall address.*"

The Director with his new discretionary power shall decide if your concerns are "*material*" (Page 7, Lines 13-31; Page 8, Lines 1-28) enough to consider in his "*preliminary or final finding, as applicable*" (Page 8, Line 29-31).

IGNORES SCIENCE AND OBSERVED KNOWLEDGE

Phasing will give the Director unlimited power to ignore science and long developed experiential and traditional knowledge, as *speculative* (Section 1(8)-Page 2, Line 25-27; Page 9, Lines 3-11) and immaterial. This agency has shown valid observations as "speculative, unscientifically based, and only a belief" no matter how long observations were made throughout one's lifetime. These terms have been given the determining factor to control and manage our resources, giving the agencies ultimate say, however unfit a decision may be.

This piecemeal approach, derives ignorance to all land disposals (Page 6, Lines 9-27) away from intelligent decision-making processes, and modifies safeguards against unsound development as originally intended by the Alaska Coastal Management Program.

DIRECTOR HAS FULL DISCRETION

Written findings under this rule "*is not required before the approval*" (Page 6, Line 7) to all "*other disposal of available land*" including sales contracts, leases, permits, mineral claims, and licenses (Page 6, Lines 9-22) "*or an interest in land for oil and gas*", as established by "*material fact*" (Page 6, Line 4) under the Director's discretion.

We question the validity of not requiring written findings before a project is approved. Does this mean once a project is approved, the Director may write one after the decision is made?

RECOMMENDATION: Delete "*material*".

The Director can "*limit the scope of an administrative review and finding...that pertain solely to a discrete phase of the project*" (Section 2(e) (1)(C), Page 4, Lines 7-19), by using what is material only to his point of view with broad authority. The amended language under Section 2 changes AS 38.05.035(e) will limit public participation, if not eliminated, under this process. The Director "*may address only reasonably foreseeable significant effects of the uses to be proposed*" (Page 3, Line 22).

RECOMMENDATION: Delete "*may address only*" to "*shall address*". Delete the word '*may*' throughout the language of the bill to "*shall*" where applicable.

Phrasing used by the federal government guarantees the method of assessing all costs and effects of a proposed project, by incorporating public knowledge, known facts and findings, provided to them at the beginning, not as a tool to limit legitimate concerns, but gives due deference to legitimate concerns.

Section 404 of the Clean Water Act, require entire projects to be submitted for review, including wetlands. HB 474 and CSSB 308(Fin)am limit reviews and proper analysis of projects required under 33 C.F.R. Ss325.1(d)(2) ("*all activities which the applicant plans to undertake which are reasonable related to the same project and for which a permit would be required.*"); and 40 C.F.R. Ss230.11(g). The agency is given the ability to proceed without thoroughly understanding and assessing cumulative and long-term impacts of projects.

**DESPITE INSUFFICIENCIES TO BEST INTEREST FINDINGS
REVIEWERS ARE ALLOWED MINIMAL TIME TO MAKE FULL
ASSESSMENT.**

Requests for reconsideration submitted under CSSB308(FIN) Section 4(i) allows *20 days* in which to challenge a final written finding submitted to the commissioner. The commissioner "*shall grant or deny the request*" (Page 9, Line 30).

RECOMMENDATION: Change *20 days* to *30 days*.

This is a radical change from present law under the administrative process.

As written, the bill restricts standing to appeal to:

- 1) People who have meaningfully participated in the process leading up to findings;
- 2) People affected by the process. Some rural communities lack technical experience to adequately address and understand findings. This process unfairly closes those communities.

This language also supports the Director's decisions if the commissioner does not "*act on the request*" (Page 9, Line 31) within 30 days after the request. Thus, force the aggrieved party to "*appeal to the superior court*" (Page 10, Line 2). We question how this language affects Senate Bill 238.

Timing developed by DNR in CSSB308(Fin)am gives the Director the ability to reject information as insufficient evidence to support what is material to him. Timing is inadequate for interested parties to properly assess the directors' findings and provide information, especially in a rural setting, with only 20 days after the finding is issued (Page 9, Line 14).

RECOMMENDATION: Replace 20 days to 30 days (Page 9, Line 14).

Notice Of An Action is given insufficient time when advertised "*...once a week for two consecutive weeks*" (Page 11. Lines 22-25) and only given "*30 days*" (Page 12, Line 7) before an action.

RECOMMENDATION: 'Four consecutive weeks, twice weekly, at daily newspapers,' and 'Four consecutive weeks, Once weekly, at weekly newspapers'. Again, 60 days, prior to an action should be made.

DNR wishes a legislative quick-fix for its own mistakes it created. It will increase litigation under HB474 and CSSB308(Fin)am. DNR established these bills from three lawsuits under the current process, and wishes to develop significant impacts in a more efficient manner.

We support well thought, thoroughly planned development. Let us not repeat mistakes by the 18th century's lack of respect for the land, fish and wildlife

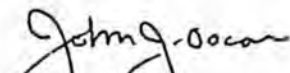
resources, and the blind sighted approach to haphazard development. We do not wish to see the creation of a bulldozing bureaucratic monster for lack of equitable language.

We recommend that a working group be developed to come to a more appropriate consensus on these bills, than a hasty development with conflicting language.

Several meetings took place between DNR and some coastal districts, but were not given enough opportunity to settle differences. SB 238 presents a good model, which addresses how petitions will be handled, the language was developed between DNR, the Coastal Districts and the Alaska Coastal Policy in a cooperative agreement. Why not allow such a group to develop a similar approach.

Thank you for the opportunity to comment.

Sincerely,
NATIVE VILLAGE OF TUNUNAK
Department of Natural Resources


John J. Oscar
President

SENATOR LITTLE

Letter of Intent # *2 as am*
CS Senate Bill 308(FIN)

It is the intent of the legislature that the sections of this legislation pertaining to AS 46.40 will be consistent with the federal coastal zone management ~~program and intent governing phased consistency determinations.~~ *act*

*

4/21/94: Adopted by Senate

Adopted

FISCAL NOTE

No. 6

Bill Version: CSSB 308 (FIN)

(S) Publish Date: 4.21.94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BI

Revision Date: 15-Apr-94

Dept Affected: Natural Resources

Title: "An Act modifying administrative procedures

BRU: Resource Development

and decisions by state agencies that relate to uses and dispositions..."

Component: Oil & Gas Development

Sponsor: Senate Resources Committee

Requestor: Senator Pearce

Component Serial No. 439

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED.

Replaced #5

Prepared by: Jim Eason, Director Phone: 762-2547
 Division: Oil & Gas Date: 15-Apr-94
 Approved by Commissioner: [Signature] Date: 15-Apr-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Attachment to CSSB308(FIN)am
April 15, 1994

The fiscal note is revised to reflect the effects of amendments since the last fiscal note was prepared. As a result of amendments expanding the administrative process and extending timelines for potential appeals of best interest findings, current sale schedules will have to be revised to assure time for compliance with the new provisions. This will result in fewer sales during the next two years, allowing funds from deferred sales to be used to pay for the increased costs associated with remaining sales. To balance delays of some future sales, however, CSSB308 should provide increased defensibility of sales and disposals conducted under its provisions. In addition, public participation and acceptance of these disposals should increase.

FISCAL NOTE

No. 3
 Bill Version: SB 308
 (3) Publish Date: 2-23-94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

BILL NO

Revision Date: _____
 Title: "An act modifying administrative procedures related to land disposal."
 Sponsor: Senate Resources
 Requestor: Senate Resources

Dept. Affected: Fish and Game
 BRU: Habitat and Restoration
 Component: Habitat
 COMPONENT SERIAL NO. 486

Expenditures/Revenues	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/METLA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Frank Rue
 Division: Habitat and Restoration
 Approved by Commissioner: _____
 Agency: Alaska Department of Fish and Game

Phone: 465-3065
 Date: 2/14/94
 Date: 2/14/94

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Changes in CSSB 308 (FIN)
 have no fiscal impact. This
 fiscal note is appropriate.
4-13-94 AN Rue
 date Comte Aide (initial)

Changes in CSSB 308 (RES)
 have no fiscal impact. This
 fiscal note is appropriate.
2-23-94 AS
 date Comte Aide (initial)

FISCAL NOTE

Bill Version: SB 308

(S) Publish Date: 2-23-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____

Dept. Affected: Office of the Governor

Title: Modifying administrative procedures and decisions by State agencies that relate to uses of State land

GRU: Office of Management & Budget

Component: Governmental Coordination

Sponsor: Senate Resources Committee

Requestor: _____

COMPONENT SERIAL NO. 0018

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF Program Receipts	0	0	0	0	0	0
1006 GF MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

Changes in SSB 308 (FIN) have no fiscal impact. This fiscal note is appropriate.

4-12-94 Hal Bylund
date Comte Aide (initial)

) Changes in CSSB 308 (RES) have no fiscal impact. This fiscal note is appropriate.

2-23-94 [Signature]
date Comte Aide (initial)

Prepared by: Paul C. Rusanowski, Director
Division: Governmental Coordination

Phone: 465-3562
Date: 2/14/94

Approved by Commissioner: [Signature]
Agency: _____

Date: 2-14-94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO

No. 1
Bill Version: SB 308
(S) Publish Date: 2-23-94

Revision Date: _____
Title: An Act Modifying Administrative Procedures
Sponsor: Senate Resources Committee
Requestor: Senate Resources Committee

Department Affected: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

COMPONENT SERIAL NO. 645

Expenditures/Revenues:	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
FUND SOURCE						
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME	0.0	0.0
PART-TIME	0.0	0.0
TEMPORARY	0.0	0.0

Changes in SSB 308 (FIN) have no fiscal impact. This fiscal note is appropriate. 0.0
4-12-94 KN Lee 0.0
 date Comite Aide (initial) 0.0

ANALYSIS: (Attach a separate page if necessary.) _____

Changes in SSB 308 (RES) have no fiscal impact. This fiscal note is appropriate. 0.0
2-23-94 ASIS 0.0
 date Comite Aide (initial)

Prepared by: Bob Poe, Director
 Division: Information & Administrative Services

Phone: 465-5010
 Date: 2/14/94

Approved by Commissioner: [Signature]
 Agency: Department of Environmental Conservation

Date: 2/14/94

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SENATE AMENDMENT

BY: SENATOR PEARCE

TO: SENATE BILL 308

Page 2 Line 22
after the word "not"
delete "necessary"
Insert "required by the state"

Page 3 Line 2
after the word "completion"
insert "but is not intended to artificially divide or segment a
proposed development project to avoid thorough review of the
project or to avoid consideration of potential future environmental,
sociological, or economic effects"

Page 4 Line 16
after the word "department"
insert "describes its reasons for a decision to phase and"

Page 6 Line 29
after the word "finding"
insert "if required."

Page 7 Line 11
after "a"
insert "prelliminary or"

Page 8 Line 19-28
delete all material

Page 8 Line 29
delete "(3)"
Insert "(2)"

Page 9 Line 7
delete all material

Page 9 Line 8
delete "(2)"
Insert "(1)"

Page 9 Line 9

delete "(3)"

insert "(2) except as otherwise provided in AS 38.05.073,"

Page 9 Line 10

delete "(4)"

insert "(3)"

Page 9 Line 12

after the word "file"

insert "an administrative appeal or"

after the word "reconsideration"

insert ",as appropriate,"

Page 9 Line 15

after the word "finding,"

insert "file an administrative appeal or"

Page 9 Line 16

after the word "file"

insert "an administrative appeal or"

Page 9 Line 20

after the word "comment;"

insert "or"

Page 9 Line 22

delete "or"

insert "and"

Page 9 Line 23-26

delete all material

Page 9 Line 28

after "(j)"

delete the word "A"

insert "An administrative appeal or a"

Page 9 Line 30

after the word "the"

insert "appeal or"

Page 10 Line 3
after the word "If"
insert "an administrative appeal or"

Page 10 Line 8
after the word "request,"
insert "an administrative appeal or"

Page 10 Line 9
after the word "on"
insert "administrative appeal or"

Page 10 Line 13
after the word "person's"
insert "administrative appeal or"

Page 13 Line 18
after the word "activity"
delete "proposed for that phase"
insert "for which the consistency determination is sought"

Page 13 Line 24
after the word "activity"
delete "proposed for that phase"
insert "for which the consistency determination is sought"

Page 13 Line 26
after the word "subsection,"
delete "prepare and issue a written statement describing"
insert "describe in the consistency determination"

**ADDITIONS/CORRECTIONS TO SENATE AMENDMENT OF CSSB 308
APRIL 18, 1994**

o **Page 3, Line 2**

Purpose: Fixes glitch - language was adopted in the wrong place.

o **Page 9, Line 12**

Purpose: To clarify that there may be appeals or requests for reconsideration, depending upon whether or not the best interest finding is issued with the advanced review and concurrence of the commissioner.

o **Page 9, Line 15**

Purpose: Technical amendment, same as page 9, line 12.

o **Page 9, Line 16**

Purpose: Technical amendment, same as page 9, line 12.

o **Page 9, Line 20**

Purpose: To clarify that a party may demonstrate meaningful participation in the administrative process by either submitting written comment or presenting oral testimony.

o **Page 9, Line 22**

Purpose: Technical amendment, to clarify that meaningful participation for the purposes of judicial appeal requires submittal of written or oral comments and that the party is a party who is affected by the final written finding.

- **Page 9, Line 28**
Purpose: Technical amendment, same as page 9, line 12.

- **Page 9, Line 30**
Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, line 3**
Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, Line 8**
Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, Line 9**
Purpose: Technical amendment, same as page 9, line 12.

- **Page 10, Line 13**
Purpose: Technical amendment, same as page 9, line 12.

- **Page 13, Line 26**
Purpose: Fixes glitch - eliminates redundancy; deletes "shall."

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

(907)762-2547

April 21, 1994

The Honorable Ramona Barnes
Speaker of the House
Alaska State Legislature
Room 208
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Barnes:

As you will recall, HB 474 was introduced earlier this session following a series of adverse court decisions concerning oil and gas lease sales and offshore prospecting permits. A summary of the lawsuits which led to the drafting of HB 474/SB 308 is enclosed. The decisions in those lawsuits confirmed the need to amend the Title 38 Best Interest Finding provisions and the Title 46 Alaska Coastal Management Program requirements. In response, these bills were drafted to clarify the legislature's intent regarding the procedures to be followed in preparing for resources disposals, as well as permitting projects in Alaska's Coastal Zone. It is critical that the legislature act this session to ensure the state's continued ability to conduct its oil and gas leasing and other disposal programs.

Earlier today, the Senate passed its amended counterpart of HB 474, CSSB 308 (Fin). It is my understanding that CSSB 308 (Fin) is being referred to the House Resources Committee where hearings are expected to be held next week. With limited time remaining in the session, I wanted to be sure that you are aware of the recent amendments to this legislation, and how these amendments have broadened public acceptance and support for this bill.

To that end, I have enclosed several documents which address the specific amendments made to SB 308 between the time the bill moved into the Senate Finance Committee and its passage by the Senate. These documents include April 9 and 12, 1994 memoranda from me to Senator Pearce describing amendments which had been made as of those respective dates. In addition, I have enclosed the three-page amendment which subsequently was offered by Senator Pearce and adopted by the Senate just prior to the bill's passage. An accompanying document provides a short description of the basis for each provision of Senator Pearce's amendment on a page and line number basis.

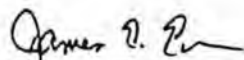
Re HB 474
April 21, 1994
Page 2

I have also enclosed letters of support from Mr. Jon Isaacs and Ms. Nancy Wainwright, both of whom are independent consultants to certain of the Coastal Districts, as well as from Ms. Linda Freed of the Kodiak Island Borough. Also enclosed is a copy of Resolution #94-046 from the Matanuska-Susitna Borough, reversing its earlier Resolution #94-032 and supporting passage of CSSB 308 (Fin), as amended on the floor by Senator Pearce. It is important to note that both Mr. Isaacs and Ms. Wainwright submitted their letters of support on behalf of themselves, and not as representatives of the district.

I hope that your review of these materials confirms that in the intervening weeks since you last saw this legislation, it has undergone many substantive amendments in response to concerns raised by the public, the Coastal Districts and affected municipalities, among others. As with any legislation of this scope, however, it is virtually impossible to accommodate every amendment suggested. Nevertheless, I feel that all the parties have made a good faith effort to assure that reasonable compromises are represented in the bill which now comes to the House. I believe CSSB 308 responds to public concerns, while at the same time maintaining the protections which are necessary to assure continuation of these vital state programs. I urge you and your colleagues to support passage of this very important legislation.

I look forward to the opportunity to answer any questions which you or your staff may have or to discuss the legislation and its background in greater detail if you desire.

Sincerely,


James E. Eason
Director

Enclosures

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

DIVISION OF OIL AND GAS

TO: Senator Drew Pearce
Senator Steve Frank

DATE: March 28, 1994

FILE NO.:

PHONE: 762-2553

FROM: Barbara Fullmer
Kyle Parker 

SUBJECT: SB308 - Litigation
Summary

Resources Disposal Litigation Summary

BACKGROUND

Under current law, the Department of Natural Resources ("DNR") may not dispose of state land, resources, or property, or interests in them, unless the Commissioner first determines that such action will serve the best interests of the state and issues a written finding to that effect. Except in the context of oil and gas lease sale best interest findings, however, the legislature has not directed specific requirements for a best interest findings analysis. Rather, the generally applicable best interest finding provision simply states, in pertinent part:

Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will serve the best interests of the state. . . . [T]he director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based.

AS 38.05.035(e). The legislature has chosen not to define the scope of DNR's best interests analysis or even to suggest specific things that should be included in the written finding. The current statute merely requires that DNR "set out the facts and applicable law" which form the basis for its best interests determination. The legislature, therefore, apparently intended to leave the details concerning the proper

scope of the written finding and the review upon which it is based to the expertise and discretion of DNR.

The Alaska Supreme Court, however, has not been content to let DNR define the scope of its best interests finding or coastal consistency determination in light of the uses to be authorized by the proposed disposal of land or resources. Instead, beginning in 1990 with its first decision on Oil and Gas Lease Sale 50 (Camden Bay), the Supreme Court has repeatedly reversed superior court decisions upholding DNR's best interest findings and coastal consistency determinations, particularly when DNR deliberately limited the scope of the finding challenged in accordance with limits on the uses directly authorized by the disposal. In short, the Court disapproves of DNR deferring consideration of remote, speculative impacts that possibly could result if the uses authorized pursuant to a best interest finding and coastal consistency determination lead to future development -- none of which could happen without further review and authorization.

The following chronologies of the administrative appeals to DNR, the appeals to the superior courts and the Supreme Court, and the subsequent remands, graphically illustrate both the scope and complexity of this litigation.

OIL AND GAS LEASE SALE 50 (CAMDEN BAY)

In the Trustees for Alaska v. State ("Camden Bay I") decision, issued on March 16, 1990, the Supreme Court ruled on the six issues raised by Trustees in their points on appeal:

- 1) The Court rejected Trustees' claim that they had been denied a fair opportunity to comment on the issues concerning offshore development, holding that the preliminary best interest finding gave sufficient notice that offshore facilities were contemplated.
- 2) The Court rejected Trustees' argument that DNR's best interest finding, in general, did not sufficiently explain the basis for its decision that the sale was in the best interest of the state.
- 3) The Court rejected Trustees' claim that DNR did not adequately address the cumulative effects of its leasing decision.
- 4) The Court agreed with Trustees' claim that DNR did not adequately consider the methods and risks of oil transportation from Camden Bay if ANWR remains unavailable for onshore support facilities.
- 5) The Court rejected Trustees' argument that leasing Camden Bay was unreasonable because oil production and transportation would not be economically feasible without onshore support facilities in ANWR, holding that "this court need not inquire into the feasibility of future development."

6) The Court agreed with Trustees' assertion that AS 44.19.145(a)(11) required the office of Management and Budget ("OMB"), rather than DNR, to render the conclusive consistency determination under the Alaska Coastal Management Program ("ACMP").

The Court remanded the Sale 50 final best interest finding stating that DNR omitted "any discussion" of the facilities necessary to transport oil from the Sale 50 area if ANWR's status remains unchanged.

The state petitioned the Court for rehearing of its Sale 50 decision asserting that the Court overlooked the fact that DNR did discuss transportation issues, including specific potential alternatives and their risks and benefits, in the final finding to the extent feasible at the lease sale stage. DNR argued that, given the uncertain nature of the quantity, quality, and location of oil deposits, and of the nature of the technology used to produce any deposits discovered, detailed hypothetical studies of alternative development scenarios at the lease sale stage are "unfair and unwise," "speculative," and "a gross misallocation of resources." See Tribal Village of Akutan v. Hodel, 869 F.2d 1185, 1192 (9th Cir. 1989); Park County Resource Council v. United States, 817 F.2d 609, 624 (10th Cir. 1987); County of Suffolk v. Secretary of Interior, 562 F.2d 1368, 1378 (2d Cir. 1977) cert. denied, 434 U.S. 1064 (1978); Village of False Pass v. Watt, 565 F.Supp. 1123, 1134 (D.Alaska 1984), aff'd, 733 F.2d 605 (9th Cir. 1984).

The Court never acted on the state's petition for rehearing. DNR, therefore, issued a supplemental best interest finding in September 1990 to comply with the Court remand. The Court's ruling in Sale 50, however, also led to the enactment of new legislation intended to clarify the Title 38 best interest finding requirement for oil and gas lease sales. See AS 38.05.035 (g).

Two weeks after the Camden Bay I decision was issued, then-Governor Cowper requested that the Alaska Legislature enact legislation addressing the Court's decision. Two bills were introduced at the Governor's request. SB 539 provided for ratification of the Camden Bay lease sale. SB 540 amended AS 44.19.145(a) to make clear that DNR and the other resource agencies have the authority to render conclusive consistency determinations if a project involves only the permits of that agency.¹ The Governor also requested that amendments be introduced to HB 128 to

¹ Although the Senate overwhelmingly passed SB 539 to ratify the Camden Bay lease sale, the House Resources Committee did not move the bill to the floor for a vote before the legislature adjourned. The legislature did, however, enact SB 540, which clarified that DNR was the proper agency to render the conclusive consistency determination for oil and gas lease sales. The

identify the subjects that DNR must discuss in its best interest finding for oil and gas lease sales. The Governor explained the purpose of the proposed legislation as follows:

The proposed amendments to SCS CSHB 128 (RES) respond to the court's holding that the best interest finding for Oil and Gas Lease Sale 50 (Camden Bay), required by AS 38.05.035(e), failed to consider the environmental safety of transportation facilities should the Arctic National Wildlife Refuge (ANWR) remain unavailable for shore-based support facility siting under federal law. The decision overlooks the fact that the best-interest finding did address transportation to the extent feasible at the time of the lease sale, incorporating suggestions from, among others, the Department of Environmental Conservation (DEC) and the Department of Fish and Game (ADF&G).

1990 Senate Jour. 3132 (emphasis added). The Governor further explained that the proposed legislation was intended to clarify that in preparing its best interest finding, "DNR need not speculate concerning the location and size of discoveries, the economic feasibility of ultimate development, future environmental or other laws that may apply at the time of any future development, or other such factors that cannot be reasonably foreseen at the time of leasing."

The legislature enacted SCS CSHB 128 (FIN) which in its final form added a new subsection (g) to AS 38.05.035. The new subsection provides a complete list of what must be considered and discussed in a written best interest finding for an oil and gas lease sale. The director's duty to consider and discuss facts is limited to "facts that are known to the director at the time of preparation of the finding and that are material to the [matters listed in the statute] or to issues that were raised during the period allowed for receipt of public comment." Governor Cowper signed this bill into law on June 14, 1990.

In May 1991, Trustees initiated their second appeal of Sale 50 on issues regarding the Alaska Coastal Management Program ("ACMP"). After briefing and oral argument, the Supreme Court, in its second opinion in the Sale 50 litigation ("Camden Bay II"), remanded DNR's coastal consistency determination for additional findings. This second remand was based, in part, on an erroneous predicate: that DNR's determination of geophysically hazardous areas was limited to "a summary statement that the entire Sale 50 area is a 'known geophysical hazard.'" In its Opinion, however, the Court understated DNR's efforts to identify geophysical hazards, and the extensive

legislature removed the inconsistency between the regulations and the statute by amending the statute retroactively. The Governor signed this bill into law on May 11, 1990.

Sale 50 administrative record established that DNR advanced more than a "summary statement" that the entire sale area is a known geophysical hazard.

In its Sale 50 finding, under the heading "Potential Geological and Geophysical Hazards in Camden Bay, " DNR noted:

Geophysical surveys conducted in the Camden Bay region (Grantz et al, 1982) have delineated several potential hazards to oil and gas exploration and production which may be of greater significance to the Sale 50 area than other sale areas on the North Slope. Recent uplift on the Beaufort Sea shelf north of Camden Bay and the occurrence of numerous faults and shallow earthquakes indicate that this area may be an active tectonic zone. The magnitude of earthquakes recorded in the Sale 50 vicinity range from less than 1.0 to 5.3 on the Richter Scale. In addition, documented slump features indicate that sediments are susceptible to liquefaction and tectonically triggered sliding or slumping in the deeper waters. The instability of poorly consolidated sediments on the Beaufort Sea shelf may present a potential hazard to pipelines, platforms, and artificial islands.²

In its assessment of geological and geophysical hazards in the Sale 50 finding, DNR specifically cites to a detailed survey of geophysical hazards in the Camden Bay area: "Map cross sections and chart showing late Quaternary faults, folds, and earthquake epicenters on the Alaskan Beaufort Shelf: USGS Miscellaneous Investigations Series, Map I-1182-C, scale 1:500,000," Grantz, A. and others, 1982.³ In fact, at the time of

² In its Opinion, the Court quotes from the federal environmental impact statement ("EIS") prepared for OCS Sale 97 (in the Beaufort Sea adjacent to the Sale 50 tracts) and states that: "The federal statement deals with faults and earthquakes in the Camden Bay area in much greater detail than the State's decisional document." However, a comparison of the statement in the Sale 50 finding, quoted in the text above, with that quoted favorably by the Court, shows that the Sale 50 statement is at least as detailed, if not more, than the federal statement. The federal statement on faults and earthquakes in the OCS Sale 97 EIS states in full: "Earthquakes indicate active movement along the faults in the Camden Bay area and tend to occur along the axes of anticlines and synclines. They are part of the central Alaska Seismic system. Most of the earthquakes recorded since 1968 range in magnitude from 3.0 to 4.0."

³ The U S. Fish and Wildlife Service referred this survey to DNR in its comments on proposed Sale 50. DNR specifically relied on the Grantz survey ("Grantz et al., 1982") in its analysis of geophysical hazards. DNR also compiled and considered additional

its final finding for Sale 50, DNR incorporated by reference the only publicly available maps and cross-sections of known geophysical hazards.

In Camden Bay II, the Court remanded the finding to DNR "to identify and report on known and substantially possible areas of geophysical hazards within Sale 50." When preparing the best interest finding and coastal consistency determination, however, DNR "conduct[ed] a survey of available sources" and "report[ed] the results." Specifically, DNR identified known geophysical hazards based on the only survey of the Camden Bay area then available, the Grantz survey. In addition to addressing and identifying known hazards, DNR imposed stipulations and terms of sale to mitigate the currently unknown but potentially discoverable geophysical hazards that subsequently may be determined to exist at specific exploratory or development sites. It took this step to ensure the sale's compliance with 6 AAC 80.050. Unless the Court wished DNR to go beyond the express language of the regulation -- and in its Opinion, the Court specifically "excludes a requirement to conduct field studies" for geophysical hazards -- there was nothing more to be done at the lease sale stage.

In the Camden Bay II decision, the Court also misinterpreted the geophysical hazards standard (6 AAC 80.050) of the ACMP. Under the geophysical hazards standard (6 AAC 80.050) of the ACMP, state agencies must "identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur." In its Opinion, the Court interprets this to mean that DNR must "identify known or substantially possible hazard areas." This is not what the regulation requires. There is a subtle, but crucial difference in the language of the regulation which the Court overlooked.

The regulation clearly requires identification of only two types of areas: (1) those with known geophysical hazards, and (2) those having high development potential in which there is a substantial possibility that geophysical hazards may occur. As discussed above, DNR identified those areas of known geophysical hazards in the sale area. However, the second type of area, areas of high development potential, obviously cannot be identified at the leasing stage because the exploration necessary to define the location of any oil deposits has not taken place. Therefore, DNR requires surveys and site specific mitigation for geophysical hazards when -- but not before -- specific activities are proposed at specific sites.

The Court rejected DNR's reasonable approach to identifying and mitigating geophysical hazards, and it did not defer to agency expertise as courts generally do in decisions involving complicated technical matters. In the same decision, however, the Court deferred to DNR's expertise and acknowledged that DNR utilized the preferred

information regarding geophysical hazards generally, and seismicity in particular, in the Sale 50 area.

approach when addressing transportation concerns: "Until exploration is proposed and, in all likelihood, until and unless a commercially exploitable discovery is made, there will be no occasion for siting, designing or constructing transportation and utility routes." The same logic the Court used in upholding DNR's approach to addressing transportation issues under the ACMP, applies to DNR's handling of geophysical hazards because development potential is unknown until after exploration has taken place.

Finally, in its Camden Bay II decision, the Court overlooked extensive evidence that DNR's consistency determination complied with the historic, pre-historic and archeological standard (6 AAC 80.150) of the ACMP. Under 6 AAC 80.150: "Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory." In its Opinion, the Court interprets the regulation to require, "the identification of known archeological sites at the initial sale stage." Identification of known cultural resource sites requires, according to the Court, "literature surveys and personal contact with individuals who may have knowledge concerning such sites."⁴

The Court's conclusion that "DNR did not attempt to identify archeological sites within the sale area," was wholly mistaken. In its consistency determination, DNR surveyed the known data, set out the results, and stated its conclusions. Specifically, DNR found that:

It is not likely that any cultural resources sites would be identified within the proposed sale area since it is offshore. However, no cultural resource surveys have been conducted in the area, and the discovery of sites, especially in nearshore areas, should not be ruled out.

This conclusion was based directly on comments submitted by Judith E. Bittner, Chief, State of Alaska Office of History and Archeology:

The offshore aspects of the proposed sale offer little impact to cultural resources of the north slope. There are currently no known cultural resource sites with the submerged lands identified in Sale 50, and the potential for encountering such sites would be low due to ice scouring. Be that as it may, appropriate stipulations should be applied to the leases for the protection of any as yet unknown cultural resources in the sale area.

⁴ In its Opinion, the Court specifically rejects the need to conduct field surveys and exploration in an effort to identify unknown sites.

Furthermore, contrary to the Court's conclusions, DNR did not leave to its lessees the discretion to determine how and when identification of cultural sites would occur. Rather, in compliance with Ms. Bittner's suggestions, DNR noted the potential for discovery of sites in the nearshore areas, and established lease terms and stipulations in recognition that future oil and gas related activity may result in the identification of currently unknown resource sites.

Specifically, stipulation 1 to the Sale 50 leases requires the lessee to report the discovery of any site, structure, or object of historical or archeological significance and to make every reasonable effort to preserve and protect the site until DNR issues directions regarding its protection. Additionally, at the permitting stage, lease term 3 requires consistency with the ACMP, and term 22 requires that the lessee complete an archeological survey before exploration and development activities are undertaken.⁵ Each of these points was brought to the Court's attention in the state's request for reconsideration of its decision. Although the Court took that opportunity to correct the factual errors in its original decision, it declined to reverse its decision.

OIL AND GAS LEASE SALE 55 (DEMARCAT'ON POINT)

In its Sale 55 Opinion, issued in December 1993, the Supreme Court determined that DNR failed to consider what the Court viewed to be a "salient" factor - the possible effects of the lease sale on the Porcupine Caribou Herd and the subsistence use of that herd by the residents of the City of Kaktovik. In so doing, however, the Court failed to defer to agency expertise and simply substituted its judgment for that of DNR in determining what is a "salient" factor for purposes of a best interests finding in support of a decision to lease. To compound its error, the Court disregarded the fact that the Sale 55 administrative record supports DNR's decision that offshore activities in the Sale 55 area would not foreseeably have an adverse impact on the caribou herd located onshore.

⁵ Because unrestricted availability to information concerning the nature and location of any archeological resource increases the threat of site destruction, access to such information is closed to the general public by the Alaska Office of History and Archeology. Authority for this policy is contained in AS 9.25.120 and 16 U.S.C. 470hh. Therefore, even if there were information on known sites offshore in the sale area, DNR is required to withhold specific information regarding those sites until the plan of operations stage when the director of the Division of Oil and Gas and Division of Parks and Outdoor Recreation can work with the lessee to develop site specific mitigation measures.

Subsection (g) of AS 38.05.035 currently provides a complete list of what DNR must consider and discuss in a best interests finding for an oil and gas lease sale. The statute requires that DNR consider the effects of an oil and gas lease sale on fish and wildlife species and the subsistence uses of those species in the sale area. However, it does not require DNR to extend its consideration to potential effects on species located outside the sale area. As the Porcupine Caribou Herd clearly is not found in the sale area, a marine environment, DNR did not violate the statute. Ruling otherwise, however, the Supreme Court created an undefined zone around the sale area which DNR must somehow, without guidance or restriction, delineate and evaluate. Extension of this logic makes it virtually impossible for DNR to assure that it has considered all the species in all the areas that may be alleged to be material.

GOODNEWS BAY OFFSHORE PROSPECTING PERMIT DISPOSAL

In the Goodnews Bay offshore prospecting permit case, decided in January of 1994, the Supreme Court again redefined the scope of DNR's best interest analysis. The Court rejected DNR's decision to defer consideration of the possible effects that might result from future mining if workable mineral deposits were found, even though the kind and number of mining operations that might result and whether mining would indeed take place were matters of speculation, and, more important, DNR's subsequent approval of mining leases (and of mining plans of operation) would have been required before mining actually could have taken place. Though the superior court had upheld DNR's best interest finding, the Supreme Court disregarded these uncertainties and the retained authority of DNR, concluding that DNR should have fully analyzed the potential impacts of mining in the region at the prospecting permit stage.

The Supreme Court remanded the Goodnews Bay finding to DNR with instructions to prepare a best interest finding which takes a "hard look" at the effects of mining, including the cumulative regional effects, that might eventually result from the limited exploration to be authorized by the offshore prospecting permits. In response to DNR's argument that its best interest analysis had been as complete as possible at the prospecting permit stage where no development was authorized or even contemplated, the Court suggested that DNR should have emulated the federal practice of conducting environmental impact studies in which a range of possible scenarios are considered.

OIL AND GAS LEASE SALES 57 AND 75A

DNR's legislatively mandated administrative proceedings provide a constructive forum where issues regarding lease sales are fleshed out and addressed.

This process is involved, costly and time-consuming. The current system, however, is subject to abuse which unnecessarily delays administrative decisions and obstructs the administrative decision making process. The Sales 57 and 75A appeals are examples of this abuse. Abuse which cost the state significant amounts of money for staff time and resources at DNR and the Department of Law. More important than these direct costs incurred as a result of such abuse, are the indirect costs of chilling participation in the state's leasing program by signaling that Alaska is more vulnerable to litigation over leasing than other areas.

Oil and Gas Lease Sale 57 (North Slope Foothills)

DNR's administrative review for Sale 57 began on June 4, 1986, when it issued the first general call for comments on the proposed lease sale. A second call for comments was issued on August 21, 1986, requesting consideration of two proposed leasing schedules involving five proposed lease sales, including Sale 57. Two more calls for comments were issued for Sale 57 on August 14, 1987 (general call for comments), and on March 13, 1989 (request for specific comments on fish and wildlife populations, human uses of those resources, and the potential effects of the sale on those resources and uses).

On June 27, 1990, DNR was forced to defer the date for several lease sales, including Sale 57, because of budget reductions in fiscal year 1990. As a result of the re-scheduling of Sale 57, DNR started the public comment process over again, issuing a general call for comments on September 17, 1990. On May 26, 1992, DNR issued another call for comments (requesting socioeconomic and environmental information and comments). Later, the public was encouraged to comment yet again following the issuance of the preliminary finding on March 23, 1993. Oral testimony on the proposed lease sale also was taken at a public hearing held April 19, 1993, in the community of Anaktuvuk Pass.

DNR's adherence to the administrative process required by law provided ample opportunity for public participation and comment during the Sale 57 administrative proceedings. Only once, however, did Trustees for Alaska and Alaska Center for the Environment ("Trustees"), appellants in the case filed with the superior court, avail themselves of those opportunities. And then, Trustees only submitted one short paragraph of general comments on the sale.

Trustees' one paragraph of general comments was submitted in response to DNR's August 21, 1986 call for comments on two proposed leasing schedules involving five proposed lease sales, one of which was Sale 57. The one paragraph addressing Sale 57 in Trustees' September 2, 1986 submission, contains a general criticism of DNR for failing to mention the proximity of the proposed sale to the Gates of the Arctic National Park and Preserve in the initial public notice. Trustees also

stated that there are questions about the transportation of oil and possible socioeconomic effects in the village of Anaktuvuk Pass associated with the sale.⁶ Aside from these broad conclusory statements, Trustees did not explain their concerns. Nor did Trustees submit further comments, scientific data, specific criticisms or testimony.

In fact, during the lengthy administrative review process that followed Trustees' September 2, 1986 generalized and brief criticism of the initial public notice, Trustees never submitted additional comments on Sale 57. Trustees never responded to the four additional calls for comment. Trustees failed to participate in the public hearing held in Anaktuvuk Pass. And Trustees did not submit comments on DNR's preliminary best interest finding -- the document that "describes the proposed sale area and presents the department's review of the areas resources," and which formed the basis for DNR's final best interest finding.

Submission of one paragraph of generalized comments at the very start of a seven year administrative review does not constitute sufficient participation in an administrative proceeding for the purpose of standing to appeal. In the present case, beyond a general criticism of DNR's alleged failure to mention in the public notice the proximity of the proposed sale to the Gates of the Arctic National Park and Preserve, Trustees did not raise any specific concerns regarding Sale 57. Throughout the seven year administrative review, when DNR was actively soliciting public comments (and when criticism would have been constructive), Trustees failed to sufficiently participate. Only after time and resources were spent in conducting a critical review of Sale 57, did Trustees decide to voice their concerns through the appeals process in the courts.

Oil and Gas Lease Sale 75A (Colville River Exempt)

The Alaska Supreme Court has held that under the state's Administrative Procedure Act, an appellant must meet three requirements in order to have standing to challenge an administrative agency decision. First, the appellant must have a direct interest in the proceedings. Second, the appellant must be factually aggrieved (suffered an actual injury) by the agency decision. And, third, the appellant must have participated at the agency level. In their appeal of Oil and Gas Lease Sale 75A, Trustees for Alaska and Alaska Center for the Environment ("Trustees") failed at least two of the three requirements established by the Court. Trustees were not factually

⁶ Noticeably absent from that one submission are any concerns regarding riparian areas or archeological resources, or any specific comments regarding impacts of the sale on the Gates of the Arctic National Park and Preserve, which are the issues Trustees subsequently brought on appeal to the superior court.

aggrieved by the DNR's decision to lease tracts of land in Sale 75A. In addition, Trustees did not participate in DNR's administrative proceedings for Sale 75A.

First, Trustees lacked standing to challenge DNR's decision to proceed with Sale 75A because Trustees suffered no actual injury as a result of DNR's decision to lease tracts of land in the sale area. In their points on appeal filed with the superior court, Trustees maintained they were organizations "concerned about sustaining the many values of the region, including the cultural, fish, wildlife, scenic and other values." This abstract concern, however, is not a special damage different in kind from that of the public generally, and it is not the concrete personal injury required by the Court to establish that Trustees were factually aggrieved by DNR's decision to offer the Sale 75A lands for lease.

With respect to the members of the appellant organizations, Trustees' only claim was that their members use and enjoy the sale area for a variety of purposes such as recreation, cultural activities, hunting, fishing, wildlife observation and scientific studies. However, the surface estate of the Sale 75A area is private property wholly owned by the Kuukoik Corporation. The members of the appellant organizations thus have no right to use the privately held surface estate for their activities. Consequently, Trustees could not honestly assert that any individual member their organizations sustained an actual injury when DNR determined that leasing the Sale 75A area was in the best interests of the state.

In order to establish standing to appeal Sale 75A, Trustees also needed to demonstrate that they participated in the administrative proceedings below. DNR's adherence to the administrative process required by law provided ample opportunity for public participation and comment on proposed Sale 75A. See, e.g., January 15, 1993 Call for Comments; and March 23, 1993 Notice of Intent to Issue a Final Finding (inviting the public to submit written comment on any aspect of the sale, and giving notice of an April 14, 1993 public hearing scheduled in accordance with AS 38,05.180(d)(2)). Trustees never availed themselves of those opportunities. Therefore, Trustees lacked standing to challenge DNR's decision and their appeal of Sale 75A was frivolous.

OIL AND GAS LEASE SALE 78 (LOWER COOK INLET)

The appeal of Oil and Gas Lease Sale 78 was initiated on November 19, 1993, when the appellants filed their notice of appeal, statement of points on appeal

and designation of record with the superior court in Kenai.⁷ Seven weeks after filing their appeal, on the eve of the sale, the appellants filed their "emergency" motion for stay. Late on January 24, 1994, less than 18 hours before the sale was scheduled to occur, the superior court issued its decision staying Sale 78.

In its order staying the sale, the court held that DNR did not comply with 6 AAC 80.040 when making its coastal consistency determination. The court's superficial analysis on this point states in full:

First, there is no discussion of the priority required in 6 AAC 80.040. Has the Commissioner considered both offshore oil and gas development and a fishery as water dependant and [sic] activities? Or, is oil and gas [sic] a water related activity? The Court cannot determine whether the sale is consistent with either standard absent a finding.

With this limited analysis, the court failed to recognize the "plain meaning" of the regulation, and it ignored both DNR's discussion of this regulation and the restrictions DNR placed through the terms of its leases and mitigating measures on potential future offshore oil and gas development.

6 AAC 80.040(a) states that "[i]n planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to" As was discussed in detail in DNR's Opposition to the Stay -- and apparently conceded to by the court -- an oil and gas lease sale is not itself "development." Development, if and when it ever occurs, requires permits, plans of operation, and other authorizations. Therefore, the relevant part of this regulation would be "planning for . . . development." The oil and gas lease sale itself has no direct impact on other water-dependent activities, and in planning for potential future

⁷ The appellants' statement of points on appeal for Sale 78 wholly fails to identify any specific issues with regard to DNR's best interest finding and coastal consistency determination. The appellants only allege that DNR's Sale 78 best interest finding is arbitrary and capricious because: (1) it fails to "properly weigh the pros and cons of the lease sale," and (2) it fails to "evaluate standards in AS 38.05.035 (e), (g), the ACMP, and applicable local coastal management plans." The appellants did not identify any of the "cons" DNR failed to address, nor do they specify which of the standards in the cited statutes and regulatory programs DNR failed to evaluate. Even after the state asked the court to require a more specific description of the points on appeal, the court refused, thereby indicating its willingness to accept anything.

activities, DNR cannot give priority to either of these two water-dependent uses (fishing and the offshore oil and gas industry) because neither by its nature has a priority over the other.

The appellants argued, and the court appeared to accept without question, that potential offshore oil and gas development is not a water-dependent activity.⁸ However, the appellants' argument that offshore development cannot be water-dependent simply ignores the plain meaning of the term "offshore,"⁹ a characteristic of areas of this sale described over and over in the final finding and the preliminary finding.

Moreover, the appellants acknowledged the water-dependency of potential offshore oil and gas activity when they stated in their Memorandum that "DNR should have required in the lease terms directional drilling to access all tracts south of Kasilof and tracts 20 and 21 wherever possible." If directional drilling is not possible and yet the oil or gas prospect is offshore, the appellants' statement concedes to the obvious: that the exploration or development of that prospect cannot be carried out without being in or on the water and therefore must be "water-dependent."

The appellants and the court ignored the numerous Mitigation Measures imposed to avoid potential conflicts between two such activities that must each be carried out in or on the water.¹⁰ Since no specific projects can or have been proposed at the lease sale stage, DNR cannot determine if, where or when any restriction might be invoked, but it has planned for such. Where possible, in order to avoid conflict, DNR has reserved the right to require that fishing be accorded accommodation by allowing only directional drilling in offshore oil and gas development. Where such measures are not possible, no priority exists between

⁸ "[W]ater-dependent" means a use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body." An offshore oil or gas deposit cannot be found anywhere except in water.

⁹ Although DNR did not make an explicit and redundant statement of the obvious, the water-dependent status of potential offshore oil and gas development is reflected in DNR's statement in the Preliminary Finding that "[t]he following proposed Mitigation Measures are designed to prevent significant interference with other water-dependent and water-related activities"

¹⁰ For example, Mitigation Measures 9(b) (addressing offshore pipelines); 13 (restrictions to avoid conflict with fishing); 16(d) (offshore disposal); 20 (offshore seismic activities).

these two activities, neither of which can be carried out onshore, but other measures to mitigate any potential conflicts between the two uses have been imposed. Therefore, DNR's consistency determination complied with 6 AAC 80.040, and deference should have been given to its decision.

The superior court's order also stated summarily that DNR's consistency determination does not discuss the requirements of 6 AAC 80.130(d) and therefore cannot be consistent with the ACMP standards. The court failed, however, to acknowledge that 6 AAC 80.130(d), upon which it relies exclusively in this argument, is invoked only when "uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of [6 AAC 80.130]" exist. The court never discussed or analyzed the requirements of 6 AAC 80.130 (b) or (c). 6 AAC 80.130(b) states as follows:

The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources.

6 AAC 80.130(c) provides a standard for the management of each of the different habitats listed in 6 AAC 80.130(a) excluding "important upland habitat." The court did not discuss or cite evidence that the habitats are not being managed so as to maintain such characteristics or standards.

DNR took a hard look at the requirement and issues of 6 AAC 80.130.¹¹ First DNR imposed numerous stipulations and mitigation measures that are specifically designed to achieve maximum compliance with the 6 AAC 80.130(c) standards of maintaining and enhancing the coastal habitats.¹² DNR's analysis points out that:

¹¹ DNR's discussion of and actions taken in response to 6 AAC 80.130 reflect that, to the extent possible at the lease sale stage, DNR has dealt with the "knowns," and further, even tried to provide for future possibilities by requiring mitigation measures. This comported fully with the Supreme Court's recent case law under the ACMP developed in the Camden Bay II decision (DNR must identify known hazards and known archeological sites). Still, the superior court did not accept or defer to the agency's analysis and decision.

¹² There is no requirement that DNR include all of its analysis in its conclusive consistency determination. The Supreme Court had held that DNR must only "establish a record which reflects the basis for [its] decision."

Issuance of oil and gas leases in itself authorizes no uses or activities in the sale area. The measures discussed in this section of the consistency analysis are designed to minimize the impact of post-lease sale oil and gas activity on the environment and to conform to 6 AAC 80.130(b) 6 AAC 80.130 (c), and the MSBCMP and KPBCMP policies.

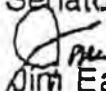
Second, DNR acknowledged that despite these precautions, "[p]articularly if oil and gas deposits are discovered in the proposed sale area, there may be uses or activities in the sale area which will not 'maintain or enhance the biological, physical, and chemical characteristics' of the coastal habitat in which they are located." DNR then parsed through, analyzed, and responded to each of the three parts of 6 AAC 80.130(d).

Therefore, since the court held that there was no irreparable harm shown nor any clear showing of probable success on the merits of the appellants' arguments against the best interest finding, and there is no basis for any showing of probable success on the merits with regard to 6 AAC 80.140 and .130, the stay of Sale 78 should not have been imposed and was issued in error. Nevertheless, DNR's appeal of this obviously flawed decision was summarily dismissed by the Alaska Supreme Court in a one sentence order.

CONCLUSION

Only the legislature can take some of the unpredictability out of judicial review of DNR's best interest findings and coastal consistency determinations. To do so, Title 38 and Title 46 must be amended to explicitly grant DNR the discretion to define the scope of its analyses and to require that issues be brought to DNR's attention during public review of a proposed disposal if they are later to be the subject of an appeal to the courts.

MEMORANDUM

TO: Senator Drue Pearce
FROM:  Jim Eason, Director
Division of Oil and Gas, DNR
RE: CSSB 308
DATE: April 9, 1994

You have asked that I respond to the concerns raised in the "Coastal Districts' Briefing Paper on CSSB 308" dated April 7, 1994, which was addressed to members of the Senate Finance Committee. My comments below address the issues raised in that document, and summarize briefly the responsive amendments reflected in the current CSSB 308. In addition, I have outlined certain other amendments which are currently being drafted which will respond to specific recommendations received during yesterday's hearing and subsequently.

Based upon my review, I believe there may be some confusion arising from the fact that the Districts' comments are directed to the prior version of CSSB 308, version K. The work draft of CSSB 308 which the Finance Committee adopted yesterday is version U. Version U represents DNR's response to the working groups' comments and recommendations which were raised during the five meetings between the parties since S.B. 308 arrived in the Senate Finance Committee.

Version U of CSSB 308 contains many substantive amendments which were made to address concerns of the Districts, as well as others including the federal Office of Coastal Resource Management (OCRM). The changes which were incorporated to address specific concerns identified in the Coastal Districts' Briefing Paper are summarized below.

First, in response to the groups' concerns about scope of review, language was incorporated in the Findings of Section 1 to make clear that the scope of review for findings will include a response to all

concerns raised during the public review period before a disposal. For oil and gas lease sales, for example, all factors listed under current A.S. 38.05.035 (g) must be addressed plus any other issues raised by the public.

In response to concerns about potential abuse of the right to phase consideration of projects, language was added in Findings 10 and 11 to clarify intent, and Section 8 was amended to make clear that phasing of state disposals and projects would occur only under the same circumstances as federal regulations now provide.

Under both federal and state law, as amended by Version K of CSSB 308, phasing would be appropriate when not enough is known about the potential future aspects of a development project to issue just one conclusive consistency determination. If the specifics of a proposed project can be sufficiently defined in the beginning, phasing cannot be allowed.

To further strengthen this concept, Finding 11 provides explicit guidance to a director that "...consideration of a disposal as a phase of a development project is not intended to avoid consideration of potential future environmental or sociological effects, but rather is intended to allow for consideration of those issues when sufficient data are available upon which to make reasoned decisions."

The Briefing Paper expressed concern that "...certain portions of S.B. 308 may be disallowed by the federal government..." and referenced earlier correspondence from OCRM and an April 24, 1994 Alaska Attorney General's Opinion. However, both the OCRM letter and the Attorney General's Opinion were written in response to version K of S.B. 308.

The two provisions of version K which both of those documents questioned as potentially being disallowed were the effect of limiting the review of effects under both best interest findings and consistency determinations to "direct effects", and not defining the circumstances under which phased review of projects would be allowed.

We have addressed both concerns in the current version of CSSB 308 by deleting the references to "direct" in Sections 2 and 8 and, as mentioned above, by adopting the standard applied under the

applicable federal regulations for determining when phasing is appropriate in Section 8 of version U of the CSSB 308.

The Coastal District representatives also asked that the legislature take no action on S.B. 308, and that instead it support deferral of any action until a broad-based working group addresses phasing in greater depth.

In the best of all possible worlds, we might have the luxury of a more lengthy process. It was never our intent that the legislature have to deal with these issues at all, much less under the pressures of having to bring controversial legislation forward during a session when many important issues must be addressed. However, we find ourselves having to respond to decisions by the Court, the timing of which was beyond our control.

The effect of those decisions has been to place all leasing decisions at risk to successful challenges absent amendment of both Title 38 and Title 46 as proposed in CSSB 308. As a result, we all find ourselves having to deal with these issues under less than perfect circumstances. Nevertheless, we have listened carefully to the concerns of everyone who has participated in the working group meetings on this legislation, and we have tried to accommodate those concerns where we can.

In addition to the amendments described above, version U of the CS for CSSB 308 also reflects the following amendments:

- The requirement to issue a preliminary best interest finding for oil and gas lease sales has been codified in statute. Further, the amendments provide that the preliminary finding will be issued no later than six months before a scheduled sale, and that the public will have no less than 60 days in which to comment.
- The public notice provisions for preliminary and final best interest findings have been enhanced. New minimum standards have been established to assure that notice for oil and gas disposal decisions will consist of legal notices, display ad notices, notice by electronic media and at least one other method.
- The proposed amendment to A.S. 38.05.035 (g) to limit discussion of fish and wildlife species and their habitats to those within the sale area has been deleted.

- Appeal procedures have been drafted which clarify and make more predictable for all parties the standards and timelines for appeals of final best interest findings.

Comments received during and after the hearing on April 8th are being addressed by the following amendments:

- Section 4 (B) is being amended to require that the final best interest findings for oil and gas lease sales will be issued 90 days before a scheduled sale instead of 21 days as is currently required. This amendment responds to concerns raised by Trustees for Alaska that appeal rights might otherwise be truncated.

- In response to comments received from the Kenai Peninsula Borough, an amendment is being drafted to assure that the director addresses in writing both issues either raised during public review or otherwise required by statute to be considered regardless of whether or not they are determined by the director to be material to the phase of the proposed disposal or project under consideration. The director will have to rationalize in writing the basis for his determinations of materiality.

Finally, as you well know, it is difficult, if not impossible to adopt every proposed amendment to any piece of legislation. To do so in the case of CSSB 308 would inevitably lead to legislation that would not be responsive to the problems which the Courts have identified. Nevertheless, I believe the current version of CSSB 308 represents a good faith effort to be responsive to the concerns of the Coastal Districts and others without diminishing the intent of the legislation.

If I can answer any additional questions, please feel free to call

STATE OF ALASKA

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

WALTER J. HICKEL, GOVERNOR

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2653
(907) 762-2547

April 12, 1994

The Honorable Drue Pearce
Alaska State Legislature
State Capitol, Room 508
Juneau, Alaska 99801-1182

via fax 465-3372 and mail

Subject: Amendments to CSSB 308

Dear Senator Pearce:

By memorandum dated April 9, 1994 I discussed the amendments reflected in version U of CSSB 308. In addition, I described two amendments which were, at that time, being drafted in response to comments which had been received during and after the Senate Finance Committee hearing on April 8.

In addition to the two amendments which were being drafted at the time, eight additional amendments have now been drafted for consideration by the Finance Committee. I have summarized below the purpose for each of those amendments.

- o Amendment #3 clarifies that persons may meaningfully participate in an administrative review by presenting oral testimony or by affirmatively adopting the testimony of others by submitting a written statement to that effect during the period allowed for receipt of public comment or during the public hearing.
- o Amendment #4 was drafted in response to any public comments indicating concern that comments on proposed disposals or projects would be summarily dismissed if determined by the Director to be non-material. The amendment clarifies that the Director will discuss, in writing, the reasons for any determination of non-materiality, as well as discussing, in writing, those issues which he finds material to a proposed disposal or project.
- o Amendment #5 clarifies that the determinations of the state's best interest are those rendered under Title 38; specifically, AS 38.05.
- o Amendment #6 clarifies that it is the Legislature's intent that the public have an opportunity to timely and meaningfully participate in the Director's determination of the scope of review appropriate to a specific finding.

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P. 02/07

FAX NO. 9075623652

DIV OF OIL AND GAS

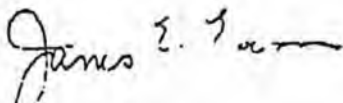
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The Honorable Drue Pearce
April 12, 1994
Page 2

- o Amendment #7 simply adds economic effects to environmental or sociological effects in finding #11 of CSSB 308.
- o Amendment #8: The language of this amendment is designed to reinforce legislative intent that a Director should not "divide or segment" proposed projects in order to avoid a thorough review of the project.
- o Amendment #9 clarifies that both Oil and Gas Preliminary and Final Best Interest Findings will include a summary of agency and public comments received as of the time of each finding, as well as the department's responses to those comments. In addition, this amendment codifies the requirement that all written findings issued under AS 38.05.035 will include a summary of agency and public comments, as well as the department's response to those comments.
- o Amendment #10 establishes a requirement that when a consistency review is limited to consideration of a specific phase, the Director or the responsible agency will prepare and issue a statement describing its bases for making a consistency determination in phases.

If you have any additional questions, please feel free to call.

Sincerely,



James E. Eason
Director

041294dpjt

MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 94-046

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY REVISING
THE BOROUGH'S POSITION REGARDING PROPOSED SENATE BILL 308 OF THE
ALASKA STATE LEGISLATURE.

WHEREAS, proposed Senate Bill 308 would modify administrative procedures and decisions by State agencies that relate to uses and dispositions of State land, property, and resources, and to the interests within them, and further modify administrative procedures that relate to uses and activities involving land, property, and resources, and to the interests within them that are subject to the Coastal Management Program when the use or activity is to be authorized or developed in phases; and

WHEREAS the Matanuska-Susitna Borough previously adopted MSB Resolution Serial No. 94-032 opposing House Bill 308 and its identical counterpart House Bill 474; and

WHEREAS, since the adoption of MSB Resolution Serial No. 94-032 the Borough has participated with the State of Alaska and other interested parties in review and revision of Senate Bill 308; and

WHEREAS, the Borough recognizes the cooperative review and legislative committee process is working and has produced an improved revised CS Senate Bill 308 (FIN) and significant proposed amendments to the Bill which if approved, would relieve many concerns of the Borough; and

WHEREAS, the Bill if approved by the Senate will proceed to the House of the Alaska State Legislature for further review, and possible revision; and

NOW THEREFORE BE IT RESOLVED the Matanuska-Susitna Borough supports passage by the Senate of CS Senate Bill 308 (FIN) if it is amended as proposed by Senator Pearce in accordance with the senate amendment document dated 4-18-94

BE IT FURTHER RESOLVED the Borough supports the Senate passage of a letter of intent for CS Senate Bill 308 (FIN) as submitted by Senator Suzanne Little and which reads as

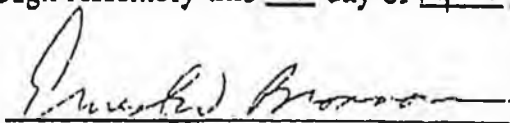
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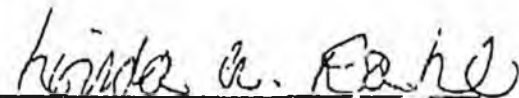
follows: ("It is the intent of the legislature that the sections of this legislation pertaining to AS 46.40 will be consistent with the federal coastal zone management program regulations and intent governing phased consistency determinations."); and

BE IT FURTHER RESOLVED that the Borough asks the State legislature to ensure the rights of the local government to protect the interests of its residents are preserved within the implementation of this act through preliminary and final best interest findings conducted under AS 38 and consistency determinations conducted under AS 46.

ADOPTED by the Matanuska-Susitna Borough Assembly this 19 day of April, 1994.


ERNEST W. BRANNON, Borough Mayor

ATTEST:


LINDA A. DAHL, Borough Clerk

sp/94036

Number: RESO 94-246
ORD 94-
AM 94-



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

SB 308: Amendments to Title 38 and the Alaska Coastal Management Program

The Alaska Environmental Lobby (AEL) opposes SB 308. This legislation is a direct attack on the Alaska Coastal Management Program. It will also affect state resource disposals of timber, minerals and lands. In all cases, it takes power away from the public and local communities and gives it to the directors of the state's resource agencies.

SB 308 attempts to reduce the state's legal obligations when it disposes of public resources. When a public resource is leased, sold or otherwise disposed of, the state is required to determine whether the disposal will best serve the interests of the state. The state is also required to show that the disposal is consistent with the Alaska Coastal Management Program. This legislation would narrow the scope of the factors that the state must consider when preparing a best interest finding and when making a consistency determination.

AEL's specific concerns are:

1. SB 308 gives resource agency directors the authority to decide which facts are material to the scope of review of best interest findings. It will significantly diminish consideration of issues the public finds important and it will insert a powerful bias into a finding since the director usually operates under a mandate to develop the resource.
2. SB 308 narrows standing by restricting who may contest a best interest finding to only those who participated in the initial public review process and who have been materially affected by the disposal.
3. These bills allow best interest findings and consistency determinations to be limited to discrete phases of a project.
 - Such a limited focus would diminish consideration of the long term and cumulative impacts of a project.
 - Oil and gas disposals are already phased to some degree under federal regulations. But the federal intent of phasing is to

broaden the scope of review by including *all* information known about the project and to phase only when critical information is not known at that time. SB 308 limits the scope of review to "significant effects of the use or activity proposed for that phase."

- Once the initial permits are approved, and the project begins to move forward, it would be very difficult for the permitting agency to deny subsequent permits. If it were to do so, the state might be legally liable for project costs, repurchase of the leases, penalty fees and lawsuits.
- SB 308 does not explicitly provide the public with the right to appeal the director's decision to phase a project.
- SB 308 fails to provide any criteria or guidelines to guide or evaluate the director's decision to phase a project.

4. SB 308 affects all resource disposals including land, minerals and timber. None of these disposals are currently phased, none receive the same level of oversight that oil and gas do and none have any statutory guidelines delineating the scope of review. SB 308 gives resource directors extraordinary discretion in determining the disposal of state resources.

These bills are not needed. The problem is not in Title 38 or the Alaska Coastal Management Program. The problem lies with DNR's inability to competently prepare a best interest finding. When the Supreme Court rejected DNR's finding for Lease Sale 55 for example, it noted that DNR had copied "*without alteration*" the Lease Sale 50 finding which the Court had previously rejected. It is hard for DNR to defend its competency or its commitment to the public interest when it reuses a rejected finding.

The Alaska Supreme Court has found that "DNR must take a hard look at any salient problems associated with a [lease] sale," and that it must "consider the probable cumulative impact of all anticipated activities which will be a part of [the project]." The public, industry and the state must be provided with all the relevant concerns before a project begins, to ensure that it proceeds responsibly and with minimal impact on local communities, other resources and the environment.

4/18/94



Kodiak Island Borough

710 MILL EAY ROAD
KODIAK, ALASKA 99615-6340
PHONE (907) ~~456-1111~~

April 15, 1994

VIA FAX 465-3872

Senator Drue Pearce
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: SB 308 version X and proposed amendments (April 14, 1994)

Dear Senator Pearce:

Due to time constraints this letter of necessity will be brief. After careful consideration of the recent amendments proposed for version X of SB 308, the Kodiak Island Borough feels we can work with you to gain passage of this legislation.

We want to thank you and your staff, especially David Rogers, and the administration, especially Jim Eason for your efforts to resolve issues surrounding this bill. Such effort, on all sides, has improved this bill dramatically.

As you are aware, the Kodiak Island Borough previously objected to the inclusion of phasing, as a concept, in this bill. It is evident to us that the Senate intends to include phasing in this bill and to that end we have worked to make the language of the bill acceptable. We believe the most recent amendments, for the most part, accomplish this.

There are five sections of the bill that continue to contain language that is unclear to us. We believe that we have conceptual agreement on the intent of this language, however, we would like to continue discussions about the implications of this language. The language in question is: the meaning of "may address only" on line 22, page 3; the implications of "aggrieved" and



Kodiak Island Borough

Senator Drue Pearce

Page 2 of 2

April 15, 1994

"affected" on lines 13 and 27 of page 9, respectively; the meaning of "economic feasibility" on line 9 page 9; the meaning "matcrial" on line 23 page 13; and the meaning of "for which the consistency determination is sought", to be added on page 13. We hope to continue productive, informative dialog about this language; at the same time we applaud and support your efforts to resolve the other issues we have identified in previous versions of the bill.

Again, please accept our thanks for working with us to improve the language of this bill.

Sincerely,

Linda L. Freed, Director
Community Development Director

c.c. Jerome Selby, Borough Mayor
Kodiak Island Borough Assembly

Jon Isaacs and associates . 2418 forest park drive . casbergo, alaska . 99517 . (907)274-9719 . fax 276-6117

April 15, 1994

Honorable Senator Drue Pearce
Chair, Senate Finance Committee

Dear Senator Pearce:

As a member of an informal coastal district working group, I have been participating in the review of Senate Bill 308 with representatives of the Department of Natural Resources, and Mr. David Rogers, who has been representing your committee. Over the last two months, I have participated in several Senate Finance Committee Meetings and workgroup discussions to develop a bill that addresses the concerns of the Department of Natural Resources without creating significant problems for the coastal districts and other municipalities.

On the afternoon of April 15, a small group of individuals worked on the significant outstanding issues identified by the informal coastal district working group. I should mention that this group does not represent or speak for all coastal districts, many of whom have other valid concerns regarding this legislation. In this meeting, we came to consensus on most of the major issues, with a few exceptions. The issues where consensus was reached was to:

- include finding language that phasing of coastal consistency determinations is not intended to artificially segment a project
- that the reasons for phasing a best interest finding are included in the preliminary finding, and are subject to public comment and appeal under appropriate avenues
- that when a consistency review is phased, the consistency review will be based on the use or activity for the consistency determination is sought rather than restricted to the phase - this allows consideration of "known facts" and reasonably foreseeable significant effects related to the use of activity
- that when a consistency review is phased, the consistency determination will include a basis for phasing the review, and that this basis is subject to standard coastal management elevation or appeal rights.

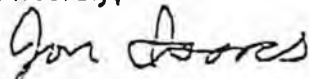
Issues where there is still some differences regarding language or resolution include:

- use of "may address only" vs. shall address reasonably foreseeable significant effects related to the use in Section 2 (A) of AS 38.05.035(e). DNR's verbal intent is that, at a minimum, reasonably foreseeable significant effects related to the use will be addressed. The appropriate language needs to be used.

- on page 5, item (6), DNR has indicated that 21 days may not be adequate time for public involvement in this step; they are researching best interest requirements and have indicated that they will come up with an appropriate number
- standing to request appeal or reconsideration of a best interest finding; I understand that DNR is looking into what language may be more appropriate
- in Section 8, page 13, line 22, the concept of material to the consistency determination has not been previously used or defined; I would prefer the term relevant be used in its place or material defined
- finally, I understand that some municipalities are still concerned about the lack of guidance regarding other best interest findings besides oil and gas, mining, timber, and commercial recreation; while language in the bill requires addressing reasonably foreseeable significant effects related to the use, and the basis of phasing can be appealed, I suggest that DNR continue to consider other solutions.

I greatly appreciate the efforts of members of the Senate and particularly Senator Pearce in supporting this working group process and resulting in better legislation. I also appreciate the efforts of Jim Eason and other members of the administration, David Rogers, coastal districts, fishing groups, and environmental groups in trying to reach consensus. While not a perfect bill that makes everyone happy, the language changes as provided by Mr. Rogers has addressed major concerns. Again, the legislature should be aware that I can only speak for myself and not represent or speak for all coastal districts, many of whom have other concerns. Thank you all for your efforts.

Sincerely,



Jon Isaacs

April 15, 1994

Honorable Senator Drue Pearce
State of Alaska Senate

Dear Senator Pearce:

I have been part of the informal working group which has been working to try and achieve consensus on SB 308. I have had an opportunity to review Version X, and to discuss, in concept, the amendments which are to be proposed on April 15, 1994. There has been substantial improvement in the bill and I appreciate the efforts of DNR and the Senate Finance Committee to attempt to address concerns raised by the coastal districts and others. I believe the efforts of those who have worked on this bill will result in a better public process. There are a few remaining issues which need to be resolved, and I support the continued efforts of the Legislature to resolve the remaining issues this session.

There have been numerous revisions made to this legislation, and I wish to highlight a few which I can support without reservation:

I support the examination of "reasonably foreseeable significant effects" and commend DNR for its selection of this as a standard for what will be examined upon the decision to phase.

I endorse the public notice provisions and the provision that a final best interest finding will be issued not less than 90 days before the sale lease or other disposal.

I also endorse the establishment of the requirement for a preliminary best interest finding for oil and gas lease sales in statute, a practice which DNR has, heretofore, undertaken voluntarily.

I commend DNR and the Senate Finance Committee for their agreement that the effects on fish and wildlife species and their habitats in the area will remain in the existing statute.

Finally, I commend DNR and the administration for adopting the federal language on phasing, into the Title 46 portions of the statute.

There are remaining issues which, I believe, can be resolved through the legislative process. These issues are addressed below:

Phasing of all land disposals under Title 38

Throughout this process some coastal districts have identified a fundamental problem with this legislation that arises under Title 38, which proposes to allow phasing for all land disposals. I believe that the provisions of section 38.05.035(g)

affords the necessary guidance to DNR to phase oil and gas lease sales. However, that same guidance is not provided for phasing of other types of disposals (timber, mining etc.) I believe that there need to be specific factors developed or referenced which the Director will examine in the decision to phase other disposals.

Phasing under Title 46 (ACMP)

There is one remaining question under Title 46. The language states that the consistency review shall be based on facts pertaining to the use or activity for which the consistency determination is sought that are "material" to the consistency determination. There is no definition of what constitutes issues which are "material" and that language does not appear elsewhere in the ACMP. Since this section addresses phasing for all projects, we believe that this vague language will result in additional litigation on the specific meaning of that word. We recommend deletion of that section. I understand that the language proposed to be added "for which the consistency determination is sought." is intended to mirror the federal scope of review for phased projects. If that intent is confirmed, then I believe this language will be adequate to meet concerns I have previously expressed about phasing under the ACMP.

Standing to Request Reconsideration/Appeal

The issue of standing is one which significantly affects public participation under this legislation. DNR has stated that the intent of this legislation is to provide for that any person who has submitted written or oral comments during the comment period be allowed to request reconsideration or, as appropriate, administrative appeal. There is remaining confusion as to whether the commenting person may raise any issue that has been identified during the public comment period, or whether the person will be limited to those issues which he or she personally raised. I believe that any issue which was raised during the administrative review should be examined on reconsideration if raised by a person who has commented during the administrative review.

I further believe that the words "is affected by the decision" (page 9, line 27) should be deleted from the bill, because it does not comport with the existing Alaska law on standing. I support the "private attorney general" theory of standing which has been endorsed by the Alaska Supreme Court. Finally, there may be some confusion by the simple addition of the word "appeal" on p. 9, line 12. I suggest the words "administrative appeal" be added so that it is not confused with an appeal to Superior Court.

Clarification of "Economic Feasibility"

Section 4 of the bill states that the director may not be required to speculate about the "economic feasibility" of ultimate development. That phrase is troubling because it is not defined, and it has implications for disposals which affect coastal

districts. In discussions with DNR it was suggested that this phrase is directed toward the economic feasibility of the applicant's ultimate development project. I believe that clarifying language should be added to state that the best interest finding shall consider the potential economic benefits and potential economic detriments from a disposal, but may not be required to speculate about future effects subject to future permitting which relate to economic feasibility, if there is no known information which can be reasonably determined.

Changing the words "may address only" to "shall address"

The language in Section 2 states that the scope of review and finding of the Director "may address only" reasonably foreseeable significant effects. The use of the word "may" means that the director is not obligated to address those effects. The addition of the word "may ...only" implies that there is no ability to look further, if, in the Director's discretion, there are effects which should be analyzed. We suggest the changing of the language to read: "The Director shall address reasonably foreseeable...". This will make this requirement mandatory, but will also allow the flexibility to the Director to consider other effects.

Conclusion

I am encouraged by the progress which has been made on this bill. While every interest may not have been fully satisfied, I believe that the overall result of this bill will be better public policy decision-making, which will successfully withstand legal challenges. I look forward to working with DNR, fishing groups, environmental groups, and all other interests to resolve the few remaining issues and to develop a process which will implement this legislation successfully.

Very truly yours,


NANCY S. WAINWRIGHT

April 17, 1994

Honorable Senator Drue Pearce
Chair, Senate Finance Committee

Dear Senator Pearce:

Linda Freed and I would like to express our sincere thanks for your efforts in making possible the process for developing a sound version of Senate Bill 308. Without your support and direction for consensus based legislation, it would not have been possible to come as far as we have. Given that the bill is a priority of the Senate, and there are many other pieces of important legislation that require your attention, we appreciate your patience with us while we attempted to come up with language that addresses the concerns of the Department of Natural Resources without creating significant problems for the coastal districts and other municipalities.

David Roger's participation was invaluable in reaching a compromise over language; he was able to facilitate from a neutral position and encourage cooperation. We also appreciate the suggestions and compromises made by Mr. Eason and the administration during the course of discussion; our understanding of his concerns initiated our working group approach to finding appropriate solutions.

Over the weekend, Linda and I have contacted several of the coastal districts who have been involved with SB 308 and urged that they support the amendments introduced last Friday. We expect that some of them will contact their Senators to request support of the amendments during reconsideration. Because not everyone has seen the amended language, it remains problematic for us to speak on behalf of all coastal districts; however, we feel most of the major issues have been addressed and have expressed our position to others.

In closing, again thank you for your invaluable assistance, and we hope that you will continue to support the amendments.

Sincerely,

Jon Isaacs
Linda Freed

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

HOUSE JUDICIARY LETTER OF INTENT

It is the intent of the House Judiciary Committee that the director interpret the language at Sec. 2 AS 38.05.035(e)(1)(A) of CSSB 308 (FIN) am, which provides in pertinent part, "... the scope of the review and finding may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal," to provide the director the discretion to consider other factors, with clear guidance, however, that he/she is not required to do so. If the facts and circumstances of a specific disposal suggest to the director that the scope of the review should be expanded, the director will have the authority to do so.

It is further the intent of this Committee that the Department of Natural Resources undertake the drafting of regulations or proposed statutory language, whichever the Department deems most appropriate, to create lists of criteria, analogous to the list of criteria at AS 38.05.035(g) for oil and gas disposals, for other disposals governed by CSSB 308 (FIN) am should that bill pass. Finally, it is also the Committee's intent that the Department of Natural Resources coordinate its creation of these lists of criteria with the Division of Governmental Coordination to facilitate the outreach and broad involvement of all interested parties in drafting the lists for disposals other than for oil and gas.

April 28, 1994

Brian D. Porter



Kodiak Island Borough

710 MILL EAY ROAD
KODIAK, ALASKA 99615-6340
PHONE (907)

April 15, 1994

VIA FAX 465-3872

Senator Drue Pearce
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: SB 308 version X and proposed amendments (April 14, 1994)

Dear Senator Pearce:

Due to time constraints this letter of necessity will be brief. After careful consideration of the recent amendments proposed for version X of SB 308, the Kodiak Island Borough feels we can work with you to gain passage of this legislation.

We want to thank you and your staff, especially David Rogers, and the administration, especially Jim Eason for your efforts to resolve issues surrounding this bill. Such effort, on all sides, has improved this bill dramatically.

As you are aware, the Kodiak Island Borough previously objected to the inclusion of phasing, as a concept, in this bill. It is evident to us that the Senate intends to include phasing in this bill and to that end we have worked to make the language of the bill acceptable. We believe the most recent amendments, for the most part, accomplish this.

There are five sections of the bill that continue to contain language that is unclear to us. We believe that we have conceptual agreement on the intent of this language, however, we would like to continue discussions about the implications of this language. The language in question is: the meaning of "may address only" on line 22, page 3; the implications of "aggrieved" and



Kodiak Island Borough

Senator Drue Pearce
Page 2 of 2
April 15, 1994

"affected" on lines 13 and 27 of page 9, respectively; the meaning of "economic feasibility" on line 9 page 9; the meaning "material" on line 23 page 13; and the meaning of "for which the consistency determination is sought", to be added on page 13. We hope to continue productive, informative dialog about this language; at the same time we applaud and support your efforts to resolve the other issues we have identified in previous versions of the bill.

Again, please accept our thanks for working with us to improve the language of this bill.

Sincerely,

Linda L. Freed, Director
Community Development Director

c.c. Jerome Selby, Borough Mayor
Kodiak Island Borough Assembly



TELECOPY COVER SHEET

Anchorage Legislative Information Office
Office - (907) 561-7007 Fax - (907) 562-4376

TO: (H) Judiciary

ATTN: Rep. Potter FAX: 465-3834 PHONE: _____

FROM: Anch. LIO - PHONE: _____

INSTRUCTIONS: Testimony from Jon Isaacs that was
kept into record at TC on 4-27 by Nancy
Winnwright.

SENT: Date 4/29 Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: 3 (counting cover sheet)

TRANSMITTED BY: Jean

April 28, 1994

Testimony of Jon Isaacs
Jon Isaacs and Associates

Honorable Representative Brian Porter
Chair, House Judiciary Committee

Thank you for the opportunity to testify today; in my testimony, I am representing myself and do not speak for any coastal districts.

As a member of an informal coastal district working group, I have been participating in the review of Senate Bill 308 with representatives of the Department of Natural Resources, coastal districts, environmental groups, fishing groups, and a representative of the Senate Finance Committee. Over the last two months, I have participated in several Senate Finance Committee Meetings and workgroup discussions to develop a bill that addresses the concerns of the Department of Natural Resources without creating significant problems for the coastal districts and other municipalities.

I greatly appreciate the efforts of Jim Eason and other members of the administration, the Senate Finance Committee, coastal districts, fishing groups, and environmental groups in trying to reach consensus. While not a perfect bill that makes everyone happy, the language changes have addressed some major concerns.

On the afternoon of April 15, a small group of individuals worked on the significant outstanding issues identified by the informal coastal district working group. I should mention that this group does not represent or speak for all coastal districts, many of whom have other valid concerns regarding this legislation. In this meeting, we came to consensus on many of the major issues, with a few exceptions. Issues where there is still some differences regarding language or resolution include:

- use of "may address only" vs. shall address reasonably foreseeable significant effects related to the use in Section 2 (A) of AS 38.05.035(e). DNR's verbal intent is that, at a minimum, reasonably foreseeable significant effects related to the use will be addressed. The appropriate language needs to be used.
- standing to request appeal or reconsideration of a best interest finding; I understand that DNR is looking into what language may be more appropriate
- in Section 8, page 13, line 22, the concept of material to the consistency determination has not been previously used or defined; I would prefer the term relevant be used in its place or material defined
- finally, I understand that some municipalities are still concerned about the lack of guidance regarding other best interest findings besides oil and gas, mining, timber, and commercial recreation; while language in the bill requires

addressing reasonably foreseeable significant effects related to the use, and the basis of phasing can be appealed, I strongly suggest that DNR continue to consider other solutions.

The language of the current bill is a major improvement over where the administration started. If some of these concerns can be addressed, it will be improved further. Thank you all for your efforts.

Sincerely,

Jon Isaacs

PostNet 10290

Fax Transmittal Memo 7672

To: *Rep. Brian Porter & House Judiciary Com.*
 Company: *AK House of Rep's*
 Location: *JUNEAU*
 Fax #: *465-3834* Telephone #
 Comments: *Please distribute to all members of the Judiciary Committee prior to their consideration of SB 308.*

From: *6* Date: *4/28* Time: *3:30pm*
 Company: *GREG ROZICKA*
 Location: *AVCP INC.*
 Bethel Dept. Charge
 Fax #: *543-3596* Toll phone # *543-3521*
 Original Activity Return Call the office

Tux

AVCP

Association of Village Council Presidents
 Natural Resource Department
 P.O. Box 219 • Bethel, Alaska 99559 • Phone 543-3521



April 26, 1994

Representative Brian Porter - Chairman, &
 Respected Members of the House Judiciary Committee
 State Capitol, (MS 3100)
 Juneau, Ak. 99801-1182

Re: CSSB 308 (Fin)

Dear Chairman Porter:

Seldom do we ever see such a travesty to the public process as is found in the Department of Natural Resources concocted legislation and administrative advocacy under Senate Bill 308. The only essential/practical application of this bill (if adopted!) will be to give this Department the latitude of circumventing their responsibilities under Alaska's Coastal Zone Management Plan. Avoidance of original legislative AVCP policy and intent followed in subsequent years by additional judicial directives is the ONLY purpose that this legislation will accomplish.

The practical effect of this bill is a step backward for all Alaskans regardless of past differences in philosophical or political tendencies. Ordinarily opposing factions such as sport/commercial fishing associations, native advocacy groups, oil & gas lobby representatives and the coastal management district representatives themselves all agree that this is simply bad legislation.

In an effort to get the situation in proper perspective we ask that each of you review the attached Legislative Policy and AVCP Objectives which are the original base on which the whole coastal management program was established. SB 308 is not only a contradiction, but also an insult to these basic premises that constitute a policy and intent for development activities in Alaska's coastal regions. Please note the flow chart which has been modified to graphically display the essential result of what DNR wants you to do for them under SB 308, if it passes with its initial and existing intent intact.

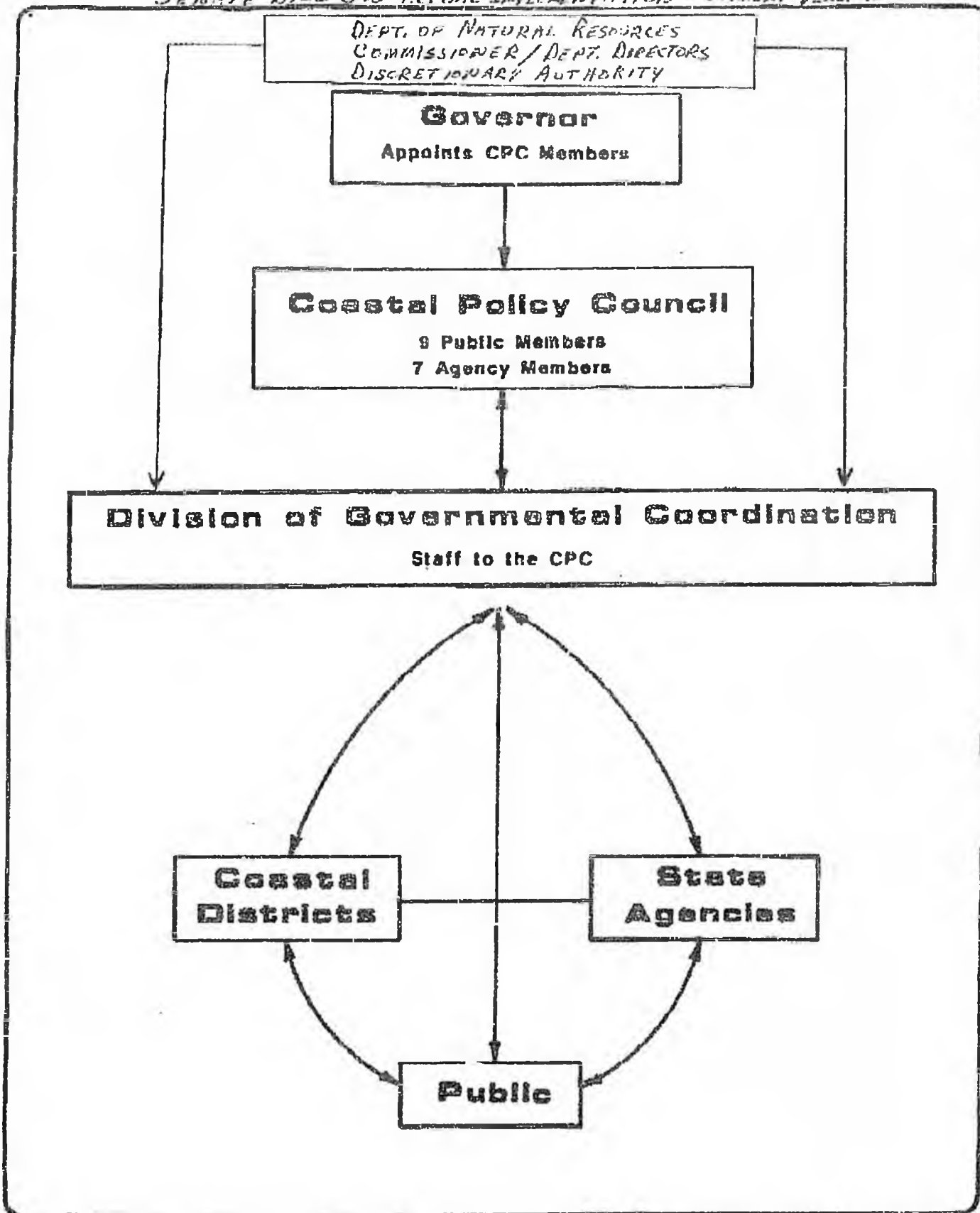
Thank you for positive and appropriate consideration of our concerns.

Sincerely,

Myron Naneng, President - AVCP Inc.

Greg Rozicka
 Resource Mgmt. Specialist II

DEPT. OF NATURAL RESOURCES - CURRENT VERSION



COASTAL MANAGEMENT PROGRAM RELATIONSHIPS

Figure 3E-2

Chapter 2: Policies, Objectives and Standards of the Program

explain the approach of ACMP, but is reprinted here as reference for the substantive aspects of the section.

Section 2. LEGISLATIVE POLICY. It is the policy of the state to:

- (1) *preserve, protect, develop, use, and, where necessary restore or enhance the coastal resources of the state for this and succeeding generations;*
- (2) *encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the use of resources which have a direct and significant impact upon the coastal land and water of the state;*
- (3) *develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have direct and significant impact upon the coastal land and water of the state;*
- (4) *assure the participation of the public, local governments, agencies of the state and federal governments in the development and implementation of a coastal management program;*
- (5) *utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and*
- (6) *authorize and require state agencies to carry out their planning duties, powers and responsibilities and take actions authorized by law with respect to programs affecting the use of the resources of the coastal area in accordance with the policies set out in this section and the guidelines and standards adopted by the Alaska Coastal Policy Council under AS 46.40.*

Chapter 2: Policies, Objectives and Standards of the Program

To further set forth the desired end result of ACMP and to give additional guidance to program participants, the legislature included the following set of objectives:

Section 46.40.020. OBJECTIVES. The Alaska Coastal Management Program shall be consistent with the following objectives:

- (1) the use, management, restoration and enhancement of the overall quality of the coastal environment;*
- (2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;*
- (3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;*
- (4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority which compared to uses which do not economically or physically require a coastal location;*
- (5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;*
- (6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;*
- (7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and*
- (8) the full and fair evaluation of all demands on the land and water in the coastal area.*

PURPOSE OF COASTAL MANAGEMENT IN ALASKA

With the passage of the Alaska Coastal Management Act in 1977, local governments, rural regions, and the State of Alaska began to manage cooperatively the use and protection of Alaska's coastal resources. Today, thirty-two coastal communities and regions work closely with the state to prepare plans and establish permitting procedures that guide development in their respective local areas. The Alaska Coastal Management Program (ACMP) serves as a forum for resolving conflicts among coastal communities, state agencies, and potential developers. The program seeks to facilitate the permitting of proposed development projects while helping to ensure that local and state interests in coastal development are met.

The Alaska Coastal Management Program is designed to:

- o bring a broad perspective to decisions on coastal uses;
- o provide information needed for sound decision-making;
- o provide a forum where conflicts can be identified and resolved;
- o enhance the State of Alaska's role in federal resource decision-making and the role of local governments in state and federal decision-making; and
- o improve the timeliness and coordination of permitting decisions for coastal projects.

COASTAL MANAGEMENT: THE LEGISLATIVE FRAMEWORK

Coastal management planning began at the national level with the enactment of the federal Coastal Zone Management Act (CZMA) of 1972. In the federal act, Congress stated its intent to "develop a national program for the management, beneficial use, protection, and development of land and water resources of the nation's coastal zone." The overall goal of the program is to achieve a proper balance of resource development and protection.

The federal act encourages states to develop coastal management programs tailored to their needs and interests. As an incentive, the federal act authorizes grants to states to develop and implement their programs. The act also requires the federal government, in its discretionary actions, to be consistent with approved state programs.

The State of Alaska initiated its coastal management program by adopting the Alaska Coastal Management Act in 1977. The Act received federal approval in 1979. The Alaska Coastal Management Act (ACMA) provides for orderly and balanced development of Alaska's coast, with full opportunity for coastal residents to take part in planning and decision-making.

The state act provides for local communities and regions designated as "coastal districts" to develop proposals for managing their coastal resources. The districts submit their management proposals to the state and then the federal government for approval. When the district's proposal for managing its coastal resources earns state and federal approval, the district is acknowledged to have an "approved district program." These approved district programs, along with the more general standards of the ACMP, set the guidelines for coastal development in Alaska.

The state act establishes coastal districts based on the existing organization of local government. Coastal districts include:

- o organized boroughs that exercise planning authority;
- o unified home rule municipalities;
- o home rule cities, first-class cities, and, under certain circumstances, second-class cities; and
- o regional coastal resource service areas directed by elected planning boards.

Figure I-1 is a map of Alaska which shows the 32 organized coastal districts.



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

SB 308 DISPOSALS OF INTERESTS IN STATE LANDS

WHAT DOES THIS LEGISLATION DO?

SB 308 allows the Department of Natural Resources to limit consideration to only those issues involved in the first step, or "phase," of a project when considering a disposal of state resources.

This incomplete review allows DNR to ignore the long-term and cumulative impacts of a project. Review can be restricted to only those effects that happen in the first phase.

For example, a "phased" consideration of an oil and gas lease sale could limit the department review to only the first step that takes place, which may be exploration.

"Phasing," or incomplete consideration of a project, can create a potentially costly buy back situation.

If it is found at a later stage that there are unresolvable conflicts which were not identified at the lease sale stage, the state may be legally liable for project costs, repayment of original purchase cost, penalties, and lawsuits;

SB 308 Affects all resource development, including timber, land, mining, and recreation/tourism. These broad effects have not been examined by all impacted parties in a public forum. This bill is not limited to oil and gas alone, but sets the process for all state land resource disposals.

SB 308 allows the "phasing," or incomplete consideration of a disposal, to be used even in those regions of the state included in the coastal zone,

This approach may put the State out of compliance with federal law. Letters from the federal office of Ocean and Coastal Resource Management, as well as our own Department of Law analysis, point this out.

SB 308 radically reduces the rights of Alaska citizens to appeal inaccurate or short-sighted government decisions on land or other resource disposals. Under SB 308, a person would be required both to "meaningfully" participate in the public comment process, and would have to show that he or she is affected by the disposal. This is a major change in our law which now allows any resident to go to court and ask for a decision on the merits.

SB 308 SHOULD NOT BE ADOPTED. If DNR is convinced that these major issues require statutory change, an interim working group process should be established to include local governments, local coastal resource areas, interested organizations, other state departments, and general public participation. This would allow a comprehensive approach to be developed that avoids the problems we have seen so far.

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fishermen's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Drifters Association • Concerned Area 11 Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kona Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Pura Selva Vessel Owners Association
Seafood Producers Cooperative • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

April 26, 1994

Brian Porter
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: House Bill 474 CSSB 308 (FIN)

Earlier this session, the Administration advanced HB 474 and its Senate counterpart SB 308 purportedly to rectify several court decisions which found DNR decisionmaking in leasing State land for oil and gas development and mining to be inadequate in several respects. Rather than simply comply with the law as it has stood for many years, DNR complains that it needs more authority from the legislature to be the sole judge of whether such land disposals are in the "best interest" of the State and are consistent with the Alaska Coastal Management Program.

On Friday, April 22, the Senate passed an amended version of the counterpart to HB 474; CSSB 308 (fin). If the proposed legislation passes into law in its current form the public will have lost almost all meaningful opportunity to participate in the decisionmaking process. Moreover, incorporation of traditional safeguards of social, cultural and environmental concerns will be left to the sole discretion of State bureaucrats.

Specific issues of concerns are outlined in the short document attached to this letter. Perhaps most alarmingly, the proposed legislation would permit piecemeal evaluation of state land disposals and projects in Alaska's coastal zone, the effect of which would be to skew the decisionmaking process toward the result the government agency reviewing the proposal supports; whether it be for or against a particular project. The proposed legislation also seeks to significantly modify Alaska law regarding who can sue over such decisions and contains many ambiguities which will further cloud issues and lead to more litigation.

Please consider shelving HB 474 until DNR and the Administration convene a working group to discuss specific problems with the current law and work together affected with parties to reach consensus on how the law should be changed. As you will surely see in the next few days, there is no broad-based support for HB 474, interested parties, whether they be environmental organizations such as Trustees, coastal districts, fishing organizations and various boroughs around Alaska, all have serious concerns about HB 474.

Finally, DNR recently sent to you a critique of what the courts did wrong in the litigation which led DNR to advance HB 474. Rather than responding to a critique of what the courts should have done, I believe it would be more helpful in understanding the need for the proposed legislation if you were provided with a more objective analysis of what the courts actually held in the litigation at issue. With that in mind, I have attached an analysis of those cases.

Sincerely,



Peter Van Tuyn
Acting Litigation Director



Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

April 6, 1994

Senator Drue W. Pearce
Senator Steve Frank
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Ak. 99801-1182

Re: SB 308 and DNR's Litigation Summary

Dear Senators,

As you know, SB 308 includes changes to both the Title 38 "best interest" finding requirement and the Title 46 Alaska Coastal Management Program. This bill was introduced to rectify perceived problems with these statutes which came to light largely through various cases involving State oil and gas lease sales.

While we may disagree as to the "problems" created by such litigation, whether they are indeed the result of faulty judicial opinions or simply inadequate implementation of the statutes by DNR, it cannot be questioned that the judiciary's treatment of cases arising under these titles is central to the debate over SB 308. Apparently with that in mind, DNR recently provided you with a "Litigation Summary" of the relevant cases. Unfortunately, instead of providing you with an objective summary of what the courts have held in these cases, DNR's Litigation Summary is essentially a critique, from DNR's perspective, of what the courts did wrong.

While it is understandable that DNR would be upset at being on the losing end of so many cases, impugning the integrity of the court system adds nothing to the debate over the need for SB 308. Indeed, an independent judiciary is a central tenet of both our state and federal forms of government.

Rather, it would seem more helpful for the legislature if it were to possess an objective perspective on the courts' holdings. As the attorneys for the plaintiffs in each of the oil and gas lease sale challenges, you may not believe that Trustees is the appropriate party to provide you with such an objective review of the current state of the law on Titles 38 and 46. Nevertheless, DNR's "Litigation Summary" contains many mischaracterizations, several of which deserve mention.

In critiquing each of the cases, DNR constantly summarizes arguments made by Trustees, et al., which the Alaska Supreme Court rejected. How such a summary is relevant to the debate over SB 308

is not clear, indeed, it would seem to support the view that the courts are willing and able, in the majority of issues, to grant DNR the "deference" it repeatedly complains to have been denied.

In any event, the Alaska Supreme Court has certainly found deficiencies in DNR's lease sale analyses under both the Title 38 "best interest" finding requirement and the Title 46 ACMP consistency determination requirement. First, it is worthwhile noting that, as the Supreme Court has repeatedly stated, it reviews DNR's "best interest" findings and consistency determinations "only to the extent necessary to ascertain whether the decision has a 'reasonable basis,'" Trustees for Alaska v. State, DNR, slip op. No. 4039 (Alaska Dec. 23, 1993) (Demarcation Point), and to ensure that it "'was not arbitrary [or] capricious.'" Trustees for Alaska v. State, DNR, 795 P.2d 805, 809 (Alaska 1990) ("Camden Bay") quoting Hammond v. North Slope Borough, 645 P.2d 750, 758, 759 (Alaska 1982). This review includes an analysis of whether DNR has taken a "hard look" at the "salient problems" and has "genuinely engaged in reasoned decision making." Id. quoting Alaska Survival v. State, 723 P.2d 1281, 1287 (Alaska 1986); see also Demarcation Point, slip op. at 5.

In the Camden Bay case, the Court simply held that, given the remoteness of the area to be leased for oil and gas activities, and the fact that the nearest land (ANWR) was not available for the siting of transportation facilities, transportation methods and their relative risks, were important factors relevant to the decision whether the lease sale is in the "best interest" of the State. Camden Bay, 795 P.2d at 810-11. As DNR "omit[ted]" any discussion of this issue in its finding, the Court remanded the case back to DNR to "consider the unique risks presented by the oil transportation methods that would be necessary if the legal status of ANWR remains unchanged" and directed that "[t]hose risks should be weighed with the other risks and benefits flowing from the decision to lease." Id. at 811.

Rather than failing to give DNR deference with respect to analyzing "determinations involv[ing] complex subject matter or fundamental policy formulations." id. at 809, the Court merely recognized, through plentiful evidence and common sense, that transportation in the Arctic is troublesome at best and, when it must be conducted in large part offshore, its feasibility and risks are certainly relevant to the decision whether to permit oil and gas activities offshore. DNR's response to this unanimous Supreme Court decision is to complain that the Court "overlooked" DNR's treatment of the transportation issue. DNR Litigation Summary at 3. This despite the fact that DNR filed a petition for rehearing with the Court which purportedly set out where this treatment could be found.

Notably, this exact issue was raised in the Demarcation Point lawsuit, where Trustees pointed out that the transportation

analysis in the findings for the Camden Bay and Demarcation Point lease sales were remarkably similar, indeed practically identical, in their failure to discuss transportation methods and the relative risks of such methods. See Demarcation Point, slip op. at 8-11.¹ Instead of voluntarily supplementing the transportation analysis in the Demarcation Point finding as result of the Supreme Court's ruling in Camden Bay, DNR chose to argue the issue, contending that its earlier briefing of the transportation issue in the Camden Bay appeal was "incomplete." Id. at note 5. Not surprisingly, the Court unanimously rejected DNR's argument and remanded the issue to DNR for a supplemental finding, similar to that ordered in Camden Bay. Interestingly, DNR's Litigation Summary wholly fails to discuss this aspect of the Demarcation Point appeal.

Another issue in the Demarcation Point appeal was the impact of the sale on the Porcupine Caribou Herd, which, despite DNR's assertions to the contrary, is present in, and immediately adjacent to, the sale area at certain times of the year. See e.g., slip op. at 11-15. DNR asserts that "the Court failed to defer to agency expertise" when the Court, once again unanimously, determined that DNR's treatment of the impacts of the sale on the Porcupine Herd was deficient. DNR's Litigation Summary at 8-9. DNR complains that AS 38.05.035(g) does not require examination of a lease sale's impacts outside the lease sale area. Id.

This legal conclusion; that DNR need only examine the impacts of the sale in the sale area, is belied by DNR's own treatment of the caribou issue in its finding for the Demarcation Point sale. In the finding, DNR stated that development in the sale area "should not" affect ANWR and, as the Court noted, DNR "simply made the unsupported assumption that offshore development cannot affect caribou." Demarcation Point, slip op. at 13. If DNR truly believed its interpretation of AS 38.05.035(g) was reasonable, it would have ignored the issue altogether, or at best explained its interpretation of the statute, rather than coming to what is clearly an unreasonable conclusion.²

DNR asserts that, through the Demarcation Point opinion, the "the Supreme Court created an undefined zone around the sale area which DNR must somehow, without guidance or restriction, delineate and evaluate." DNR's Litigation Summary at 9. As the Supreme

¹ Demarcation Point is also located offshore of ANWR, approximately 30 miles further from land-based transportation facilities than Camden Bay. See id. at note 4.

² In pointing out DNR's inconsistent arguments, I do not mean to concede that caribou are not actually present within the sale area; they travel in and through the marine environment to, among other things, gain some relief from insects during the post-calving season.

Court noted, however, DNR has no problem looking far beyond the sale area for the beneficial impacts of a lease sale. Id. at note 8. It defies reason, therefore, to assert that the detrimental impacts of a lease sale cannot be examined and evaluated unless they are within the sale area. The standard, as the Supreme Court constantly reiterates, is whether DNR has taken a "hard look" at the "salient problems." Id. at 5. If an issue does not raise a "salient problem," and DNR's basis for concluding that an issue is not salient is reasonable, the courts will not interfere. See id.

The second Supreme Court decision regarding the Camden Bay lease sale merely required DNR to comply with existing ACMP standards concerning identification of known geological hazards and archeological sites; hardly an onerous burden. See Trustees for Alaska v. State, DNR, 851 P.2d 1340, 1343-46 (Alaska 1993) (Camden Bay II). DNR's criticism that it cannot meet this standard until later stages of the lease process, while perhaps relevant to unknown sites, makes no sense for sites known at the time of the lease sale; there simply is no speculation involved.

Despite DNR's complaint in a petition for rehearing (noted as well in the Litigation Summary) that the Court "overlooked extensive evidence" which showed that DNR actually met the standard, the Court remained unanimous in its opinion. In fact, DNR repeatedly calls into question unanimous Supreme Court decisions because of the Court's alleged "overlooking" of "extensive evidence." DNR, however, has had repeated opportunities to "educate" the Court on this evidence, filing petitions for rehearing in both Camden Bay cases and the Demarcation Point case and arguing previously litigated issues in the Demarcation Point case on the assertion that prior briefing was "incomplete, slip op. at note 5. Despite these efforts, DNR has failed to change the Court's collective mind on any significant issue; a revealing fact in its own right.

DNR also asserts that the Sale 57 and 75A appeals are somehow relevant to the debate over SB 308. While the logic of this is unclear given the fact that both cases were dismissed before any ruling from the courts, DNR's analysis of the cases reveals a fundamental misconception about the right of the public to bring a lawsuit in Alaska (referred to as the "standing" doctrine) and a fundamental misunderstanding of administrative law. As even a brief review of "standing" law in Alaska will reveal, Alaska does not follow the federal requirements for standing, but rather proceeds under a much broader standard. See e.g., State v. Lewis, 559 P.2d 630, 634 & note 7 and cases cited therein (Alaska 1977) cert. denied 432 U.S. 901 (1977) ("this court has liberally construed the judicial limitation of standing and has favored increasing accessibility to the courts"). Moreover, to assert, as does DNR, that a member of the public cannot judicially challenge a decision of its government unless it participated in the administrative process flies in the face of both common sense and

the law. To preserve an issue for appeal, courts merely require that an agency have had the opportunity to pass judgment, during the administrative process, on the issue later raised in an appeal. See e.g., Reid v. Engen, 765 F.2d 1457 (9th Cir. 1985); Marathon Oil v. U.S., 807 F.2d 759 (9th Cir. 1986) cert. denied 480 U.S. 940 (1987); Unemployment Comm'n of the Territory of Alaska v. Aragon, 329 U.S. 143 (1946). To hold otherwise would demean, indeed prevent, the public's reliance on "expert" state and federal agencies to comment on complicated issues. As applied to Sales 57 and 75A, under DNR's interpretation of the law, Trustees, et al., would have been prevented from raising concerns initially raised by both federal and state agencies concerning the impacts of the lease sales. As these agencies work for the public, to preclude use of their information in an appeal because Trustees did not repeat, in separate comments, the exact same concerns, would be draconian at best.

Finally, while DNR presents a detailed critique of Judge Cranston's preliminary ruling in the appeal of Sale 78, as that case is ongoing and I am the attorney representing the plaintiffs, I do not feel it is appropriate, at this time, to discuss the appeal.

In any event, I do not suggest that you should rely upon my reiteration of the litigation which has purportedly led to SB 308. I merely provide it to present my perspective on the cases and to clear up what I believe to be serious mischaracterizations made by DNR in its Litigation Summary. Rather, I encourage you to read the cases themselves and come to your own conclusions as to what, exactly, they say.

Thank you for your time and I would appreciate it if you could distribute this letter to other members of the Senate Finance Committee.

Sincerely,



Peter Van Tuyn

ISSUES OF CONCERN

Without seeking meaningful input from Alaska coastal districts or other members of the public, the Hickel Administration is promoting legislation designed to significantly modify how the State of Alaska conducts "best interest" findings for the disposal of State land and consistency reviews under the Alaska Coastal Management Program (ACMP). HB 474 and SB 308, House and Senate counterparts of the same bill, have been advanced by their sponsors as bills designed to increase the State's ability to efficiently dispose of public lands and permit activities in Alaska's coastal zone. Unfortunately, these bills do so at the expense of both purposeful input from the public and balanced development.

On April 21, 1994, the Senate passed an amended version of SB 308. CSSB 308 (fin), despite the amendments, does little to alleviate the concerns of coastal districts and others disturbed about the Administration's haste attempt to modify long-established procedures and public safeguards against inadequate decisionmaking. The following issues, raised by CSSB 308 (fin) and HB 474, remain of great concern.

I. A WORKING GROUP CONSISTING OF COASTAL DISTRICTS AND OTHER AFFECTED PARTIES SHOULD BE ESTABLISHED PRIOR TO ALLOWING PHASING OF "BEST INTEREST" FINDINGS AND CONSISTENCY REVIEWS

A fundamental problem with HB 474 and CSSB 308 (fin) is that they allow for a piecemeal approach to review of both land disposals under Title 38 and ACMP consistency reviews. If these bills were to pass as written, the State would merely have to examine one "phase" of a contemplated action -- either a disposal of public land or a proposed development -- with no analysis of the impacts or costs of later phases of the proposed use or activity. This approach limits the public's ability to both understand the likely impacts of a proposal and have meaningful input into the ultimate decision to be made. The effect of the piecemeal review of the proposed legislation is to skew the decisionmaking process toward the result the government agency reviewing the proposal supports; whether it be for or against a particular project.

A. Title 38 Land Disposals Should Not Be Phased Absent Explicit Statutory Standards For Analysis

The proposed legislation would permit piecemeal review of all land disposal decisions, not just oil and gas lease sale decisions, problems with which DNR claims as the reason behind the legislation's introduction. Oil and gas lease sales, however, are subject to the standards contained in AS 38.05.035(g), designed to assure consideration of important public and environmental concerns. No other type of disposal, whether it be for timber, mining or some other use or activity, has a delineated set of standards with which to measure a decision to dispose of public

land. Because the proposed legislation allows the government agency decisionmaker the sole authority to determine what is "material" to a land disposal decision, the legislation would allow the State to dispose of non-oil and gas resources at the sole discretion of bureaucrats within the State's resource agencies.

Moreover, even for oil and gas lease sales, the proposed legislation intends to allow piecemeal review of later phases of a lessee's activity which are subject to permitting requirements. The consequences of granting such broad authority to one State bureaucrat are broad; for example, at no point would the State be required to analyze what is truly in the "best interest" of the State when conflicts between competing uses are evident.

B. Any Phasing Of ACMP Consistency Reviews Must Be Consistent With Federal Coastal Zone Management Requirements

The proposed legislation permits piecemeal review of projects in Alaska's coastal zone by allowing the ACMP consistency review to be "limited" to facts pertaining to solely the use or activity proposed for that phase and which are, in the decisionmaker's mind, "material" to the consistency determination. All the decisionmaker need do to so limit the review is declare that a fact or issue is not "material," or assert that it relates to a later phase of a project. Once again, this allows the State decisionmaker to wear blinders by sanctioning ignorance of the true costs and impacts of a project.

While the proposed legislation's sponsors contend that this provision merely meets the intent of the federal phasing model, it clearly does not. Under the federal model, phasing is used to ensure ongoing coastal program review of long term projects. Thus, the federal government uses phasing of its consistency reviews not as a tool to limit public input into the decisionmaking process or to ignore impacts but rather as a method of considering all costs and impacts of a proposed project, even if they do not become known until a later phase of a project.

Moreover, concerns with piecemeal review of coastal projects go beyond the ACMP consistency review process itself. If the federal government were involved in a project, for example, NEPA would not sanction such a piecemeal review. See e.g., 40 C.F.R. § 1508.28(b)(7). Furthermore, under Section 404 of the Clean Water Act, triggered whenever a proposed project impacts waters of the United States, including wetlands, an entire project must be submitted for review. See 33 C.F.R. § 325.1(d)(2) (requiring analysis of "all activities which the applicant plans to undertake which are reasonably related to the same project and for which a [Corps of Engineer] permit would be required"); see also 40 C.F.R. § 230.11(g). Thus, the proposed legislation creates an untenable situation where a project may meet ACMP standards for analysis but

fails, absent further analysis, under NEPA and the Clean Water Act because the project review was too limited.

In summary, piecemeal review of public land disposals in a "best interest" finding, and of coastal projects in an ACMP consistency review, raise myriad problems. The issues raised by phasing are complex and directly impact all Alaskans. Legislation changing the way so many Alaskans do business and conduct their daily affairs should not be rushed through the legislature.

Recently, the legislature passed SB 238 to change the Coastal Policy Council petition process. SB 238, sponsored by the same people who advance HB 474 and CSSB 308 (fin), was also intended to address perceived problems with the status quo brought to light by litigation over oil and gas lease sales. In that case, however, the State approached all the interested parties, including coastal districts, and formed a working group to try and reach consensus on the issue. This approach was a resounding success, as evidenced by the easy passage of the bill through the legislature.

As recommended by the Coastal Policy Council during its recent conference in Juneau, the legislature should counsel the Administration to use this same approach for the proposed legislation. A working group should be formed, composed of coastal districts and other interested members of the public, as well as those within the Administration who support the widespread changes reflected in HB 474 and CSSB 308 (fin). This group could work during the interim to find an approach that is acceptable to all parties and that could then pass through the legislature without the controversy surrounding HB 474 and CSSB 308 (fin).

II. WELL-ESTABLISHED ALASKA LAW SHOULD GUIDE WHO HAS STANDING TO SUE

The sponsors of HB 474 and CSSB 308 (fin) have attempted to change the standards under which an appeal can be taken of an administrative decision covered by the proposed legislation. The proposed legislation limits the "standing" of a potential litigant to one who requested reconsideration of the decision and, apparently, raised themselves all issues of concern in the reconsideration request. This change would seemingly bar the traditional reliance on concerns about a proposal expressed by the state and federal expert agencies. Moreover, by including the requirement that only those "affected by the decision" may appeal, the proposed legislation does not comport with existing Alaska law which allows for liberal access to courts under the well-reasoned "taxpayer" standing doctrine. The proposed legislation should be amended to clarify that it is not intended to change the current Alaska law on standing or, better yet, to be silent on the issue altogether.

III. ECONOMIC FEASIBILITY IS CENTRAL TO DETERMINING THE PRUDENCE OF A PROJECT AND IN SETTING THE CONDITIONS UNDER WHICH A PROJECT MAY PROCEED

The proposed legislation also gives State decisionmakers the unfettered discretion to disregard whether or not a proposed project is economically feasible. Economic feasibility, however, is not defined and a failure to address economic detriments from a proposal could result in concrete implications for disposals which affect coastal districts. Thus, the proposed legislation should be clarified to make clear that a "best interest" finding should consider the potential economic benefits and detriments from a disposal.

IV. DECISIONMAKERS MUST BE REQUIRED TO CONSIDER ALL REASONABLY FORESEEABLE SIGNIFICANT EFFECTS AND MUST BE GIVEN THE FLEXIBILITY TO CONSIDER A BROADER RANGE OF EFFECTS

As currently written, the proposed legislation mandates that the decisionmaker "may address only" reasonably foreseeable significant effects of a disposal. This phrase further permits a decisionmaker to limit review of a disposal because the use of the term "may" means that the decisionmaker is not obligated to address those effects. Additionally, by using the term "may ... only" the legislation prohibits the consideration of anything but reasonably foreseeable significant effects. This language should be changed to read that the decisionmaker "shall address" reasonably foreseeable significant effects, thus both requiring all such effects to be analyzed and allowing the flexibility to consider others.

* * *

In conclusion, as evidenced by the Coastal policy Council's recent refusal to support the legislation despite the Administration's urging, HB 474 and CSSB 308 (fin) raise serious and complex issues which must be carefully considered prior to becoming law. Without this careful consideration long-established processes will be changed before the implications of such change can be fully understood. Similar to that convened for SB 238, a working group should be assembled to address the proposed legislation and given time to reach consensus on both the need for, and the wording of, legislation impacting Title J8 land disposals and ACMP consistency reviews.

NATIVE VILLAGE OF TUNUNAK

Tununak IRA Council
DEPARTMENT OF NATURAL RESOURCES
P.O. Box 107
Tununak, Alaska 99681
(907)652-6527 / Fx. 652-6011

April 25, 1994

HONORABLE BRIAN PORTER
HONORABLE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Subject: House Bill 474/CSSB308(Fin)

Chairman Porter and Honorable Members of the House Judiciary Comra.:

The Tununak IRA Council has grave concerns about the unfairness of House Bill 474 and CSSB 308(FIN)am, and its conflict with federal coastal zone requirements and the Alaska Coastal Management Program's guided principles to protect us from the dominance of some agencies' bureaucratic dilemmas and their decision making process to dispose state land for development under these bills.

Subject to the State's Best Interest amid amendments to dispose land as described in CSSB308(FIN)am, nevertheless, provide the opposite of the legislature's intent to permit development in the best intelligent manner. We find inconsistencies and controversy that conflict with the original intent of the Coastal Zone Management requirements.

PHASING

We will discuss CSSB308(FIN)am, passed by the Senate. We wish to caution that, phasing under this bill limits the ability to require Alaska's Department of Natural Resources (DNR) to consider all costs and impacts of proposed projects from the beginning.

At the "*director's discretion*" (Page 3, Line 17) the state would only assess one phase, and "*may address only reasonably foreseeable significant effects...*" (Page 3, Line 22). Thus, avoid argument to address impacts by the first phase of development. Depletion of fish and

wildlife resources and their habitat from cumulative effects caused by the first phase gives the Director unfair judgment and discretion to reject any argument, and determine new resource information immaterial and nonexistent. Moreover, it accelerates and binds the process to continue with development, despite imbalances, by rendering phasing (Page 12, Lines 22-31, and Page 14, Lines 1-6).

RECOMMENDATION: Delete "*may address only*" to "*shall address.*"

The Director with his new discretionary power shall decide if your concerns are "*material*" (Page 7, Lines 13-31; Page 8, Lines 1-28) enough to consider in his "*preliminary or final finding, as applicable*" (Page 8, Line 29-31).

IGNORES SCIENCE AND OBSERVED KNOWLEDGE

Phasing will give the Director unlimited power to ignore science and long developed experiential and traditional knowledge, as *speculative* (Section 1(8)-Page 2, Line 25-27; Page 9, Lines 3-11) and immaterial. This agency has shown valid observations as "speculative, unscientifically based, and only a belief" no matter how long observations were made throughout one's lifetime. These terms have been given the determining factor to control and manage our resources, giving the agencies ultimate say, however unfit a decision may be.

This piecemeal approach, derives ignorance to all land disposals (Page 6, Lines 9-27) away from intelligent decision-making processes, and modifies safeguards against unsound development as originally intended by the Alaska Coastal Management Program.

DIRECTOR HAS FULL DISCRETION

Written findings under this rule "*is not required before the approval*" (Page 6, Line 7) to all "*other disposal of available land*" including sales contracts, leases, permits, mineral claims, and licenses (Page 6, Lines 9-22) "*or an interest in land for oil and gas*", as established by "*material fact*" (Page 6, Line 4) under the Director's discretion.

We question the validity of not requiring written findings before a project is approved. Does this mean once a project is approved, the Director may write one after the decision is made?

RECOMMENDATION: Delete "*material*".

The Director can "*limit the scope of an administrative review and finding...that pertain solely to a discrete phase of the project*" (Section 2(e) (1)(C), Page 4, Lines 7-19), by using what is material only to his point of view with broad authority. The amended language under Section 2 changes AS 38.05.035(e) will limit public participation, if not eliminated, under this process. The Director "*may address only reasonably foreseeable significant effects of the uses to be proposed*" (Page 3, Line 22).

RECOMMENDATION: Delete "*may address only*" to "*shall address*". Delete the word '*may*' throughout the language of the bill to "*shall*" where applicable.

Phrasing used by the federal government guarantees the method of assessing all costs and effects of a proposed project, by incorporating public knowledge, known facts and findings, provided to them at the beginning, not as a tool to limit legitimate concerns, but gives due deference to legitimate concerns.

Section 404 of the Clean Water Act, require entire projects to be submitted for review, including wetlands. HB 474 and CSSB 308(Fin)am limit reviews and proper analysis of projects required under 33 C.F.R. Ss325.1(d)(2) ("*all activities which the applicant plans to undertake which are reasonable related to the same project and for which a permit would be required.*"); and 40 C.F.R. Ss230.11(g). The agency is given the ability to proceed without thoroughly understanding and assessing cumulative and long-term impacts of projects.

**DESPITE INSUFFICIENCIES TO BEST INTEREST FINDINGS
REVIEWERS ARE ALLOWED MINIMAL TIME TO MAKE FULL
ASSESSMENT.**

Requests for reconsideration submitted under CSSB308(FIN) Section 4(i) allows *20 days* in which to challenge a final written finding submitted to the commissioner. The commissioner "*shall grant or deny the request*" (Page 9, Line 30).

RECOMMENDATION: Change *20 days* to *30 days*.

This is a radical change from present law under the administrative process.

As written, the bill restricts standing to appeal to:

- 1) People who have meaningfully participated in the process leading up to findings;
- 2) People affected by the process. Some rural communities lack technical experience to adequately address and understand findings. This process unfairly closes those communities.

This language also supports the Director's decisions if the commissioner does not "*act on the request*" (Page 9, Line 31) within 30 days after the request. Thus, force the aggrieved party to "*appeal to the superior court*" (Page 10, Line 2). We question how this language affects Senate Bill 238.

Timing developed by DNR in CSSB308(Fin)am gives the Director the ability to reject information as insufficient evidence to support what is material to him. Timing is inadequate for interested parties to properly assess the directors' findings and provide information, especially in a rural setting, with only 20 days after the finding is issued (Page 9, Line 14).

RECOMMENDATION: Replace 20 days to 30 days (Page 9, Line 14).

Notice Of An Action is given insufficient time when advertised "*...once a week for two consecutive weeks*" (Page 11, Lines 22-25) and only given "*30 days*" (Page 12, Line 7) before an action.

RECOMMENDATION: 'Four consecutive weeks, twice weekly, at daily newspapers,' and 'Four consecutive weeks, Once weekly, at weekly newspapers'. Again, 60 days, prior to an action should be made.

DNR wishes a legislative quick-fix for its own mistakes it created. It will increase litigation under HR474 and CSSB308(Fin)am. DNR established these bills from three lawsuits under the current process, and wishes to develop significant impacts in a more efficient manner.

We support well thought, thoroughly planned development. Let us not repeat mistakes by the 18th century's lack of respect for the land, fish and wildlife

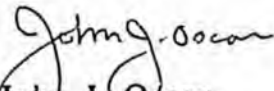
resources, and the blind sighted approach to haphazard development. We do not wish to see the creation of a bulldozing bureaucratic monster for lack of equitable language.

We recommend that a working group be developed to come to a more appropriate consensus on these bills, than a hasty development with conflicting language.

Several meetings took place between DNR and some coastal districts, but were not given enough opportunity to settle differences. SB 238 presents a good model, which addresses how petitions will be handled, the language was developed between DNR, the Coastal Districts and the Alaska Coastal Policy in a cooperative agreement. Why not allow such a group to develop a similar approach.

Thank you for the opportunity to comment.

Sincerely,
NATIVE VILLAGE OF TUNUNAK
Department of Natural Resources


John J. Oscar
President

TESTIMONY TO HOUSE JUDICIARY COMMITTEE
CS SB308 (FIN) am

Theo Matthews
P.O. Box 69
Kasilof, Ak. 99610

Cook Inlet commercial salmon permit holder

Representing Cook Inlet commercial fishing and UCIDA.

-3,500 harvesters

-3,000 processing workers = 40% of Kenai Peninsula Borough work force

Representing UFA - 21 regional associations from Ketchikan to Bering Sea.

Sent brief comments yesterday evening and assume that all our previous comments and testimony have been given to committee members.

NO notice, have notes, REED for public comment - *3-5 minutes not adequate*

UCIDA and UFA oppose CS SB308(FIN) which treats the disposal of all state resources

→ list concerns out of letter to Porter ^{Per:} *1) paper transactions*
2) non oil
3) standing

Analogy to represent our position and the "process" of 308's evolution to purchasing a new car.

Get in and won't start - engine broken - FUNDAMENTAL problem.

Dealer says, O.K., I'll send it to the shop and have my experts fix it.

Come back and car has new paint job BUT still won't run.

Dealer says, I'll send it back and have my experts fix it.

You come back and in addition to a new paint job, the brakes have been fixed and there is a new interior and the Dealer says, "It looks great"

BUT, the fundamental problem hasn't been fixed.

THE CAR STILL WON'T RUN.

With respect to SB308, comfish groups identified two major problems.

-1st, 308 inappropriately includes all state disposals.

In addition to oil & gas, that would include mining, timber and water rights among others.

It has repeatedly been pointed out to DNR that, while oil & gas disposals

→ SB308 is amended Do NOT address fundamental problems of
1) paper transaction
2) non-oil & gas disposal
SB308 was amended to add new section of which radically alters public's standing to appeal or request reconsiderations

ALASKA OIL AND GAS ASSOCIATION
POSITION
ON
SB 308/HB474
ADMINISTRATIVE ACTION RELATING TO LAND

February 25, 1994

The Alaska Oil and Gas Association (AOGA) is a trade association whose member companies account for the majority of oil and gas exploration, production, transportation and marketing activities in Alaska.

AOGA supports a full analysis of all issues and concerns through the best interest finding process for each lease sale. The Association feels that the current statutes and regulations were designed to do just that.

However, AOGA is concerned by the uncertainty that has been created by recent rulings of the courts interpreting the current law.

AOGA supports certainty in the process so that DNR's scope of review can be defined during the administrative review process and not by the courts. We feel that most of the people testifying today would agree with that. The scope of the review should be defined by the administrative review process and not by the courts. The only question is how to define that scope of review.

AOGA believes that the scope of review for the best interest finding for oil and gas lease sales should cover three things.

First, through review of the information available to the Director, the director should determine those issues that should be addressed during the review.

Second, all public comments should be considered in determining what the scope of the review should be.

Third, the legislature has determined that those items listed in AS 38.05.035(g) should be a part of the scope of review.

If the Director, the public, and the legislature do not consider an issue to be of sufficient concern then the courts should not be allowed to decide it should have been covered in the best interest finding.

AOGA believes that the intent of this bill is directed at providing certainty in the scope of review.

AOGA supports SB308/HB474.

Nancy Lord
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Homer, Alaska 99603

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(907) 235-8253 fax

April 26, 1994

TO: REP. BRIAN PORTER, CHAIR
HOUSE JUDICIARY COMMITTEE
FAX 465-3834

RE: SB 308

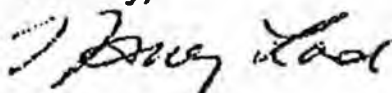
Please provide copies of this, my written testimony, to all members of the House Judiciary Committee at your Wed., 4/27 meeting. Thank you.

I am opposed to SB 308, which significantly shifts state leasing policy to make leasing "easier" for DNR, at the expense of public involvement and an honest balancing of interests in determining what activities shall take place within our coastal zones. SB 308 is an overreaction to oil and gas lease sale 78 in Cook Inlet, in which DNR did such a poor job of complying with existing law, considering public input, and balancing interests that the court rightly took the department to task. The answer is not to change the law so that DNR can do what it wants "more efficiently," but for it to obey the law and recognize that there are indeed some activities that are not always compatible in the same places. I am certainly not opposed to all oil and gas development and did not object to leasing adjacent to my own fishing locations, but only an idiot can think that oil rigs can coexist with drift fishing in the very tight fishing corridor along the Kenai Peninsula.

Rather than "fixing" a perceived problem, SB 308 seems to me to invite further litigation. It also will only add to the deep cynicism of so many Alaskans who already feel extreme frustration when their testimony and concerns are ignored by those in state agencies who have already decided their "best interests." The provisions in the bill that provide for increased notification are a sham when the overall intent is to limit public participation.

A particular concern in the bill, despite changes made in Senate Finance, is the phasing provisions. I urge you to consider the federal coastal zone management requirements; you will see that what is currently in SB 308 related to phasing is at odds with the federal model and limits rather than continues project review.

Sincerely,



Nancy Lord

TESTIMONY TO HOUSE JUDICIARY COMMITTEE
CS SB308 (FIN) am

at least have an agreed list of issues that should be addressed at some time in the process, --- "g" list ---

There are no standards set for non-oil & gas disposals - in our working group jargon there are no "sideboards" for non-oil & gas.

Concerns of commercial fishing groups vary from area to area but they CERTAINLY include non-oil & gas in all areas of the state:

- In S.E. - timber, mining, water rights
- In PWS, CI, Kodiak - oil, timber, perhaps mining
- In Bristol Bay - mining, Oil
- In N. Ak. - mining, timber, oil

There has been much public concern expressed over this issue AND there is NO public understanding of how non-oil & gas disposals would progress under this legislation.

Which gives DNR directors incredible discretion to establish the ground rules for disposals.

WE THINK:

- * Non-oil & gas disposals should be deleted from this legislation until appropriate sideboards are developed for each type of disposal - i.e. mining, timber, water, etc.
- * The second major concern identified early on is the unprecedented discretion granted DNR directors to establish the scope of administrative review and limit the review at his discretion to discrete "phases" of a project.

This great discretion granted DNR directors is a two edged sword. Depending on the inclinations of any given administration, this discretion could just as well be used to prevent development as it could be used to initiate development without considering issues and concerns raised by the public.

- * SB308 would allow DNR to treat the initial disposal of the state's resources as "paper transaction" where a property right may be granted

TESTIMONY TO HOUSE JUDICIARY COMMITTEE
CS SB308 (FIN) am

a lessee without any consideration of even reasonably foreseeable effects.

- * Phasing, as permitted by SB308 puts the public at risk in 4 ways:
 - 1) Granting of property rights may be given prior to consideration of public comment
 - 2) Public must follow individual tracts through the entire development process and comment at each phase.
 - 3) When public comment finally does become relevant, if the state decides it should limit or cancel a project, the public is in a buy back situation.
 - 4) The recent addition of Section 4 which drastically limits the public's standing to appeal or ask for reconsideration.



Post-It™ brand fax transmittal memo 7671

of pages > 1

To	Daniella Lopez	From	Jeff Parker
Co.	c/o Rep. Porter	Co.	ASA/TU
Dept.		Phone #	
Fax #		Fax #	



Alaska Sportfishing Association

3605 Arctic Blvd., Suite 600 • Anchorage, Alaska 99503

4/27/94

Via Fax

To: House Judiciary Committee
ATTN: Rep. Porter, Kott, Jensen

Re: SB 308

ASA and TU remain opposed to SB 308. "Phrasing" of best interest determinations ignores cumulative impacts. SB 308 invites poor land use decisions. For further elaboration, if necessary, call Jeff Parker, ASA board of directors and TU vice president, at 272-9377

Thank you
Jeff Parker

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 27, 1994

The Honorable Gail Phillips
House Majority Leader
Room 216
State Capitol
Juneau, AK 99801-1182

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

Re: CSSB 308(FIN) --
Best interest findings

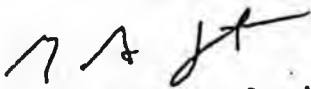
Dear Representative Phillips:

There has been confusion regarding the meaning of "or" on page 7, line 20 of CSSB 308(FIN) am, and some people have suggested that the "or" be replaced with an "and." If this was done, the facts that would have to be considered and discussed in the best interest finding would be severely limited. The result would be the exact opposite effect of what the people who are suggesting this amendment intend.

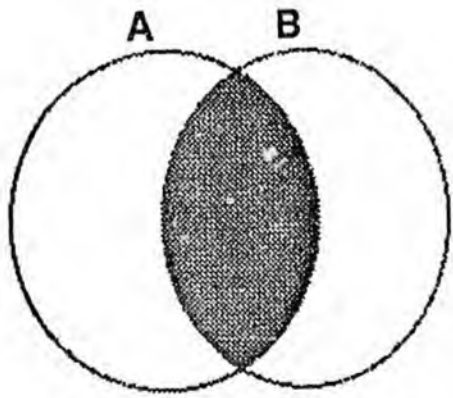
The use of "or" requires the director to discuss first, facts that are known and "material to issues that were raised during the period allowed for receipt of public comment" AND second, facts that are known and material to the matters listed in subparagraph B (page 7, line 22 through page 8, line 21). (The entire shaded area in the diagram labeled "OR"; attached.) If the "or" is changed to an "and," the director would only have to discuss the facts that are known if they are BOTH "material to issues that were raised during the period allowed for receipt of public comment" AND material to the matters listed in subparagraph B (page 7, line 22 through page 8, line 21). (The shaded area in the diagram labeled "AND"; attached.) Thus, the result of changing the "or" to an "and" is to severely limit the facts that the director would have to discuss in the best interest finding for oil and gas lease sales.

Sincerely,

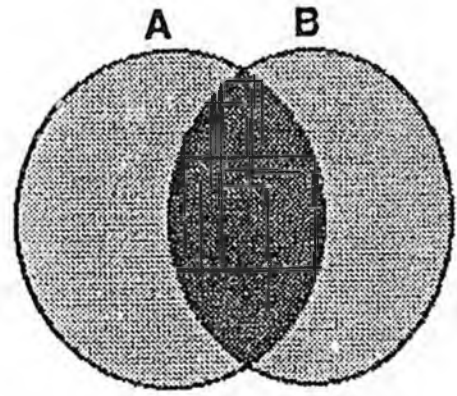
BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Mary Ann Lundquist
Assistant Attorney General

MAL:tg
Attachment



AND



OR



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

April 19, 1994

SENT BY TELEFAX

Representative Bill Williams,
Chair, House Resources Committee
State Capitol, Room #128
Juneau, AK. 99801-1182

SUBJECT: CS SB310 (RES)
UCIDA POSITION: Opposed

Dear Representative Williams,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

UCIDA would like to inform you of our strong opposition to CS SB310 (RES). This legislation constitutes little more than a give away of our timber resources for short term gain at the expense of other uses and users of our renewable resources.

Section 2: Exempts sales under 500,000 board feet from the current public review process which requires that a sale be on the Timber Sale Schedule for two years.

Section 3: Authorizes Forest Management Agreements (FMA). This allows the Commissioner the authority to circumvent the public process and determine that timber harvesting is the best use of the state's forest resources. Other uses will be sacrificed to short term profits for operators. More specific concerns with FMA are as follows:

Rep. Bill Williams

April 19, 1994

Page 2 of 3

- No legislature has adequately funded reforestation or implementation of the Forest Practices Act.
- DNR decides where and what size FMA's will be.
- Public comment occurs only after FMA bids are received.
- There is no provision that the state not lose funds (Please see enclosed Guest Editorial, Peninsula Clarion, 4/19/94). FMA's clearly can create a state subsidized industry not supported by the public.
- Contrary to the claim of many sponsors, FMA's can NOT guarantee local industry. There is no longer a primary processing law in Alaska. The holder of a FMA is free to sell timber to the highest bidder.

Section 4 (c)(3): Requires, for state and municipal forest lands, that they be administered for the expansion (emphasis ours) of harvest activities. This can only be at the expense of other non-extractive uses. At the very least, without definitions of "business, activities; and life styles that are dependent upon or derived from forest resources" this amendment will create endless litigation and is ripe for abuse.

Section 5: Much as Section 4, creates a defacto preference for harvest activities, the new language of this section clearly tries to establish a preference for "development of commercial forest land," while merely "perpetuating personal, commercial, and other beneficial uses".

Section 6: This section allows the Commissioner to restrict the public uses of land and resources in order to carry out the "resource giveaway" proposed in preceding Sections. Further, "forest growth at a high level of productivity" and "the interests of private landowners" are mandated to be taken into account. However, these interests may at times be inconsistent with other public uses.

I would appreciate it if a copy of our comments could be distributed to the rest of the House Resources Committee members.

Rep. Bill Williams
April 19, 1994
Page 3 of 3

In conclusion, UCIDA requests that you not support this attack on the public process and uses other than timber harvests.

Sincerely,



Theo Matthews
Administrative Assistant

CC Representative Phillips
Representative Davis
Representative Navarre
Senator Little
Senator Salo
Commissioner Carl Rosier, ADF&G
Alaska Environmental Lobby, Inc.
Alaska Outdoor Council
Alaska Sportfishing Association
United Fishermen of Alaska



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 389 • Kenai, Alaska 99611 - 0389

(907) 283-3600 • FAX (907) 283-3306

February 22, 1994

SENT BY TELEFAX

Senator Mike Miller
Senate Resource Committee

SUBJECT: SB 308

UCIDA Position: Strongly Oppose

Dear Senator Miller,

United Cook Inlet Drift Association (UCiDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

SB308 turns "public interest findings" into "Industry interest findings".

SB308 represents a radical change in public policy that affects all "land" disposals - oil & gas, timber and mining.

SB308 is fiscally irresponsible.

There are many revisions or amendments that may be proposed to "fine tune" this legislation - (i.e. remove the proposed changes that would have the scope limited to fish and wildlife species and their habitats within the lease sale area - pg. 4 @ 15-16). However, nothing can "fine tune" the goal of this legislation, i.e. to turn the lease sale process into a mere "paper transaction" and thereby taking away power from local governments and the public and giving it to the state bureaucracy.

Senator Miller
February 22, 1994
Page 2 of 3

DNR directors (oil & gas, timber, mining) will simply state that no one may even buy a given lease, it is SPECULATIVE to assume that development will occur. Therefore, at the lease sale stage, even if there are reasonably foreseeable effects if development occurs (either fiscal effects or environmental effects or conflicts with existing users/uses), DNR will not have to address and resolve those issues in the state's best interest at the finding "stage".

DNR's desire to establish multi-phase development projects is fiscally irresponsible because once a lease is granted the lessee has a property interest. "The State cannot deprive a lessee of the reasonable use of the leasehold interest. See Finding at 126, Appendix D, Sample Lease at para. 9(f), 11 AAC 83.158. The revocation of a lease or the deprivation of the reasonable use of a lessee's property, would result in the State having to pay just compensation to the lessee. Therefore, once it issues the lease, the State is under tremendous pressure to let the lessee go forward with its exploration and extraction." (Superior Court Judge Cranston, Case No. 3KN-93-1174 Cl, pages 4-5)

In conclusion, UCIDA opposes SB308 because it does not provide for the resolution of reasonably foreseeable effects at the lease stage, it deprives local governments and the public of meaningful input, and it is fiscally irresponsible. We respectfully request that the Senate Resource Committee not pass out this legislation. Further, should DNR require more staff, we also respectfully suggest that your committee might urge the legislature to provide more funding so that the existing lease process proceed in the public's "best interest".

We would appreciate it if you would provide all committee members a copy of our comments.

Sincerely,



Theo Matthews
Administrative Assistant

Senator Miller
February 22, 1994
Page 3 of 3

CC Governor Hickey
House Resource Committee
Senator Little
Senator Salo
Representative Davis
Representative Navarre
Representative Phillips

UFA
ADF&G
ADEC
Attorney General
Cook Inlet RCAC



UCIDA

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(907) 283-3600 • FAX (907) 283-3306

February 23, 1994

SENT BY TELEFAX

Senator Steve Frank
Senator Drue Pearce ~
Co-chairs, Senate Finance Committee

SUBJECT: CSSB 308 (RES)

UCIDA Position: Strongly Oppose

Dear Senators Frank and Pearce,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

CSSB 308 (RES) turns "public interest findings" into "Industry Interest findings".

CSSB (RES) 308 represents a radical change in public policy - even reasonably foreseeable effects of certain types of development will not be addressed at the lease stage.

CSSB308 (RES) is fiscally irresponsible. This bill institutionalizes lease "buy backs"

There are many revisions or amendments that may be proposed to "fine tune" this legislation - (i.e. remove the proposed changes that would have the scope limited to fish and wildlife species and their habitats within the lease sale area - pg. 4 @ 15-16). However, nothing can "fine tune" the goal of this legislation, i.e. to turn the lease sale process into a mere "paper transaction". This will take away the

Senators Frank and Pearce

February 23, 1994

Page 2 of 3

ability of local governments and the public to participate in the development of mitigation measures and terms to resolve "reasonably foreseeable effects" at the lease sale stage as is provided for by current law.

Under CSSB 308(RES) the decision to commit the state to initiating exploration and to potential fiscal liability for "buy backs" is vested in the state bureaucracy. DNR directors (oil & gas, timber, mining) will simply state that no one may even buy a given lease and that it is SPECULATIVE to assume that development will occur. Therefore, at the lease sale stage, even if there are reasonably foreseeable effects which would result if certain types of development occur (either fiscal effects, environmental effects or conflicts with existing users/uses), DNR will not have to address and resolve those issues in the state's best interest at the lease "stage". For example, it is reasonably foreseeable that a fixed production platform in the middle of the Kenai River or in the intensively used marine waters of the Central District of Cook Inlet or the Copper River Fiats will not be physically compatible with existing sport, personal use and/or commercial uses. With this legislation, these obvious conflicts would not be resolved - even if they could be - in the state's best interest at the lease stage and the state would be subject to future buy backs demands.

DNR's desire to establish multi-phase development projects and to re-write the language for single phase projects is fiscally irresponsible because once a lease is granted the lessee has a property interest:

"The State cannot deprive a lessee of the reasonable use of the leasehold interest. See (Cook Inlet Sale 78) Finding at 126, Appendix D, Sample Lease at para. 9(f), 11 AAC 83.158. The revocation of a lease or the deprivation of the reasonable use of a lessee's property, would result in the State having to pay just compensation to the lessee. Therefore, once it issues the lease, the State is under

tremendous pressure to let the lessee go forward with its exploration and extraction."

Superior Court Judge Cranston, Case No. 3KN-93-1174 C1, pages 4-5

It is clear that by not addressing reasonably foreseeable effects at the lease stage and by retaining full authority to disallow activities which cannot be made consistent with the ACMP or which are later found not to be in the state's best interest, **CSSB 308 (RES)** will allow the state buracracy to commit the state to making "just compensation" to the lessee- i.e. full or partial buy backs.

UCIDA opposes **CSSB 308 (RES)** as written because at the lease stage it does not provide for the resolution of reasonably foreseeable effects, it deprives local governments and the public of meaningful input, and it is fiscally irresponsible. We respectfully request that the Senate Finance Committee not pass out this legislation as written.

Further, should DNR require more staff, we also respectfully suggest that your committee might urge the legislature to provide more funding so that the existing lease process can proceed in the state's "best interest".

Finally, we respectfully submit that, at a minimum:

1) The existing statutes and regulations dealing with single phase projects should be left in place. Lease sale receipts could continue to go to the general fund.

2) An amendment should be crafted that places lease sale receipts for multiphase projects into escrow accounts. This would prevent the state from falling into the federal dilemma associated with the Bristol Bay leases - i.e. no money for buy backs that can be accessed without cutting back on other federal programs.

3) An amendment should be crafted that exempts the state from liability for any costs incurred by the lessee for exploration, design, etc. after the lease is granted.

4) It is not clear if the "just compensation" referenced by Judge Cranston above would include compensation for lost income from a project that is commercially viable but that the state decides is not in its best interest to allow to proceed. This very serious issue needs to be researched. If the state could be liable, an amendment needs to be crafted that exempts the state from such liability.

5) Timber and mining disposals should be removed from all versions of SB 308.

6) Since the rules are changing in mid-stream, an amendment should be crafted that:

a) Exempts oil and gas leases that are currently undergoing best interest and/or consistency findings, or

b) have been remanded to the state by the courts for further best interest and/or consistency review.

7) SB 308 as amended and if it passes out of this committee should be referred to the Senate Judiciary Committee. Issues of "just compensation", potential state liability for buy backs, conformity with the Federal Coastal Plan, issues of constitutionality, and confusion concerning how this legislation will mesh with the administration's "large block" leasing legislation have already been raised in the very limited opportunity the public has had to comment.

UCIDA appreciates this opportunity to comment and would appreciate it if you would provide all committee members a copy of our comments.

Sincerely,



Theo Matthews
Administrative Assistant

Senators Frank and Pearce

February 23, 1994

Page 4 of 4

CC Governor Hickel
House Resource Committee
House Oil & Gas Committee
Senate Judiciary Committee
Senator Little
Senator Salo
Representative Davis
Representative Navarre
Representative Phillips

UFA

ADF&G
ADEC
Attorney General
Cook Inlet RCAC



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

February 24, 1994

SENT BY TELEFAX

Senator Jalmar Kerttula
Senate Finance Committee

SUBJECT: CSSB 308 (RES)

Dear Senator Kerttula,

This morning I testified in behalf of United Cook Inlet Drift Association (UCIDA) to the Senate Finance Committee in opposition to CSSB 308 (RES). You asked me why UCIDA opposed Lease Sale 78 and I replied that in fact UCIDA had never opposed the lease sale and went on to explain the position we had taken. You then requested that I send you a written version of my comments. Fortunately the testimony was being taped and I have transcribed my comments which follow:

Question by Senator Kerttula: I have a question that is tangential to the testimony which covers the legislation proposed before us. What were the specifics? Why did the drift net association oppose the lease sale? Just ABC.

My response: Madam Chairman, Mr. Kerttula. The drift association did not oppose the lease sale. We asked for a mitigation term to be put into the sale document that said permanent production platforms would not be allowed in front of the tanker docks or in the intensively used waters south of Kasilof. We had no objections to directional drilling (from shore), capping a well and piping it to shore. We did not object to the lease (sale) and we had concerns on some about 25% of the tracts in the lease (sale).

We very much appreciate your willingness to take the time to address the serious public policy issues raised by the introduction of SB 308. As

supplemental information I have taken the liberty to include the following:

1) UCIDA request for reconsideration of Final Finding, Nov.8, 1993.

2) Letter to UCIDA from ADF&G apologizing for its "oversight" in not addressing "conflicts with commercial fishing activities in our comments on Lease Sale 78", Nov. 2, 1994.

3) Letter to DO&G from the Capt. of the Port, Western Alaska expressing his concern that with respect to TRACTS 20 & 21 " in addition to our navigational concerns, development of these tracts would increase the potential for significant pollution incidents resulting from vessel/platform allsions "(collisions). Nov. 22,1993.

4) A map of the Lease Sale tracts.

Once again we appreciate your interest. If you feel it is appropriate, please feel free to share our comments and documents with the other members of the Finance Committee.

Sincerely,



Theo Matthews
Administrative Assistant



UCIDA

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

November 8, 1993

SENT BY TELEFAX
HARD COPY TO FOLLOW

COPY

Mr. James Eason
Director, Div. Oil & Gas, DNR
P.O. Box 107034
Anchorage, AK 99510-0734

SUBJECT: Request for reconsideration of Final Finding. Oil & Gas Lease
Sale 78, Cook Inlet

Dear Mr. Eason,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA). UCIDA would like to request that Div. Oil & Gas (DO&G) reconsider its Final Finding for Oil and Gas Lease Sale 78 and:

Delete the marine portions of Tracts 20 and 21 and the marine portions of all tracts south of the Kaslof River Q.E. insert a stipulation that the marine portions of these tracts must be accessed by directional drilling from shore. UCIDA would like to cite both AS.38.05.035 and 6AAC 80.130(c)(1):

AS.38.05.035(f) stipulates that "if the director determines in a written finding that the purchase of a lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right".

6AAC 80.130 stipulates "offshore areas must be managed as a fisheries conservation zone so as to maintain and enhance the state's sport, commercial and subsistence fishery."

Mr. James Eason
November 8, 1993
Page 2 of 5

Based on the above statute and regulation, and other considerations, UCIDA feels that the Final Finding is deficient and should be reconsidered because it does not "make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based"- as required by AS 38.05.035(e).

UCIDA submits the following new or additional information for your consideration:

- 1) At its Nov. 2, 1993 regular meeting, the Kenai Peninsula Borough Assembly passed a motion by a supra majority requesting DO&G to reconsider its Final Finding and delete all remaining tracts south of the Kaslof River. Although Mayor Gillman vetoed the action based on his perception of a flawed public process, DO&G should be aware that the request for reconsideration was made by six of the nine Assembly members. (Please see enclosed Peninsula Clarion article, Nov. 5, 1993).
- 2) The comments submitted by ADF&G failed to cite the intense public use in the tracts south of the Kaslof River. No written analysis of a best interest finding is made to justify a finding of "best interest" in light of this intense public use. (Please see enclosed letter to UCIDA from ADF&G, Nov. 2, 1993).
- 3) With respect to Tracts 20 and 21, no analysis of use by the commercial drift and setnet fleets is given and no mention of conflicts with oil and gas tanker traffic in the area is made.
- 4) The Final Finding ignores the additional risks associated with "near shore" leases in Cook Inlet.

While the Final Finding notes many possible adverse impacts to fish (e.g. Final Finding, p.43), DO&G states that "with the Mitigation Measures required herein and with the many controls which are imposed on plans of operations, the likelihood of significant adverse impacts on fish and their habitats is considered to be minimal". (Final Finding,

Mr. James Eason
November 8, 1993
Page 3 of 5

p.43). DO&G also notes that Stipulation 2 advises the lessees of the requirement of an oil discharge contingency plan.

UCIDA feels that neither of these adequately meet the "best interest" standard for these near shore leases for the following reasons:

A) Much of these tracts lie inside the 10 fathom line and thus fall into a Zone 3 designation where the use of dispersants is generally not recommended. No analysis is found in the Final Finding.

Burning of oil in these near shore areas would present a health risk to the area's population which is generally located along the coastline. No analysis is found in the Final Finding.

Mechanical clean-up would be problematic, if not impossible, for a spill which occurred during the period of time when the set nets were in the water. No analysis is found in the Final Finding.

B) An oil spill inside the east rip during the flood tide or with on-shore wind conditions can be expected to move rapidly on-shore. It is doubtful if any response would be timely.

Our experience with both the Glacier Bay and Exxon Valdez spills has taught us that the rips of Cook Inlet collect and hold oil in much the same manner that they collect and hold debris. The near shore tidal flow is NOT parallel to the beach. Rather, the flow is generally north and east on the flood and south and west on the ebb. Spills originating inside the rip under the conditions noted above, can be expected to move rapidly on-shore. No analysis is found in the Final Finding.

C) The only clean-up organization that could possibly respond in a relatively short time frame to a near shore spill is CISPRI. Membership in CISPRI is not required by any state or federal regulation. Further, liability concerns continue to cause delays in response by CISPRI even after the passage of HB 140 which limited their liability to acts of "gross negligence". (See the results of the

Mr. James Eason
November 8, 1993
Page 4 of 5

recent USCG spill drill in Anchorage - contact: Capt. Miller, USCG, Anchorage. - where the simulated response was delayed due to a "lack of contract."). UCIDA feels that the concerns expressed in the Final Finding over effective response and clean-up (p. 58) are very valid in general and in the near shore spill scenario in particular. No analysis of delayed response times due to contract disputes is given in the Final Finding.

- 5) The analysis of the Nikiski and Drift River offshore facilities is superficial and, in the case of Drift River, misleading.

No mention is made of the difficult docking procedures at Nikiski, the lack of escort vessels, and the fact that the Drift River dock is built 15° to the current. (See Report on Safety of Navigation and Oil Spill Contingency Plans, Capt.J.T. Dixon, Feb. 1992)

The Drift River offshore facility's safety record is noted as "generally good" (p. 56) and past small spills are noted. DO&G further cites the Alaska Oil Spill Commission as stating "while contingency plans and oil spill recovery equipment have failed for large oil spills, the vast majority of oil spills are small spills. For these more frequent oil spills, contingency plans and oil spill cleanup equipment have the capacity to perform satisfactorily." (Finding, p. 58)

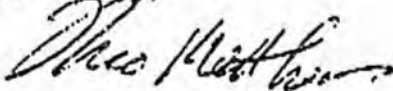
The Dec. 1990 spill at Drift River is correctly reported at approximately 630 gal. (Finding, p. 56). However, the Final Finding does not report that the oil pumps were not operating when the oil lines broke free. Had the pumps been operational, a large spill would probably have resulted and no cleanup would have been likely.

Finally, the Final Finding has no analysis of the impacts of small spills on the drift fleet. The quantity of oil from with the Glacier Bay or Exxon Valdez oil spills that was found in Cook Inlet would be considered "small" by most standards. However, the drift fleet saw major disruptions to its fishery in the case of the Glacier Bay spill and a total closure as a result of the Exxon Valdez spill.

Mr. James Eason
November 8, 1993
Page 5 of 5

In conclusion, based on the information above, UCIDA requests the Div. of Oil & Gas reconsider its Final Finding for Lease Sale 78 and delete the marine portions of tracts 20 and 21 and the marine portions of the remaining tracts south of the Kasilof River.

Sincerely,



Theo Matthews
Administrative Assistant

CC. Governor Walter Hickel
Charlie Cole, Attorney General
Commissioner Carl Rosier, ADF&G
Commissioner Harry Noah, DNR
Senator Suzanne Little
Senator Judy Salo
Representative Gary Davis
Representative Mike Navarre
Representative Gail Phillips
Mayor Don Gilman
Mrs. Betty Gilck, KPB Assembly Pres.
Kenai Peninsula Fisherman's Assoc.
UFA
Trustees for Alaska
Green Peace
Kachemak Bay Conservation Society

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE (907) 344-8541
FAX (907) 349-1723

November 2, 1993

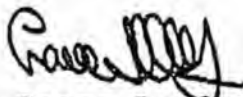
Mr. Theo Matthews
Administrative Assistant
United Cook Inlet Drift Assn.
Post Office Box 389
Kenai, Alaska 99611-0389

Dear Mr. Matthews:

You asked the Alaska Department of Fish and Game (ADF&G) to explain why we did not address conflicts with commercial fishing activities in our comments on Lease Sale 78. The simple answer is that it was an oversight. The Habitat and Restoration Division was not aware that a large percentage of commercial drift netting has been restricted to a fairly narrow three-mile corridor on the east side of the inlet. This was an internal communication problem and I take full responsibility for it. If we would have been aware of this at the time we were writing our comments, we would have asked the Alaska Department of Natural Resources for surface entry restrictions for oil and gas development within this comparatively restricted area and/or seasonal restrictions on exploration activities to avoid conflicts with commercial fishing activities.

At this point the ADF&G will attempt to deal with potential conflicts during the development and review of plans of operation if there is interest in exploring or developing this area as the result of Lease Sale 78. We will make every effort to assure that any project plans are consistent with 6 AAC 80.130(c)(1), which states that offshore areas must be managed as a fisheries conservation zone.

Sincerely,



Lance L. Trasky
Regional Supervisor
Region II
Habitat and Restoration Division

cc: F. Rue
C. Slater
D. McKay
K. Tarbox
K. Florey

U.S. Department
of Transportation

United States
Coast Guard



Captain of the Port
U.S. Coast Guard
Marine Safety Office

310 L Street
Suite 100
Anchorage, AK
99501-1946

16705/DNR
22 November 1993

Director, Division of Oil & Gas
Alaska Department of Natural Resources
P.O. Box 107034
Anchorage, Alaska 99510-0734

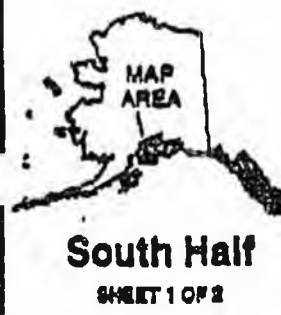
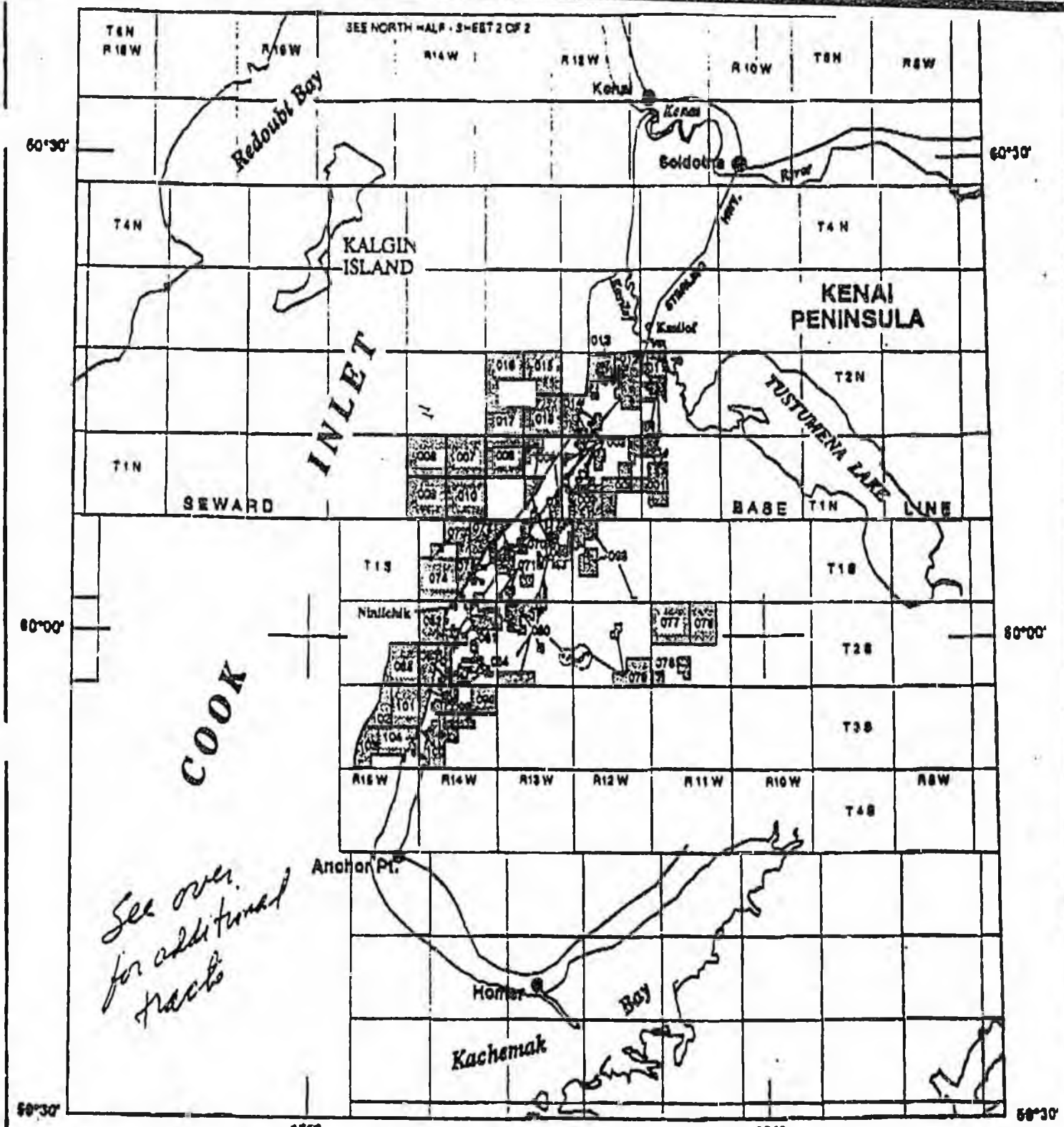
Dear Mr. Eason;

I have reviewed the proposed final tract map offerings on Oil and Gas lease sale 78 for Cook Inlet, Alaska. I have concerns with the potential congestion that may develop in tracts 20 and 21 restricting the safe navigation of large vessels. Both areas are transitted by tank vessels and barges approaching the Nikiski Waterfront Facilities. These include oil (Crude and Product), LNG, Anhydrous Ammonia, and Bulk Urea vessels.

As you are well aware, the area is marked with shoals further constraining the maneuverability of most large vessels. Any additional obstructions would only add to this already congested area. In addition to our navigational concerns, development of these tracts would increase the potential for significant pollution incidents resulting from vessel/platform allisions.

I would request that you take these issues under careful consideration prior to any lease sales in tracts 20 and 21. If you would like to discuss these concerns further please contact me at 271-6700. I appreciate your review of our concerns.

Max R. Miller Jr.
Captain, U.S. Coast Guard
Captain of the Port
Western Alaska



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

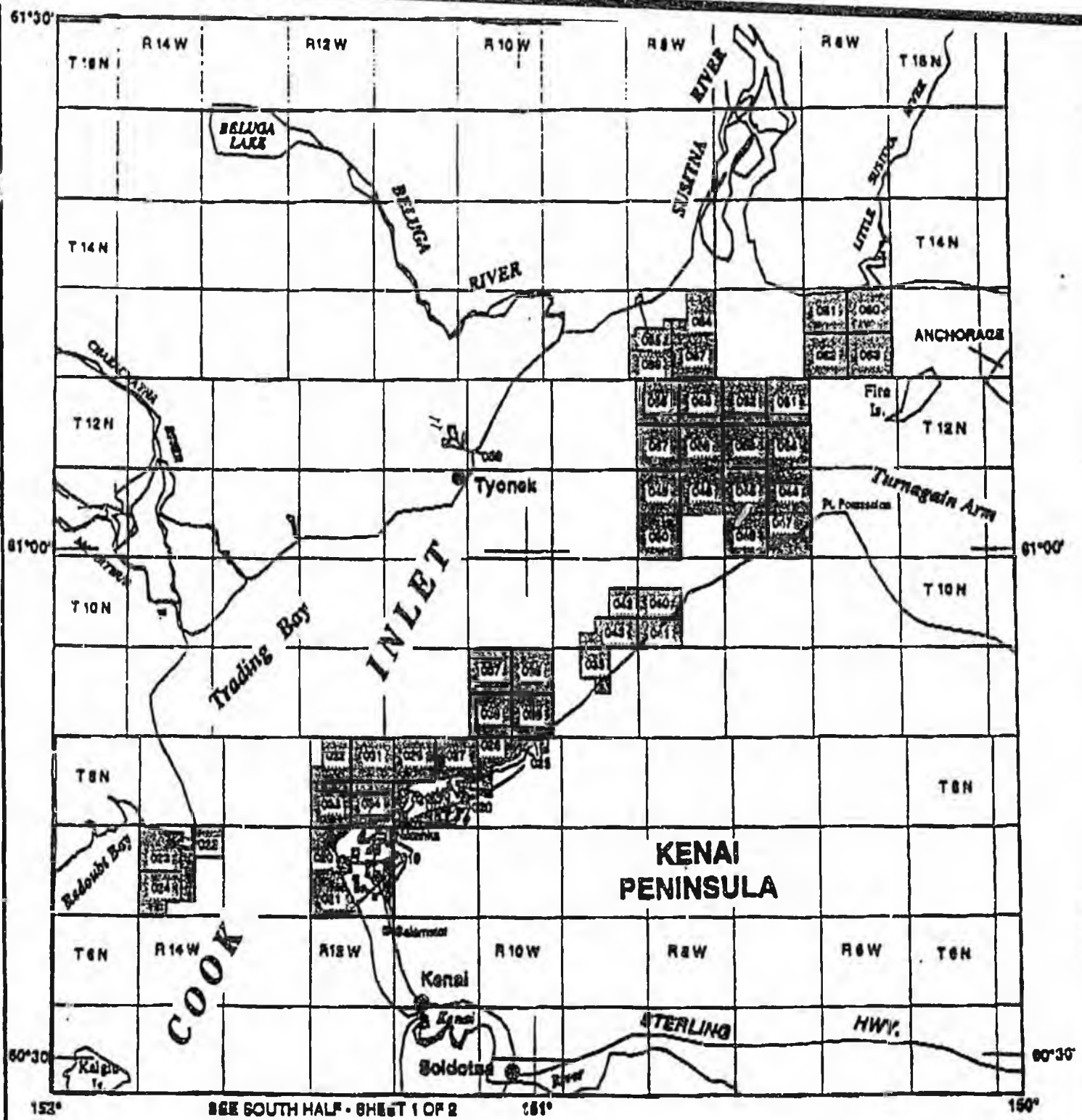
**OIL AND GAS LEASE SALE 78
COOK INLET FINAL TRACT MAP**

SCALE 1:600,000 ONE INCH = 10 MILES

DIRECTOR, DIVISION OF OIL AND GAS JAMES E. EASON <i>[Signature]</i>	DRAWN BY M.P. & O.G.E. DATE APPROVED 10/12/83 BASE MAP: TRANSCORP FROM U.T.M. PROJECTIONS BY U.S.G.S. REDRAWN IN AUTOCAD AND CLANS G.I.S.
PETRO. GEOPHYSICIST, JAMES HANSEN <i>[Signature]</i>	CHECKED BY: <i>[Signature]</i>

NOTE: THIS MAP IS NOT THE OFFICIAL TRACT MAP. A SET OF OFFICIAL TRACT MAPS IS AVAILABLE AT THE DEPARTMENT OF NATURAL RESOURCES, DIVISION OF OIL AND GAS, 3801 ST. BURT 1306, P.O. BOX 1070, ANCHORAGE, ALASKA 99510-701. PHONE (907) 786-1286

FIGURE 2A



152° SEE SOUTH HALF - SHEET 1 OF 2 151° 150°



North Half
SHEET 2 OF 2

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

OIL AND GAS LEASE SALE 78 COOK INLET FINAL TRACT MAP

SCALE 1:600,000 ONE INCH = 10 MILES approx.

DIRECTOR, DIVISION OF OIL AND GAS JAMES E. EASON <i>[Signature]</i> PETRO. GEOPHYSICIST, JAMES HANSEN <i>[Signature]</i>	DRAWN BY M.P. d O.A.S. CHECKED BY J.M. DATE APPROVED 10/12/83 BASE MAP: TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. REDRAWN IN AUTOCAD AND CLARIFIED.
---	--

NOTE: THIS MAP IS NOT THE OFFICIAL TRACT MAP. A SET OF OFFICIAL TRACT MAPS IS AVAILABLE AT THE DEPARTMENT OF NATURAL RESOURCES DIVISION OF OIL AND GAS, 3601 ST., SUITE 1963, P.O. BOX 10708, ANCHORAGE, ALASKA 99510-7. PHONE (907) 762-2188

FIGURE 2B



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

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(907) 283-3600 • FAX (907) 283-3306

Theo Matthews Testimony

Senate Finance Committee - SB 308, March 2, 1994

Good morning Mr. Chairman, members of the Committee. My name is Theo Matthews. I am speaking today as Administrative Assistant of the United Cook Inlet Drift Association (UCIDA). We represent the commercial drift fishermen in Cook Inlet. I am also on the UFA Habitat Committee and Executive Committee of UFA.

UCIDA opposes CS for SB 308

We have submitted written comments on this bill, which I hope you have in your packet so I won't go too far into them. But I do want to stress that what is being overlooked is the heart and core of this bill. **What every legislator must consider is when your constituents' comments will be relevant to the decisions that DNR makes .**

As stated by DNR, this bill allows for public comment and it requires a response by DNR to those comments. However, by allowing directors the discretion to limit the scope of best interest and consistency findings - please see Sec.1 (e)(1)(C) and Sec. 3 (a)(1) - to discrete phases of a project, **your constituents comments and concerns will often if not always be irrelevant to to decision to initiate a disposal of the state's resources.**

This initial disposal has been noted by the courts to confer a property right to the lessee. This will commit the state to buy backs if it later decides that the disposal is not in the state's best interest or if the state later imposes restrictions that deprive a lessee of the reasonable use of the leasehold interest (please see Order on Motion to Stay, Lease Sale 78, p.4-5). As noted by Judge Cranston, "once it issues the lease, the State is under tremendous pressure to let the lessee go forward with its exploration and extraction." (id., p.5)

In addition, the public will be required to follow a series of partial

findings in the hope that at some point its concerns will finally be relevant to a particular phase of a project. Finally, it should also be noted that whereas the public can address concerns that are generally applicable to a set of similarly situated tracts at the lease stage, afterwards the public must address the same issues "tract by tract". The additional time commitment and costs to the public only complicates the public process and generally will bias the process against the public's interests.

So the issue is - when are your constituent's comments going to be relevant? Under this legislation they will not be relevant to the issue of whether or not a lease is issued by the state bureaucracy.

I would like to briefly address Mr. Eason's letter that he submitted to the Finance Committee on Feb. 28, 1994 and to which he addressed some comments this morning. On the last page, the letter states that "against the backdrop of 35 years of compatible usage, the Superior Court chose to accept allegations of conflicts, to disregard the facts and to adopt those purely speculative conflicts as a basis for enjoining Sale 78". To support his assertions Mr. Eason cites as "facts" that there are four tracts under lease in the area and that four exploratory wells have been drilled in those offshore tracts. These facts are not contested, but they simply are not germane to the issue! There have been no conflicts in the past because there are no platforms in these areas.

We have never opposed leasing, per say, in Cook Inlet even in the infamous corridor areas cited by Mr. Eason. What we have said - and what the Superior Court found in DNR's Finding on Sale 78 - is that a permanent production platform will present conflicts. And we asked for a mitigation measure that made it known to the lessee that they would not be able to put a permanent platform in certain areas.

As I mentioned in our written comments dated Feb. 23, 1994, there are many amendments that could be made but nothing will resolve the issue of your constituents' comments being irrelevant to the initial decision to dispose of the state's resources. But I will offer a few amendments just to show some problems.

On page 2 at line 3, "and subject to the director's discretion", should be deleted. It is astounding to me that the Commissioner has authority but it is at the discretion of the Director.

At line 9, DNR has said consistently that they don't want to have to speculate too far. And we generally agree with that. But the words, "May address only" means that they don't even have to address all reasonable foreseeable affects, just the ones they choose. It should read, "Shall address reasonably foreseeable".

Down in paragraph "C", line 23, we sort of agree that there may be instances where you should phase a project because some facts simply can not be known or foreseen ahead of time. However, you need to look at all known facts prior to making that phasing decision. In other words, take care of what you can reasonably foresee at the lease stage. Then make a finding that, given all known facts and what can be reasonably foreseen, the project is probably in the state's best interest and that it will be necessary to phase parts of the project.

This legislation, as written, simply gives the Department the discretion to decide to phase, to lock out even the known and relevant facts like it attempted to do in Sale 78 in Cook Inlet. If the state decides to phase it should make a preliminary best interest finding, a probable best interest finding, discuss all the things and resolve all the things that are known, and then start down the phased road.

On page 3, line 10 it says, "before a public hearing, if held". Well, we would submit that it is best for your constituents to always have a public hearing. We applaud the current practice of DNR to issue preliminary best interest findings. This allows the the public to comment and for DNR to refine those findings. But there is no regulation requiring a preliminary finding. So we would like to see, and as I say, DNR has been doing this and we applaud it, additional language that requires a preliminary finding, that requires a public hearing in the area, and the deletion of the language, "before a public hearing, if held".

On page 4, here again we see a long list of things that look reasonable to consider. But at lines 13 and 14 it talks about things that are within the scope of the administrative review established by the Director. So this long list of things won't necessarily be considered if it is not within the scope of the phase at the discretion of the Director. At line 15, "or" should be changed to "and" or some other wording found to make it clear that the issues found under B(i)-(xi) will always be considered.

On page 4 at lines 21, "within the lease sale area" should be changed back

to what it is now, "in the area". It just simply is nonsense to think that you only have to look at a specific sale tracts and not the land or water next to them. There is a "reasonable" limit as to how far you should be required to go down the road. However, I think that when you say, "in the area", what that really means is what is reasonably foreseeable. If you put a massive mine at the head waters of the Yukon River, for example, it is certainly reasonably foreseeable that you could have affects hundreds of miles downstream. So that should be considered "in the area".

Section 3 on page 5, we feel should be deleted altogether. The consistency review process, as mentioned by the gentleman from the Mat-Su Borough Development District in opposing this legislation, can cut both ways - i.e. pro- or anti- development. When you give this much discretion to the Department and any number of directors across the state you are going to have more problems than you have under the current language.

I would like to point out how the public's comments, your constituents' comments, are not going to be relevant to consistency determinations under this legislation. Section 3 allows the state agency making the review to conduct a consistency review for a particular phase of a project. As with best interest findings, once again comments, even comments about reasonably foreseeable issues, will not be germane if they do not address the relevant "phase" of a project. You see the same problem at line 15, page 6.

Thank you Mr. Chairman. I would suggest that if DNR really wants to work on "clarification" language, commercial fishermen and it sounds like the coastal communities are willing to help. But this kind of massive stroke to lock out the public at the leasing stage is not acceptable and no amount of clarification can resolve this fundamental flaw with this legislation.. Thank you.

Sincerely,



Theo Matthews
Administrative Assistant



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

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March 10, 1994

Sent by telefax

Representative Bill Williams,
Chairman House Resources Committee
State Capitol, Room #128
Juneau, AK. 99801-1182

Dear Representative Williams,

On February 28, 1994, I was fortunate enough to have an opportunity to testify orally on HB 474 before the House Special Committee on Oil & Gas. That testimony was transcribed and submitted to your committee on March 4. I have since taken the opportunity to clarify my remarks and add some additional comments.

I would appreciate it if copies of my revised testimony could be distributed to each of the Committee members. Thank you for your consideration.

Sincerely,

Theo Matthews
Administrative Assistant



UCIDA

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**Theo Matthews February 28, 1994 Testimony On HB474
To The House Oil & Gas Committee**

Thank you Mr. Chairman. My name is Theo Matthews. I am speaking tonight as the Administrative Assistant of United Cook Inlet Drift Association (UCIDA). I am also a member of UFA and serve on the UFA Habitat and Executive Committees.

Both UCIDA and UFA oppose HB474. I was encouraged by the comments from AOGA tonight where it was stated that they simply did not feel that DNR should have to engage in endless speculation. I don't think anyone has argued against the fact that there should be some certainty in the scope of things that need to be considered - this is only fair to the courts and to DNR. One should not have to speculate out to the ends of the earth. However, that is not the driving force behind this legislation which, as written, would allow "directors" the discretion to deem most if not all public comments and concerns "speculative" in best interest and consistency findings at the initial disposal phase of any project.

The driving force behind this legislation is found on page 2, lines 24-27. The issue here is phasing and best interest findings, and what that does to the relevancy of public comment and to the public and state coffers. The attempt to limit what is relevant to a DNR decision to grant a property right to a leasee at the leasing stage is not acceptable. This legislation will not even permit DNR to consider the most nonspeculative of issues that can be seen down the road. The same thing is found in the section dealing with consistency findings, section 46 on page 5. Again, at its discretion, DNR may limit consistency review to a particular stage. The problem with this bill is DNR's ability to limit the scope of best interest findings and consistency reviews - this is bad public policy.

There was nothing speculative about the issues we raised in Cook Inlet with respect to Lease Sale 78. We made it very clear that a stationary production platform in certain waters in Cook Inlet would be totally incompatible with existing uses when considering physical and safety conflicts. We made this claim with respect to two areas of Cook Inlet

included in Lease Sale 78:

- 1) Tracts 20 and 21 which are located in front of the oil tanker docks in North Kenai. It is pretty obvious you don't want a stationary platform there.
- 2) We also made this claim with respect to the near shore waters south of Kasilof.

There is nothing speculative about the conflict that would be created by locating platforms in either of these areas.

UCIDA requested that DNR include a mitigation measure in the Lease that was fair to the lessee and the public. The suggested mitigation measure would have advised the lessee interested in purchasing leases in these particular marine waters that permanent production platforms would not be allowed. UCIDA also suggested that other kinds of access would have been acceptable. These included directional drilling, tapping a well and piping it to shore. We did not oppose the lease sale itself. There were many other tracts in northern waters, along the west side of Cook Inlet and onshore where no additional mitigation measures were proposed.

DNR's response was that we were asking them to engage in speculation by considering the conflicts that would arise if a permanent production platform were to be put in these areas. We found this comment less than genuine after 35 years of offshore platforms being the only production method used in the marine waters of Cook Inlet!

The public, in every possible forum, let DNR know that there were conflicts. Different elements of the public had different concerns. For example:

- there were many land owners who stated they had not been notified and did not want drilling on their property. DNR stated that, by law, a bond would have to be posted if an agreement could not be reached with a land owner but that drilling could, nevertheless, occur. DNR also stated that the bond would not cover a neighbor's damages.

- Cook Inlet Regional Citizen's Advisory Council opposed the entire sale, all tracts in marine waters and onshore because no environmental monitoring program has been established in Cook Inlet.

- The Kenai Peninsula Borough Assembly opposed all tracts, land and marine, south of Kasilof.

- Commercial fishermen opposed only the marine portions of tracts that were located in front of the tanker docks and south of Kasilof. As you

can see, there were many different elements of the public that had varied concerns. But commercial fishermen did not oppose this sale.

I would like to conclude, Mr. Chairman, by noting that the court in the Lease Sale 78 case was not arbitrary and did not engage in far flung speculation. The court noted DNR's own Finding where the fisheries were identified and it was stated that exploration and development of the sale area could adversely affect human uses of the area and its resources if access to hunting, fishing, or trapping were restricted by industry's operations occurring at the same time and place as harvest activities. Those were DNR's own findings. Judge Cranston concluded that DNR's failure to address and resolve specific conflicts as to proposed use imperilled the consistency findings. That is exactly what we told DNR throughout the public hearings. We expressed our conviction that conflicts would definitely arise if platforms were placed in certain tracts. We need to resolve these issues at the lease stage and in the state's best interest.

Thank you Mr. Chairman.

Sincerely,



Theo Matthews

Administrative Assistant



UCIDA

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March 4, 1994

Representative Bill Williams,
Chairman House Resources Committee
State Capitol, Room #128
Juneau, AK. 99801-1182

Dear Representative Williams,

On February 28, 1994, I was fortunate enough to have an opportunity to testify on HB 474 before the House Special Committee on Oil & Gas. That testimony has been transcribed and I respectfully submit the enclosed written copy.

I would appreciate it if copies of my testimony could be distributed to each of the Committee members as possible. Thank you for your consideration.

Sincerely,

Theo Matthews (by P.M.)

Theo Matthews
Administrative Assistant



UCIDA

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(907) 283-3600 • FAX (907) 283-3306

**Theo Matthews February 28, 1994 Testimony On HB474
To The House Oil & Gas Committee**

Thank you Mr. Chairman. My name is Theo Matthews. I am speaking tonight as the Administrative Assistant of United Cook Inlet Drift Association (UCIDA). I am also a member of UFA and serve on the UFA Habitat and Executive Committees.

Both UCIDA and UFA oppose HB474. I was encouraged by the comments from AOGA tonight. I don't think anyone has argued that it is not fair to the courts and to DNR. There should be some certainty in the scope of things that need to be considered. One should not have to speculate out to the ends of the earth. However, that is not the driving force behind this legislation.

The driving force behind this legislation is found on page 2, lines 24-27. The issue here is phasing, and what that does to the public and the state's coffers. The attempt to limit what is relevant to a DNR decision at the leasing stage is just the lease process. This legislation will not even permit DNR to consider the most nonspeculative of issues down the road. The same thing is found in the consistency findings, section 46 on page 5. Again, at its discretion, DNR may limit consistency review to a particular stage. The problem with this bill is DNR's ability to limit the consistency review and that is also why it is bad public policy.

There was nothing nonspeculative about our issues in Cook Inlet. We made it very clear that a stationary production platform in certain waters in Cook Inlet was totally incompatible with existing uses when considering physical and safety conflicts. We made this claim with two Cook Inlet areas included in Lease Sale 78:

- 1) The tracts in front of the oil tanker docks in North Kenai. It is pretty obvious you don't want a stationary platform there.
- 2) We also made this claim with respect to the near shore waters south of Kasilof.

There is nothing speculative about the conflict that would be created by locating platforms in either of these areas.

DNR's response to UCIDA's concerns was they didn't even know for sure if a platform would be located in those areas. UCIDA requested DNR include a mitigation measure in the Lease that was fair to the lessee. The suggested mitigation measure would have advised the lessee interested in purchasing the lease that platforms would not be allowed in those particular marine tracts. UCIDA also suggested other kinds of access that would have been acceptable. These included directional drilling, tapping a well, and piping it to shore. We did not oppose the lease sale itself. There are many other tracts in the northern waters and along on the west side of Cook Inlet.

The public, in every possible forum, let DNR know that there were conflicts. And different elements of the public had different conflicts. For example, there were many land owners who stated they had not been notified. They acknowledged that, by law, a bond would have to be posted if an agreement could not be reached on a drilling arrangement, but that the bond would not cover a neighbor's interests. Cook Inlet Regional Citizen's Advisory Council opposed the entire sale, all tracts in marine waters, including the Northern District tracts, because there is no environmental monitoring program. The Kenai Peninsula Borough Assembly opposed all tracts, land and marine, south of Kasilof. Commercial fishermen opposed only those portions of the marine tracts that were located in front of the tanker docks and those south of Kasilof. As you can see, there were many different elements of the public that had varied concerns. But the commercial fishermen did not oppose this sale.

I would like to conclude, Mr. Chairman, by noting that the court in this case was not arbitrary. The court noted DNR's finding where the fisheries were identified and it was stated that exploration and development of the sale area could adversely affect human uses of the area and its resources if access to hunting, fishing, or trapping were restricted by industry's operations occurring at the same time and place as harvest activities. Those were DNR's own findings. Judge Cranston concluded that DNR's failure to address and resolve specific conflicts as to proposed use imperilled the consistency findings. That is exactly what we told DNR throughout the public hearings. We expressed our conviction that conflicts would definitely arise if platforms were placed in certain tracts. We need to resolve these issues at the lease stage and in the state's best interest. Thank you Mr. Chairman.



UCIDA

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April 19, 1994

SENT BY TELEFAX

Senator Suzanne Little
State Capitol - Room #7
Juneau, AK. 99801-1182

SUBJECT: CS SB308 Finance Version "X" and Amendments which were offered on the Senate floor, April 15, 1994.

Dear Senator Little,

UCIDA would like to express its appreciation for your efforts last Friday to delay consideration of a new version of SB308 "X" in order that the public have time to review last minute amendments offered by Senator Pearce. You correctly stated that very few of the working group members, other coastal districts or other concerned interest groups had had any opportunity to review the proposed amendments.

UCIDA feels that the proposed legislation, Version "X" of SB308, even with the amendments offered last Friday, is indeed even more detrimental to the public process than the original version of this legislation introduced in the Resource Committee for the following reasons:

- Concerns over non-oil and gas disposals under Title 38 have not been addressed by this legislation. The Director, at his discretion, may dispose of these interests.
- The phasing of oil and gas disposals at the discretion of the Director at the lease sale stage under Title 38 and Title 46 remains fiscally irresponsible and makes a mockery of the "public process".
- The addition of new limitations on the public's standing to file an appeal in administrative matters makes this legislation worse from the public policy point of view than the original version introduced in Senate Finance.

Senator Little
April 19, 1994
Page 2 of 4

As you are aware, from the very first introduction of this legislation UCIDA and other commercial fishing groups have put forward concerns that have not been addressed by any version of the bill, including version "X" or the proposed amendments. These major concerns include:

- A) **Non-oil and gas disposals of the state's interests under Title 38 such as timber, mining, and water rights simply have not been treated appropriately in this legislation. This legislation, even with the proposed amendments, allows the state bureaucracy to dispose of these non-oil and gas resources at the discretion of directors. To date these concerns have been mentioned often but absolutely not addressed at any time in any version of this legislation. We find this totally unacceptable.**
- B) **With respect to oil and gas disposals, this legislation, even with the proposed amendments, still does not address our fundamental concern that the initial disposal of the state's interest and, therefore, the granting of a property right to the lessee is left to the discretion of DNR directors. Indeed, Section 8 in the Findings continues to state, "the speculation concerning future development activities that will be subject to independent permitting requirements is not necessary at the time a decision is made to dispose of state land or an interest in state land."**

Public concerns and conflicts with other uses will not be germane to the decision to dispose of the state's resources.

Section 2(e) (1)(C) of version "X" still contains the discretion of the director to limit the scope of administrative review "solely to a discreet phase of the project". Under this scenario, as we saw with Lease Sale 78, even "reasonably foreseeable, significant effects" will not be addressed and resolved prior to the decision to dispose of the state's interests. This is poor public policy, fiscally irresponsible and not acceptable to UCIDA.

Senator Little
April 19, 1994
Page 3 of 4

- C) Section 8 is the final original concern voiced by commercial fishing organizations. Section 8 of this legislation would amend AS 46.40 to state under (b)(1) that the Department "may, in its discretion, limit the consistency review to that particular phase". The attempt by DNR to phase consistency determinations is not acceptable under the current proposed language.

It is our contention that no amount of language added thereafter, in Section 8, mitigates in any way the language found in (b)(1).

It is simply not in the state's best interest to allow directors to limit consistency reviews under Title 46 and/or best interest findings under Title 38 to particular phases.

In addition to our original major concerns, the recent addition of Section 4 in versions of SB308 has indeed compounded our concern with the overall legislation. There are essentially two parts to Section 4:

- 1) Section 4(h) essentially allows the Director to dispose of the state's interests without considering the location and size of the ultimate use of the project or the economic feasibility of the ultimate development. It is our contention that, with these two provisions, very little is left for the Director to base any best interest finding upon. Indeed, the very factors that must be considered for oil and gas disposals under AS 38.05.035(g) become meaningless in terms of the decision to make the initial disposal. The "best interest finding", once again, is made a "paper transaction" with this language.
- 2) Section 4(i) drastically limits the ability of the public to appeal a decision. We feel this is a reversal of the current issue of "standing" as viewed by the Alaska Supreme Court. Section 4 should be deleted in its entirety.

phase oil and gas lease sales, that same guidance is not provided for phasing of other types of disposals (timber, mining etc.) We support the development of specific standards, against which each Director will examine the decision to phase disposals. Without such standards there is no assurance that important local and public concerns will be met.

- Phasing under Title 46 (ACMP)

SB 308 states that the phasing of projects for ACMP consistency review is to be based on facts pertaining to the use or activity "for which the consistency determination is sought" and which are "material" to the consistency determination. There is no definition of what issues are "material" and that word does not appear elsewhere in the ACMP. The addition of this undefined language could result in litigation on the specific meaning of the word "material." Some municipalities, coastal districts, fishing groups and environmental groups are concerned that this language leaves too much discretion in the administrative agency to limit review by deeming certain facts or issues as not "material." These groups have recommended that the word "material" be deleted.

There has also been a recommendation that the language "use or activity for which the consistency determination is sought" be reexamined. The language, as written, implies that only effects of the particular phase will be examined, and this approach to phasing does not appear to conform with the federal model for how the review of phased projects in the coastal zone should be conducted. The original language of the bill which addressed review of the entire "project" was deleted without consultation of the working group.

- Standing to Request Reconsideration/Appeal

The issue of standing is one that significantly affects public participation under this legislation. DNR has altered the requirements for how the public must participate, in order to later be able to challenge a DNR action in court. DNR has stated that the intent of this legislation is to provide that any person who has submitted written or oral comments during the comment period will be allowed to request reconsideration. There is confusion in the bill as to whether the commenting person may raise any issue that has been identified during the public comment period, or whether

the person will be limited to those issues that he or she personally raised. Many coastal districts and fishing groups have expressed support for the concept that a commenting person may raise any issue that was raised during the administrative review, by any person. This ensures that the commenters will be able to draw on the comments of other public agencies and private individuals, in seeking reconsideration of DNR's decision.

There has been a further suggestion that the SB 308 requirement that a person may only appeal/request reconsideration if he is "affected by the decision" be deleted from the bill. The current language would result in a limitation on the public's right to seek administrative or judicial review and does not comport with the existing Alaska law on standing as established by the state Supreme Court.

- Clarification of "Economic Feasibility"

Section 4 of the bill states that the director may not be required to speculate about the "economic feasibility" of ultimate development. That provision has been questioned by the SB 308 Working Group and others because "economic feasibility" is not defined, and has implications for disposals that affect coastal districts. It has been suggested that the bill would be improved by the addition of clarifying language stating that the best interest finding shall consider the potential economic benefits and potential economic detriments to the state from a disposal, and that a definition of "economic feasibility" be provided.

- Changing the words "may address only" to "shall address"

The language in Section 2 states that the scope of review and finding of the Director "may address only" reasonably foreseeable significant effects. The use of the word "may" means that the director is not obligated to address those effects. The addition of the word "may ...only" implies that there is no ability to look further if, in the Director's discretion, there are other effects that should be analyzed. It also results in the conferring of discretion on the Director as to whether or not to address reasonably foreseeable significant effects. It is suggested that the language be changed to read: "The Director shall, at a minimum, address reasonably foreseeable significant effects....." This will result in a mandatory requirement to consider

"reasonably foreseeable significant effects" and will allow the flexibility to the Director to consider other effects.

Conclusion

As coastal districts who are committed to developing the best public policy through consensus, we have been highly successful in the past in developing legislation which has passed both houses without significant opposition. SB 238 (this session) and HB 99 (last session) are two examples of how divergent interests can come together to successfully resolve such issues. We are committed to this same process for SB 308, a bill which significantly affects local governments and coastal districts, as well as other interests. We request that the House Judiciary Committee give us the opportunity to resolve these remaining issues, so that this legislation may be as broadly supported as our past efforts. Without a consensus, the result will be a bill which is divisive and generates controversy in the communities of Alaska.

Respectfully submitted,

Kodiak Island Borough

North Slope Borough

Northwest Arctic Borough

Bering Straits Coastal Resource Service Area

Bristol Bay Coastal Resource Service Area

Cenaliuriiit Coastal Resource Service Area

* Due to abbreviated schedule for this bill, and the geographic distance of the signatories, we were unable to provide the actual signatures for this letter. Signatures will be provided at a later time.

cc: Hon. Governor Walter Hickel

BERING STRAITS COASTAL RESOURCE SERVICE AREA BOARD

P.O. Box 10
Ugalek, Alaska 99684
(907) 624-3062

26 April 1994

The Honorable Members of
the House Judiciary Committee
Room 120
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Members of the House Judiciary Committee:

Subject: Senate Bill 308

The Bering Straits CRSA is concerned about the delegation of the powers of the Commissioner of Natural Resources down to the Director Level public employees. This will severely dilute the powers of the Commissioner in the area land and resource disposal.

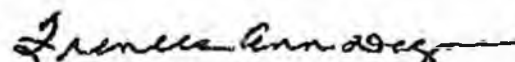
This Bill also attempts to limit the citizens (of the State of Alaska) standing and the citizens ability for meaningful comment unless the Director agrees with the citizens.

This Bill places too much discretion to mid-level civil servants. When the regular citizen is not fully recognized and his or her concerns are dismissed as unimportant and irrelevant, the citizen is forced to go to the Judicial Branch of Government.

We recommend that you keep the Commissioner of Natural Resources fully responsible for his department and continue the historic practice of meaningful citizen participation in the administrative procedures of the State of Alaska.

Sincerely,

BERING STRAITS CRSA BOARD



Frances Ann Degnan, Chair

cc: BSCRSA Board

KETCHIKAN GATEWAY BOROUGH
Department of Planning and Community Development
344 Front Street
Ketchikan, AK 99901
228-6610

Representative William K. Williams
State Capitol
Juneau, AK 99801-1182

19 April 1994

Dear Representative Williams,

Thank you for meeting me last Thursday to discuss SB 308. My concerns are highlighted below, based on "Version X", the last one available to me when I left Juneau.

Section 1 (8): "speculation concerning future development activities that will be subject to independent permitting requirements is not necessary at the time a decision is made to dispose state land or and interest in state land;"

Section 1 (10): "conducting phased coastal zone consistency determinations is appropriate in those instances where there is insufficient information to determine the consistency of a proposed development project from planning to completion;"

As the Coastal District Coordinator, my concern is information not be intentionally withheld in early phases. There are numerous cases where complete information is lacking, may be hypothetical at best, etc. Early phases should not be held hostage until all details are confirmed, since projects might evolve over years.

Section 2 (e)(1)(C)(iii): "the department conditions its approval to ensure that any additional uses or activities proposed for that or any later phase of the project will serve the best interests of the state;"

This is important for two reasons. An applicant must not be misled to believe the whole project will automatically be approved, resulting in extensive investments that may later be removed or ignored. It is also critical that projects not be broken into such minute pieces that approval is denied in a "single agency" review.

Section 2 (e)(5-6), Section 3 (g) amendments:

These statements relate almost exclusively to gas and oil leases, which appears to be the main emphasis of the entire document. However, since Section 1 clearly indicates the scope of the bill is much larger, many coastal district coordinators feel it is important that the effects of the bill on coastal zone management be clarified. A bill satisfying the concerns for oil and gas leases may be more appropriate, with coastal zone amendments next spring.

Section 6 (a)(1-2): "This section establishes the requirements for notice given by the department for the following actions: (1) classification or reclassification of state land...and the closing of land to mineral leasing...; (2) zoning of land under applicable law;"

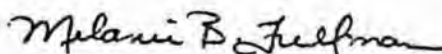
Section 8 'New Section 46.40.094 Consistency Determinations for Phased Uses and Activities (b): "When a use or activity is authorized or developed in discrete phases and each phase will require decisions relating to a permit, lease, or authorization for that particular phase, the agency responsible for the consistency determination for the particular phase (1) may, in its discretion, limit the consistency review to that particular phase if, but only if, (A) the agency or another state agency must carry out a subsequent consistency review and make a consistency determination before a later phase may proceed; and (B) the agency responsible conditions its consistency determination for that phase on a requirement that a use or activity authorized in a subsequent phase be consistent with the Alaska coastal management program; and (2) shall, when the consistency review is limited under (1) of this subsection, conduct the consistency review for that particular phase and make the consistency determination based on ...(C) the reasonably foreseeable, significant effects of the use or activity proposed **for that phase.** (emphasis added)

District concerns with SB 308 have revolved primarily around this issue. I feel the last sentence should delete the last three words (in bold). Two potential scenarios arise. Theoretically, "phasing" could mean a series of single agency reviews rather than a coordinated effort by DGC. If the Ketchikan district were opposed to a planned activity, a single agency review (which does require and, frequently, does not include district comments) could result in approval of the entire project. Conversely, a proposal favored by the local district, could be denied a consistency determination and permits by a single agency, without the benefit of local district involvement. Until Thursday morning, I believed coastal district were always notified of activities occurring in the coastal zone. DNR, ADF&G, and DEC all stated it is not their practice to notify coastal district contacts. This bill would allow large projects to be split into segments (phases) suitable for single agency reviews only.

Although the Coastal Zone program is federally mandated, I feel its success lies in the ability of the local government and citizens to become personally involved in projects that are located in their city/town/area. This bill provides an way to eliminate local input and for the state to determine the fate of projects, in which the local residents may be intricately involved. Regardless, if the main emphasis for this bill is oil and gas leasing, about which I know little, a more comprehensive evaluation of the long-term implications is needed.

I apologize for the delay in responding to your request for additional input. It was a pleasure to see you in Juneau and to be introduced to your colleagues in the House. Please contact me if you have any questions or wish to discuss this matter further. Best wishes for a speedy and enjoyable remainder of the Legislative session.

Sincerely,



Melanie B. Fullman
Associate Planner - Projects



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

"Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

April 26, 1994

Honorable Members of the House Judiciary Committee
Room 120
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Re: Senate Bill 308

Dear Honorable Members of the House Judiciary Committee:

The Prince William Sound Regional Citizens' Advisory Council ("RCAC") has 18 members representing municipalities, commercial fishing groups, Alaska Native interests and environmental and business organizations. RCAC's mission is "citizens promoting the environmentally safe operation of the Alyeska terminal and associated tankers." RCAC is a named review participant in the Alaska Coastal Management Program (ACMP) review of oil discharge prevention and contingency plans ("C-Plans"). Therefore, RCAC has an interest in any legislation which affects the ACMP, or which could impact the analysis of oil spills by state agencies. Senate Bill (SB) 308 has implications which significantly change how projects can be reviewed under the ACMP, and will affect the process by which the Alaska Department of Natural Resources (DNR) evaluates the potential impacts of oil spills under DNR's oil and gas leasing program.

RCAC supports the concept of a working group to address the problems which SB 308 raises. The working group that was initiated by the coastal districts early in the session to address SB 308 remedied some of the technical problems which original versions of the bill raised, *however, fundamental problems with SB 308 still remain to be addressed*. RCAC is concerned that the abbreviated process which the House is giving this legislation will not allow for the resolution of these few remaining issues and will result in a bill which increases the possibility that projects will receive a piecemeal review under the ACMP, and will generate more litigation. At the conclusion of the Senate Finance Committee work on this bill, representatives of the coastal districts highlighted several remaining issues, which could be addressed by the House of Representatives. The significant issues that the coastal districts, fishing groups and others have identified as requiring resolution when this legislation is considered by the House are identified below.

Issues Remaining to be Resolved

Phasing under Title 46 (ACMP)

SB 308 states that the phasing of projects for ACMP consistency review is to be based on facts pertaining to the use or activity "for which the consistency determination is sought" and which is "material" to the consistency determination. There is no definition of what issues are "material" and that word does not appear elsewhere in the ACMP. The addition of this undefined language could result in litigation on the specific meaning of the word "material." Some municipalities, coastal districts, fishing groups and environmental groups are concerned that this language leaves too much discretion in the administrative agency to limit review by deeming certain facts or issues as not "material." These groups have recommended that the word "material" be deleted.

There has also been a recommendation that the language "use or activity for which the consistency determination is sought" be deleted. The language, as written, implies that only effects of the particular phase will be examined, and this approach to phasing does not conform to the federal model for how the review of phased projects in the coastal zone should be conducted. The original language of the bill which addressed review of the entire "project" was deleted at DNR's suggestion, and without consultation of the working group.

Standing to Request Reconsideration/Appeal

The issue of standing is one that significantly affects public participation under this legislation. DNR has altered the requirements for how the public must participate, in order to later be able to challenge a DNR action in court. DNR has stated that the intent of this legislation is to provide that any person who has submitted written or oral comments during the comment period will be allowed to request reconsideration. There is confusion in the bill as to whether the commenting person may raise any issue that has been identified during the public comment period, or whether the person will be limited to those issues that he or she personally raised. Many coastal districts and fishing groups have expressed support for the concept that a commenting person may raise any issue that was raised during the administrative review, by any person. This ensures that the commenters will be able to draw on the comments of other public agencies and private individuals, in seeking reconsideration of DNR's decision.

There has been a further suggestion that the SB 308 requirement that a person may only appeal/request reconsideration if he is "affected by the decision" be deleted from the bill. This language would result in a limitation on the public's right to seek administrative or judicial review and does not comport with the existing Alaska law on standing as established by the state Supreme Court.

Clarification of "Economic Feasibility"

Section 4 of the bill states that the director may not be required to speculate about the "economic feasibility" of ultimate development. That provision has been questioned by the SB 308 Working Group and others because "economic feasibility" is not defined, and has implications for disposals that affect coastal districts. In discussions with DNR it was suggested that this phrase be directed toward the economic feasibility of the applicant's ultimate development project. It has been suggested that the bill would be improved by the addition of clarifying language stating that the best interest finding shall consider the potential economic benefits and potential economic detriments to the state from a disposal, and that a definition of "economic feasibility" be provided.

Changing the words "may address only" to "shall address"

The language in Section 2 states that the scope of review and finding of the Director "may address only" reasonably foreseeable significant effects. The use of the word "may" means that the director is not obligated to address those effects. The addition of the word "may ...only" implies that there is no ability to look further if, in the Director's discretion, there are other effects that should be analyzed. It also results in the conferring of discretion on the Director as to whether or not to address reasonably foreseeable significant effects. It is suggested that the language be changed to read: "The Director shall address reasonably foreseeable significant effects....." This will result in a mandatory requirement to consider "reasonably foreseeable significant effects" and will allow the flexibility to the Director to consider other effects.


Phasing of all land disposals under Title 38

Throughout the review of SB 308, coastal districts have identified a fundamental problem with this legislation that arises under Title 38, which proposes to allow phasing for all land disposals. While the provisions of section 38.05.035(g) afford the necessary guidance to DNR to phase oil and gas lease sales, that same guidance is not provided for phasing of other types of disposals (timber, mining etc.) This is not an issue which directly affects RCAC, however, given the strong coastal district concerns with this section, we believe that there needs to be attention given to the districts' request that specific standards developed, against which the Director will examine the decision to phase other disposals. Without such standards there is no assurance that important public and environmental concerns will be met.

RCAC has been involved in numerous successful working group efforts involving ACMP and DEC legislation. Most notable were the working group efforts to resolve problems with petitions to the Coastal Policy Council which resulted in the successful passage of SB 238 this session, and the working group efforts to address the timing of C-Plan reviews last session (HB 99). Therefore, we believe that the working group process can achieve results which are acceptable to all parties. SB 308 has the potential for such resolution, but not without additional working group efforts in consultation with members of the House of Representatives. We request that these issues be

addressed and resolved before SB 308 is passed by the House Judiciary Committee. Alternatively, the unresolved sections of the bill could be deleted and addressed over the interim by the working group. Either of these options would ensure that legislation intended to clarify the ACMP process and reduce litigation is not counterproductive.

Sincerely,


Stan Stephens
President

c.c. Governor Hickel
H.E. Stanley, RCAC, Executive Director
Gary Bader, Citizens' Group Liaison Manager, Alyeska Pipeline Service
Company
RCAC Directors

Dr. George C. West

BEECHSIDE STUDIOS

P. O. Box 841

Homer, Alaska 99603

(907) 235-7095

Fax (907)235-4230



27 April 1994

Memorandum

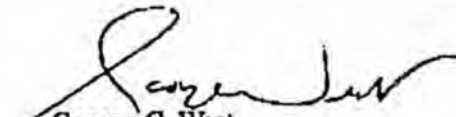
To: House Judiciary Committee
Attention: Gail Phillips

Re: House Bill 474, CSSB 308 (fin)

I urge you to NOT pass this bill out of committee, but allow it to die there and instead, form a working group to address the proposed legislation as was successfully accomplished with SB 238. The allowance for a "piecemeal" review of land disposal decisions would obviate a complete and open public process, restricting dissemination of potentially important information to the public. It is not in the public's best interest to allow a government bureaucrat to have control over what information is released in regard to a land disposal decision.

The same concerns are even more relevant for a coastal community such as Homer, where the State wishes to dispose of coastal wetlands or offshore lands as in a lease sale, and would have the authority NOT to release information that the agency proposing the sale thinks might cause public opposition. We saw the attempt at this in lease sale 78, and it appears that this legislation is an attempt to make the procedures used in trying to push lease sale 78 through legal. Clearly, those of us on the lower Kenai Peninsula were adamantly against the way that sale process was handled, and would be equally against this bill.

Please ask that a working group be assembled to resolve the issue in the legislative interim and make your final decision in the next session.


George C. West

April 27, 1994

Honorable Brian Porter
Honorable Members of the House Judiciary Comm. Room 120
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

RE: SB 308

Dear Chairman Porter and Honorable Members
of the House Judiciary Committee:

The undersigned coastal districts request that the Judiciary Committee not take action on SB 308 until additional language changes are discussed relative to the items identified below. We have been involved in the significant effort that was devoted to a Working Group on SB 308 in the Senate. We supported the efforts of the Senate Finance committee to develop a consensus on this bill. Unfortunately, there was not adequate time in the Senate to resolve the remaining issues. We anticipated having the opportunity to resolve the remaining issues, in a similar fashion, in the House, and hope that the Judiciary Committee can help us to do so. We believe that passage of this legislation, as currently drafted, will leave these legal and procedural questions unanswered, and will leave the interpretation of problematic wording to the courts.

We respectfully request that the House Judiciary Committee afford us the opportunity to address these remaining issues with a continuation of the previous Working Group. We look forward to working with members of the House of Representatives or their staff to facilitate the resolution of these issues.

Remaining Issues in SB 308

- Phasing of all land disposals under Title 38

Throughout the review of SB 308, municipalities and coastal districts have identified a fundamental problem with this legislation that arises under Title 38, which proposes to allow phasing for all land disposals. While the provisions of section 38.05.035(g) afford the necessary guidance to DNR to

Senator Little
April 19, 1994
Page 4 of 4

Finally, UCIDA would like to remark that the failure of the Senate to adopt the letter of Intent that you submitted last Friday makes it clear to us and should make it clear to the public, that it is the intent of this legislation to allow the disposal of the state's resources without any consideration of the reasonably foreseeable, significant effects at the initial disposal stage.

UCIDA appreciates your continuing efforts to maintain the integrity of the public process and to allow for meaningful input from the public that is germane to the decision to dispose of the state's resources.

Sincerely,



Theo Matthews
Administrative Assistant

CC Representative Gail Phillips
Representative Gary Davis
Representative Mike Navarre
Senator Judy Salo
CDFU
Kenai Peninsula Borough
KPFA
Jon Isaacs
Linda Freed
United Fishermen of Alaska
Nancy Walnwright

ALASKA MARINE CONSERVATION COUNCIL

Box 101145 Anchorage, Alaska 99510
(907) 277-5357 (kelp) 277-5975 (Fax)

April 27, 1994

Dear Mr. Porter,

The Alaska Marine Conservation Council is community based organization of fishermen and women, subsistence users and others throughout Alaska concerned about the health of our marine resources. Our membership is comprised of men and women who have a stake in and care deeply about ocean health.

We are opposed to SB 308 and believe it to be a direct response by the Department of Natural Resources to the Court Decision which blocked Lease Sale 78 in Cook Inlet. Lease Sale 78 was overwhelmingly opposed by the people of Homer and Kenai.

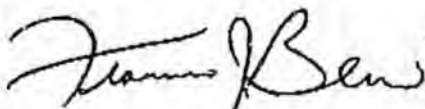
Our specific concerns include:

The conversion to a piecemeal approach to the review and permitting of projects without looking at the long term, cumulative impacts. The language for phasing under Title 46 considerably narrows the realm of review for a longterm project, ignoring potentially significant, synergistic overall impacts.

The lack of a requirement for agencies to consider all reasonably foreseeable significant effects.

We fully endorse the accompanying paper prepared by Trustees of Alaska. The Alaska Marine Conservation Council opposes CSSB 308 and its counterpart, HB 474.

Sincerely,



Francine J. Bennis
Alaska Marine Conservation Council

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 5
To House Judiciary	From AK Marine Cons. Council	
Co. ATTN: Brian Porter	Co.	
Dept. Gail Phillips	Phone # 277-5357	
Fax # 965-3834	Fax # 277-5975	

ISSUES OF CONCERN

Without seeking meaningful input from Alaska coastal districts or other members of the public, the Hickel Administration is promoting legislation designed to significantly modify how the State of Alaska conducts "best interest" findings for the disposal of State land and consistency reviews under the Alaska Coastal Management Program (ACMP). HB 474 and SB 308, House and Senate counterparts of the same bill, have been advanced by their sponsors as bills designed to increase the State's ability to efficiently dispose of public lands and permit activities in Alaska's coastal zone. Unfortunately, these bills do so at the expense of both purposeful input from the public and balanced development.

On April 21, 1994, the Senate passed an amended version of SB 308. CSSB 308 (fin), despite the amendments, does little to alleviate the concerns of coastal districts and others disturbed about the Administration's haste attempt to modify long-established procedures and public safeguards against inadequate decisionmaking. The following issues, raised by CSSB 308 (fin) and HB 474, remain of great concern.

I. A WORKING GROUP CONSISTING OF COASTAL DISTRICTS AND OTHER AFFECTED PARTIES SHOULD BE ESTABLISHED PRIOR TO ALLOWING PHASING OF "BEST INTEREST" FINDINGS AND CONSISTENCY REVIEWS

A fundamental problem with HB 474 and CSSB 308 (fin) is that they allow for a piecemeal approach to review of both land disposals under Title 38 and ACMP consistency reviews. If these bills were to pass as written, the State would merely have to examine one "phase" of a contemplated action -- either a disposal of public land or a proposed development -- with no analysis of the impacts or costs of later phases of the proposed use or activity. This approach limits the public's ability to both understand the likely impacts of a proposal and have meaningful input into the ultimate decision to be made. The effect of the piecemeal review of the proposed legislation is to skew the decisionmaking process toward the result the government agency reviewing the proposal supports: whether it be for or against a particular project.

A. Title 38 Land Disposals Should Not Be Phased Absent Explicit statutory Standards For Analysis

The proposed legislation would permit piecemeal review of all land disposal decisions, not just oil and gas lease sale decisions, problems with which DNR claims as the reason behind the legislation's introduction. Oil and gas lease sales, however, are subject to the standards contained in AS 38.05.035(g), designed to assure consideration of important public and environmental concerns. No other type of disposal, whether it be for timber, mining or some other use or activity, has a delineated set of standards with which to measure a decision to dispose of public

land. Because the proposed legislation allows the government agency decisionmaker the sole authority to determine what is "material" to a land disposal decision, the legislation would allow the State to dispose of non-oil and gas resources at the sole discretion of bureaucrats within the State's resource agencies.

Moreover, even for oil and gas lease sales, the proposed legislation intends to allow piecemeal review of later phases of a lessee's activity which are subject to permitting requirements. The consequences of granting such broad authority to one State bureaucrat are broad; for example, at no point would the State be required to analyze what is truly in the "best interest" of the State when conflicts between competing uses are evident.

B. Any Phasing Of ACFM Consistency Reviews Must Be Consistent With Federal Coastal Zone Management Requirements

The proposed legislation permits piecemeal review of projects in Alaska's coastal zone by allowing the ACFM consistency review to be "limited" to facts pertaining to solely the use or activity proposed for that phase and which are, in the decisionmaker's mind, "material" to the consistency determination. All the decisionmaker need do to so limit the review is declare that a fact or issue is not "material," or assert that it relates to a later phase of a project. Once again, this allows the State decisionmaker to wear blinders by sanctioning ignorance of the true costs and impacts of a project.

While the proposed legislation's sponsors contend that this provision merely meets the intent of the federal phasing model, it clearly does not. Under the federal model, phasing is used to ensure ongoing coastal program review of long term projects. Thus, the federal government uses phasing of its consistency reviews not as a tool to limit public input into the decisionmaking process or to ignore impacts but rather as a method of considering all costs and impacts of a proposed project, even if they do not become known until a later phase of a project.

Moreover, concerns with piecemeal review of coastal projects go beyond the ACFM consistency review process itself. If the federal government were involved in a project, for example, NEPA would not sanction such a piecemeal review. See R.L.A., 40 C.F.R. § 1508.28(b)(7). Furthermore, under Section 404 of the Clean Water Act, triggered whenever a proposed project impacts waters of the United States including wetlands, an entire project must be submitted for review. See 33 C.F.R. § 323.1(d)(2) (requiring analysis of "all activities which the applicant plans to undertake which are reasonably related to the same project and for which a [Corps of Engineer] permit would be required"); see also 40 C.F.R. § 230.11(g). Thus, the proposed legislation creates an untenable situation where a project may meet ACFM standards for analysis but

fails, absent further analysis, under NEPA and the Clean Water Act because the project review was too limited.

In summary, piecemeal review of public land disposals in a "best interest" finding, and of coastal projects in an ACMP consistency review, raise myriad problems. The issues raised by phasing are complex and directly impact all Alaskans. Legislation changing the way so many Alaskans do business and conduct their daily affairs should not be rushed through the legislature.

Recently, the legislature passed SB 238 to change the Coastal Policy Council petition process. SB 238, sponsored by the same people who advance HB 474 and CSSB 308 (fin), was also intended to address perceived problems with the status quo brought to light by litigation over oil and gas lease sales. In that case, however, the State approached all the interested parties, including coastal districts, and formed a working group to try and reach consensus on the issue. This approach was a resounding success, as evidenced by the easy passage of the bill through the legislature.

As recommended by the Coastal Policy Council during its recent conference in Juneau, the legislature should counsel the Administration to use this same approach for the proposed legislation. A working group should be formed, composed of coastal districts and other interested members of the public, as well as those within the Administration who support the widespread changes reflected in HB 474 and CSSB 308 (fin). This group could work during the interim to find an approach that is acceptable to all parties and that could then pass through the legislature without the controversy surrounding HB 474 and CSSB 308 (fin).

IX. WELL-ESTABLISHED ALASKA LAW SHOULD GUIDE WHO HAS STANDING TO SUE

The sponsors of HB 474 and CSSB 308 (fin) have attempted to change the standards under which an appeal can be taken of an administrative decision covered by the proposed legislation. The proposed legislation limits the "standing" of a potential litigant to one who requested reconsideration of the decision and, apparently, raised themselves all issues of concern in the reconsideration request. This change would seemingly bar the traditional reliance on concerns about a proposal expressed by the state and federal expert agencies. Moreover, by including the requirement that only those "affected by the decision" may appeal, the proposed legislation does not comport with existing Alaska law which allows for liberal access to courts under the well-reasoned "taxpayer" standing doctrine. The proposed legislation should be amended to clarify that it is not intended to change the current Alaska law on standing or, better yet, to be silent on the issue altogether.

Rep. Brian Porter, Chairman
House Judiciary Committee
Alaska Legislature
Fax: 465-3834

April 28, 1994

Re: SB 308

Dear Representative Porter,

I write to ask your support for SB 308 concerning the disposal of state lands for phased development. I am familiar with this bill and the issues that surround it from my involvement on the State's Coastal Policy Council where I serve as the public Co-Chair. My comments are my own and do not represent the opinion of the council as a whole.

SB 308 has passed out of the Senate after much debate and numerous amendments. A testimonial to the public involvement thus far.

SB 308 provides a common sense approach to balancing the needs of the state to develop its resources and the public's right to participate in the process.

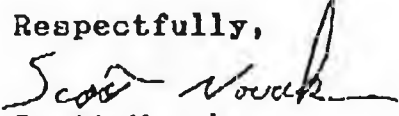
The opportunity for public participation is increased by expanding the time for public notice and giving local coastal districts a greater hand in reviewing the proposed project.

DNR's decisions must be justified in writing and reviewed by the public, with clear statutory guidance to the courts for solving disputes.

SB 308 coordinates well with SB 238, which streamlines the appeals process of the CPC.

STAGNATION IS NOT THE KEY TO SUCCESS, PROGRESS IS NOT THE END OF IT.

Respectfully,


Scott Novak
PO Box 1703
Cordova, Alaska 99574

Phone: 424-3800

Fax: 424-3802

cc: Ramona Barnes, Speaker. Fax: 465-4568
Gail Phillips, Majority Leader. Fax: 465-3472
Fran Ulmer, Minority Leader. Fax: 465-2108