SB 308

SFIN

FILE

This fiscal note sent along after the bill was reported out. It zeroes 34.2 note.

No. 16

FISCAL NOTE

Bill Version: CSSB 308 (FIN)

STATE OF ALASKA BI (S) Publish Date: 4.21.94

1994 LEGISLATIVE SESSION

levision 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
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

JND 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.

Prepared by: Jim Eason, Director Phone : 762-2547

Division: Oil & Gas Date : 15-Apr-94

proved by Commissioner:

Harry A. Noah Date: 15-Apr-94

Agency: Natural Resources

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

(SB308.XLS Rev 4/15/94) For further distribution information call the 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.

SENATE FINANCE COMMITTEE REPORT

DATE: 2/23/94 FURTHER:

DATE TURNED INTO OFFICE: 4-13-94

The Finance Committee considered SENATE BILL NO. 308

"An Act modifying 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 that relate to land, property, and resources, and to the interests within them, that are subject to the coastal management program; and providing for an effective date."

and recommends:

[✓] replace with ____ CS SB 308 (FINANCE)

or [ ] adopt previous ____ CS ____ (____)

[ ] attaches amendment(s)

[ ] same title
[✓] new title
[ ] technical title change (HB only)

[ ] adopts ____ Letter of Intent

[ ] further referral to the ____

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
DNR 4-7-94	4/7/94		34.2

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DF&G	2/14/94	0	
Gov.	2/14/94	0	
DEC	2/14/94	0	

[ ] Appropriation No Fiscal Note

DO PASS: Tim Kelly

Bert Sharp

1. Loren Do Pass
Co-Chair: Signature/Recommendation

OTHER RECOMMENDATIONS:

Steve Rieger No Recommendation

Ted Do not pass

2. Trust Pearce 10
Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA **BILL NO. CSSB308(FIN)**

1994 LEGISLATIVE SESSION

Revision Date: 7-Apr-94 Dept Affected: Natural Resources

Title: "An Act modifying administrative procedures and decisions by state agencies that relate to uses and dispositions..." BRU: Resource Development

Component: Oil & Gas

Sponsor: Senate Resources Committee

Requestor: Senate Resources Committee **Component Serial No.** 439

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	34.2	35.2	36.2	37.3	38.4	40.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	34.2	35.2	36.2	37.3	38.4	40.0
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 (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	34.2	35.2	36.2	37.3	38.4	40.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	34.2	35.2	36.2	37.3	38.4	40.0

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.

Prepared by: Jim Eason, Director Phone : 762-2547

Division: Oil & Gas Date : 7-Apr-94

Approved by Commissioner:

Harry A. Noah Date: 7-Apr-94

Agency: Natural Resources

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(SB308.XLS Rev 4/7/94) For further distribution information call the Governor's Legislative Office

Attachment to Fiscal Note for SB308
April 7, 1994

Analysis:

Under Section AS 38.05.945(b) the department is currently required to give notice of a decision to conduct an oil and gas lease sale by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action. This requirement has been met by placing a legal notice in each newspaper one time. As amended, this section would increase this requirement to at least once a week for two consecutive weeks, doubling the current cost. In addition, the department would be required to place a display ad in the newspapers at least once a week for two consecutive weeks. Increased costs per sale would be:

Legal Notice (1 additional)	$2115
Display Ad (2)	$1920
TOTAL	$4035

Also, amended AS 38.05.945(b) would require the same noticing requirements in newspapers for a preliminary written finding. It would also require the department to give notice of the preliminary finding by public service announcements on the electronic media and by notifying parties known or likely to be affected by the final action. The preliminary written finding notification costs for each oil and gas lease sale would be:

Printing of Notice	$ 400
Mailout	$ 800
Legal Notice (2)	$4230
Display Ad (2)	$1920
TOTAL	$7350

There is no cost to issuing public service announcements on the electronic media.

The total additional cost for each sale would be $11,385 ($4035 + $7350). If the division were to continue to conduct three lease sales per year, additional costs for these requirements would be $34,155. It is anticipated that such costs will increase approximately three percent per year.

FISCAL NOTE

No: 1

Bill Version: SB 308

STATE OF ALASKA

BILL NO

(S) Publish Date: 2-23-94

1994 LEGISLATIVE SESSION

Revision Date:

Department Affected: Environmental Conservation

Title: An Act Modifying Administrative Procedures

BRU: Environmental Quality

Sponsor: Senate Resources Committee

Component: Water Quality Management

Requestor: Senate Resources Committee

COMPONENT SERIAL NO. 645

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

ANALYSIS: (Attach a separate page if necessary.)

Changes in CSS.308(Res) have no fiscal impact. This fiscal note is appropriate.

2-23-94 date — Comte Aide (initial)

Prepared by: Bob Poe, Director — Phone: 465-5010

Division: Information & Administrative Services — Date: 2/14/94

Approved by Commissioner: FOR IAS

Agency: Department of Environmental Conservation — Date: 2/14/94

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FISCAL NOTE

C.S. 2

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 308
(S) Publish Date: 2-23-94

Revision Date:
Dept. Affected: Office of the Governor
Title: Modifying administrative procedures and decisio
by State agencies that relate to uses of State land
RU: 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
CHANGE IN REVENUES ( )	0	0	0	0	0	0

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

2.23.94 date — Comte Aide (initial)

Prepared by: Paul C. Rusanowski, Director
Division: Governmental Coordination
Phone: 465-3562
Date: 2/14/94

Approved by Commissioner:
Agency:
Date: 2-14-94

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(Rev 10/93) 94fisno.xls/OBR

FISCAL NOTE

No. 3

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. Bill Version: SB 308

(S) Publish Date: 2-23-94

Revision Date:
Title: "An act modifiying 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)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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/MHTIA						
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 Ruc
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 (Res) have no fiscal impact. This fiscal note is appropriate.

2.23.94
date

Comte Aide (initial)

4-12-94

8-LS1689\U.2
Chenoweth
4/8/94

SR 3
Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 1, lines 30 - 31:

Delete "[AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS]"

Insert "and the department's responses to those comments"

SENATE FINANCE COMMITTEE
Amendment Number: 1
Bill Number: SB 308-Version U
Sponsor: Date: 4/9/94
Logged In By: TRM

4-12-94

8-LS1689\U.1
Chenoweth
4/8/94

GJ — 3
Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 5, line 11:

Delete "**21 days**"

Insert "**90 days**"

SENATE FINANCE COMMITTEE
Amendment Number: (2)
Bill Number: SB 308 - Version U
Sponsor: _____ Date: 4/9/94
Logged In By: Lorn

4-12-94
GJ
3
Adopted

S-LS1689\U.3
Chenoweth
4/8/94

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 3
Bill Number: SB 308
Sponsor: _____ Date: 4/11/94
Logged In By: _____

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 8, line 23, through page 9, line 5:

Delete all material and insert:

"(i) A person who is eligible to file a request for reconsideration under this subsection and who is aggrieved by the final written finding of the director entered under (e)(4) or (5) of this section may, within 20 days after the issuance of the final written finding, request reconsideration of the decision by the commissioner. A person is eligible to file a request for reconsideration if the person

(1) meaningfully participated in the process set out in this chapter for receipt of public comment by

(A) submitting written comment during the period for receipt of public comment;

(B) presenting oral testimony at a public hearing, if a public hearing was held; or

(C) adopting as the person's own testimony concerns that were expressed by another, either by submitting a written statement to that effect during the period for receipt of public comment or by so declaring during a public hearing; and

(2) is affected by the final written finding.

(j) A request for reconsideration submitted under (i) of this section must specify the written finding complained of and the specific basis upon which it is challenged. The commissioner shall grant or deny the request within 30 days after issuance of the final written finding. Failure of the commissioner to act on the request for reconsideration within this period is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court."

Reletter the following subsections accordingly.

Page 9, line 17:

Delete "(k)"

Insert "(l)"

4-12-94
CJ
8-LS1689\U.5 Adopted
Chenoweth
4/11/94

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 4, following line 17:

Insert a new paragraph to read:

"(2) the director shall discuss in the written finding prepared and issued under this subsection the reasons that each of the following was not material to the director's determination that the interests of the state will be best served:

(A) facts pertaining to the land, resources, or property, or an interest in them other than those that the director finds material under (1)(B)(ii) of this subsection; and

(B) issues based on the statutes and regulations referred to in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this subsection:"

Page 4, line 18:

Delete "(2)"

Insert "(3)"

Page 4, line 20:

Delete "(3)"

Insert "(4)"

SENATE FINANCE COMMITTEE
Amendment Number: 1
Bill Number: SB 308
Sponsor: _____ Date: 4/11/94
Logged In By: BSM

Page 4, line 26:

Delete "(4)"

Insert "(5)"

Page 5, line 19:

Delete "(5)"

Insert "(6)"

Page 5, line 22:

Delete "**under (4)**"

Insert "**under (5)**"

Page 8, line 25:

Delete "under (e)(4) or (5)"

Insert "under (e)(5) or (6)"

Page 9, line 9:

Delete "under (e)(4) or (5)"

Insert "under (e)(5) or (6)"

Page 9, line 31:

Delete "AS 38.05.035(e)(4)(A)"

Insert "AS 38.05.035(e)(5)(A)"

Page 10, line 3:

Delete "AS 38.05.035(e)(4)(B)"

Insert "AS 38.05.035(e)(5)(B)"

Page 10, line 8:

Delete "AS 38.05.035(e)(5)"

Insert "AS 38.05.035(e)(6)"

4-12-94
GJ 3

S-LS1689\U.6
Chenoweth
4/11/94
Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 2, line 1, after "determination":

Insert "under AS 38.05"

SENATE FINANCE
COMMITTEE
Amendment Number: 6
Bill Number: SB 308
Sponsor: _____ Date: 4/14/94
Logged In By: BW

4-12-94
GT 3

8-LS1689\U.7
Chenoweth
4/11/94

Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 2, line 19, after "scope":

Insert "of review"

SENATE FINANCE COMMITTEE

Amendment Number: 6

Bill Number: SB 308

Sponsor:

Date: 4/14/94

Logged In By:

4-12-94
GJ

8-LS1689\U.8
Chenoweth
4/11/94

Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 3, line 4, after "environmental":

Delete "or"

Insert ","

After "sociological"

Insert ", or economic"

SENATE FINANCE COMMITTEE
Amendment Number: 7
Bill Number: SB 308
Sponsor: _____ Date: 4/12/94
Logged In By: _____

4-12-94
CJ
3

8-LS1689\U.9
Chenoweth
4/11/94

BSG
7
Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 3, line 4, after "intended":

Insert "to artificially divide or segment a proposed development project to avoid thorough review of the project or"

SENATE FINANCE COMMITTEE
Amendment Number: 1
Bill Number: SB 308
Sponsor: _____ Date: 4/14/94
Logged In By: _____

4-12-94
CJ

8-LS1689\U.11
Chenoweth
4/11/94

CJ

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

SENATE FINANCE COMMITTEE
Amendment Number: 9
Bill Number: SB 308
Sponsor: _____ Date: 4/11/94
Logged In By: _____

Adopted

Page 6, line 16, after "**finding**":

Insert "**:**

(6) in

(A) a preliminary written finding, a summary of agency and public comments, if any, obtained as a result of contacts with other agencies concerning a proposed disposal or as a result of informal efforts undertaken by the department to solicit public response to a proposed disposal, and the department's preliminary responses to those comments; and

(B) in the final written finding, a summary of agency and public comments received and the department's responses to those comments"

Page 7, line 29, after "(2)":

Delete "**in a final written finding,** a summary of agency and public comments received [AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS];

(3)"

Page 8, line 8, after "**subsection:**":

Insert "[A SUMMARY OF AGENCY AND PUBLIC COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS;]"

Page 8, line 9:

Delete "**(4)** [(3)]"

Insert "(3)"

4-12-94
CJ—3

8-LS1689\U.12
Chenoweth
4/11/94
Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308( )

Page 12, line 27, after "phase":

Insert ";

(3) shall, when the consistency review is limited under (1) of this subsection, prepare and issue a written statement describing the reasons for its decision to make the consistency determination for the use or activity in phases"

SENATE FINANCE COMMITTEE
Amendment Number: 4
Bill Number: SB 308
Sponsor: _____ Date: 4/11/94
Logged In By: _____

Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

TO: All Legislative Information Offices

FROM: Billy Miles, Junior Staffer
Senate Finance Committee

DATE: April 7, 1994
7:00 p.m.

RE: Errata for SB 308, Administrative Action Regarding Land/Resources/Property

ERRATA

Proposed CS for Senate Bill No. 308( )

Page 7, lines 29, 30 and 31 should read as follows:"

(2) in a final written finding, a summary of agency and public comments received and the department's responses to those comments.

No deletion was intended.

NOTICE

Please attach to page 7 of CSSB 308, Version U

8-LS1659\C
Chenoweth
4/7/94

CS FOR SENATE BILL NO. 308( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act modifying 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 modifying administrative procedures and decisions by state agencies 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 providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) in order for the state to make a disposal of state land or of an interest in state land, the legislature has previously determined that it is the responsibility of the director of the division of lands in the Department of Natural Resources to make a written determination that the interests of the state will be best served;

(2) each determination that the interests of the state will be best served is a policy decision involving facts unique to each proposed disposal, and complex issues the analysis and resolution of which are most appropriately left to the expertise of the agency making the determination:

(3) it is the intent of the legislature to confirm that the determination of when and under what circumstances a disposal is in the state's best interest is vested in the discretion of the director of the division of lands, subject to the consent of the commissioner of natural resources and the policy guidance provided by this Act;

(4) the scope of the review undertaken by the director of the division of lands in support of a proposed disposal is to be established in the director's written finding made under the provisions of this Act, and is to be based upon the known information or information that is made known to the director during the administrative review;

(5) in delegating this discretion, it is not the intent of the legislature to limit public comment or the public's opportunity to participate in the administrative review that takes place before the determination by the director of the division of lands that a disposal is in the state's best interest;

(6) it is the legislature's intent to ensure that the public participates in a timely and meaningful manner in the development of the administrative record that will be used by the director of the division of lands to define the scope of the written finding;

(7) analyses comparable to those generally required by 42 U.S.C. 4321 - 4370a (National Environmental Policy Act of 1969, as amended) for the preparation of an environmental impact statement under 42 U.S.C. 4332(2)(C) are not necessary for support of best interest findings issued under AS 38.05 or conclusive coastal zone consistency determinations issued under AS 46.40;

(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 of state land or an interest in state land;

(9) this Act is not intended to allow the director of the division of lands to limit the scope of an administrative review so as to omit issues or disregard concerns that otherwise must be addressed under the provisions of applicable statutes and regulations;

(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; and

(11) 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.

* **Sec. 2.** AS 38.05.035(e) is amended to read:

(e) 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 best serve the interests of the state. **The preparation and issuance of the written finding by the director is subject to the following:**

(1) with the consent of the commissioner and subject to the director's discretion, for a specific proposed disposal of available land, resources, or property, or of an interest in them, the director, in the written finding,

(A) shall establish the scope of the administrative review on which the director's determination is based, and the scope of the written finding supporting that determination; the scope of the review and finding may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal;

(B) may limit the scope of an administrative review and finding for a proposed disposal to

(i) applicable statutes and regulations;

(ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

(iii) issues that, based on the statutes and regulations

referred to in (i) of this subparagraph, on the facts as described in (ii) of this subparagraph, and on the nature of the uses sought to be authorized, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state; and

(C) may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that pertain solely to a discrete phase of the project when

(i) the only uses to be authorized by the proposed disposal are part of that discrete phase;

(ii) the department's approval is required before the next phase of the project may proceed; and

(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;

(2) a [A] written finding for an oil and gas lease sale under AS 38.05.180 is subject to (g) of this section;

(3) a [. A] contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the commissioner approves the contract but if the appraised value is not greater than $50,000 in the case of the sale of land or an interest in land, or $5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;

(4) public notice requirements relating to the sale, lease, or other disposal of available land or an interest in land for oil and gas proposed to be scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), are as follows:

(A) before a public hearing, if held, or in any case not less than 180 days before the sale, lease, or other disposal of available land or

an interest in land, the director shall make available to the public a preliminary written finding that states the scope of the review established under (1)(A) of this subsection and includes the applicable statutes and regulations, the material facts and issues in accordance with (1)(B) of this subsection, and information required by (g) of this section, upon which the determination that the sale, lease, or other disposal will serve the best interests of the state will be based; the director shall provide opportunity for public comment on the preliminary written finding for a period of not less than 60 days;

(B) after the public comment period for the preliminary written finding and not less than 21 days before the sale, lease, or other disposal of available land or an interest in land for oil and gas, the director shall make available to the public a final written finding that states the scope of the review established under (1)(A) of this subsection and includes the applicable statutes and regulations, the material facts and issues in accordance with (e)(1) of this subsection, and information required by (g) of this section, upon which the determination that the sale, lease, or other disposal will serve the best interests of the state is based;

(5) before [. BEFORE] a public hearing, if held, or in any case not [NO] less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them other than a sale, lease, or other disposal of available land or an interest in land for oil and gas under (4) of this subsection, the director shall make available to the public a written finding that, in accordance with (1) of this subsection, sets out the material facts and applicable statutes and regulations and any other information required by statute or regulation to be considered [LAW] upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based; however, a [. A] written finding is not required before the approval of

(A) [(1)] a contract for a negotiated sale authorized under AS 38.05.115;

(B) [(2)] a lease of land for a shore fishery site under

AS 38.05.082;

(C) [(3)] a permit or other authorization revocable by the commissioner;

(D) [(4)] a mineral claim located under AS 38.05.195;

(E) [(5)] a mineral lease issued under AS 38.05.205;

(F) [(6)] a production license issued under AS 38.05.207;

(G) [(7)] an exempt oil and gas sale under AS 38.05.180(d) of acreage offered in a sale that was held within the previous five years if the sale was subject to a written best interest finding, unless the commissioner determines that new information has become available that justifies a revision of the best interest finding; or

(H) [(8)] a lease sale under AS 38.05.180(w) of acreage offered in a sale that was held within the previous five years if the sale was subject to a best interest finding, unless the commissioner determines that new information has become available that justifies a revision of the best interest finding.

* **Sec. 3.** AS 38.05.035(g) is amended to read:

(g) **Notwithstanding (e)(1)(A) and (B) of this section, when** [WHEN] the director prepares a written finding required under (e) of this section for an oil and gas lease sale scheduled under AS 38.05.180, the director shall consider and discuss

(1) in **a final written** [THE] finding [(1)] facts that are known to the director at the time of preparation of the finding and that are

(A) material to [THE FOLLOWING MATTERS OR TO] issues that were raised during the period allowed for receipt of public comment, **whether or not material to a matter set out in (B) of this paragraph, and within the scope of the administrative review established by the director under (e)(1) of this section; or**

(B) material to the following matters:

(i) [; (A)] property descriptions and locations;

(ii) [(B)] the petroleum potential of the sale area, in general terms;

(iii) [(C)] fish and wildlife species and their habitats in the area;

(iv) [(D)] the current and projected uses in the area, including uses and value of fish and wildlife;

(v) [(E)] the governmental powers to regulate oil and gas exploration, development, production, and transportation;

(vi) [(F)] the reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;

(vii) [(G)] lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;

(viii) [(H)] the method or methods most likely to be used to transport oil or gas from the lease sale area, and the advantages, disadvantages, and relative risks of each;

(ix) [(I)] the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;

(x) [(J)] the reasonably foreseeable effects of oil and gas exploration, development, production, and transportation on municipalities and communities within or adjacent to the lease sale area; and

(xi) [(K)] the bidding method or methods adopted by the commissioner under AS 38.05.180;

(2) **in a final written finding,** a summary of agency and public comments received [AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS];

(3) in a preliminary written finding, facts that are known to the director at the time of preparation of the finding and that are

(A) material to issues that the department identifies, whether or not material to a matter set out in (B) of this paragraph, and within the scope of the administrative review established by the director under (e)(1) of this section; or

(B) material to a matter described in (1)(B) of this subsection; and

(4) [(3)] the basis for the director's preliminary or final finding, as applicable, [DETERMINATION] that, on balance, leasing the area would be in the state's best interest.

* **Sec. 4.** AS 38.05.035 is amended by adding new subsections to read:

(h) In preparing a written finding under (e)(1) of this section, the director may not be required to speculate about possible future effects subject to future permitting that cannot reasonably be determined until the project or proposed use for which a written best interest finding is required is more specifically defined, including speculation about

(1) effects that are remote in time or place;

(2) the exact location and size of an ultimate use and related facilities;

(3) the economic feasibility of ultimate development; and

(4) future environmental or other laws that may apply at the time of any future development.

(i) A person who is eligible to file a request for reconsideration under this subsection and who is aggrieved by the final written finding of the director entered under (e)(4) or (5) of this section may, within 20 days after the issuance of the final written finding, request reconsideration of the decision by the commissioner. A person is eligible to file a request for reconsideration if the person meaningfully participated in the process set out in this chapter for receipt of public comment by submitting written comment during the period for receipt of public comment and if the person is affected by the final written finding. A request for reconsideration submitted under this subsection must specify the written finding complained of and the specific basis

upon which it is challenged. The commissioner shall grant or deny the request within 30 days after issuance of the final written finding. Failure of the commissioner to act on the request for reconsideration within this period is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court.

(j) If a request for reconsideration is granted, the commissioner may order the director to issue a new final written finding after reconsideration as may be required under the circumstances.

(k) A person may appeal a final written finding issued under (e)(4) or (5) of this section to the superior court, but only if the person was eligible to request, and did request, reconsideration of that finding under (i) of this section. The person shall initiate the appeal within 30 days from the date that the decision on reconsideration is mailed or otherwise distributed, or the date the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal are limited to those presented to the commissioner in the person's request for reconsideration.

(l) For purposes of appeal under (k) of this section, the burden is upon the party seeking review to establish the invalidity of the finding.

* **Sec. 5.** AS 38.05.075(h) is amended to read:

(h) A person aggrieved by a decision of the commissioner under this section may appeal to the commissioner within five days of the prequalification decision. The decision of the commissioner under this subsection [OR UNDER AS 38.05.035(e)] may be appealed to the superior court.

* **Sec. 6.** AS 38.05.945(a) is amended to read:

(a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;

(2) zoning of land under applicable law;

(3) **issuance of a**

(A) preliminary written finding under AS 38.05.035(e)(4)(A)

regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas subject to AS 38.05.180(b);

(B) final written finding under AS 38.05.035(e)(4)(B) regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas subject to AS 38.05.180(b);

(C) written finding for [A DECISION UNDER AS 38.05.035(e) REGARDING] the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035(e)(5);

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a public hearing under AS 38.05.856(b);

(6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries.

* **Sec. 7.** AS 38.05.945(b) is amended to read:

(b) When notice is required to be given under this section,

(1) the notice must contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on it;

(2) if the notice is of a preliminary written finding described in (a)(3)(A) of this section, the department shall give notice at the beginning of the public comment period for the preliminary written finding, notifying the public of the right to submit comments; the department shall give notice by

(A) publication of a legal notice in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action at least once a week for two consecutive weeks;

(B) publication of a notice in display advertising form in the newspapers described in (A) of this paragraph at least once a week for two consecutive weeks;

(C) public service announcements on the electronic media serving the area to be affected by the proposed action; and

(D) one or more of the following methods:

(i) posting in a conspicuous location in the vicinity of the action;

(ii) notification of parties known or likely to be affected by the action; or

(iii) another method calculated to reach affected parties;

(3) if the notice is of an action [NOTICE OF ONE OR MORE ACTIONS] described in (a) of this section, other than notice of an action under (a)(3)(A) of this section, the department shall give notice [SHALL BE GIVEN] at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

(A) [(1)] publication through public service announcements on the electronic media serving the area affected by the action;

(B) [(2)] posting in a conspicuous location in the vicinity of the action;

(C) [(3)] notification of parties known or likely to be affected by the action; or

(D) [(4)] another method calculated to reach affected persons [. A NOTICE SHALL CONTAIN SUFFICIENT INFORMATION IN COMMONLY UNDERSTOOD TERMS TO INFORM THE PUBLIC OF THE NATURE OF THE ACTION AND THE OPPORTUNITY OF THE PUBLIC TO COMMENT ON THE ACTION].

* Sec. 8. AS 46.40 is amended by adding a new section to read:

Sec. 46.40.094. CONSISTENCY DETERMINATIONS FOR PHASED USES AND ACTIVITIES. (a) The provisions of this section apply to a use or activity for which a consistency determination is required if

(1) at the time the proposed use or activity is initiated, there is insufficient information to evaluate and render a consistency determination for the entirety of the proposed use or activity;

(2) the proposed use or activity is capable of proceeding in discrete

phases based upon developing information obtained in the course of a phase: and

(3) each subsequent phase of the proposed use or activity is subject to discretion to implement alternative decisions based upon the developing information.

(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 the particular phase and make the consistency determination based on

(A) applicable statutes and regulations;

(B) the facts pertaining to a use or activity proposed for that phase that are

(i) known to the state agency responsible or made a part of the record during the consistency review; and

(ii) material to the consistency determination; and

(C) the reasonably foreseeable, significant effects of the use or activity proposed for that phase.

(c) In this section,

(1) "agency responsible for the consistency determination" means

(A) the office of management and budget, for a consistency determination required to be made under AS 44.19.145(a)(11); and

(B) the commissioner of the resource agency that coordinates a consistency review for a proposed use or activity, or for a proposed phase of a use or activity, when required by this chapter for which a permit, lease, or authorization is required to be approved or issued only by that resource agency;

(2) "resource agency" has the meaning given in AS 44.19.152.

*** Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).

CS FOR SENATE BILL NO. 308(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act modifying 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 modifying administrative procedures and decisions by state agencies 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 providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) in order for the state to make a disposal of state land or of an interest in state land, the legislature has previously determined that it is the responsibility of the director of the division of lands in the Department of Natural Resources to make a written determination that the interests of the state will be best served;

(2) each determination under AS 38.05 that the interests of the state will be best served is a policy decision involving facts unique to each proposed disposal, and complex issues the analysis and resolution of which are most appropriately left to the expertise of the agency making the determination;

(3) it is the intent of the legislature to confirm that the determination of when and under what circumstances a disposal is in the state's best interest is vested in the discretion of the director of the division of lands, subject to the consent of the commissioner of natural resources and the policy guidance provided by this Act;

(4) the scope of the review undertaken by the director of the division of lands in support of a proposed disposal is to be established in the director's written finding made under the provisions of this Act, and is to be based upon the known information or information that is made known to the director during the administrative review;

(5) in delegating this discretion, it is not the intent of the legislature to limit public comment or the public's opportunity to participate in the administrative review that takes place before the determination by the director of the division of lands that a disposal is in the state's best interest;

(6) it is the legislature's intent to ensure that the public participates in a timely and meaningful manner in the development of the administrative record that will be used by the director of the division of lands to define the scope of review of the written finding;

(7) analyses comparable to those generally required by 42 U.S.C. 4321 - 4370a (National Environmental Policy Act of 1969, as amended) for the preparation of an environmental impact statement under 42 U.S.C. 4332(2)(C) are not necessary for support of best interest findings issued under AS 38.05 or conclusive coastal zone consistency determinations issued under AS 46.40;

(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 of state land or an interest in state land;

(9) this Act is not intended to allow the director of the division of lands to limit the scope of an administrative review so as to omit issues or disregard concerns that otherwise must be addressed under the provisions of applicable statutes and regulations;

(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; and

(11) consideration of a disposal as a phase of a development project 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, but rather is intended to allow for consideration of those issues when sufficient data are available upon which to make reasoned decisions.

* Sec. 2. AS 38.05.035(e) is amended to read:

(e) 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 best serve the interests of the state. **The preparation and issuance of the written finding by the director is subject to the following:**

(1) with the consent of the commissioner and subject to the director's discretion, for a specific proposed disposal of available land, resources, or property, or of an interest in them, the director, in the written finding,

(A) shall establish the scope of the administrative review on which the director's determination is based, and the scope of the written finding supporting that determination; the scope of the review and finding may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal;

(B) may limit the scope of an administrative review and finding for a proposed disposal to

(i) applicable statutes and regulations;

(ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

(iii) issues that, based on the statutes and regulations referred to in (i) of this subparagraph, on the facts as described in (ii) of this subparagraph, and on the nature of the uses sought to be authorized, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state; and

(C) may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that pertain solely to a discrete phase of the project when

(i) the only uses to be authorized by the proposed disposal are part of that discrete phase;

(ii) the department's approval is required before the next phase of the project may proceed; and

(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;

(2) the director shall discuss in the written finding prepared and issued under this subsection the reasons that each of the following was not material to the director's determination that the interests of the state will be best served:

(A) facts pertaining to the land, resources, or property, or an interest in them other than those that the director finds material under (1)(B)(ii) of this subsection; and

(B) issues based on the statutes and regulations referred to in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this subsection;

(3) a [A] written finding for an oil and gas lease sale under AS 38.05.180 is subject to (g) of this section;

(4) a [. A] contract for the sale, lease, or other disposal of available

land or an interest in land is not legally binding on the state until the commissioner approves the contract but if the appraised value is not greater than $50,000 in the case of the sale of land or an interest in land, or $5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;

(5) public notice requirements relating to the sale, lease, or other disposal of available land or an interest in land for oil and gas proposed to be scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), are as follows:

(A) before a public hearing, if held, or in any case not less than 180 days before the sale, lease, or other disposal of available land or an interest in land, the director shall make available to the public a preliminary written finding that states the scope of the review established under (1)(A) of this subsection and includes the applicable statutes and regulations, the material facts and issues in accordance with (1)(B) of this subsection, and information required by (g) of this section, upon which the determination that the sale, lease, or other disposal will serve the best interests of the state will be based; the director shall provide opportunity for public comment on the preliminary written finding for a period of not less than 60 days;

(B) after the public comment period for the preliminary written finding and not less than 90 days before the sale, lease, or other disposal of available land or an interest in land for oil and gas, the director shall make available to the public a final written finding that states the scope of the review established under (1)(A) of this subsection and includes the applicable statutes and regulations, the material facts and issues in accordance with (1) of this subsection, and information required by (g) of this section, upon which the determination that the sale, lease, or other disposal will serve the best interests of the state is based;

(6) before [. BEFORE] a public hearing, if held, or in any case not [NO] less than 21 days before the sale, lease, or other disposal of available land,

property, resources, or interests in them **other than a sale, lease, or other disposal of available land or an interest in land for oil and gas under (5) of this subsection**, the director shall make available to the public a written finding that, **in accordance with (1) of this subsection,** sets out the **material** facts and applicable **statutes and regulations and any other information required by statute or regulation to be considered** [LAW] upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based**; however, a** [. A] written finding is not required before the approval of

(A) [(1)] a contract for a negotiated sale authorized under AS 38.05.115;

(B) [(2)] a lease of land for a shore fishery site under AS 38.05.082;

(C) [(3)] a permit or other authorization revocable by the commissioner;

(D) [(4)] a mineral claim located under AS 38.05.195;

(E) [(5)] a mineral lease issued under AS 38.05.205;

(F) [(6)] a production license issued under AS 38.05.207;

(G) [(7)] an exempt oil and gas sale under AS 38.05.180(d) of acreage offered in a sale that was held within the previous five years if the sale was subject to a written best interest finding, unless the commissioner determines that new information has become available that justifies a revision of the best interest finding; or

(H) [(8)] a lease sale under AS 38.05.180(w) of acreage offered in a sale that was held within the previous five years if the sale was subject to a best interest finding, unless the commissioner determines that new information has become available that justifies a revision of the best interest finding;

(7) the director shall include in

(A) a preliminary written finding a summary of agency and public comments, if any, obtained as a result of contacts with other agencies concerning a proposed disposal or as a result of informal efforts

undertaken by the department to solicit public response to a proposed disposal, and the department's preliminary responses to those comments; and

(B) the final written finding a summary of agency and public comments received and the department's responses to those comments.

* Sec. 3. AS 38.05.035(g) is amended to read:

(g) **Notwithstanding (e)(1)(A) and (B) of this section, when** [WHEN] the director prepares a written finding required under (e) of this section for an oil and gas lease sale scheduled under AS 38.05.180, the director shall consider and discuss

(1) in **a final written** [THE] finding [(1)] facts that are known to the director at the time of preparation of the finding and that are

(A) material to [THE FOLLOWING MATTERS OR TO] issues that were raised during the period allowed for receipt of public comment, **whether or not material to a matter set out in (B) of this paragraph, and within the scope of the administrative review established by the director under (e)(1) of this section; or**

(B) material to the following matters:

(i) [; (A)] property descriptions and locations;

(ii) [(B)] the petroleum potential of the sale area, in general terms;

(iii) [(C)] fish and wildlife species and their habitats in the area;

(iv) [(D)] the current and projected uses in the area, including uses and value of fish and wildlife;

(v) [(E)] the governmental powers to regulate oil and gas exploration, development, production, and transportation;

(vi) [(F)] the reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural

resources;

(vii) [(G)] lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;

(viii) [(H)] the method or methods most likely to be used to transport oil or gas from the lease sale area, and the advantages, disadvantages, and relative risks of each;

(ix) [(I)] the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;

(x) [(J)] the reasonably foreseeable effects of oil and gas exploration, development, production, and transportation on municipalities and communities within or adjacent to the lease sale area; and

(xi) [(K)] the bidding method or methods adopted by the commissioner under AS 38.05.180;

(2) **in a preliminary written finding, facts that are known to the director at the time of preparation of the finding and that are**

(A) material to issues that the department identifies, whether or not material to a matter set out in (B) of this paragraph, and within the scope of the administrative review established by the director under (e)(1) of this section; or

(B) material to a matter described in (1)(B) of this subsection [A SUMMARY OF AGENCY AND PUBLIC COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS]; and

(3) the basis for the director's **preliminary or final finding, as applicable,** [DETERMINATION] that, on balance, leasing the area would be in the state's best interest.

* Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

(h) In preparing a written finding under (e)(1) of this section, the director may not be required to speculate about possible future effects subject to future permitting that cannot reasonably be determined until the project or proposed use for which a written best interest finding is required is more specifically defined, including speculation about

(1) effects that are remote in time or place;

(2) the exact location and size of an ultimate use and related facilities;

(3) the economic feasibility of ultimate development; and

(4) future environmental or other laws that may apply at the time of any future development.

(i) A person who is eligible to file a request for reconsideration under this subsection and who is aggrieved by the final written finding of the director entered under (e)(5) or (6) of this section may, within 20 days after the issuance of the final written finding, request reconsideration of the decision by the commissioner. A person is eligible to file a request for reconsideration if the person

(1) meaningfully participated in the process set out in this chapter for receipt of public comment by

(A) submitting written comment during the period for receipt of public comment;

(B) presenting oral testimony at a public hearing, if a public hearing was held; or

(C) adopting as the person's own testimony concerns that were expressed by another, either by submitting a written statement to that effect during the period for receipt of public comment or by so declaring during a public hearing; and

(2) is affected by the final written finding.

(j) A request for reconsideration submitted under (i) of this section must specify the written finding complained of and the specific basis upon which it is challenged. The commissioner shall grant or deny the request within 30 days after issuance of the final written finding. Failure of the commissioner to act on the request

for reconsideration within this period is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court.

(k) If a request for reconsideration is granted, the commissioner may order the director to issue a new final written finding after reconsideration as may be required under the circumstances.

(l) A person may appeal a final written finding issued under (e)(5) or (6) of this section to the superior court, but only if the person was eligible to request, and did request, reconsideration of that finding under (i) of this section. The person shall initiate the appeal within 30 days from the date that the decision on reconsideration is mailed or otherwise distributed, or the date the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal are limited to those presented to the commissioner in the person's request for reconsideration.

(m) For purposes of appeal under (l) of this section, the burden is upon the party seeking review to establish the invalidity of the finding.

*** Sec. 5.** AS 38.05.075(h) is amended to read:

(h) A person aggrieved by a decision of the commissioner under this section may appeal to the commissioner within five days of the prequalification decision. The decision of the commissioner under this subsection [OR UNDER AS 38.05.035(e)] may be appealed to the superior court.

*** Sec. 6.** AS 38.05.945(a) is amended to read:

(a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;

(2) zoning of land under applicable law;

(3) **issuance of a**

(A) preliminary written finding under AS 38.05.035(e)(5)(A) regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas subject to AS 38.05.180(b);

(B) final written finding under AS 38.05.035(e)(5)(B)

regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas subject to AS 38.05.180(b);

(C) written finding for [A DECISION UNDER AS 38.05.035(e) REGARDING] the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035(e)(6);

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a public hearing under AS 38.05.856(b);

(6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries.

* Sec. 7. AS 38.05.945(b) is amended to read:

(b) When notice is required to be given under this section,

(1) the notice must contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on it;

(2) if the notice is of a preliminary written finding described in (a)(3)(A) of this section, the department shall give notice at the beginning of the public comment period for the preliminary written finding, notifying the public of the right to submit comments; the department shall give notice by

(A) publication of a legal notice in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action at least once a week for two consecutive weeks;

(B) publication of a notice in display advertising form in the newspapers described in (A) of this paragraph at least once a week for two consecutive weeks;

(C) public service announcements on the electronic media serving the area to be affected by the proposed action; and

(D) one or more of the following methods:

(i) posting in a conspicuous location in the vicinity of the action;

(ii) notification of parties known or likely to be

affected by the action; or

(iii) another method calculated to reach affected parties;

(3) if the notice is of an action [NOTICE OF ONE OR MORE ACTIONS] described in (a) of this section, other than notice of an action under (a)(3)(A) of this section, the department shall give notice [SHALL BE GIVEN] at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

(A) [(1)] publication through public service announcements on the electronic media serving the area affected by the action;

(B) [(2)] posting in a conspicuous location in the vicinity of the action;

(C) [(3)] notification of parties known or likely to be affected by the action; or

(D) [(4)] another method calculated to reach affected persons [. A NOTICE SHALL CONTAIN SUFFICIENT INFORMATION IN COMMONLY UNDERSTOOD TERMS TO INFORM THE PUBLIC OF THE NATURE OF THE ACTION AND THE OPPORTUNITY OF THE PUBLIC TO COMMENT ON THE ACTION].

* Sec. 8. AS 46.40 is amended by adding a new section to read:

Sec. 46.40.094. CONSISTENCY DETERMINATIONS FOR PHASED USES AND ACTIVITIES. (a) The provisions of this section apply to a use or activity for which a consistency determination is required if

(1) at the time the proposed use or activity is initiated, there is insufficient information to evaluate and render a consistency determination for the entirety of the proposed use or activity;

(2) the proposed use or activity is capable of proceeding in discrete phases based upon developing information obtained in the course of a phase; and

(3) each subsequent phase of the proposed use or activity is subject to discretion to implement alternative decisions based upon the developing information.

(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 the particular phase and make the consistency determination based on

(A) applicable statutes and regulations;

(B) the facts pertaining to a use or activity proposed for that phase that are

(i) known to the state agency responsible or made a part of the record during the consistency review; and

(ii) material to the consistency determination; and

(C) the reasonably foreseeable, significant effects of the use or activity proposed for that phase;

(3) shall, when the consistency review is limited under (1) of this subsection, prepare and issue a written statement describing the reasons for its decision to make the consistency determination for the use or activity in phases.

(c) In this section,

(1) "agency responsible for the consistency determination" means

(A) the office of management and budget, for a consistency determination required to be made under AS 44.19.145(a)(11); and

(B) the commissioner of the resource agency that coordinates a consistency review for a proposed use or activity, or for a proposed phase of a use or activity, when required by this chapter for which a permit, lease, or authorization is required to be approved or issued only by that resource agency;

(2) "resource agency" has the meaning given in AS 44.19.152.

* **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).

Amendment #1 By Rieger

Page 2, Line 8

after "determination;" insert "may limit"

Page 2, Line 9

delete "may address" and replace with "to"

Page 2, Line 9

after "direct" insert "risks and"

Amendment # 2 By Rieger

Page 2, line 15

after "them" delete ", that the director finds

insert "which"

Page 2, line 20

delete "the director finds"

Amendment #1

8-LS1689\E.1
Chenoweth
2/22/94

AMENDMENT

OFFERED IN THE SENATE

Failed

TO: SB 308

Page 2, line 21:

Delete "and"

Page 2, lines 22 - 31:

Delete all material and insert:

"(2) subject to the director's discretion, and with the consent of both the commissioner and the person seeking the proposed disposal, for a specific proposed disposal of available land, resources, or property, or of an interest in them, the director may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable law, facts, and issues identified in (1)(B)(i) and (ii) of this subsection that pertain solely to a discrete phase of the project; an administrative review and finding that is limited under this paragraph is subject to each of the following:

(A) the only uses of the land, resources, or property, or the interest in them, to be authorized by the proposed disposal are uses that are part of the discrete phase of the project;

(B) the person seeking the proposed disposal agrees in writing that the person understands and agrees that

(i) the director's approval of the proposed disposal does not give the person a vested right to proceed beyond the discrete phase of the project for which the approval is given;

(ii) the person's investment, if any, made in the discrete phase of the project following the director's approval of the proposed disposal is at the person's own risk;

(iii) the director may disapprove a subsequent related disposal for the multiphased development if the director determines that the subsequent related disposal will not serve the state's best interest; and

(iv) the director may not, during any determination of the best interest of the state in conjunction with a subsequent related disposal for the multiphased development, consider the investment made by the person following the director's previous approval of a proposed disposal for the project; and

(C) if, during an administrative review of a proposed disposal that represents a phase of the multiphased development, the director considers the costs of the project related to that phase, the director may not consider benefits from the proposed disposal that do not result directly from the same phase;"

Renumber the following internal paragraph designation within AS 38.05.035(e) accordingly.

Amendment #2

S-LS1689\E.2
Chenoweth
2/22/94

AMENDMENT

adopted

OFFERED IN THE SENATE

TO: SB 308

Page 1, line 3, after "**them**":

Insert "**and to cooperative resource management or development agreements based on them**"

Page 1, following line 6:

Insert a new bill section to read:

"*** Section 1.** AS 38.05.027(a) is amended to read:

(a) Consistent with the authority of the commissioner under law, the commissioner, after determining that the agreement is in the best interests of the public and the state, may enter into cooperative resource management or development agreements with the federal government, a state agency, a village or municipality, or a person. **Before** [SPECIFIC GUIDELINES TO PROTECT THE STATE AND PUBLIC INTEREST SHALL BE ESTABLISHED, IF NECESSARY, BY THE COMMISSIONER BEFORE] entering into an agreement under this section, **the commissioner shall**

(1) for a cooperative resource management or development agreement entered into with a municipality, a village, or a person for a proposed sale, lease, or other disposal of land, resources, or property, or of an interest in them, that is for a multiphased development project, require the municipality, village, or person to indemnify the state for costs incurred for the sale, lease, or disposal, and any investment made as a result of the sale, lease, or other disposal, if

(A) the project for which the agreement is to be made requires the department to issue a permit or other authorization; and

(B) the commissioner revokes the permit or authorization

before completion of the final phase of the project: and

(2) establish other specific guidelines to protect the state and public interest."

Page 1, line 7:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill sections accordingly.

Amend #11

4-12-94
JK
DP-Eng
Mng
Vote
JK &
JR for
all others
against
(lost out)
Failed
BS did not
vote.

Amendment to SB 308

Page 12 line 26 after the word "significant" **add** the word "future"

Page 12, line 27 after the word "proposed" **delete** "for that phase".

FISCAL NOTE

No. 4

Bill Version: SB 308

(S) Publish Date: 2-23-94

STATE OF ALASKA

1994 LEGISLATIVE SESSION

BIL

Revision Date: Original

Dept Affected: Natural Resources

Title: "An Act modifying administrative procedures and decisions by state agencies that relate to uses and dispositions..."

BRU: Resource Development

Component: All

Sponsor: Senate Resources Committee

Requestor: Senate Resources Committee

Component Serial No. All

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
CHANGE IN REVENUES ( )	0.0	0.0	0.0	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/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)

There is no anticipated fiscal impact associated with this bill in the Department of Natural Resources.

Changes in CSSB308 (RES) have no fiscal impact. This fiscal note is appropriate.

2·23·94 date

Comte Aide(initial)

Prepared by: Jerry Gallagher, Legislative Liaison

Phone : 465-2400

Division: Commissioner's Office

Date : 14-Feb-94

Approved by Commissioner: Harry A. Noah

Date: 14-Feb-94

Agency: Natural Resources

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FROM: Mary Lundquist
Oil, Gas & Mining Section
Attorney General's Office, Anchorage

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MEMORANDUM

State of Alaska
Department of Law

TO: Senate Finance Committee:
Senators Pearce, Frank, Jacko,
Kelly, Kerttula, Rieger & Sharp

DATE: March 22, 1994

FILE NO. 221-94-0515

TEL. NO.: 269-5255

SUBJECT: Sale 78 Administrative Appeal

FROM: Mary Ann Lundquist
Assistant Attorney General
Oil, Gas & Mining - Anchorage

In response to a request made this morning by the senate finance subcommittee on SB308, enclosed is the Department of Law's response to Trustee's offer of settlement of the Sale 78 administrative appeal.

If I can be of further assistance, please do not hesitate to contact me.

Attachment

cc: James E. Eason, Director, Division of Oil and Gas

MA::ars

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 10, 1994

Mr. Peter Van Tuyn
Trustees for Alaska
725 Christensen Drive
Anchorage, Alaska 99501

Re: Ninilchik Traditional Council v. State
AGO File No. 221-94-0515 Civ.

Dear Mr. Van Tuyn:

I am responding to your Offer of Settlement dated February 7, 1994. It has come to my attention that the substance of Trustees' settlement offer, which was labeled "Confidential - - For Settlement Purposes Only" has been widely disseminated in Juneau since it was presented to the state. Since the state has treated this letter as a confidential document up to this point, we can only assume that Trustees of Alaska have chosen to selectively disseminate the terms of this offer of settlement. In light of the general knowledge of this settlement offer, the state will not be treating the letter, nor this response on behalf of the Department of Natural Resources, as confidential.

The terms of settlement you propose are not acceptable, and the Department of Natural Resources is reluctant to entertain settlement of the Lease Sale 78 administrative appeal at this time.

Our reasons for declining your offer should be readily apparent. First, you do not offer dismissal of the lawsuit with prejudice. You simply point out the obvious - that it is unlikely, absent the Supreme Court's reversal of the Superior Court's injunction or legislative intervention, that the state can proceed with Sale 78 until mid-1998. Then you suggest that "settlement may be possible within a time frame which would allow the state to proceed with the sale this year." Feb. 7, 1994 letter (emphasis added). Therefore, Trustees' offer of settlement may not offer the state anything for settling.

Presumably, Trustees mean by its settlement offer that it would cooperate to have the injunction removed, allowing the sale to be held while litigation on the underlying issue continues. The state would still be exposed to the continuing costs of pursuing this and other sale-related litigation in which it is engaged with Trustees. Both the state and its lessees would

be subjected to prolonged uncertainty regarding the validity, terms and conditions of any leases which might be issued under those circumstances.

Moreover, dismissal of the Sale 78 litigation in its entirety does not address the broader question of the substantial risks to the state's ability to conduct its competitive leasing programs which have been created by the lawsuits which Trustees have pursued against Sales 50, 55 and 78 (as well as the appeal of the department's Good News Bay decision). The legislature will shortly be addressing the broader question and exploring legislation to clarify its intent regarding what the scope and content of Best Interest Findings and ACMP Consistency Determinations should be.

I think that it is also important to note that while the Trustees have alleged (albeit vaguely) wide-reaching problems with respect to the Final Best Interest Finding and the Consistency Determination, it appears from your settlement offer that the Trustees' concerns are, in fact, much narrower. If the public interest litigants are willing to trade off their much broader concerns, as were alleged in the appeal, for the much narrower concerns of the commercial fishing industry, then perhaps we should revisit the public interest litigant status of the appellants.

In conclusion, the state has determined that it would set a bad precedent to settle the injunction while continuing the costs of litigation and perpetuating the uncertainty which has been cast over the state's leasing program. The state also sees no advantage to settling this appeal in its entirety. Further, while the Superior Court has granted the Trustees' motion for stay of Lease Sale 78, the state has petitioned the Alaska Supreme Court regarding the correctness of the Superior Court's decision. If the Supreme Court timely reverses the Superior Court with regard to the stay, Lease Sale 78 will be able to proceed in a timely manner.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Mary Ann Lundquist
Assistant Attorney General

MALIAR

SB 352

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Criminal Branch
Anchorage, Alaska

Case Title: STATE V NINILCHIK TRADITIONAL
Supreme Court Case #: S5175

***** O R D E R ***** 02/22/94

IT IS ORDERED: THE PETITION FOR REVIEW FILED ON JANUARY 28, 1994, IS DENIED. ENTERED AT THE DIRECTION OF THE SUPREME COURT ON FEBRUARY 22, 1994. (CHIEF JUSTICE MOORE NOT PARTICIPATING; JUSTICE BRYNER, PRO TEM).
CC: JUSTICES, JUDGE CRANSTON, CLERK OF THE TRIAL COURT
3KN-93-1174 CIVIL TRW

Clerk of The Appellate Courts

MARY ANN LUNDQUIST ESQ
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF LAW
1031 W 4TH #200
ANCHORAGE AK 99501

SB 308

DIVISION OF LEGAL SERVICES

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Juneau, Alaska 99801-2105

FEB 24 1994

MEMORANDUM February 24, 1994

SUBJECT: CSSB 308 (Resources) -- Sectional analysis
(Work Order No. 8-LS1689\K)

TO: Senator Drue Pearce, Co-Chair
Senate Finance Committee
Attn: Bill Miles

FROM: Jack Chenoweth
Legislative Counsel

My comments are to the version of the bill reported yesterday from the Senate Resources Committee and under consideration by the Senate Finance Committee.

The bill title describes the measure as one to modify administrative procedures and decisions relating to uses and disposition of state land, property, and resources, and related interests and to similar purposes involving proposed multiphased uses and activities that are subject to the state's coastal management program. The measure is applicable to administrative procedures and decisions made by the commissioner of natural resources under the Alaska Land Act (AS 38.05) [1] and by the party

---

[1] The issue appears to arise out of a decision adverse to the Department of Natural Resources in the issue of coal mining permits under the state's Surface Coal Mining Control Act, AS 27.21. In Trustees for Alaska v. Gorsuch, 835 P.2d 1239 (Alaska 1992), the court disposed of one issue in favor of the plaintiffs by noting that "statutory language does support Trustees' . . . argument that [the department] may not ignore cumulative effects of mining and related support facilities by unreasonably restricting its jurisdiction and disregarding the effects of activities outside that jurisdiction." Looking, first, at purposes and policies that underlay the statutes in question, the court reached this determination:

> These purposes cannot be accomplished by ignoring cumulative impacts. Based on the policies inherent in these purposes, we conclude that DNR may not ignore cumulative effects of mining and related support facilities by unreasonably restricting its jurisdiction or by permitting facilities separately. These purposes require that at the time DNR reviews any [Surface Coal Mining Control Act] permit application it consider the probable cumulative impact of all anticipated activities which will be part of a "surface coal

(continued...)

charged with making consistency determinations under the coastal management program (AS 46.40). 2/

*

Alaska Land Act: Department of Natural Resources --

AS 38.05.035(e) directs the director of the division of lands to make written "best interest" findings in a range of applications and actions involving the lease, sale, or other disposal of state land, resources, property, or interests in them. The significant substantive change wrought to that subsection by the measure's bill section 1 would authorize the division director to

-- (1) under subparagraph (1)(A), define "the scope of the administrative review on which the director's determination is [to be] based, and the scope of the written finding supporting that determination"; further, under the limitation proposed, that scope and that written finding are proposed to be limited to "only reasonably foreseeable, significant, direct effects of the uses proposed to be authorized by the disposal";

1/(...continued)

> mining operation," whether or not the activities are part of the permit under review. If DNR determines that the cumulative effect is problematic, the problems must be resolved before the initial permit is approved.

835 P.2d at 1246.

2/ On the matter of review of cumulative impacts, the Gorsuch conclusion was followed in Trustees for Alaska v. Department of Natural Resources, 851 P.2d 1340 (Alaska 1993), a challenge to the Camden Bay lease sale, Lease Sale 50, wherein the department had been charged with making a consistency determination under the Alaska coastal management program, a determination that plaintiffs contended was inadequate. Again, the court noted:

> . . . [D]eferring a careful and detailed look at particularized geophysical hazards to later stages of the development process, as DNR evidently intends, entails certain practical risks. First, DNR's method means that particularized geophysical hazards will be considered on a lease-site-by-lease-site basis. This may tend to mask appreciation of any cumulative environmental threat that would otherwise be apparent if DNR began with a detailed and comprehensive identification of those hazards. Second, as we noted in Trustees for Alaska v. Gorsuch, 835 P.2d 1239, 1246 n. 6 (Alaska 1992), the more segmented an assessment of environmental hazards, the greater the risk that prior permits will compel DNR to approve later, environmentally unsound permits.

Trustees for Alaska v. State, Department of Natural Resources, 851 P.2d 1340, at 1346.

-- (2) under subparagraph (1)(B), restrict the scope of the review and the written finding,

-- to applicable law and to facts that the director "finds are material to the determination and that are known to the director" or the knowledge of which derives from the administrative review process; and

-- to issues that the director finds are material to the determination of whether the disposal proposed will best serve the interests of the state; and

-- (3) under subparagraph (1)(C), give consideration to the disposal by phases if the proposed disposal involves a multiphased development when the department determines that each of the contingencies set out for phased consideration are present.

AS 38.05.035(g) sets additional parameters on the making of a written best interest finding. Under bill section 2, in addition to providing the summary of comments and the explanation for the basis of the decision as that subsection currently requires, AS 38.05.035(g) would be amended so that the director must set out in the finding a discussion of (1) facts material to issues raised during the period of public comment, whether those facts are also material to a matter identified in subparagraph (B), so long as those material facts were within the scope of the administrative review as defined by the director under (e)(1), and (2) facts that are material to the matters that are currently specified in AS 38.05.035(g)(1)(A) - (K).

*

Consistency determinations: Coastal Management Program --

Like considerations motivate the proposed modification of the consistency determination process under the Alaska coastal management program.

"Consistency determinations" are administrative reviews intended to ascertain whether or not "uses and activities" proposed to be conducted in the coastal area are consistent with the standards that have been adopted by the state and its coastal resource districts. AS 46.40.100; 6 AAC 80.010(b). When required for a federal project, or when the proposed use or activity involves the permits of two or more state agencies, the division of governmental coordination is the agency responsible for making the consistency determination. When the only permits required are all to be issued by one agency, and that is almost always one of the three "resource agencies," the Departments of Environmental Conservation, Fish and Game, and Natural Resources, that single agency becomes the party responsible for making the consistency determination.

The addition of A S 46.40.094 by bill section 3 replicates the principles outlined for Department of Natural Resources by bill section 1, and makes them applicable in the context of coastal management consistency determinations **when those determinations involve uses or activities "authorized or developed in discrete phases."** The material being added authorizes consistency determinations on a phased basis by allowing the agency responsible for making the consistency determination to limit that review to a particular phase when each of the contingencies identified in (a)(1) is present, and requiring the completed consistency determination to be based on the factors set out in (a)(2).

*

Section 4 of the bill gives it an immediate effective date.

JBC:pl
94-157.plm

INSIDE: Oil and gas leasing legislation

SB-308, HB-474 — preserving Alaska's oil and gas leasing program

Editor's note: The following is based on interviews with Dept. of Natural Resources officials, and on testimony by the department before legislative committees.

Q: Why is the legislation proposed in Senate Bill 308 and House Bill 474 needed?

A. In a series of decisions, the Alaska Supreme Court has ordered changes in the state Best Interest Finding document for oil and gas lease sales, and, more recently, the granting of offshore prospecting permits for minerals. These decisions have resulted in substantial delays in the state's leasing program, which is needed to insure a continuous pace of oil exploration, and hopefully, new discoveries. In its decisions, the court indicates that the current method of preparing for land dispositions is insufficient to meet its criteria. But that criteria is unknown. It is being spelled out on a decision-by-decision basis.

Unless this problem is remedied, either through more explicit legislative direction such as proposed in SB-308 and HB-474, or through the state's adoption of a costly and voluminous federal-type EIS system, it is unlikely that any future oil and gas lease sale or other land action requiring a Best Interest Finding will survive legal challenge.

Q: What is a Best Interest Finding?

A. The Best Interest Finding is the administrative record of a decision by the Commissioner that a proposed land disposition is in the best interest of the state. The document shows that the Commissioner has looked at the pros and cons of an action and carefully considered, and analyzed, all issues raised in the required public review process.

Q. How would SB-308 or HB-474 change it?

A. Not by much, really. What the legislation does is give clarification to the way the Commissioner reviews issues that are raised. By more clearly defining in statute what is required, the courts will be able to see that the Commissioner has, indeed, followed the legislature's intent.

Q. Critics of this legislation charge that it would "narrow" the Commissioner's review, so that consideration of some issues might be excluded.

A. That's not so. In fact, the legislation actually strengthens requirements that the Commissioner review all issues brought up. What the legislation does, however, is give more direction to the Commissioner to consider foreseeable, direct effects. This directive is already in the statute for oil and gas lease sales ("reasonably foreseeable" effects must now be assessed) but the words are apparently not strong enough for the court. SB-308 and HB-474 adds two words, so that the statute will read "reasonable foreseeable, significant, direct...".

Parties who challenge lease sales may continue, of course, to raise speculative and indirect effects, but the court will be able to look to a stronger enabling statute in support of the Commissioner's decision.

SB-308 and HB-474 actually *strengthen* the review process by *requiring* the Commissioner to review all pertinent issues raised in public hearings or public comments. That is not now in the law. The intent is to make a more thorough, balanced decision document.

Q. But people worry about the discretion given the Commissioner of Natural Resources to decide whether an issue is "substantial" or irrelevant.

A. Some public official has to make that decision. If we are to engage in review of endless speculative issues, we wind up with volumes of documents and the probability that the decision will be made, in any event, on the basis of significant, foreseeable, and direct effects. The point is our laws now give that authority, and discretion, to the executive branch Commissioner of Natural Resources. SB-308 and HB-474 clarifies the authority. If the legislature wishes some other official, or agency, to make the best interest decision, it could delegate it to another office in the executive branch, or the legislature can make these decisions itself on a case-by-case basis. If we leave it as it is, we effectively delegate this decision to the *courts*, who are now deciding when a Best Interest Finding is appropriate.

Q. Does the legislation enable the Commissioner to approve projects in phases, thereby avoiding consideration of long-term cumulative effects?

A. The law now implicitly allows the Commissioner to approve phases of development, through the sequential approvals required for a lease sale and any subsequent activity, such as development of a discovery. The legislation would make that implicit authority explicit. Current law also requires a review of cumulative effects of development and

INSIDE: SB-308, HB-474

subsequent transportation of oil and gas on wildlife populations and habitat. SB-308 and HB-474 doesn't change that. The bills do state more clearly that projects can be approved in phases, but also that future phases will be subject to separate review. That clearly puts a lessee on notice that should some unforeseen effect come to light, the Commissioner has the authority to alter or halt development. In two occasions in recent years — development of the Point McIntyre and Niakuk offshore fields on the North Slope — the Commissioner ordered changes in development plans to avoid environmental impacts.

Q. But once the state issues a lease, doesn't it open itself to liabilities if development of that lease is subsequently blocked?

A. Ever since the Kachemak Bay state oil and gas leases were repurchased in the mid-1970s, the state has included in its leases clear language that addresses this point. The state does assume some financial liability, but that is spelled out in the lease to remove any uncertainty. Since this language was inserted in lease forms, 40 competitive state lease sales have been held, with 1,758 leases issued. There have been no problems. In total, about four million acres of state lands are covered by oil and gas leases with this provision. The Kachemak Bay lease sale also stimulated the state legislature to establish the present five-year leasing schedule, so that sales planned in sensitive areas would be known to the public well in advance, in time for policy decisions to be made.

Q: Would the legislation conflict with federal Coastal Zone Management law?

A. DNR doesn't think it does. The only section of SB-308 and HB-474 that addresses coastal zone management is the part that deals with decisions on phases of development. Since the federal CZM program allows for phasing of development, there wouldn't seem to be a problem.

Q: Absent this legislation, the Supreme Court seems to be encouraging the state to adopt a full-blown federal Environmental Impact Statement process. What's wrong with that?

A. It is very costly, a matter of some concern when state revenues are declining. And, it is unnecessary if the significant issues can be addressed under the current procedure, with state law modified by SB-308 or HB-474.

DNR's Best Interest Findings are prepared by a staff of five, and cost an average of $105,000 each. The federal Minerals Management Service spends an average of $500,000 on each EIS under the federal Outer Continental Shelf leasing program. MMS employs 53 people in its leasing section, which is responsible for producing the EIS. DNR would have to greatly increase its operating budget and staffing levels to fund the necessary environmental studies and prepare an EIS-type document. To date, MMS has spent $72.6 million for environmental studies within the Cook Inlet region.

Q. Would the number of lease sales decrease?

A. Yes. In 14 years of leasing since 1979, DNR has held 42 lease sales, averaging three sales a year. MMS has held only 15 Alaska OCS lease sales since the program began in 1976. Preparing an EIS is costly, and with the increased funding requirement, DNR would be able to hold only one sale every 18 months, a major reduction in its leasing program.

Q. Would an EIS-type approach prevent lawsuits?

A. No. Lawsuits were filed against half of the MMS sales, resulting in two sales being enjoined and two sales postponed.

AOGA's position on the legislation

The Alaska Oil and Gas Association (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. The only question is how to define that scope of review.

- Through review of the information available, the Director of the Division of Oil and Gas should determine those issues that should be addressed during the review.
- All public comments should be considered in determining what that scope of review should be.
- All concerns required by legislation should continue to be part of the scope of review.

AOGA supports SB-308/HB-474.

STATE OF ALASKA
WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

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April 12, 1994

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

via fax 465-3872 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.

- 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.

- Amendment #4 was drafted in response to 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.

- Amendment #5 clarifies that the determinations of the state's best interest are those rendered under Title 38; specifically, AS 38.05.

- 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.

- Amendment #7 simply adds economic effects to environmental or sociological effects in finding #11 of CSSB 308.

- Amendment #8: The language of this amendment is designed to reinforce legislative intent that a director should not "artificially divide or segment" proposed projects simply to avoid a thorough review of the project.

- 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 (e) will include a summary of agency and public comments, as well as the department's response to those comments.

- 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

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

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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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 discussed 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

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[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

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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

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[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

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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.

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[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 (DEMARCATION 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.

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[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

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[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 Kuukpik 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

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[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

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[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 maxim compliance with the 6 AAC 80.130(c) standards of maintaining and enhancing the coastal habitats.[12] DNR's analysis points out that:

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[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.

SB 308

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
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March 3, 1994

Clement Lewsey, Acting Chief
Coastal Programs Division
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Ocean Service
Office of Ocean and Coastal Resource Management
Washington, D.C. 20235

Dear Mr. Lewsey:

I am writing to you in my capacity as Director of the State of Alaska's Division of Oil and Gas, an agency both interested in and affected by the proposed statutory amendments contained in Alaska Senate Bill 308. I have reviewed a copy of your March 2, 1994 letter responding to a March 1, 1994 letter from Ms. Riki Ott. Your letter raises several questions.

As a preliminary matter, I agree with your statement that it is premature for OCRM to decide whether it would approve the changes resulting from SB 308. The bill is proposed legislation and is still undergoing the committee review process. It may be modified several times as its intent is clarified and public concerns are addressed. I also understand that any changes to an approved state coastal management program must be formally submitted for review by your agency. Since this bill is not yet approved or enacted, such a submittal, obviously, has not yet been made.

Is it a standard procedure for your federal agency to comment on proposed state legislation? Committing to a written statement on legislation which is currently before Alaska's Legislature under the signature and letterhead of agency authority appears unusual, at best, and gives the impression that the federal agency is actively taking a position on the proposed state legislation. If that is indeed your intent, please describe your agency's authority for and policy on commenting on proposed state legislation.

Further, the comments in your letter lead me to believe that your agency does not understand the bill's composition. In the third paragraph of page 1 of your letter, you state that SB 308 would narrow the scope of review for state agency decisions including the disposition of state land, property, and resources. That described effect is not part of the proposed amendment to the Alaska Coastal Management Program ("ACMP"). Only Section 3 of the bill, proposed statute AS 46.40.094, would affect the ACMP. The first two sections

of the bill address amendments to the Alaska Land Act (Alaska Statutes Title 38, chapter 5), a set of statutes dating from statehood which is independent of and not part of the ACMP statutory scheme.

Even if a federal agency properly may comment on proposed state legislation, a federal agency cannot possibly have any basis to comment on proposed amendments to state statutes which are not in any way under the control of a federal program. Although some decisions eventually issued under the Alaska Land Act may require a prior independent consistency determination under the ACMP (Alaska Statutes Title 46, Chapter 40), the vast majority do not.

I would ask that you reconsider the accuracy of and appropriateness of your comments presented on page 1, paragraph 3 of your letter. If, after such reconsideration, you still feel that your comments are accurate and appropriate, please clarify and specify how they apply to the particular sections of SB 308 and what conflicts result.

Your second comment (page 2, paragraph 1) also appears to address the portions of the bill proposing amendments to the Alaska Land Act. The last sentence of paragraph 1, page 2 refers to the location of an activity. Nothing in Section 3 of the bill, the only section affecting decisions under the ACMP, refers to location of an activity; the only such reference is in Section 2 of SB 308. Again, such comments appear to arise from a faulty understanding of the bill and, as a result, are inaccurate and inappropriate.

If indeed your second comment does address Section 3 of SB 308, the comment remains unclear as to how the ACMP, if amended pursuant to Section 3 of SB 308, might contradict federal statutes or regulations and cause problems. You refer to CZMA section 307(c)(1) (codified at 16 U.S.C. § 1456(c)(1)) which requires consistency of federal agency activities "to the maximum extent practicable with the enforceable policies of approved State management programs," (emphasis added) and you then provide H.R. Conference Report No. 964 describing the intent of Congress in enacting the 1990 amendment to that section.

You do not, however, provide any cites to federal statutes or regulations which, in the event that Section 3 of SB 308 is enacted in its current form, could create a conflict between the ACMP and existing federal requirements for state coastal management programs (16 U.S.C. § 1455(d)). What specific statutes or regulations exist (since intent language must be used to construe existing language) that would cause a conflict between the ACMP and the federal requirements for state programs if Section 3 of SB 308 is enacted? What would be the result of any alleged conflict? I request clarification and specifics of how OCRM anticipates that Section 3 of SB 308 would violate state program requirements.

Your third comment (page 2, paragraph 2) does appear to address Section 3 (phasing of consistency determinations). However, it seems to agree that the use of phasing is consistent with the CZMA. Indeed, Section 3 of SB 308 appears to conform with the intent of 15 C.F.R. § 930.37(c) by providing for review "at major decision points for a long-term project and ensur[ing] that the project, taken as a whole, is consistent . . . with the state coastal management program." If there is a conflict, please specify how you believe Section 3 of SB 308 conflicts with the federal CZMA requirements for state programs.

I am impressed by the quick response you provided to Ms. Ott and request that I be accorded the same consideration. As Ms. Ott pointed out, proposed legislation may move quickly and if concerns or potential problems exist, they should be addressed now. I look forward to a written response in the next day or two. Our facsimile number is (907)562-3852. If a prompt written response is not possible, perhaps you will be available to provide comments by telephone to a state legislative committee considering this bill. In that case, please call me at (907)762-2547 so I can arrange for a telephonic conference.

Sincerely,

James E. Eason
Director

4pp fax 7/2/94

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Washington, D.C. 20235

Riki Ott, Ph.D.
United Fishermen of Alaska
211 Fourth Street, Suite 211
Juneau, Alaska 99801

MAR 2 1994

Dear Dr. Ott:

Thank you for your letter of March 1, 1994, regarding Alaska Senate Bill 308 (SB 308). SB 308 would affect the way the Alaska Coastal Management Program (ACMP) reviews decisions by state agencies regarding the disposition of state land, property and resources. Your letter raises several issues regarding SB 308 and asks for clarification on the federal role in this particular legislation. Because we have not had time to conduct an in-depth review or legal analysis of SB 308, the comments that follow must be viewed as a preliminary programmatic response.

The Office of Ocean and Coastal Resource Management (OCRM) is the federal office responsible for overseeing the implementation of state coastal management programs developed pursuant to the Coastal Zone Management Act of 1972, as amended (CZMA). In addition to initially approving state programs, OCRM is charged with reviewing and approving or denying changes to the state's coastal management program. Thus, if SB 308 were enacted, the resultant changes to the ACMP would have to be submitted to OCRM for approval as a program change pursuant to 15 C.F.R. 923 Subpart I.

As mentioned above, we have completed a preliminary review of SB 308, and it would be premature to decide whether OCRM would approve the changes resulting from SB 308. We can, however, point out several aspects of SB 308 for which OCRM has significant concerns. First, as presented, SB 308 would narrow the scope of review for state agency decisions including disposition of state land, property and resources. In essence, this would create a double standard for review under the ACMP: one standard for federal agency actions, and a narrower, less strict standard for state agency actions. In order to apply state coastal management enforceable policies to federal agencies through the CZMA's federal consistency provisions, the standard of review applicable to the federal agency must be the same standard that applies to all public and private entities under the state's jurisdiction.

Second, in narrowing the scope of review, SB 308 would be contrary to the direction set by Congress in the 1990 reauthorization of the CZMA regarding state review of direct federal activities under section 307(c)(1) of the CZMA. Specifically, the changes require that each federal agency activity affecting any land or water use or natural resource of the coastal zone be conducted in a manner which is consistent to the maximum extent practicable with the enforceable policies of an approved state coastal management program. Further, Congress intended that in determining the effects of the activity, the federal agency must consider both direct and indirect effects, including reasonably foreseeable cumulative effects of the proposed activity.[1] It is also important to emphasize that the trigger for review of an activity is whether it affects the land or water uses or natural resources of the coastal zone, not the location of the activity.

Finally, you have raised the question of whether the federal program allows for phasing the review of certain activities. Federal regulations at 15 C.F.R. 930.37(c) allow, under certain circumstances, for the phased review of federal activities. This section is not intended to curtail the scope of the review at any particular phase. In fact, this section provides an opportunity for state review at major decision points for a long-term project and ensures that the project, taken as a whole, is consistent to the maximum extent practicable with the state coastal management program.

I hope that this letter answers your questions. Enclosed are some background materials regarding the reauthorization of the CZMA and federal consistency. If you would like to discuss the matter further, please contact John King of my staff at 301/713-3121.

Sincerely,

Clement Lewsey, Acting Chief
Coastal Programs Division

enclosures

cc: Paul Rusanowski, OGC
Beth Kerttula, DOL

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[1] H.R. Conference Report No. 964, 101st Congress, 2d Session at 970, 971 (1990)

UNITED FISHERMEN OF ALASKA

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John King
Office of Oceans & Coastal Resource Management
National Oceanic & Atmospheric Administration
Rockville, MD

VIA FAX: (301) 713-4367 March 1, 199[illegible]

Dear Mr. King;

Several days ago, we provided you with a copy (via fax) of Senate Bill SB308 and background information. From our perspective, SB308 is a radical shift in public policy regarding the public input process under Alaska's coastal management plan of the Coastal Zone Management Act. We have several key concerns.

#1) This bill gives resource agency directors the power to limit the scope of issues addressed during the initial administrative review. Would similar powers be granted to federal resource agency directors on federal land disposals under the consistency determinations? Or would two standards go into effect: one on federal lands and one on state lands?

#2) This bill institutionalizes multi-phasing on state lands by allowing review of "relevant" public concerns during the appropriate project phase. We are concerned that multi-phasing increases the likelihood of erroneous land disposals because the process lacks a thorough cost/benefit analysis and best interest finding during the initial review phase. This seems counter to the entire concept of the CZMA. Does the federal government allow multi-phasing of projects on federal lands as maintained by state officials?

#3) Limiting the range of effects during the review process to "foreseeable, significant and direct" seems to eliminate most effects. Didn't Congress clarify "direct" to include secondary, cumulative and indirect? If so, how can the federal government approve language that they themselves do not use?

#4) Limiting the range of effects on fish and wildlife to "within the scope of the lease sale area" seems extremely arbitrary and unrealistic. This would exclude effects on migratory wildlife, including fish, marine mammals and birds, and also effects on wildlife immediately adjoining the lease sale area.

In summary, could you clarify the role of the federal government in this legislation? Would the federal government have to approve the changes proposed in S8308 should this bill become law? What is the likelihood of federal approval given the legal history of the CZMA?

This bill is on an extremely fast track. Your haste in answering these questions--even a preliminary review--would be greatly appreciated.

Sincerely,

Riki Ott

Riki Ott, Ph.D.
Chairman of the Habitat Committee

SB 308

WALTER J. HICKEL, GOVERNOR

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March 3, 1994

The Honorable Jalmar Kerttula
Alaska State Legislature
State Capitol, Room 427
Juneau, Alaska 99801-1182

Dear Senator Kerttula:

Thank you for taking the time to meet with me earlie this week to discuss the CS for SB 308 (RES). At the conclusion of our meeting, you requested that I review and comment on the testimony submitted by Mr. Jon Isaacs and Ms. Ricki Ott before the Senate Finance Committee during Monday morning's hearing on that Bill. My comments on the issues raised in that testimony are provided below. They address the testimony of Mr. Isaacs first, and conclude with a response to the issues raised by Ms. Ott. I also have enclosed copies of both statements to assist you in your review.

Mr. Isaacs' testimony identifies four broad areas which he feels make the CS for SB 308 (RES) unacceptable. Each of these is addressed separately beginning, in each instance, with a verbatim cite of Mr. Isaacs' concerns.

Mr. Isaacs' Comments:

Issue: "There have been procedural problems with Best Interest Findings resulting from shortage of staff and funding; some of these could have been avoided with assistance from the Division of Governmental Coordination or other agencies."

Response: I was not aware of any procedural problems with the division's Best Interest Findings, either as a result of staff shortages or a lack of funds. Without further elaboration from Mr. Isaacs, I had no way of judging why he believes that those "problems" could have been avoided with the assistance of the Division of Governmental Coordination or other agencies. I called Mr. Isaacs yesterday evening to see if he could give me specific examples of procedural, staffing or funding problems which he believes have existed. He replied that he did not know of any specifics, but that he had a general feeling that the Lease Sales section of the Division of Oil and Gas could use more funds and more staff. He further indicated that there was a broader perception among some in the Coastal Districts that staffing and funding problems exist; however, he was unable or unwilling to provide specific examples.

Issue: "Giving broad discretion to division directors reduces the coastal district role in decision-making, key terms are undefined, adding to agency discretion, particularly when tied (sic) project phasing language."

Response: As you and I have discussed, and as I have said repeatedly in testimony on the CS for SB 308 (RES), I believe that the legislature has already delegated broad discretion to the commissioner through the provisions of Title 38. Our attempt in the CS for SB 308 (RES) is not to broaden that discretion, but to define and clarify that discretion, as well as the commissioner's/director's responsibilities when acting within the bounds of that discretion. That clarification need not diminish the coastal districts, or the public's role in decision making. It is not the intent of this legislation to do so.

Under the legislature's delegation of responsibility to balance state-wide concerns in determining the state's best interest, someone has to be the decision maker on behalf of the state. That fact, however, does not mean that the director's decisions or the exercise of his discretion in reaching those decisions is, or should be, unbridled. The written best interest findings and consistency decisions, as required by this legislation, must be well reasoned and supported by the record. Otherwise, those decisions would be subject to challenge as being arbitrary and capricious, and if they are not supported by the record, they obviously would be vulnerable to such challenges.

Mr. Isaacs' comment that agency discretion is expanded by tying the discretion to phasing language is unfounded, in my view. The legislation seeks to clarify the legislature's intent that the director, under carefully controlled conditions, be allowed to make a determination of whether or not a sale or disposal is in the state's best interest and consistent with the ACMP, without having a perfect knowledge of all future events. However, it does not allow for those decisions to occur unless the director provides for subsequent reviews of individual projects by the responsible agencies to assure that they are also consistent. Phased considerations cannot occur under the proposed legislation unless the director assures that the state has the authority to further condition subsequent projects to assure that they are consistent with the ACMP.

Issue: "This statute change sets a more lenient standard for Best Interest Findings compared to similar federal approvals, and may lead to federal legal challenge of the amendment to (sic) coastal management program."

Response: Title 38, as presently codified, already establishes a "more lenient" standard for best interest findings in support of oil and gas leasing, as compared to the Environmental Impact Statements and other NEPA-related analyses required for federal Outer Continental Shelf sales. The CS for SB 308 (RES) simply provides clarification regarding the timing, scope and discretion within which the director must operate in developing the state's best interest finding.

Requiring an EIS-like analysis, with its attendant costs, has always been an option which the legislature could require; however, the legislature chose in 1978, and reconfirmed in its 1990

amendments to Title 38, not to do so. The basis for Mr. Isaacs' comment that the CS for SB 308 (RES), through its amendments to the best interest finding provisions, could increase the likelihood of federal challenge to the state's leasing statutes is unclear.

I am unaware of any basis for the federal agencies to challenge a policy decision of the Alaska legislature regarding the leasing of Alaska's lands. To the extent that the provisions of Title 38 have always been "inconsistent" with their federal counterparts, whatever basis, if any, for such a challenge would already exist. The best interest finding amendments, as well as those related to Title 46, have been reviewed very carefully by the Department of Law. Based upon that review, I do not believe that these amendments, whether to Title 38 or Title 46, would lead to federal challenge, much less to decertification of the state's ACMP program, as some have suggested in the public testimony on the CS for SB 308 (RES).

Issue: "Deferring full project review to later phases of a project under the recommended changes to AS46 has implications that are broader than just Best Interest Findings; it impairs adequate evaluation of potential impacts and benefits and can lead to manipulation of the process." (emphasis added)

Response: The CS for SB 308 (RES) does not, per se, require deferral of project reviews. Rather, it acknowledges the director's authority under certain conditions and with appropriate safeguards based upon the law, the regulations, the facts and the record, to decide that a phased consistency determination is appropriate. It is not the intent of the legislation to impair full public review and evaluation of potential impacts and benefits. It simply acknowledges that, at the leasing stage, no one can properly evaluate all potential impacts and benefits that ultimately will follow from having awarded someone the exclusive right to explore for oil and gas for a pre-determined period of time.

The legislation will assure that the state retains, in those instances where phasing is appropriate, full authority to further condition specific projects to assure that they are consistent. As I have said before, this is not a novel concept, nor is it a "radical change in policy," as some have said on the record. It is precisely the process contemplated under federal law and regulations to be used in those instances, i.e., a lease sale, in which not enough is known at the leasing stage to conduct one conclusive consistency determination for all projects that may follow.

Ms. Ott's Comments:

Issue: "The bill is fiscally irresponsible." Multi-phase projects will cost the state, because state and industry investments in a project will bias DNR's analysis of later project stages in favor of project completion. Since buy-back of land once disposed is not a fiscally

realistic option, this bill will favor development regardless of costs to competing resource users.

Response: Since most of Ms. Ott's expressed concerns relate, in one manner or another, to a belief that lease buy-backs are likely to be more common should the CS for SB 308 (RES) be passed, I have attached a copy of my March 1, 1994 letter to Senators Pearce and Frank addressing those concerns in detail. It is also important to note that DNR's review and approval of post-lease sale projects is but one of the many agency reviews and public review that are required before permit approval. DNR does not, and will not, under the provisions of the CS for SB 308 (RES), have the unilateral authority to approve any post-lease projects, such as the drilling of a well or the placement of facilities, pipelines or any other development-related facilities.

Permits for such activities entail multiple agency review and approval. As a consequence, their review is coordinated by the Division of Governmental Coordination (DGC), not DNR. As the coordinating agency for the state, DGC is responsible for assuring that those permit/project reviews are thorough, and that any resulting permits are appropriately conditioned to be sure that they are consistent with the ACMP. State agencies typically participating in those reviews include the Alaska Departments of Fish and Game, Natural Resources, Environmental Conservation, and the Division of Governmental Coordination; federal agencies typically include the Environmental Protection Agency, the U. S. Fish and Wildlife Service, the Corps of Engineers, the National Park Service, the National Marine Fisheries Service, and others. In addition to these agencies, the Coastal Districts review the permits, and there is opportunity for public review, as well. Thus, the fear that DNR can control this process is completely unfounded.

Issue: "Mr. Eason has misrepresented the fiscal impacts of this bill to the state. This can be demonstrated by the following three scenarios comparing the financial risks of initial versus multi-phase development."

Response: Rather than speculate on the potential fiscal impacts of alternative scenarios, none of which have any basis in fact, it is more reasonable to review the record to see what the fiscal impacts of having issued almost 1800 leases with provisions allowing the state to subsequently preclude development have been (see attached letter to Senators Pearce and Frank).

Issue: Multi-phase developments are not in the public's best interest. Because this bill institutionalizes multi-phase developments, this bill does not protect the public interest.

Response: Tautologies are insidious; this one particularly so. The CS for SB 308 (RES) does not "institutionalize" multi-phase developments. Multi-phase developments are the

norm in real life. For example, no one contemplated when the leases overlying the Prudhoe Bay Field were issued in 1967 and 1969, that an expanded oil recovery phase, including construction of the central conditioning facilities at Prudhoe Bay Field, would occur 20 years later. No one predicted that phase, nor could they have, because the technology required did not then exist. Nevertheless, the fact that the facilities were constructed nine years after production began, and that they ultimately will result in the incremental production of billions of barrels of liquids with attendant royalties and taxes, calls into question whether the project's development should be summarily dismissed as "not protecting the public's interest."

While Ms. Ott presumably would insist that we should have known beforehand whether technology may be developed and whether additional oil ultimately may be recovered in order to "better" understand the costs and benefits of all development before leasing, it is infeasible for us to do so. I continue to believe that the fact that we cannot foresee the future does not necessarily mean that developments which result from our initial decision to lease with less than perfect knowledge are necessarily not in the public interest.

Issue: "Mr. Eason has misrepresented the impacts of this bill to the public. It does affect the public review process, because timing is everything. What this bill takes away is full public input at the beginning for the lease sale or land disposal process."

Response: Ms. Ott's comment mischaracterizes both the intent and the effect of the CS for SB 308 (RES). As drafted, the bill encourages full public comment on lease sales and disposals. In addition, it defines the sideboards within which the director defines the scope of review, based on both those comments and the criteria listed in 38.05.035(g). Further, it places the burden upon the director to determine, in writing, all material facts and issues related to the proposed sale. In so doing, he must also explain in writing the basis for any determinations of non-materiality.

If you have additional questions or require further clarification on any of my responses, please call. I am hopeful that your careful consideration of the record concerning the CS for SB 308 (RES) will lead you to agree that there is a compelling need for this legislation and that it represents a careful balancing of the public interests.

Sincerely,

James E. Eason
Director

Enclosures

SB 308

TESTIMONY BEFORE SENATE FINANCE COMMITTEE

Jon Isaacs
Jon Isaacs and Asscciates

Madame Chair, committee members, I appreciate the effort by the Chair to continue testimony for those who did not have a chance to do so last friday. My name is Jon Isaacs, of Jon Isaacs and Asscciates. I am a planning consultant and have worked with municipalities and other coastal districts for the past 13 years. I am working with a group of districts who have been evaluating the proposed legislation.

- As a group, we feel, that there is no process better than coastal management for bringing everyone to table to resolve concerns and result in the best possible development, the DNR Best Interest Finding included.

- Coastal management gives municipalities a guarantee that the state and federal government will treat them as equals and take their positions seriously (think about how the state complains of treatment by the federal government).

Over the last year, when there has been need to make changes in the coastal management program on issues such as oil spill contingency plans and Coastal Policy Council procedures (pending SB 238, SB81 last year), coastal districts, agencies, representatives of the oil industry, and environmental groups have worked together to develop consensus solutions. Please note the broad support and lack of objection these bills have experienced.

Coastal districts recognize the importance of oil and gas sales and other state resources to state and local economies. I agree that the Superior Court decision on lease sale 78 has created a problem for the Division of Oil and Gas with regard to Best Interest Findings and coastal consistency determinations. The primary questions relate to:

- what is a reasonable scope of analysis for a best interest finding,

- what level of analysis is applied to disposal of interest and subsequent phases of development, and

- how should multi-phased projects be addressed under the coastal consistency determination

I appreciate the intent of the recent amendments. However, this bill, even with the proposed amendments, is not yet an acceptable solution.

- there have been procedural problems with Best Interest Findings resulting from shortage of staff and funding; some of these could have been avoided with assistance from the Division of Governmental Coordination or other agencies

- giving broad discretion to division directors reduces the coastal district role in decision-making, key terms are undefined, adding to agency discretion, particularly when tied project phasing language

- this statute change sets a more lenient standard for Best Interest Findings compared to similar federal approvals, and may lead to federal legal challenge of the amendment to coastal management program

- deferring full project review to later phases of a project under the recommended changes to AS46, has implications that are broader than just Best interest findings; it impairs adequate evaluation of potential impacts and benefits and can lead to manipulation of the process

We are pleased that some initial discussions on perspectives were held with the Department of Natural Resources, and we hope to meet again to discuss language that might reduce the problems faced by DNR without creating new problems for others. We are currently working on language changes, but do not want to rush amendments to the table and repeat the inadequate public involvement problems that have plagued this legislation to date. We respectfully request that the Senate Finance Committee delay action on this bill for a week in order to develop amendments that can best meet the interests of all parties. — who have a stake in this matter.

UNITED FISHERMEN OF ALASKA

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2/28/94

TESTIMONY FOR SENATE FINANCE ON SB308

UFA opposes this legislation. We are not anti-development. However, this legislation allows DNR to ignore resource use conflicts, transportation issues and environmental issues during the initial administrative review prior to disposal of lands.

This bill is fiscally irresponsible. Multi-phase projects will cost the state, because state and industry investments in a project will bias DNR's analysis of later project stages in favor of project completion. Since buy-back of land once disposed is not a fiscally realistic option, this bill will favor development regardless of costs to competing resource users.

Mr. Eason has misrepresented the fiscal impacts of this bill to the state. This can be demonstrated by the following three scenarios comparing the financial risks of initial versus multi-phase development.

Scenario #1 is initial phase development in which the state, industry and the public discuss and resolve all issues prior to the state disposing the land and depositing the money into the general account. If, at some later time, the state finds it erroneously disposed the land, even with the best information available to it during the initial review, the state assumes the financial risk for its mistake and must pay just compensation to the lessee. This is the way things are done under existing law.

Multi-phasing introduces a new element of financial risk, because it increases the likelihood of erroneous land disposals. UFA does not believe this financial risk should be borne by the state or the public. Rather, if the developer is in such a hurry to start a project that they cannot take the time to have the state do a thorough cost/benefit analysis and best interest finding prior to a land disposal, then the developer should bear all or part of the increased financial risk.

Scenario #2 is multi-phase development in which the developer proceeds at their own risk. Approval for land disposal does not vest the person with a property right. The state would not have to compensate the lessee for the land disposal, including interest, any investments made by the person based upon the approval and lost potential, if DNR disapproves later project phases.

In scenario #3, the developer and the state share the financial risk of proceeding with a multi-phase development. Money for a land disposal is transferred into an escrow account until the

state completes its final best interest finding. If the project is approved, the money is transferred into the state's general account. If the project is denied, the money is returned to the lessee. However, the lessee bears the risk for all investments it made based upon project approval, including lost potential.

Mr. Eason has presented this bill as no additional risk to the state. This is not true. The bill does not address the additional risk to the state. I wish to emphasize that UFA strongly believes that the state should be required to conduct a thorough best interest finding prior to a land disposal in every case in which the necessary information is available to the state at the time of the initial administrative review.

Multi-phase developments are not in the public's best interest. Because this bill institutionalizes multi-phase developments, this bill does not protect the public interest.

Mr. Eason has misrepresented the impacts of this bill to the public. It does affect the public review process, because timing is everything. What this bill takes away is full public input at the beginning of the lease sale or land disposal process.

This is a critical point. At the lease sale stage, DNR functions as a public agency and it controls the conflict resolution process with minimal bias because it does not, at this point, have a vested interest in the project. However, after the land is disposed, the state and lessee work closely together: there are contractual obligations and financial investments to which the public is not privy. During later public comment periods, the public is fighting an uphill battle against both the lessee and the state, which now is a vested partner in the project. Public input at later project stages simply does not carry the same weight it would have had at the initial review stage.

Mr. Eason has also testified that this bill does not limit the scope of issues addressed during its review. This is not true as can be seen on page 2, line 9, with the word "may." To ensure that the full spectrum of effects will be covered during the review, "may" should be changed to "shall." Further, while the word "significant" has been substituted for "nonspeculative," there is no definition for either "significant" or "direct." It is impossible to determine if the original intent of the language "nonspeculative," that is, to severely limit the scope of issues raised, has changed.

Mr. Eason has misrepresented the ramifications of this bill to the state and the public. This is a serious breach of the public trust. This bill is a radical shift in public policy: as such, this bill is both unnecessary and undesirable. UFA urges this committee to scrutinize this bill with people who are familiar with its legal history, such as the state attorneys who litigated Lease Sales 50, 55 and 78, to determine if the current law really needs "fixing."

Further, UFA requests that, if SB308 is passed out of this committee, it should be referred to the Senate Judiciary Committee to deal with issues of constitutionality, conformity with the Coastal Zone Management Act, just compensation and potential state liability for buy-backs.

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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March 1, 1994

The Honorable Drue Pearce and Steve Frank
Co-Chairmen, Senate Finance Committee
Alaska State Legislature
State Capitol, Rooms 508 and 518
Juneau, Alaska 99801-1182

Dear Senators Pearce and Frank:

A recurrent theme in public testimony on SB 308 is that the department is exposing the state to large fiscal risks should it be necessary to repurchase oil and gas leases if they are subsequently determined to be too environmentally sensitive for development. In her testimony earlier this week before the Finance Committee, Ms. Ricki Ott even went so far as to suggest that conflicts will undoubtedly occur, resulting in the need for lease buybacks. Her comments, as well as those of others testifying on SB 308, suggest that there will be extraordinary financial exposure for the state should SB 308 be passed.

Those concerns seem to arise from a belief that "history will repeat itself," and that the state will be faced with the need to repurchase tracts, as resulted after the legislature decided, as a matter of policy, not to allow leasing in Kachemak Bay. For two reasons, I do not believe that passage of SB 308 will produce such dire consequences.

First, as a result of the Kachemak Bay decision, as well as general concerns about oil and gas leasing, the statutes governing oil and gas leasing underwent comprehensive revision in 1978. A major provision of those revisions was the adoption of a five-year schedule with its predictable timelines. The requirement that sales which the department proposes to conduct must be on the five-year schedule for a minimum of two calendar years was adopted at that time. The implicit purpose of this requirement was that the legislature have sufficient notice of potentially controversial sales so that it could act to set broad policy in those instances where it was the will of the legislature not to lease. SB 308 in no way diminishes the legislature's ability to review areas under consideration for leasing and to remove those which it chooses.

Secondly, the fiscal exposure about which Ms. Ott and others speculate already exists. However, the presumption that massive lease buybacks conflicts will occur as a result of that exposure conflicts with the record. Rather than speculating on the effects of having a

situation where leasing might occur with the need to later disallow development, one should look to that record.

Since 1979, the Department of Natural Resources has included as a term in its leases a provision which makes clear that the lessee purchases the lease with the risk that it may ultimately not be allowed to develop the lease. That provision, Paragraph 20, entitled *Default and Termination; Cancellation*, provides in pertinent part:

> ...(b) The state may cancel this lease at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that:
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> (1) continued operations pursuant to this lease probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment (including the human environment);
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> (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and
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> (3) the advantages of cancellation outweigh the advantages of continuing this lease in effect. Any cancellation under this subparagraph will not occur unless and until operations under this lease have been under suspension or temporary prohibition by the state, with due extension of the terms of this lease, continuously for a period of five years or for a lesser period upon request of the lessee.
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> (c) Any cancellation under subparagraph (b) will entitle the lessee to receive compensation as the lessee demonstrates to the state is equal to the lesser of:
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> (1) the value of the canceled rights as of the date of cancellation, with due consideration being given to both revenues from this lease and anticipated costs, including costs of compliance with all applicable regulations and stipulations, liability for clean-up costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated under this lease; or
>
> (2) the excess, if any, over the lessee's revenues from this lease (plus interest on the excess from the date of receipt to date of reimbursement) of all consideration paid for this lease and all direct expenditures made by the lessee after the effective date of this lease and in connection with exploration or development, or both, under this lease, plus interest on that consideration and those expenditures from the date of payment to the date of reimbursement.

Since that provision was incorporated in the state's leases, 40 competitive oil and gas lease sales have been held, with more than 1758 leases having been issued. In total, leases comprising more than four million acres currently are conditioned by this provision.

To date, there have been no conflicts which required the state to exercise this option. To the contrary, there have been instances in which major accommodations were required of lessees to assure that their proposed development plans were made compatible with competing surface resources. I have cited for the record during prior testimony on SB 308 the state's experience in permitting the Niakuk and Lisburne developments on the North Slope. In both cases the lessees' proposed developments were considerably reconfigured and conditioned to assure minimal environmental impact and compatible development. Thus, perception that the state is somehow forced into incompatible development after issuing oil and gas leases has never materialized.

Similarly, I have addressed on the record that the "conflicts" which were alleged by the plaintiffs to be inevitable should Sale 78 proceed without deletion of the fishing corridor acreage. Those supposed "conflicts" simply do not comport with the record. As noted in my February 28, 1994 letter to the committee, the corridor area has been the site of leasing in the past, as well as the drilling of four exploratory wells. There are active leases in the area today. These facts, again, are being disregarded.

The record compiled from more than 40 lease sales since 1978 reflects that adequate mitigation measures and terms have been adopted at the lease sale stage to assure that the department can condition subsequent projects with demonstrated success to assure that they are in the state's best interest and consistent with the ACMP. However, the courts' decisions demonstrate that they are unwilling to allow the department to proceed beyond leasing to the second stage, that of reviewing specific project proposals, identifying conflicts that must be resolved, and working with the responsible state agencies, the public and lessees to provide creative solutions to address those conflicts.

It is for that reason that passage of SB 308 is crucial. Without the legislature's clear guidance, the courts will continue to set oil and gas leasing policy.

Sincerely,

James E. Eason
Director

3-2-94
SFC
Exxon

WALTER J. HICKEL, GOVERNOR

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March 1, 1994

The Honorable Drue Pearce and Steve Frank
Co-Chairmen, Senate Finance Committee
Alaska State Legislature
State Capitol, Rooms 508 and 518
Juneau, Alaska 99801-1182

Dear Senators Pearce and Frank:

A recurrent theme in public testimony on SB 308 is that the department is exposing the state to large fiscal risks should it be necessary to repurchase oil and gas leases if they are subsequently determined to be too environmentally sensitive for development. In her testimony earlier this week before the Finance Committee, Ms. Ricki Ott even went so far as to suggest that conflicts will undoubtedly occur, resulting in the need for lease buybacks. Her comments, as well as those of others testifying on SB 308, suggest that there will be extraordinary financial exposure for the state should SB 308 be passed.

Those concerns seem to arise from a belief that "history will repeat itself," and that the state will be faced with the need to repurchase tracts, as resulted after the legislature decided, as a matter of policy, not to allow leasing in Kachemak Bay. For two reasons, I do not believe that passage of SB 308 will produce such dire consequences.

First, as a result of the Kachemak Bay decision, as well as general concerns about oil and gas leasing, the statutes governing oil and gas leasing underwent comprehensive revision in 1978. A major provision of those revisions was the adoption of a five-year schedule with its predictable timelines. The requirement that sales which the department proposes to conduct must be on the five-year schedule for a minimum of two calendar years was adopted at that time. The implicit purpose of this requirement was that the legislature have sufficient notice of potentially controversial sales so that it could act to set broad policy in those instances where it was the will of the legislature not to lease. SB 308 in no way diminishes the legislature's ability to review areas under consideration for leasing and to remove those which it chooses.

Secondly, the fiscal exposure about which Ms. Ott and others speculate already exists. However, the presumption that massive lease buybacks conflicts will occur as a result of that exposure conflicts with the record. Rather than speculating on the effects of having a

situation where leasing might occur with the need to later disallow development, one should look to that record.

Since 1979, the Department of Natural Resources has included as a term in its leases a provision which makes clear that the lessee purchases the lease with the risk that it may ultimately not be allowed to develop the lease. That provision, Paragraph 20, entitled ***Default and Termination; Cancellation,*** provides in pertinent part:

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To date, there have been no conflicts which required the state to exercise this option. To the contrary, there have been instances in which major accommodations were required of lessees to assure that their proposed development plans were made compatible with competing surface resources. I have cited for the record during prior testimony on SB 308 the state's experience in permitting the Niakuk and Lisburne developments on the North Slope. In both cases the lessees' proposed developments were considerably reconfigured and conditioned to assure minimal environmental impact and compatible development. Thus, perception that the state is somehow forced into incompatible development after issuing oil and gas leases has never materialized.

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Sincerely,

James E. Eason
Director

WALTER J. HICKEL, GOVERNOR

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March 1, 1994

03 19c

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Co-Chairmen, Senate Finance Committee
Alaska State Legislature
State Capitol, Rooms 508 and 518
Juneau, Alaska 99801-1182

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> (2) the excess, if any, over the lessee's revenues from this lease (plus interest on the excess from the date of receipt to date of reimbursement) of all consideration paid for this lease and all direct expenditures made by the lessee after the effective date of this lease and in connection with exploration or development, or both, under this lease, plus interest on that consideration and those expenditures from the date of payment to the date of reimbursement.

Since that provision was incorporated in the state's leases, 40 competitive oil and gas lease sales have been held, with more than 1758 leases having been issued. In total, leases comprising more than four million acres currently are conditioned by this provision.

To date, there have been no conflicts which required the state to exercise this option. To the contrary, there have been instances in which major accommodations were required of lessees to assure that their proposed development plans were made compatible with competing surface resources. I have cited for the record during prior testimony on SB 308 the state's experience in permitting the Niakuk and Lisburne developments on the North Slope. In both cases the lessees' proposed developments were considerably reconfigured and conditioned to assure minimal environmental impact and compatible development. Thus, perception that the state is somehow forced into incompatible development after issuing oil and gas leases has never materialized.

Similarly, I have addressed on the record that the "conflicts" which were alleged by the plaintiffs to be inevitable should Sale 78 proceed without deletion of the fishing corridor acreage. Those supposed "conflicts" simply do not comport with the record. As noted in my February 28, 1994 letter to the committee, the corridor area has been the site of leasing in the past, as well as the drilling of four exploratory wells. There are active leases in the area today. These facts, again, are being disregarded.

The record compiled from more than 40 lease sales since 1978 reflects that adequate mitigation measures and terms have been adopted at the lease sale stage to assure that the department can condition subsequent projects with demonstrated success to assure that they are in the state's best interest and consistent with the ACMP. However, the courts' decisions demonstrate that they are unwilling to allow the department to proceed beyond leasing to the second stage, that of reviewing specific project proposals, identifying conflicts that must be resolved, and working with the responsible state agencies, the public and lessees to provide creative solutions to address those conflicts.

It is for that reason that passage of SB 308 is crucial. Without the legislature's clear guidance, the courts will continue to set oil and gas leasing policy.

Sincerely,

James E. Eason
Director

2-28-94
Eason

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
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February 28, 1994

The Honorable Drue Pearce and Steve Frank
Co-Chairmen, Senate Finance Committee
Alaska State Legislature
State Capitol, Rooms 508 and 518
Juneau, Alaska 99801-1182

Dear Senators Pearce and Frank:

I appreciated the opportunity to testify before the Senate Finance Committee last Thursday morning concerning SB 308. During the public comment period following my testimony there were several comments made which need to be addressed in order to clarify the record regarding Sale 78, as well as the background of the litigation which precipitated this legislation.

The order in which I address the comments below reflects the order in which they were given during the testimony. I have included names of those testifying on each specific issue where my notes reflected them. In other instances, I have simply indicated the location from which the comments came as reflected in my notes. Also, I have paraphrased the comments, as I was unable, given the pace of the testimony, to take down verbatim notes.

Mr. Loman, representing the North Slope Borough, suggested that "...Minerals Management Service's (MMS) way is the way to reduce lawsuits." He went on to explain that MMS starts much earlier in its leasing process to gather public comments, identify concerns and build consensus. He indicated that were we to have followed that agency's model, we would have avoided this litigation, and we wouldn't be here discussing the legislation." The record suggests otherwise.

I have previously submitted for the record a two page document addressing the relative costs and litigation risks of the federal EIS/NEPA pre-sale analyses conducted by MMS. The record reflects that MMS has conducted 15 lease sales over the 17 year period since it began OCS leasing in Alaska in 1976. In Cook Inlet alone, where two sales were held in the late 1970s, MMS spent over $72 million for pre-sale environmental studies.

Notwithstanding this extraordinary investment and the scope and timing of their public outreach efforts, half of MMS's lease sales were the target of lawsuits; two of those sales were enjoined by the court, and two sales were postponed by MMS. Therefore, contrary to Mr. Loman's proposed solution, the record indicates that MMS's process is not less

vulnerable to litigation risk. Rather, based on the statistics, the MMS's process appears to be more vulnerable, even though its costs are an order of magnitude higher and its pace is dramatically slower than the state's process. Less than 15 percent of the state's lease sales have been challenged in the corresponding period vs. 50 percent of MMS's sales.

Mr. Loman also suggested that "...because Sale 55 tracts extended to shore," it was appropriate for the Alaska Supreme Court to find DNR's best interest finding deficient for allegedly not considering in "enough" detail the impacts of Sale 55 on the Porcupine Caribou herd onshore in ANWR. Mr. Loman's recollection of the sale configuration is simply wrong. Submerged lands immediately seaward of the ANWR uplands and lying between those uplands and the barrier islands offshore of ANWR are subject to the Beaufort Sea title litigation. Since the ownership of that area is in dispute, it was not offered for lease in either Sale 50 or 55. Therefore, as I said originally, our sale tracts were well offshore of the ANWR uplands, and we did consider the effects of that sale on habitat and species within the sale area. The Supreme Court, in substituting its judgment, simply said we had not considered those effects "enough."

One of the comments received from Homer suggested that, "...had we only agreed to institute a no surface entry policy in the three mile corridor offshore of the Nikiski area," we would not be involved in this lawsuit (Sale 78)." Again, the record suggests otherwise.

First, the allegations which the appellants made in the Sale 78 litigation were much broader than this comment would suggest. The appellants verbatim claim was that DNR's findings are "...arbitrary, capricious, unsupported by record evidence and otherwise contrary to law, because they fail to properly weigh the pros and cons of the lease sale in deciding whether the sale is in the state's best interest, evaluate standards in AS 38.05.035(e), (g), the ACMP and applicable local coastal zone management plans relating to the individual and cumulative impacts of proposed development projects on fisheries, wildlife and specially designated resources and landscape values in the Cook Inlet region, human uses of those resources (e.g., sport and commercial fishing, subsistence and tourism, archaeological resources and privately-owned land in the region)."

Also, the record reflects that the lawsuit alleged multiple violations and oversights affecting numerous resources and involving several concerns in addition to fishing-related concerns. This fact clearly contradicts the assertion that, had we only prohibited surface entry on certain tracts, the lawsuit could have been avoided. Deleting certain offshore tracts would not have responded to alleged failures to properly consider cumulative impacts to archaeological resources, privately-owned land in the region and other vaguely defined concerns. Thus, there is no credible evidence that had we done so, we could have avoided a lawsuit.

Either the lawsuit actually was filed primarily on behalf of commercial fishing interests and focused solely on protecting certain nearshore waters to assure their exclusive use of those areas or it was, as the plaintiffs contended in their lawsuit, much broader in scope. For a fuller understanding of this issue and the ambiguities between what apparent concerns were and what was alleged in the lawsuit, please see the enclosed letter dated February 10, 1994 from Assistant Attorney General Mary Ann Lundquist to Mr. Peter Van Tuyn declining Trustees' offer of settlement.

However, a broader issue arises from the comment that we could have avoided this lawsuit and the need to amend the statutes had we but listened to those who demanded that we remove certain acreage from the sale, even though the "conflicts" which they alleged may never materialize. The legislature has reserved to itself the right to remove acreage from consideration for oil and gas leasing, and it has chosen to do so sparingly, once in Kachemak Bay, and again in the instance of the state-owned submerged lands in Bristol Bay.

However, in 1978 the legislature established in statute a process that requires preparation and submittal of the department's five year oil and gas leasing schedule to the legislature. This process assures that the legislature will know well in advance those areas which the department proposes to lease. The statutes require that sale areas be on the five year schedule for a minimum of two years before they can be offered, with certain limited exceptions (exempt sales).

As a result of this process, the legislature has the opportunity to provide its policy guidance to the department regarding those areas which it may choose not to lease. I question whether we would be fulfilling our responsibility in administering the lease program simply to presume conflicts exist where none has been shown to exist and, acting on such a presumption, to close broad areas to oil and gas leasing. While it may benefit certain special interests to do so, I believe our responsibility to be broader under the legislature's delegation to assure that oil and gas leasing be in the best interests of all Alaskans.

Finally, there was a comment, also from Homer (or perhaps from Kenai), that we had disregarded the "obvious conflicts" which exist in the fishing corridor. It was pointed out that this is the most heavily fished area on the peninsula. The record again reflects otherwise.

There are currently four tracts under lease in this corridor, with the most recent lease having been issued in September 1991. In addition, four exploratory wells have been drilled in those offshore tracts, all without creating a conflict. That record, it seems, has been disregarded. Nevertheless, it represents a record of compatible operations and multiple use of areas which have valuable surface and subsurface resources. 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.

The Alaska Supreme Court subsequently compounded the Superior Court's error in refusing even to consider the state's petition for reconsideration. As a result, the state's leasing program is in jeopardy, and will remain so, until the legislature acts to clarify its intent regarding the scope and timing of best interest findings under Title 38 and Coastal Zone Consistency Determinations under Title 46.

Sincerely,

James E. Eason
Director

Enclosure

022894dp.je

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 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 10, 1994

Mr. Peter Van Tuyn
Trustees for Alaska
725 Christensen Drive
Anchorage, Alaska 99501

Re: Ninilchik Traditional Council v. State
AGO File No. 221-94-0515 Civ.

Dear Mr. Van Tuyn:

I am responding to your Offer of Settlement dated February 7, 1994. It has come to my attention that the substance of Trustees' settlement offer, which was labeled "Confidential - - For Settlement Purposes Only" has been widely disseminated in Juneau since it was presented to the state. Since the state has treated this letter as a confidential document up to this point, we can only assume that Trustees of Alaska have chosen to selectively disseminate the terms of this offer of settlement. In light of the general knowledge of this settlement offer, the state will not be treating the letter, nor this response on behalf of the Department of Natural Resources, as confidential.

The terms of settlement you propose are not acceptable, and the Department of Natural Resources is reluctant to entertain settlement of the Lease Sale 78 administrative appeal at this time.

Our reasons for declining your offer should be readily apparent. First, you do not offer dismissal of the lawsuit with prejudice. You simply point out the obvious - that it is unlikely, absent the Supreme Court's reversal of the Superior Court's injunction or legislative intervention, that the state can proceed with Sale 78 until mid-1998. Then you suggest that "settlement may be possible within a time frame which would allow the state to proceed with the sale this year." Feb. 7, 1994 letter (emphasis added). Therefore, Trustees' offer of settlement may not offer the state anything for settling.

Presumably, Trustees mean by its settlement offer that it would cooperate to have the injunction removed, allowing the sale to be held while litigation on the underlying issue continues. The state would still be exposed to the continuing costs of pursuing this and other sale-related litigation in which it is engaged with Trustees. Both the state and its lessees would

be subjected to prolonged uncertainty regarding the validity, terms and conditions of any leases which might be issued under those circumstances.

Moreover, dismissal of the Sale 78 litigation in its entirety does not address the broader question of the substantial risks to the state's ability to conduct its competitive leasing programs which have been created by the lawsuits which Trustees have pursued against Sales 50, 55 and 78 (as well as the appeal of the department's Good News Bay decision). The legislature will shortly be addressing the broader question and exploring legislation to clarify its intent regarding what the scope and content of Best Interest Findings and ACMP Consistency Determinations should be.

I think that it is also important to note that while the Trustees have alleged (albeit vaguely) wide-reaching problems with respect to the Final Best Interest Finding and the Consistency Determination, it appears from your settlement offer that the Trustees' concerns are, in fact, much narrower. If the public interest litigants are willing to trade off their much broader concerns, as were alleged in the appeal, for the much narrower concerns of the commercial fishing industry, then perhaps we should revisit the public interest litigant status of the appellants.

In conclusion, the state has determined that it would set a bad precedent to settle the injunction while continuing the costs of litigation and perpetuating the uncertainty which has been cast over the state's leasing program. The state also sees no advantage to settling this appeal in its entirety. Further, while the Superior Court has granted the Trustees' motion for stay of Lease Sale 78, the state has petitioned the Alaska Supreme Court regarding the correctness of the Superior Court's decision. If the Supreme Court timely reverses the Superior Court with regard to the stay, Lease Sale 78 will be able to proceed in a timely manner.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Mary Ann Lundquist
Assistant Attorney General

MAL:ARS

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

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February 24, 1994

The Honorable Drue Pearce and Steve Frank
Co-Chairmen, Senate Finance Committee
Alaska State Legislature
State Capitol, Rooms 508 and 518
Juneau. Alaska 99801-1182

Dear Senators Pearce and Frank:

Today the Senate Finance Committee is scheduled to take up SB 308. Based upon my experience in prior hearings on this bill before the Senate Resources Committee and its counterpart, HB 474, before the House Special Committee on Oil and Gas, I expect that you will hear many concerns expressed that this legislation is intended to diminish public and agency review of project approvals. To the contrary, SB 308 is intended to provide guidance to the department in defining the scope and timing of reviews for best interest findings for sales and disposals of interest in state lands and for coastal zone consistency determinations for discreet phases of projects.

The CS for SB 308 (RES) should make clear that the amendments are not intended to affect the review and approvals of project permits. Those reviews will continue to be conducted under existing statutory and regulatory authorities. Many of those who have testified have suggested that they will have diminished opportunities to condition or limit projects should this legislation be passed. It think it is very important that the committee members understand how thorough post sale project-specific review is under typical circumstances so that they can have a full appreciation of the multiple opportunities for agency and public review of projects.

To that end, I have enclosed an affidavit submitted by Representative Joe Green, then in his capacity as an engineer for ARCO, in the Sale 50, Camden Bay, litigation. Trustees, et al., had requested that the Supreme Court enjoin the drilling of the ARCO Stinson No. 1 well. Representative Green's affidavit was submitted to the court to document the numerous permits and reviews which would be required before that well could be drilled. I have also enclosed the attachment to Representative Green's affidavit which summarizes the permits required. It should be clear from a review of these documents that there are numerous permits and conditions attached to the drilling of exploration wells once the locations for those wells have been proposed.

Similarly, should a commercial discovery be made, permits related to subsequent development are even more numerous, often requiring the preparation of environmental impact statements (EIS) under federal law. The public has, and will continue to have, numerous opportunities to comment on and participate in the decisionmaking regarding the issuance of those permits.

Please feel free to call if you have additional questions or concerns.

Sincerely,

James E. Eason
Director

Attachments

AFFIDAVIT OF JOSEPH P. GREEN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

JOSEPH P. GREEN, being duly sworn, does state the following:

1. I am employed by ARCO Alaska, Inc. as a Permit Coordinator. Prior to my employment at ARCO, I was the Director of the Division of Minerals and Energy Management for the State of Alaska, and prior to that I was the Petroleum Administrator for Santa Barbara County, California. I am a registered geologist in the State of California, and a registered engineer in the State of Oklahoma.

2. As a part of my job responsibilities at ARCO, I either obtained or assisted/coordinated the obtaining of all of the permits, authorizations and approvals necessary to drill the ARCO Stinson No. 1 Well.

3. Attached is a chart listing the more significant permits, authorizations and approvals for the ARCO Stinson No. 1 Well. The chart also describes the agency(ies) responsible and gives a brief description of the purpose of the permit, authorization or approval.

4. These permits, authorizations and approvals do not give ARCO the authority to transport Camden Bay oil, if it is discovered. Numerous additional reviews by the federal, state and local governments will be required prior to any transportation of oil from Camden Bay.

5. In my opinion, there is very little flexibility in the drilling schedule for the ARCO Stinson No. 1 well. The primary constraint is the Beaufort Sea ice pack, which immobilizes the Concrete Island Drilling Structure ("CIDS") from approximately November to June every year. Also, the Bowhead whale migration and subsistence hunt during September and October of each year make this a controversial time period to conduct oil and gas exploration. Furthermore, oil exploration activity is restricted during unstable ice conditions in the spring (May-July) and fall (October-November) due to oil spill containment and cleanup capability concerns. There is thus very little flexibility in the time of drilling operations.

For these reasons, cessation of drilling operations on the ARCO Stinson No. 1 well would have grave implications. It would very likely require a second entire drilling season to complete the well, which would be extremely expensive.

6. In the course of my work in the petroleum industry, and in particular in the course of obtaining approval of the oil spill contingency plan for the ARCO Stinson No. 1 Well, I have reviewed data concerning the risk of a blowout occurring (other potential oil spills should be nominal in size [maximum 200 gallons] and should be capable of containment on the CIDS). The Oil Spill Risk Analysis model (OSRA) utilized by the MMS in its Environmental Impact Statements (EIS) assigns zero as the probability that a significant oil spill will occur during exploration (none has ever occurred from exploratory drilling on

the U.S. Outer Continental Shelf). Dr. Frank B. Martin, Department of Applied Statistics, at the University of Minnesota analyzed MMS blowout statistics for U.S. O.C.S. areas in 1986. The data indicates that 31 blowouts (these were apparently gas blowouts and did not result in any significant oil spill) were reported for 4,824 exploratory wells drilled between 1971 and 1984. Dr. Martin concluded that, based on historical data, the probability of a blowout not occurring is 99.36 percent. The probability that a significant oil spill will not occur is 99.9996 percent. In any event, ARCO's oil spill contingency plan addresses the remote possibility that a blowout could occur.

7. If the Supreme Court were to order DNR to suspend all industrial activity in Camden Bay, several dire consequences would result. First, helicopter flights to the CIDS would have to continue, in order to evacuate the approximately 75 people on the CIDS. Second, safety concerns would require a skeleton crew to maintain the CIDS. Navigational lighting is necessary to protect passing aircraft and watercraft. Third, if the CIDS cannot be removed from Camden Bay during the limited open water season, it would be forced to stay where it is. This would have enormous economic impact on either ARCO or the owner of the CIDS (who would be denied the ability to use it elsewhere).

Further this Affiant Sayeth Naught.

DATED this 27 day of March, 1990.

JOSEPH P. GREEN

SUBSCRIBED AND SWORN TO before me this 30th day of March, 1990.

NOTARY PUBLIC IN AND FOR ALASKA
My Commission Expires: 6-30-90

STINSON PERMITS, AUTHORIZATIONS, PLANS, ETC.

Permit/Authorization/Plan, Etc.	Agency	Comments
Coastal Zone Consistency Determination	Alaska Division of Governmental Coordination	Coordinates the review by state (Depts. of Environmental Conservation, Fish and Game and Natural Resources), federal (Environmental Protection Agency, Corp. of Engineers, Fish and Wildlife Service) and local government (North Slope Borough), to minimize possible inconsistencies between the various agencies' permit requirements, to ensure all agencies' concerns have been addressed, and to implement the District Coastal Management Plan.
Oil Spill Contingency Plan	Alaska Dept. of Environmental Conservation	Requires advance planning for any potential oil spill that could happen. This includes an assessment of oil spill risks and advance response and notification planning. The plan also requires on-site oil spill containment and cleanup equipment and off-site backup equipment. In addition, it requires training of on-site cleanup crews; response teams from Deadhorse, Prudhoe Bay and Kuparuk, the villages of Kaktovik and Nuiqsut; and provides for scheduled and unscheduled inspections and spill cleanup drills.

National Pollurant Discharge Elimination System (NPDES) Permit	Environmental Protection Agency	Regulates discharges from the Concrete Island Drilling Structure (CIDS).
Lease Operations Approval	Alaska Dept. of Natural Resources (Div. of Oil & Gas)	Requires: - barge traffic must be at least one mile offshore - environmental orientation program for CIDS occupants - polar bear interaction plan - coordination with whalers - oil spill drill - activities be limited to those contained in Plan of Operations
Certificate of Reasonable Assurance	Alaska Dept. of Environmental Conservation	Issued pursuant to Section 401 of the Clean Water Act. Certifies reasonable assurance that all drilling activity will comply with the Clean Water Act.
Development Permit	North Slope Borough	Assures activities are in compliance with Borough ordinances.
Drilling Permit	Alaska Oil & Gas Conservation Commission	Requires adherence to sound engineering principles and practices to prevent resource waste, protect correlative rights, and conduct safe drilling operations.

Spill Prevention Control and Countermeasure	Alaska Dept. of Environmental Conservation, Alaska Dept. of Natural Resources	A document detailing the procedures followed and special actions taken to prevent hydrocarbon spills; and if a spill occurs, to prevent the material from getting off the drilling structure.
Section 10 Anchoring Permit	Corp of Engineeers	Allows CIDS to rest on ocean bottom - stipulations require: - 1500' minimum flight altitude to avoid disturbing wildlife - plan approval by U.S. Fish & Wildlife Service covering wildlife disturbance, oil spill plans, etc. - polar bear monitoring plan
Air Quality (Flaring)	Alaska Dept. of Environmental Conservation	Provides strict air emissions standards which must be met, including: - maximum opacity of smoke - maximum pollutant discharges from combustion engines - no test oil burning
Plan of Operations	All Agencies	A comprehensive review of the entire operations to be conducted at the Stinson location from move in through drilling/testing, to move out.

Liquid Waste Disposal - down hole	Alaska Dept. of Environmental Conservation	Stipulates rates and total volumes of liquid that can be pumped down the well's annuli. Includes review of pipe integrity and ensures that formation being pumped into has no value as a possible future fresh water source.
H_2S Contingency Plan	Alaska Oil & Gas Cconservation Commission	A detailed plan outlining tests for the presence of H_2S, actions to be taken if present, and safety equipment, escape plans and emergency aid reviews.
Whale Monitoring Plan	Alaska Dept. of Natural Resources	Determines the need for and degree of monitoring plan for areas within whale migration route.
Oil/Whalers Agreement	Whaling Village Representatives	Agreement limiting activities to what is acceptable to the whalers during the whale migration. Also includes supplies and services furnished to the Native whalers.
Seasonal Drilling Restrictions	Alaska Dept. of Natural Resources	Outlines the areas and degrees of restricted activities during the whale migrating season.

Water Use Permit (Seawater)	U.S. Fish & Wildlife Service	Provides standards for using seawater as a source of making freshwater (in this case, through reverse osmosis).
Water Use Permit (Freshwater)	Alaska Dept. of Natural Resources (Div. of Land & Water Management)	Allows use of fresh water for drilling purposes.
Notice of Financial Responsibility	Alaska Dept. of Environmental Conservation	An agency requirement that the company or individual conducting drilling operations have financial responsibility sufficient to perform properly.
Evacuation Plan (CIDS)	U. S. Coast Guard	For safe evacuation of the Concrete Island Drilling Structure (CIDS) in the event an emergency occurred.
Aids to Navigation Approval	U. S. Coast Guard	Requires fog horn and visual markings on CIDS.
Landing Permit	Federal Aviation Administration	Ensures helicopters and pilots are capable of safe landing on the CIDS.

Food and Drink Permit	Alaska Dept. of Environmental Conservation	Requires strict adherence to health and cleanliness regulations for serving human consumables and for handling associated waste.

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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February 23, 1994

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

Dear Senator Pearce:

As you requested during the Senate Resources Committee hearing on SB 308 yesterday, I have enclosed two documents which demonstrate the milestones from the first announcement of a posted oil and gas lease sale to the lease sale itself. The first enclosure is a table from page 7 of the 1993 Five-Year Oil and Gas Leasing Program. This enclosure demonstrates the "generic" timeline to which all lease sales, with the exception of exempt sales, are applicable.

In addition to the "minimum" number of events outlined in enclosure No. 1, there may be additional hearings or other notices related to a specific sale. For example, I have enclosed a chronology for the milestones related to Sale 78, the proposed Cook Inlet Sale, that was recently enjoined by the Superior Court.

If you have additional questions or need other materials, please feel free to call.

Sincerely,

James E. Eason
Director

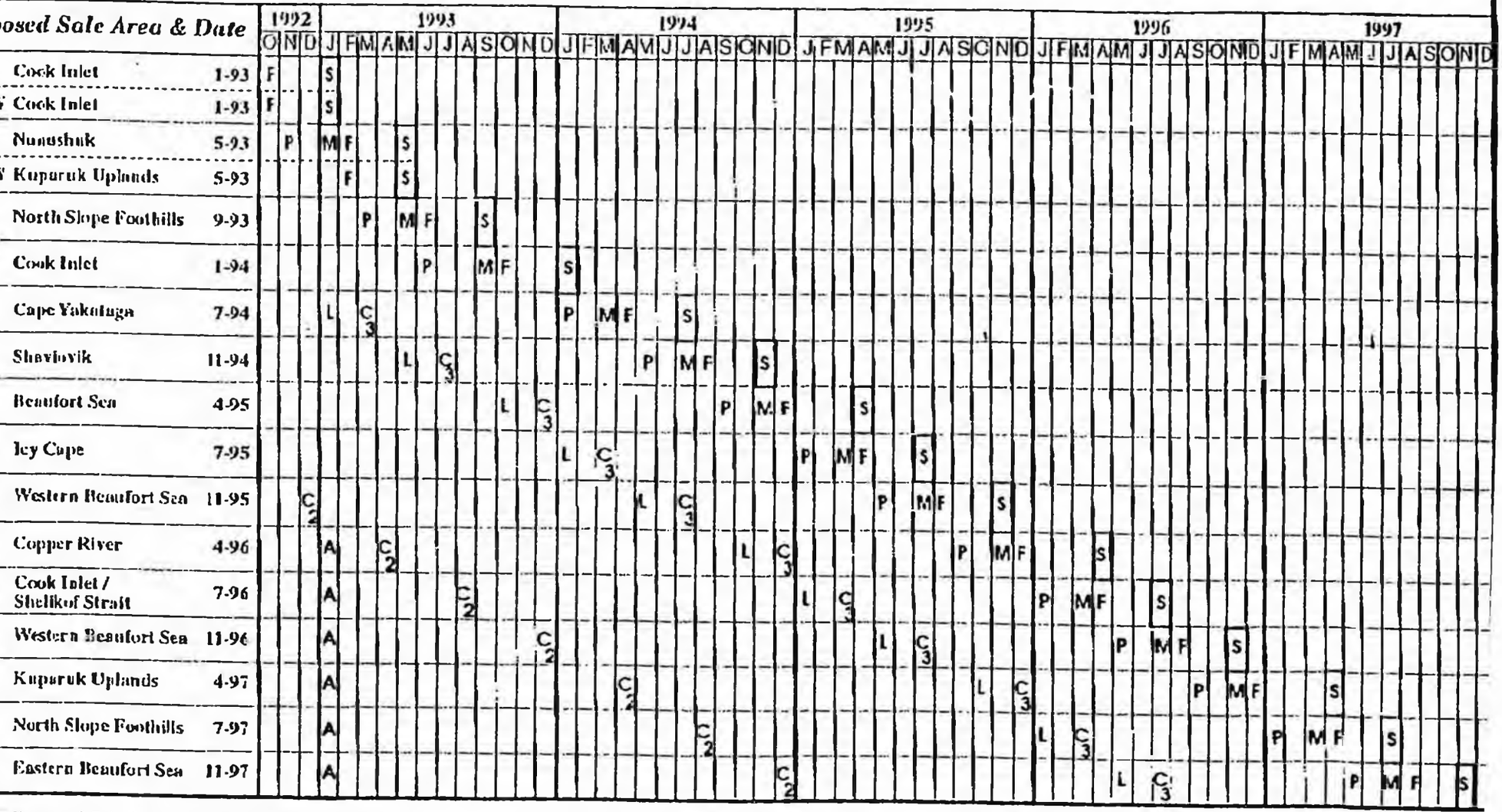
Enclosures

JZZP4dp.je

FIVE-YEAR OIL AND GAS LEASING PROGRAM

ALASKA DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS



A = Proposed Sale Area Added to 5-Year Program.
C = Call for Comments:
1 = New Sales and 5-Year Program Revisions Made 6 months prior to Additions (A).
2 = Request for General Information
3 = Request for Socioeconomic and Environmental Information

L = Preliminary Land Status Check
P = Preliminary Finding / Notice of Intent to Issue Final Finding [AS 38.05.945(a)(3)] / ACMP Consistency Analysis. (If required.)

M = Public Meeting or Teleconference
F = Final Finding and/or Notice of Sale and Terms [AS 38.05.945(a)(4)]
S = Sale

12/21/92

Oil and Gas Lease Sale 78
Public Notification Process

The Division of Oil & Gas mailing list for notification of proposed lease sales is comprised of the following:

State and federal agencies
Oil companies
Boroughs, municipalities and village councils
Newspapers
Radio and TV stations
Environmental and pro-development organizations
Individuals expressing interest in lease sales
All legislators

The sequence of public notification was as follows. Only those notifications in **bold** print were required by law; all others were done voluntarily by the Division of Oil and Gas:

Oct 9, 1989 : Call for Comments (lists areas to be added to leasing schedule)
sent to all on mailing list

Jan 1991: **Sale Added to Five-Year Leasing Program**
published in Five-Year Oil and Gas Leasing Program

Feb 26, 1991: Call for Comments (General Information)
sent to all on mailing list

Oct 22, 1991: Supplemental Call for Comments (area expanded to Homer)
sent to all on mailing list

Jul 21, 1992: Call for Nominations
sent to oil companies on mailing list

Oct 27, 1992: Call for Comments (Socioeconomic and Environmental Info)
sent to all on mailing list

Jul 15, 1993: **Notice of Intent to Issue Final Finding and Decision**
sent to all on mailing list
ads in newspapers (Anchorage, Juneau, Fairbanks, Kenai, Homer*)
Also published on Jul 22
sent to all affected post offices within sale area for posting

Certified Letter to Boroughs and Muncipalities
sent to affected boroughs and municipalities
Preliminary Finding of the Director
sent to state and federal agencies
multiple Copies sent to local libraries and to State Library in Juneau
sent to boroughs and municipalities
sent to organizations and individuals who have commented
Public Service Announcement
sent to local radio and TV stations

Aug 12, 1993: Kenai Peninsula Borough Public Hearing in Homer

Aug 13, 1993: Notice of Extension of Deadline for Comments Until Aug 24
published in Anchorage, Juneau, Kenai, Fairbanks, and Homer papers

Oct 19, 1993: **Final Finding of Director**
sent to state and federal agencies
sent to legislators from affected area
sent to all who commented on Preliminary Finding
multiple copies sent to local libraries and to State Library in Juneau
Certified Letter to Boroughs and Muncipalities
sent to affected boroughs and municipalities
Sale Announcement
sent to all on Mailing List
published in local and statewide papers (same as for Aug 13 Notice)
posted at all affected post offices within sale area
Public Service Announcement
sent to local radio and TV stations

Nov 18, 1993: Kenai Peninsula Borough Assembly Public Hearing in Ninilchik

Jan 25, 1994: **Lease Sale 78** (Stayed by the Superior Court)

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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ANCHORAGE, ALASKA 99510-7034
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(907)762-2547

February 23, 1994

Walt Furnace, General Manager
The Alliance
4220 "B" Street, Suite 200
Anchorage, Alaska 99503-5911

Via Fax 561-8870

Dear Mr. Furnace:

Late yesterday afternoon the Alaska Supreme Court acted on the state's Petition for Review of Judge Cranston's Injunction of Lease Sale 78, Cook Inlet. I have enclosed a copy of the Order from the Supreme Court. You will note that the Supreme Court denied our petition for review and, in so doing, provided no indication of its reason for doing so.

Those of you who have participated in hearings on SB 308 or HB 474 are no doubt aware that a constant theme of those who are opposed to this legislation is that "there is no problem" or "there is no need for rapid legislative action." Those comments are seriously undercut by the Alaska Supreme Court's decision yesterday. That decision emphatically underscores the need for legislative action this session to reestablish a reasonable balance to the administration of the state's leasing program. Absent this legislation, virtually every lease sale which the state proposes to conduct under its current Five-Year Schedule is at jeopardy.

We urge you to review this issue carefully and to support passage of SB 308 and HB 474.

Sincerely,

for James E. Eason
Director

Enclosure

cc: Kyke Parker

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To KYLE PARKER	From MARY LUNDQUIST
Co. Governor's Office	Co. DOL
Dept.	Phone # 269-5266
Fax #	Fax #

FROM

APPELLATE COURTS CLERK
303 K STREET
ANCHORAGE, AK 99501

RECEIVED
Department of Law
FEB 22 1994
Attorney General
Criminal Division
Anchorage, Alaska

Case Title: STATE V NINILCHIK TRADITIONAL
Supreme Court Case #: S-6172

***** O R D E R ***** 02/22/94

IT IS ORDERED: THE PETITION FOR REVIEW FILED ON JANUARY 28, 1994, IS DENIED. ENTERED AT THE DIRECTION OF THE SUPREME COURT ON FEBRUARY 22, 1994. (CHIEF JUSTICE MOORE NOT PARTICIPATING; JUSTICE BRYNER, PRO TEM).
CC: JUSTICES, JUDGE CRANSTON, CLERK OF THE TRIAL COURT
3AN-93-1174 CIVIL TRW

Clerk of the Appellate Courts

MARY ANN LUNDQUIST ESQ
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF LAW
1031 W 4TH #200
ANCHORAGE AK 99501

SB 308

State of Alaska, Department of Natural Resources

DIVISION OF OIL AND GAS - DIRECTOR'S OFFICE
3601 C Street, Suite 1380, Anchorage, Alaska 99503

FAX 907/562-3852
PHONE 907/762-2549

FAX TRANSMITTAL

DATE & TIME: 2/23/94 11:15

TO: Senitza Reesse

FAX NUMBER: 465-3872

FROM: Jim Eason

NUMBER OF PAGES, INCLUDING COVER: 5

COMMENTS: Return blue file SFC

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2568

(907)762-2547

February 23, 1994

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

Dear Senator Pearce:

As you requested during the Senate Resources Committee hearing on SB 308 yesterday, I have enclosed two documents which demonstrate the milestones from the first announcement of a posted oil and gas lease sale to the lease sale itself. The first enclosure is a table from page 7 of the 1993 Five-Year Oil and Gas Leasing Program. This enclosure demonstrates the "generic" timeline to which all lease sales, with the exception of exempt sales, are applicable.

In addition to the "minimum" number of events outlined in enclosure No. 1, there may be additional hearings or other notices related to a specific sale. For example, I have enclosed a chronology for the milestones related to Sale 78, the proposed Cook Inlet Sale, that was recently enjoined by the Superior Court.

If you have additional questions or need other materials, please feel free to call.

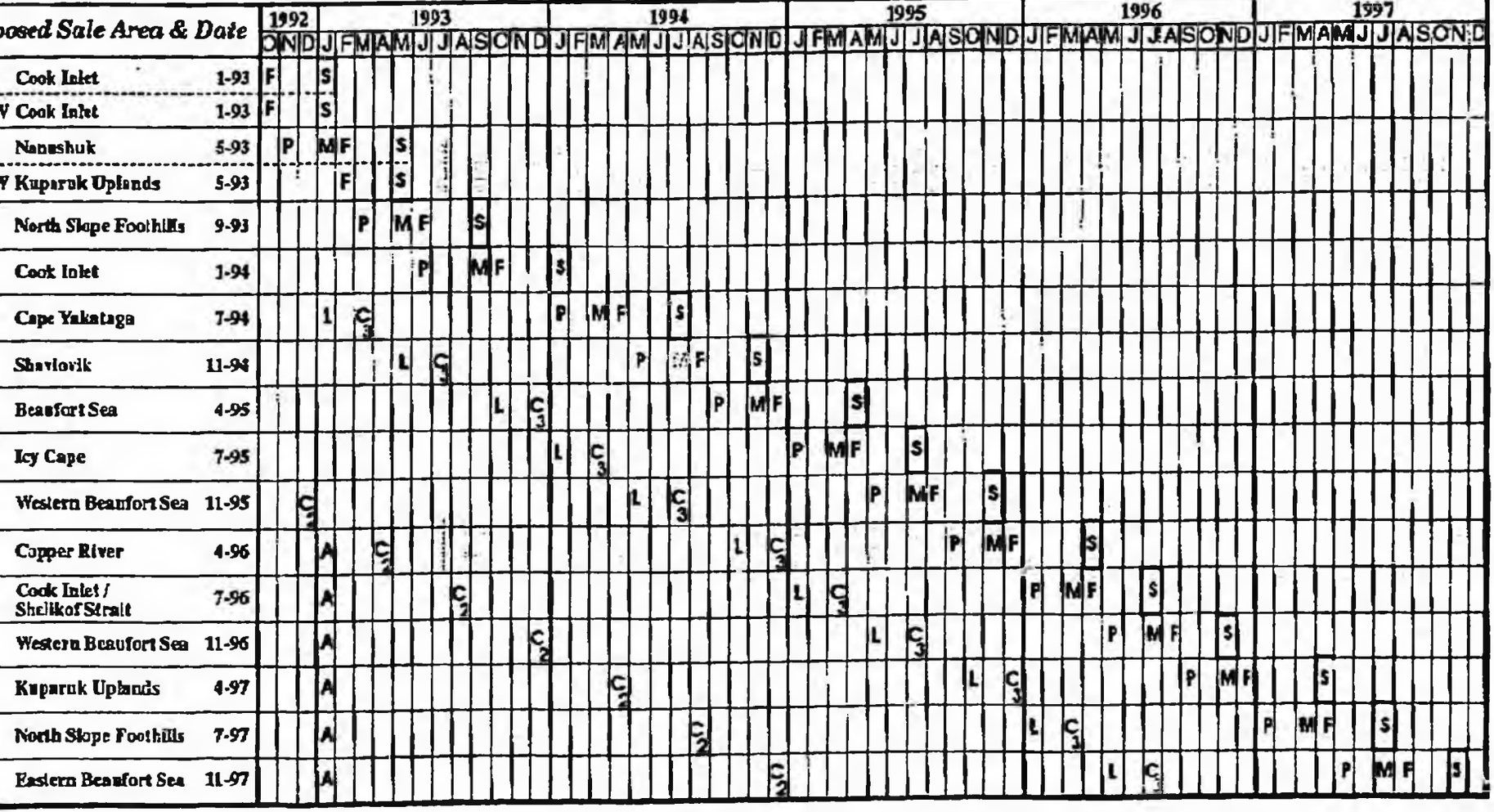
Sincerely,

for James E. Eason
Director

Enclosures

FIVE-YEAR OIL AND GAS LEASING PROGRAM

ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS



A = Proposed Sale Area Added to 5-Year Program.
C = Call for Comments:
- 1 = New Sales and 5-Year Program Revisions Made 6 months prior to Additions (A).
- 2 = Request for General Information
- 3 = Request for Socioeconomic and Environmental Information

L = Preliminary Land Status Check
P = Preliminary Finding / Notice of Intent to Issue Final Finding [AS 38.05.945(a)(3)] / ACMP Consistency Analysis. (If required.)

M = Public Meeting or Teleconference
F = Final Finding and/or Notice of Sale and Terms [AS 38.05.945(a)(4)]
S = Sale

12/21/92

Oil and Gas Lease Sale 78
Public Notification Process

The Division of Oil & Gas mailing list for notification of proposed lease sales is comprised of the following:

State and federal agencies
Oil companies
Boroughs, municipalities and village councils
Newspapers
Radio and TV stations
Environmental and pre-development organizations
Individuals expressing interest in lease sales
All legislators

The sequence of public notification was as follows. Only those notifications in **bold** print were required by law; all others were done voluntarily by the Division of Oil and Gas:

Oct 9, 1989 : Call for Comments (lists areas to be added to leasing schedule)
sent to all on mailing list

Jan 1991: **Sale Added to Five-Year Leasing Program**
published in Five-Year Oil and Gas Leasing Program

Feb 26, 1991: Call for Comments (General Information)
sent to all on mailing list

Oct 22, 1991: Supplemental Call for Comments (area expanded to Homer)
sent to all on mailing list

Jul 21, 1992: Call for Nominations
sent to oil companies on mailing list

Oct 27, 1992: Call for Comments (Socioeconomic and Environmental Info)
sent to all on mailing list

Jul 15, 1993: **Notice of Intent to Issue Final Finding and Decision**
sent to all on mailing list
ads in newspapers (Anchorage, Juneau, Fairbanks, Kenai, Homer*)
Also published on Jul 22
sent to all affected post offices within sale area for posting

Certified Letter to Boroughs and Muncipalities
sent to affected boroughs and municipalities

Preliminary Finding of the Director
sent to state and federal agencies
multiple Copies sent to local libraries and to State Library in Juneau
sent to boroughs and municipalities
sent to organizations and individuals who have commented

Public Service Announcement
sent to local radio and TV stations

Aug 12, 1993: Kenai Peninsula Borough Public Hearing in Homer

Aug 13, 1993: Notice of Extension of Deadline for Comments Until Aug 24
published in Anchorage, Juneau, Kenai, Fairbanks, and Homer papers

Oct 19, 1993: **Final Finding of Director**
sent to state and federal agencies
sent to legislators from affected area
sent to all who commented on Preliminary Finding
multiple copies sent to local libraries and to State Library in Juneau

Certified Letter to Boroughs and Muncipalities
sent to affected boroughs and municipalities

Sale Announcement
sent to all on Mailing List
published in local and statewide papers (same as for Aug 13 Notice)
posted at all affected post offices within sale area

Public Service Announcement
sent to local radio and TV stations

Nov 18, 1993: Kenai Peninsula Borough Assembly Public Hearing in Ninilchik

Jan 25, 1994: **Lease Sale 78** (Stayed by the Superior Court)

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
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KEY BANK BUILDING
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FAIRBANKS, ALASKA 99701-4679
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P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 22, 1994

James Eason, Director
State of Alaska
Department of Natural Resources
Division of Oil and Gas
P.O. Box 107034
Anchorage, Alaska 99510-0734

Dear Jim:

You have asked that the Department of Law comment on the authority of the Department of Natural Resources (DNR) to restrict or condition an oil and gas lessee's use of leased lands after issuance of a lease.[1] DNR may condition a lessee's right to use of the lands within a lease on authority arising from two bases: (1) the statutory right to include conditions in leases when issued and (2) the state's police power to regulate uses to protect the public health, safety, and welfare.

The Alaska Land Act provides the statutory right to include conditions in a lease, as follows:

> 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 interest 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 best serve the interests of the state.

AS 38.05.035(e). Therefore, when a final finding that the sale of oil and gas leases is in the best interest of the state includes mitigation measures restricting or reserving the right to restrict uses, those measures must then be incorporated into leases issued pursuant to that sale. Any bidder is therefore on

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[1] This letter addresses only oil and gas leases and does not address subsequent permits or authorizations by other agencies.

03-CSLH

notice that restrictions pursuant to the mitigation measures may be imposed on any lease issued in that sale and that a bid submitted is presumed to account for such risks. In order for a lease to be validly executed, a potential lessee must execute and return both a lease form and the attached mitigation measures which are incorporated by reference into the lease. The lessee has then taken the lease subject to such potential future restrictions.

The director may also, through the police power of the state, regulate uses to protect the public health, safety, and welfare when approving a plan of exploration, development, or operations. Exercise of this power is reflected in both AS 38.05.035(3) (above) and in the current lease form (DOG 9208) subparagraph 9(f) which states:

> In approving a lease or unit plan of operation, or an amendment of a plan, the state will require amendments it determines necessary to protect the state's interest, including the environment. The state will not require any amendment that would be inconsistent with the terms of sale under which the lease was obtained or with the terms of the lease itself, or would deprive the lessee of reasonable use of the leasehold interest.

When police power restrictions deprive a property owner of use of the property involved, the question arises of whether a "taking" of property has occurred that requires compensation under the Fifth Amendment to the U.S. Constitution. The Supreme Court recently delineated when compensation for such is required in Lucas v. South Carolin. Coastal Council, 112 U.S. 2886 (1992). Under Lucas, compensation is not required if "regulatory action [has] the effect of eliminating the land's only economically productive use" when the use would not have been allowed under "existing rules and understandings." 112 U.S. at 2900, 2901. Therefore, where requirements such as compliance with the Alaska Coastal Management Plan and other environmental restrictions (including the sale terms, lease terms, and mitigation measures) exist at the time of lease issuance, imposing restrictions pursuant to those requirements, even if the restrictions eliminate all economically productive uses of the property, does not give rise to a taking requiring compensation.

Under the current lease terms (subparagraph 9(f) above), a restriction that is consistent with the sale terms, lease terms, mitigation measures, or environmental regulatory schemes existing at the time of the lease issuance will not be a taking requiring compensation because the lessee bid and accepted the lease with notice of such potential restrictions.

Additionally, under the last standard of the limits on such restrictions in that subparagraph, any use contrary to such a restriction cannot be a "reasonable use" of the leasehold interest that was offered to and accepted by the lessee.[2]

In summary, DNR may restrict or condition uses of leased areas based on its statutory and police power authority. The terms, mitigation measures, statutes, and regulations existing at the time of the lease issuance determine when such restrictions result in a taking which requires compensation.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Barbara F. Fullmer

Barbara F. Fullmer
Assistant Attorney General

BFF/lwr

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[2]Under subparagraph 20 of the current lease form, the state may cancel a lease with appropriate compensation under certain situations involving "continued operations [that] probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment (including the human environment)" where "the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time" and the advantages of cancellation outweigh the advantages of continuing the lease. Such a cancellation differs from a restriction that eliminates beneficial use of a lease because it is a voluntary and discretionary act on the state's part to terminate all rights under the lease under certain conditions, without regard to whether a compensable taking under Lucas has occurred.

SALE 78 – THE PROBLEM – A CASE STUDY

TRUSTEES CREATE A CONFLICT:

"There is ample—and uncontroverted—evidence that these uses and activities simply cannot coexist with certain oil and gas exploration and development activities. To take a simple example, assume that an oil company purchases a marine tract south of Kasilof and, during exploration, discovers a commercially viable deposit of oil. The company then places a production platform on its tract, in the heart of the fishing grounds. Given the area's extreme tides and strong currents no fishing could occur within, at best, a half-mile circle around the platform. The danger is simply too great that a net, or a boat, will get wrapped up with the platform."

Trustees, et al, "Response to State's Petition to the Alaska Supreme Court for Review of Sale 78 Injunction"

REALITY:

There is no evidence of incompatibility—ample, uncontroverted or otherwise—just allegations and speculation. That speculation, however, is inconsistent with the actual "evidence" of coexistence of fishing, subsistence, and oil and gas exploration and development activities in Cook Inlet. The "fishing corridor" itself currently has valid leases within its boundaries and it has in the past been the site of several exploratory wells. Nevertheless, the Superior Court accepted Trustees' "evidence" of incompatibility as a basis for its Injunction of Sale 78.

In the case of Sale 78, there are no known, absolute conflicts at the lease sale stage. As in all lease sales, there is the potential for conflicts, depending upon what is proposed to occur, when it may occur, where it may occur, and for how long it may occur. By retaining flexibility to entertain alternative proposals which may be conditioned to achieve "consistency," the state remains able to at least try to accommodate competing uses of its resources. In those instances where accommodation is impossible, it retains the authority to disallow the proposed activity.

Under the Sale 78 lease provisions, for example, the following alternative scenarios could be accommodated.

- The "corridor" tracts may or may not receive bids—if there were no bids, there is no conflict.
- If bids and leases within the corridor are issued, there still is no assurance of a conflict. There may or may not ever be an application to drill an exploratory well on the tracts. If there isn't, there is no conflict.
- If there is an application, it may or may not be for a location which creates a conflict. For example, it may be accessible from adjacent acreage—either onshore or offshore.
- It may present a potential conflict that can be avoided through alternative site selection or scheduling so that the activity can be conducted when there are no commercial, subsistence or sport fishing activities.
- If an exploratory well can be accommodated, it may or may not result in a commercial discovery. If there is no commercial discovery, there is no conflict from development that will not occur.

In selecting Sale 78 lease terms, DNR adopted Term 13 to allow for a subsequent site-specific evaluation of alternatives in light of potential conflicts, while retaining full authority to disallow activities which cannot be made consistent with the ACMP or which are found not to be in the state's best interest.

"Term 13: To prevent conflicts with subsistence and commercial fishing operations, the Director may restrict lease-related use. In enforcing this term the division, during review of plans of operation, will work with other agencies and the public to assure that potential conflicts are identified and avoided to the fullest extent possible. Available options include alternative site selection, requiring directional drilling, and seasonal drilling restrictions."

Adopt This Legislation To Fix The System

THE ALASKA SUPREME COURT WOULD HAVE DNR DO NEPA-LIKE BEST INTEREST FINDINGS FOR ITS LEASE SALES

"The record indicates that the federal government has conducted environmental impact studies....DNR can emulate these studies."

Alaska Supreme Court—Goodnews Bay Decision

WHAT WOULD BE THE COST?

DNR's Best Interest Findings, prepared by a staff of five, average $105,000 each

- The Minerals Management Service (MMS) EIS's average $500,000 each
- MMS employs 53 people in their leasing section, which is responsible for producing the EIS
- MMS has spent $72.6 million for environmental studies within the Cook Inlet region

DNR Would Have To Greatly Increase Its Operating Budget And Staff Level In Order To Fund The Necessary Environmental Studies And Prepare The Document

Would The Number Of Sales Decrease? YES!

- In 14 years of leasing since 1979, DNR has held 42 lease sales, averaging three sales per year
- MMS has held only 15 Alaska OCS lease sales in the 17 years since 1976, when the Federal program began in Alaska
- With increased best interest finding requirements, DNR would be able to conduct only one lease sale every 18 months

Would EIS's Prevent Lawsuits? NO!

- Based on alleged NEPA violations and on the EIS findings, lawsuits were filed against half of the MMS lease sales
- These lawsuits resulted in two sales being enjoined, and two sales being postponed by MMS

CONCLUSION:

Given the required funding for staff and environmental studies, DNR could emulate the federal EIS process.

Ho r, doing so would mean a tremendous increase in operating costs; a significant red. ction in the number of lease sales held; a decrease in state revenue; a delay in future revenue resulting from new discoveries; and no guarantee that litigation would be reduced.

DESPITE THE STUDIES, DESPITE THE TREMENDOUS EXPENSE

NO OIL OR GAS HAS BEEN PRODUCED FROM ALASKA'S FEDERAL WATERS

TITLE 38 AND THE ACMP STATUTES NEED TO BE AMENDED

IF THIS LEGISLATION IS NOT ADOPTED

- We must accept jeopardizing ALL future lease sales
- We must accept the inevitable loss of revenue
- We must accept the increased costs of litigation
- We must accept the court's opinion that oil and gas leasing is not in the public interest
- We must accept the court's opinion that oil and gas exploration cannot coexist with fishing
- We must accept that spending tens of millions of dollars for more "studies" is a necessary use of revenue
- We must accept that leasing cannot occur if there is an alleged risk to the environment, no matter how remote or unlikely that risk may be

WITHOUT THIS LEGISLATION

We must accept the continuing erosion of the Legislature's authority and judgment to special interest groups and the courts

THE RECORD SENDS THE FOLLOWING MESSAGES . . .

Consistency with the ACMP (Sale 78)

Trustees for Alaska:
"Direct conflicts exist between oil and gas exploration and development activities and fishing and large vessel traffic. Consequently, oil and gas exploration and development activities must give way to those activities which are of higher priority; fishing and large vessel traffic...the decision to proceed with Sale 78 is not consistent with 6 AAC 80.040 and thus not consistent with the ACMP."

". . .Noah fails adequately to evaluate the cumulative effect of current and planned oil and gas exploration and development activities on the Inlet or explain how the sale can proceed without such analysis."

Alaska Superior Court:
"...the Court cannot divine the basis for the consistency determination. 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 dependent and (sic) activities? Or, is oil and gas a water related activity?...There is no discussion of a significant public need for the lease sale ...6 AAC 80.130(d) requires a finding of no feasible prudent alternative to meet the public need for the proposed use and a finding that all feasible and prudent steps to maximize conformance with standards will be taken."

DNR:
Analysis of ACMP consistency was included in the Preliminary Best Interest Finding which the court failed to look at when making its decision to stay the sale. The court appears to accept without question that potential offshore oil and gas development is not a water-dependent activity. DNR took a hard look at the requirements and issues of 6 AAC 80.130. The court created of its own accord the argument that DNR did not comply with 6 AAC 80.130, then relied on its own unsupported argument, without examination of the relevant parts of the record or response from DNR, to impose the stay.

Trustees for Alaska:
" The Court has further stated that environmentally protective purposes "require that at the time DNR reviews any...permit application it consider the probable 'cumulative impact' of all anticipated activities which will be part of [the project in question] whether or not the activities are part of the project under review. If DNR determines that the cumulative impact is problematic, the problems must be resolved before the initial permit is approved." (emphasis added)

Best Interest Finding (Sale 78)

Trustees for Alaska:
"Because Noah has failed to adequately address these issues in the 'best interest' finding and explain how they fit into the 'best interest' equation, the finding is legally deficient".

Geophysical Hazards (Sale 50)

Trustees for Alaska:
DNR violated the ACMP "by utterly failing (emphasis added) to identify known geophysical hazard areas within the Sale 50 area as required by 6 AAC 80.050(a). DNR does not consider geophysical hazards until it reviews a company's plans of operations. In contrast, MMS has demonstrated that an identification of geophysical hazards is practical at the lease sale stage."

Alaska Supreme Court:
"The geophysical hazards in a given area could be such as to make any use or activity inconsistent with the ACMP...we conclude that this case must be remanded to DNR with instructions to identify and report on known and substantially possible areas of geophysical hazards within Sale 50...a draft environmental impact statement for a federal sale just north of Sale 50 deals with faults and earthquakes in the Camden Bay area in much greater detail than the State's decisional document."

DNR:
"The Court has understated DNR's efforts to identify geophysical hazards...On the basis of its consideration of the existing information, DNR identified and discussed the known

potential geophysical hazards in the Sale 50 area....Unless the court is to require DNR to go beyond the express language of the regulation, there is nothing more to be done."

DNR's petition for rehearing was denied.

Archeological Resources (Sale 50)

Trustees for Alaska:
DNR failed to identify or describe any of the historic, prehistoric and archeological resources in the Sale 50 area; and DNR deferred analysis of such data to the exploration and production stages of development.

Alaska Supreme Court:
"DNR's decision to defer identification of archeological sites does not comply with 6 AAC 80.150. The regulation clearly requires the identification of archeological sites, but it does not state when they are to be identified. In our view the regulation is most reasonably interpreted to require...the identification of known archeological sites at the initial sale stage...DNR must comprehensively survey the known data, set out the results, and state its conclusions."

DNR:
"Because unrestricted availability to information concerning the nature and location of any archeological resource increases the threat to 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. § 47 (O)....DNR is required to withhold specific information regarding those sites until the plan of operations stage... "

DNR's petition for rehearing was denied.

Transportation (Sale 55)

Trustees for Alaska:
"DNR failed to discuss how development would occur, the riskiness of any methods chosen, and whether, in light of the risk, the lease sale was in the best interests of the state..."

Alaska Supreme Court:
"DNR did not take a hard look at the transportation issue in making its best-interest determination for Sale 55...the Finding concludes that offshore development would be "feasible" without use of ANWR, but does not discuss how the oil would be transported or what risks these methods would pose."

DNR:
"DNR, in its final finding, ...requires that lessees submit a detailed plan of operations for approval before conducting any exploratory or development operations, and imposes 26 restrictions or terms as a condition of the approval of plans of operations...Seven of these terms...specifically address environmental concerns arising from the transportation of oil and gas. DNR recognizes that the transport of oil and gas by pipeline is environmentally preferable to transport by tanker. DNR carefully considered the impact that the unchanged legal status of ANWR might have, and the risks presented by various oil and gas transportation methods that might be necessary to develop Sale 55 tracts."

The Porcupine Caribou Herd (Sale 55)

Trustees for Alaska:
"The Final Best Interest Finding... does not address the impacts of the sale on the Porcupine Caribou Herd nor does it indicate how these impacts are factored into the 'best interest' equation. This failure on behalf of DNR also reveals the inadequacy of DNR's analysis of the effect of the sale on the subsistence activities of the people of Alaska."

Alaska Supreme Court:
"Although DNR asserts that development 'should not' affect ANWR or the caribou that utilize ANWR, DNR has made no finding to this effect. Rather, it has simply made the unsupported assumption that offshore development cannot affect caribou."

DNR:
"[AS 38.05.035(g)] requires that DNR thoroughly 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 (emphasis added). 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 is clearly not found in the sale area, DNR did not violate the statute."

DNR's petition for rehearing was denied

Goodnews Bay Offshore Prospecting Permit (OPP) Disposal

Alaska Supreme Court:
"The State's argument that it could have done little more to fully assess the impacts of mining in the region than it did at the OPP stage is significantly undercut by evidence of comparable federal studies. The record indicates that the federal government has conducted environmental impact studies for offshore mining based on various mining scenarios. **DNR can emulate these studies**." (emphasis added)

FAILURE TO ADOPT THIS LEGISLATION WILL MAINTAIN THE STATUS QUO—AND GUARANTEE AN UNCERTAIN ECONOMIC FUTURE FOR ALASKA

THEY SAY OIL & GAS LEASING IS BROKEN

Has the Commissioner considered both offshore oil and gas development and a fishery as water dependent and (sic) activities?

. . . no discussion of a significant public need for the lease sale

Appellants' motion to stay (lease sale 78) is granted

Superior Court order staying Lease Sale 78

. . . DNR should undertake seismic studies prior to the sale to identify particular areas having special hazards

DNR has not demonstrated that it has taken all feasible and prudent steps to maximize conformance with the ACMP

Brief to the Supreme Court by:
Trustees for Alaska
Alaska Environmental Center
The Sierra Club
Nat'l Parks and Conservation Assoc.
The Wilderness Society

. . . Noah fails to adequately evaluate the cumulative effect of current and planned oil and gas exploration and development activities on the Inlet or explain how the sale can proceed without such an analysis

Brief to the Superior Court on Sale 78 by:
Trustees for Alaska
Ninilchik Traditional Council
Alaska Environmental Center
Greenpeace
Kenai Peninsula Fishermen's Assoc.
United Cook Inlet Drift Assoc.

DNR failed to take a hard look at the impact of (offshore) Sale 55 on the (onshore) Porcupine Caribou Herd, and on the subsistence users of this herd.

Alaska Supreme Court

YOU CAN FIX IT

IT'S A FACT

Since The Inception Of Competitive Leasing in 1959:

- Over 75 Lease Sales Have Been Held
- Over 80 Best Interest Findings Have Been Compiled
- Over 25 Million Acres Have Been Offered For Lease And Over 11 Million Acres Have Been Leased
- Over 3,800 Wells Have Been Drilled
- The State Has Collected Over $45 Billion In Bonuses, Rents, Royalties and Taxes
- Competitive Oil And Gas Lease Sales Have Been The Cornerstones On Which Alaska's Economy Has Been Built—And Have Provided Benefits To ALL Alaskans

AFTER 35 YEARS OF OIL & GAS LEASING

- The courts—and not the Legislature or the Executive Branch—are setting the state's leasing policy
- The Supreme Court says the Best Interest Findings under Title 38 are insufficient
- The Superior Court cannot determine whether lease sales are consistent with ACMP unless all potential future development can be described
- The Superior Court is unable to determine that there is a significant public need for the lease sale
- The Ombudsman finds that although we have met or exceeded all legal requirements, the process—as defined in current statute—is not "fair"

WHAT IS THE PROBLEM?

With 85% of State Revenue At Stake

HOW DO WE FIX IT?

First, Understand The Problem

- Under Title 38, the commissioner must take a "hard look" at "the salient factors" in best interest findings that an oil and gas lease sale should be held.

- However, through a series of Supreme Court decisions beginning in 1987 and continuing through this year, the court has systematically rejected the commissioner's authority both to determine what are the salient factors and "how much" analysis is "enough" before proceeding with a lease sale.

- Both the Alaska Supreme Court, and now the Superior Court, have ruled that best interest findings under Title 38 and ACMP consistency determinations for lease sales under title 46 cannot rely upon deferred consistency reviews of post-sale projects until specific exploration or development projects are proposed.

- Since no one can predict the consequences of a lease sale, litigants are encouraged to speculate on the sufficiency of the commissioner's considerations on future events, and the courts have become the arbiter of what is "proper weight" and "adequate analysis." Arguments over "how many angels might someday come to sit on the head of the pin" are disrupting the leasing program, frustrating legislative intent and threatening the state's future economic health.

To Fix It

The Statutes Must Be Changed

- Modify Title 38, the oil and gas leasing statutes, and Title 46, the ACMP statutes, to clarify legislative intent
- Eliminate the opportunity for courts to substitute their judgment by providing clear guidance as to the scope of best interest findings and ACMP findings and consistency determinations for lease sales
- Regulatory "fixes" do not carry the force of law and will NOT solve the problem

If Legislation Is Not Passed

- Continued disruption and delay of lease sales
- Lost reliability of lease sale process
- Loss of industry participation
- Lost state revenue
- Increased litigation costs
- Increased unemployment as service industry contracts

WHAT THIS LEGISLATION DOES

- "Tightens" the scope of the best interest finding and ACMP determination for leasing
- Creates a best interest finding and ACMP procedure
  - that is factual, fair and timely
  - that is more likely to withstand judicial and public scrutiny
- Provides for meaningful public review process and directs the commissioner to determine best interest and find consistency when
  - valid, material and relevant facts are known and considered
  - required permits meet established standards

BOTTOM LINE

This Legislation More Clearly Defines Legislative Intent With Respect To Oil and Gas Lease Sales

Fax Transmittal Memo 7672

To Senator Mike Miller	No. of Pages 2	Today's Date 2/22/94	Time
Company Senate Resources Committee	From J.S. Emple		
Location Juneau, AK	Company Union Texas Petroleum Alaska		
Fax # 907-465-3888	Telephone # 907-465-4976	Location Houston Tx	Dept. Charge
Comments		Fax # 713-968-2455	Telephone # 713-968-2450
		Original Disposition: ☐ Destroy ☐ Return ☐ Call for pickup	

SB 308
testimony
(2/22/94)

Union Texas Petroleum

1330 Post Oak Boulevard
P. O. Box 2120
Houston, Texas 77252-2120
Telephone (713) 968-2440

Joel S. Emple
Vice President
Exploration

February 22, 1994

The Honorable Mike Miller
Chairman
Senate Resources Committee
Capitol Building, Room 423
Juneau, AK 99811

VIA FAX AND FEDERAL EXPRESS

RE: STAY OF STATE OF ALASKA LEASE SALE 78
PROPOSED LEGISLATION SB308 / HB474
LAWSUITS REGARDING STATE OF ALASKA LEASE SALES 50, 55, & 78

Dear Senator Miller:

Union Texas Petroleum Alaska is an indirect wholly owned subsidiary of Union Texas Petroleum Holdings, Inc., one of the largest independent producers located in the United States. Union Texas explores for and produces oil and gas overseas primarily in the U.K. North Sea, Indonesia and other strategic areas.

Union Texas Petroleum Alaska pursues exploration activities in Alaska. At year-end 1993, it held approximately 88,000 net acres in Alaska, primarily in the Colville Delta, Cook Inlet and offshore Beaufort Sea. During the past several years, Union Texas Petroleum Alaska has increased its exploration activity in Alaska. This activity included participation in three additional wells in the Kuukpik State Exploration Unit, four wells in the adjacent Colville River Delta area, one well in the Jones Island State Exploration Unit, three wells in the Kuvlum Federal Unit in the Beaufort Sea, and the Diamond #1 Well in the Chukchi Sea.

The stay of the State of Alaska Lease Sale 78 has significantly affected the view of Union Texas Petroleum Alaska regarding our ability to implement a sound exploration and development plan in Alaska. Current statutes and regulations governing leasing activities as interpreted by the Alaska courts in lawsuits concerning State Lease Sales 50, 55, and 78, discourage bidding as well as exploration and production activities on state lands. In addition, we believe these interpretations are inconsistent with the legislative intent of these statutes and regulations. The delay in arriving at a settlement and the impact of the settlement of the Mental Health Lands further discourages activities on state lands. Because of the long lead time and high exploration costs involved in arctic projects, independent operators such as Union Texas Petroleum can ill afford to continue to expend significant sums of money on exploration activities into areas where the return on the investment is becoming more uncertain due to the of lack of leasing opportunities on state lands.

Alaska is in direct competition with alternative international opportunities for funding. We believe that Alaska compares favorably with other international projects on a technical basis but we are concerned that increasing regulation and the inability to plan and budget programs with reasonable assurance that leases will be available places Alaska at a distinct disadvantage. Union Texas Petroleum would prefer to keep the dollars and jobs at home as much as possible. The passage of SB308/HB474, to be applied retroactively, would be a significant step in accomplishing our common objectives.

Sincerely,

UNION TEXAS PETROLEUM ALASKA CORPORATION

J. S. Empie
Senior Vice President

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2111

George N. Ahmaogak, Sr., Mayor

POSITION OF THE NORTH SLOPE BOROUGH ON PROPOSED COASTAL ZONE MANAGEMENT PROGRAM LEGISLATION

Two bills are now before the legislature relating to the State's Coastal Zone Management Program (ACMP). The Borough strongly supports SB 238, and strongly opposes SB 308. These positions are more fully explained below:

SB 238

SB 238 was introduced by Senator Drue Pearce, and has been the subject of several teleconferenced public committee hearings. It is the product of several years' work by Senator Pearce's office and a broad-based working group composed of state resource agency, Division of Governmental Coordination (DGC), and Department of Law ACMP coordinators, representatives from industry and the federal Minerals Management Service (MMS), and ACMP coordinators from several state coastal districts. The group worked diligently, with significant input from others involved in implementation of the ACMP on a daily basis, to craft legislation designed to correct due process problems associated with the current procedures for appeal of coastal consistency determinations to the state Coastal Policy Council (CPC), and to strengthen the role of coastal districts in the consistency review process. Acting on a consensus basis, the group has worked with Senator Pearce to produce a bill which the Borough feels accomplishes those tasks. This change in appeal procedures may not yield state consistency determinations which are always more to the liking of coastal districts and their residents, but it should provide for a more open process resulting in better understood and supportable state decisions.

It is also important to understand that SB 238 has been developed in conjunction with other Working Group efforts aimed at improving the coordination and effectiveness of consistency reviews. Proposed changes to 6 AAC 50 would streamline the process of consistency reviews relating to federal offshore oil and gas lease sales. The changes would require greater exchange of information and early meetings of all parties with the expectation that identification of issues of concern and data gaps, and the open discussion of possible solutions can avoid

costly litigation, and leave all parties feeling more satisfied with their role in the process. At the same time, a draft Memorandum of Understanding (MOU) between the state DGC and federal MMS has been developed by the Working Group and submitted for approval by state and federal authorities. The MOU will enhance coordination between MMS, DGC, state agencies, and coastal districts in the consistency review of federal offshore lease sales.

SB 238, the proposed 6 AAC 50 changes, and the MOU all have the support of the people who implement the ACMP within state agencies, MMS, industry, and coastal districts. While they may not prove to be the final steps in creating a coastal management program which best serves all state interests, they will contribute to improving the predictability of the system, and importantly, the atmosphere within which important state decisions are made.

SB 308

SB 308 was introduced by the Administration on the morning of February 14, and scheduled for hearing by the Senate Resources Committee at 3:30 that same day. A copy of the Bill was not available in the Barrow Legislative Information Office until 2:30. It was drafted in response to a court decision on January 24, which temporarily enjoined state offshore oil and gas Lease Sale 78, based in part on ACMP issues. Both the substance of this bill, and its attempted fast tracking through the legislature are very troubling. SB 308 is designed to limit the scope of ACMP consistency reviews conducted by the state, and to weaken coastal districts' and the public's ability to participate in full and open discussions of all concerns related to leasing. Although at its heart the federal-state-district coastal zone management structure is designed to provide the maximum public input and control over local development, the Administration has here quickly moved a bill which would significantly alter the balance of the ACMP without making even a minimum effort to contact each of the coastal districts throughout the state. The request of the Coastal District Coalition, comprised of district coordinators for boroughs, other municipalities, and coastal resource service areas around the state, for representation on the Governor's task force formed to respond to the Sale 78 court decision was denied. No state members of the ACMP Working Group were present, or we believe were allowed to testify, before the Senate Resources Committee on SB 308. With the exception of Division of Oil and Gas Director Jim Eason and a representative of ARCO, all of the dozen or so participants in the committee teleconference on February 14 were strongly opposed to the bill, and alarmed at the brief time available for its review.

SB 308 would restrict consistency reviews to "reasonably foreseeable, nonspeculative, direct effects" of proposed lease sales. If one of the goals of the bill is to avoid costly litigation over proposed lease sales, this language will not get it done. At the same time, while all those involved on a day-to-day basis in implementing the ACMP are moving on a variety of fronts through the Working Group structure to open up the consistency review process, this bill slams the door on the airing of all public concerns. The public frustration which will surely result from enactment of SB 308 will likely stimulate greater, rather than lesser, activity in the courts. The Borough believes that SB 308 is unnecessary legislation which is counterproductive to the more carefully undertaken broad-based efforts now underway to improve the state's Coastal management Program.

George N. Ahmaogak, Sr. 15 February 1994
George N. Ahmaogak, Sr. Date
Mayor

UNITED FISHERMEN OF ALASKA

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

2/22/94

TESTIMONY FOR SENATE RESOURCES ON SB 308

UFA opposes this legislation. We are not anti-development. However, this legislation allows DNR to ignore resource use conflicts, transportation issues and environmental issues during the initial administrative review prior to disposal of lands. This will force the state, during later project stages, into a position of either proceeding with environmentally unsound projects or expensive buy-backs of the sale or lease, including interest and repayment of any expenditures made by the leasee. Neither of these options are in the public's best interest.

This bill does not protect the public interest.

The constitution prohibits the state from disposing or leasing state lands without "safeguards of the public interest": determinations of whether a given resource disposal serves the public interest must be based upon an evaluation of all of the potential costs or risks of the disposal.

This bill increases the risk of environmentally unsound projects.

During its public interest finding, DNR considers the economic benefits of later project development (which are speculative): it is inconsistent to not simultaneously consider the environmental costs of later project developments. Lop-sided cost/benefit analyses which consider economic benefits with no environmental risks clearly bias the initial public interest determination in favor of the project. This allows DNR to make false or skewed "public interest" determinations by avoiding a thorough cost/benefit analysis.

This bill is fiscally irresponsible.

Initial project approvals will create state and industry investments in the project that will bias DNR's analysis of later project stages in favor of project completion. Since buy-back of land once disposed is not a realistic option, this bill will favor development regardless of costs to competing resource users and the environment.

This bill limits DNR's determinations to effects of paper transactions.

By narrowing the scope to "nonspeculative" and "direct" effects, this bill turns land disposals into mere paper transactions. This contradicts U.S. Supreme Court opinions, Congressional intent, previous Alaska Attorney General's opinions and common sense.

In 1984, the U.S. Supreme Court ruled that OCS oil and gas lease sales did not "directly affect" the coastal zone, because they were paper transactions. When Congress passed the 1990 Coastal Zone Management Act Reauthorization, it broadened the scope of effects which must be considered to include "cumulative and secondary effects... direct effects... and indirect effects which may be caused by the activity and are later in time or farther removed in distance..." The Alaska Attorney General stated that "...administrative agencies are mandated...to review the uses for which a particular authorization is issued, the ultimate activities associated with those uses, and the impacts of both the uses and the associated activities on the state's coastal area" (J66-502-81, p. 10).

The reasons for these decisions are obvious: impacts such as from oil spills can affect communities and wildlife thousands of miles away from the lease sale area. The public expects DNR to anticipate risks such as oil spills and to work out resolutions before any leases are issued.

This bill limits local control over local development and increases federal control over federal lands.

This bill concentrates power to determine land disposals in the hands of mid-level state bureaucrats. <u>As written, this will affect all future timber, mining and oil projects.</u> Further, this bill, in conjunction with SB 150, could give unprecedented power to resource division directors to speed exploration and development on large blocks of state lands and waters.

The coastal management plan provides an avenue for public input and control over local development. Usurping this local control violates federal and state agreements under the CZMA. Further, this bill either gives parallel powers to the federal government, which decreases state input on federal land disposals, or it creates two standards of review, one for federal lands and one for state lands. Neither option is desirable, but it is unclear which will occur under this bill.

This legislation will invite litigation.

The bill lacks clarity over how various factors interrelate, but it is clear that it will <u>not</u> immunize DNR's best interest findings from judicial scrutiny. This bill will increase the public's frustration and the likilihood of lawsuits.

The coastal management program is not problem.

The public, industry and the state deserve to discuss and resolve issues up front to ensure that if projects are allowed to proceed, they are done responsibly and with minimal impact on other resource users and the environment.

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.

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 CI, 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

Theo Matthews
Administrative Assistant

CC Governor Hickel
House Resource Committee
Senator Little
Senator Salo
Representative Davis
Representative Navarre
Representative Phillips
UFA
ADF&G
ADEC
Attorney General
Cook Inlet RCAC

United Cook Inlet Drift Association

Fax Cover Letter
Office (907) 283-3600 • Fax (907) 283-3306

DATE: 2/22/94 TIME: _____

NUMBER OF PAGES (Including Cover Letter): 4

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (907) 283-3600 AS SOON AS POSSIBLE.

TO: Sen Resources - 465-3883 FROM: Theo Matthews
Gov. Hickel
House Resources
✓ Sen. Little % Sen Ellis
Sen. Sebo
Rep. Davis
Rep Navarre

Rep Phillips
VFA
ADF&G
ADEC
AG.
CIRCA C-

SUBJECT: SB 308

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To Charlie Johnson	From Jenny
Co. EWC	Co. Nome
Dept.	Phone # 5231
Fax # 443 2162	Fax # 3708

Statement of Charles Johnson, Direstor of Eskimo Walrus Commission, Kawerak Inc. on Alaska Senate Bill 308

Mr Chairman and Honorable Senators

I am Charles Johnson, Director of the Eskimo Walrus Commission, which represents the walrus hunting villages from Togiak to Barrow. I am speaking on behalf of that organization and on behalf of Kawerak Inc. which represents the villages of the Bering Straits Region.

First, we are very disturbed at the speed in which Senate Bill 308 was introduced and hearings were called for. It is obvious that DNR tried to slip this bill through without having to hear testimony from those that will be most affected by this legislation. We recommend that legislation having this major impact be given broader exposure to the public and local governments. This legislation cannot stand the light of exposure for the attempts by DNR to bypass public process will be exposed.

We must refer to DNR's sorry record of incompetence and irresponsibility when granting offshore oil leases. The Alaska Supreme Court has found DNR wanting in addressing salient issues in making its best interest finding to allowing lease sale 50 and again for lease sale 55. We feel that this legislation is intended to free DNR from addressing the publics interest when it disposes of State land and waters. OUR lands and waters I must add. This legislation will not serve the best interests of the state for it denies the public and affected local governments the right to review development within their areas.

DNR is attempting to remedy the courts finding of incompetence with this legislation. By making this legislation retroactive to the last five years it is attempting to overturn the courts decision that DNR did not act in the public or the state's best interest in granting lease sales 50 and 55.

The State of Alaska has sued the Federal Government on the basis of local control of lands and resources. With this legislation it is attempting to do to local governments what it is claiming the Federal Government is doing to the State of Alaska.

By allowing the Commissioner of DNR to determine " material facts and applicable law upon which the determination that the sale, lease, or other disposal will serve the interests of the state" a process is set up to bypass local governments and the Coastal Management Program. This is contrary to the interests of the public, local governments and the State of Alaska.

We are very disturbed at the provision that " only reasonably foreseeable, non speculative, direct effects of the uses proposed" will be evaluated. It is often the traceable indirect effects that have the most impact whether good or bad on a community or the environment. This legislation eliminates experience with other projects as a factor in deterring the value of state disposal of property for development purposes.

By liimiting the evaluation of directs effects on fish and game only to the sale area DNR is ignoring the fact that fish and game are migratory animals that do not know where sale areas are. This provision allows DNR to allow development in key migratory paths that might have devestating effects on other areas of the state. The State of Alaska sued the Federal government over the Bristol Bay lease sales on this basis. Now DNR is requesting that it be allowed to do the very same thing.

Section 1 Paragraph C which allows DNR to evaluate impact on incrimental phases of a proposed sale rather than the whole project is intended to bypass present laws that protect the environment as well as the public from irresponsible permitting by government agencies such as DNR. By eliminating the cumulative long range effects of a sale from consideration and only considering "phases" as an entire project by itself DNR places itself in a position of not being able to halt a project that may be doing irreparable damage to the environment and the public.

One can argue that a shovel full of dirt or a gallon of oil spilled does not have significant damage to the environment or the lives of Alaska Citizens. By that standard we can argue that each successive gallon of oil spill did not have significantly more damage that the last gallon spilled by the Exxon Valdez as so consequently the Exxon Valdez was a permissible event. An extreme example but this is essentially what DNR is asking us to do.

Neither the Eskimo Walrus Commission nor Kawerak is against development. We are for responsible and competent evaluation of any development. This legislation allows DNR to continue it irresponsible and incompetent ways. It is not needed. It is bad legislation.

Thank you Mr. Chairman and Senators.

I ADAMANTLY OPPOSE SB 308

OUR PRESENT LAWS WERE DESIGNED TO ALLOW MEANINGFUL PUBLIC PARTICIPATION AND TO PROTECT OTHER RESOURCES AND INTERESTS FROM DETRIMENT AND DESTRUCTION BY OIL AND GAS ACTIVITIES.

IT OCCURS TO ME THAT THE PEOPLE OF THIS STATE HAVE SAID THAT THERE ARE SOME INTERESTS, SOME PEOPLE AND SOME RESOURCESTHAT ARE WORTHY OF PROTECTING AND THAT COMMAND THE SAME OR HIGHER PRIORITY FOR PRESERVATION AS THERE IS A DEMAND FOR OIL DEVELOPMENT AND THAT THIS PRIORITY IS IN THE BEST INTEREST OF THE PEOPLE OF THE STATE OF ALASKA.

WITHOUT THOSE LAWS WE ARE SAYIHNG THAT OIL DEVELOPMENT IS THE PRIORITY ON ANY AND EVERY STATE LAND.

I HAVE TO ASK MYSELF...IF THE MARINE TRACTS OF LEASE SALE 78 ALONG THE EASTERN SHORES OF COOK INLET ARE NOT WORTHY OF PROTECTING ... THEN WHAT IS. GIVE ME AN EXAMPLE OF AN AREA MORE DYNAMIC, AN AREA WITH RICHER RESOURCES, AN AREA MORE HEAVILY USED, AND AREA WITH MORE ADVERSE CLIMATIC AND ENVIRONMENTAL CONDITIONS, IS THERE AN AREA WHERE PHYSICAL CONFLICKTS WITH OTHER RESOURCE ACTIVITIES ARE GREATERII I DON'T THINK THERE ARE ANY.

SB 308 WILL MAKE A SHAM OF THE STATES BEST INTEREST FINDING. THE LAW WILL GIVE THE DNR THE LICENSE FOR OIL DEVELOPMENT ANYWHERE ANYTIME AS IT AND ITS GOVERNOR AND ADMINISTRATION SEE FIT.

THIS BILL IS THE WORK OF A GOVERNOR AND AN ADMINISTRATION WHICH I PERSONALLY FEEL WILL NOT BE AROUND IN 1995. PLEASE DONT REACT CARELESSLY TO THE RECENT COURT DECISIONS REGARDING OIL AND GAS LEASE SALE 78. THE COURT IN LEASE SALE 78 SAID THAT THE STATES REVIEW DID NOT PAY ATTENTION TO CONFLICTING USES IN COOK INLET. THE COURT WAS RIGHT! THEY SHOULD HAVE AND THEY DIDNT. WE TOLD MR. NOAH AND MR HICKEL IN PUBLIC HEARINGS BUT THEY CHOSE NOT TO LISTEN. WE NEED OUR PRESENT LAWS TO PROTECXT THE PEOPLE FROM AN ADMINISTRATION THAT HAS SAID IT MUST DEVELOP ANY AND ALL RESOURCES ASAP REGARDLESS OF THE CONSEQUENCES SHORT TERM OR LANG TERM.

PLEASE DON'T BE FOOLED BY MR. EASONS PAPER TRANSACTION THEORY. ONCE THE LEASES ARE BOUGHT I BELIEVE IT WILL BE NEARLY IMPOSSIBLE TO STOP AN ACTIVITY THAT IS NOT IN THE BEST INTEREST OF THE STATE AND EVEN IF POSSIBLE THE BUY BACK OPTION IS COSTLY AND UNNECESSARY.

Signed: _____
Testifier

SOUTH KENAI PENINSULA resident
Representing (Optional)

PO BOX 39294 NINILCHIK AK. 99639
Address

567-3374
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

committee on SB 308, dated Feb 22, 1994.
bill/subject

I am opposed to SB 308 both for its attempts to gut the coastal management program and for the short notice that the public has had to review and comment on this proposed legislation.

Signed: Anne Wieland
Testifier

self
Representing (Optional)

Box 1395 Homer
Address

235-6919
Phone No.

February 22, 1994

To: Senator Mike Miller, Chair
Senate Resources Committee

Re: SB 308

My name is Judy Mayhew, I am a resident of Unalaska and Vice-Chair of the Aleutians West Coastal Resource Service Area.

The Aleutians West CRSA administers the coastal management program in the western Aleutians. This bill potentially has significant ramifications for our program. We would ask the committee to give the public more time to review the bill in light of the implications of the amendments proposed today. We can not at this time make a well considered comment whether or not to support the amendments, having just heard the amendments at the beginning of this hearing. It is imperative for a workable solution to this problem, that a fair and open public process, with adequate time to inform the public, be followed.

Thank you.

Judy Mayhew
P.O. Box 221
Unalaska, AK 99685

Feb. 22, 1994

To Whom It May Concern:

I am very concerned with the way in which Senate Bill 308 is being railroaded through the legislature currently. DNR does not have a very credible record as far as I can see on much of its public review or risk acknowledgement in regard Resource leases, licenses, or variances.

I would simply echo the sentiments expresses in a recent letter from the mayor of the North Slope mayor. as a resident + wage earner + business operator in the lease 79 area, I bow to his greater experience in what is already working (ie. the Coastal Zone Management System) and what will be lost (public risk assessment) if this bill goes through

I am very concerned with the lease 79, the Copper River Flats, directly downstream + currant of the proposed lease area is the only unoiled fishing resource left in my backyard DNR better ensure that my economic options are safeguarded + assessed before a huge drilling project is put in place and becomes even more cost prohibitive to slow down at that

Feb 22, 1994

point to take into account ~~regarded~~ impacts, environmentally and otherwise.

This bill is not the way to do better business or create any better understanding amongst what are being forced to be more & more competitive and combative ~~to~~ resource user interests in oil, fishing, timber, & minerals.

DNR does not have my support, nor does the Governor, on this bill. You're both creating alot more already outright animosity by trying to sand bag this thing through.

It's a bad bill.

Sincerely
Torie Baker
PO Box 1159
Cordova, Ak 99574

2/22/94 Testimony, SB 308 (HB 474)

MICHAEL S. O'MEARA
P.O. BOX 1125
HOMER, ALASKA 99603

As a long-time resident of coastal Alaska I find this legislation to be offensive. Alchemy doesn't work -- you can't make gold from base metal. Given this, it is a waste of legislative time and effort to try to "fix" SB 308 (HB 474). It should be given a merciful death in committee.

SB 308 (HB 474) is a fine example of what is presently wrong with administrative procedures and agency attitudes. If enacted, I feel confident that it will prove counterproductive by exacerbating the present and growing tension between local people and state government. By seeking to father reduce opportunities for meaningful public participation in resource management decisions, this legislation will represent a declaration of war against already beleaguered, ordinary citizens. Be assured that this can only lead to increasing opposition to, and disruption of proposed resource disposals. In short, expect more lawsuits under this legislation, not fewer.

The increasing frequency of successful judicial challenges of oil and gas lease sales should send a message to us all. Perhaps there is something wrong with the sales as proposed, and with the way in which they have been pursued by the state. In the face of rising public opposition supported by judicial action, perhaps it would be more productive for the state to modify its administrative procedures than to seek immunity from public and legislative oversight. If state policy mandated that agencies work openly and in good faith with concerned citizens we might find that differences could be resolved before litigation was necessary.

A major problem with present administrative procedure relative to use and disposition of state resources is that a very basic and important step is missing. There is no provision for evaluation of actions proposed by agencies such as the Divisions of Oil and Gas or Forestry by unbiased parties. Agencies responsible for such things as public health and safety, environmental quality, and stewardship of a broad spectrum of other state resources potentially at risk by a proposed activity lack a veto.

For example, the Division of Oil and Gas, in consultation with industry, proposes an action and then evaluates its own proposal.

-- more --

The euphemism "Best Interest Finding" is applied to the end product of this exercise. As a "resource salesman" it is impossible for the Division's director to determine what is actually in the interest of all citizens of this vast state. To him, all of his proposals are good ideas or he wouldn't have put them forward in the first place. For him, the Coastal Zone Plan Consistency Review and Best Interest Finding processes are simply forums for self-justification.

While SB 308 (HB 474) is likely to be counterproductive in terms of helping to establish a predictable and consistent leasing program for the oil industry, there is need for legislative reform of a different sort. Administrative procedure should be revised so that promoters of resource projects such as the Divisions of Oil and Gas or Forestry no longer evaluate their own project proposals. Procedure should be modified so that the Divisions' "Best Self-interest Findings" go to a balanced, disinterested evaluation authority which rules on the merit of the proposed action in light of the input and interests of all affected parties. This authority, composed of legitimate representatives from other resource agencies, coastal districts, and resource user groups should be in a position to authorize or block the proposed action.

In addition, efforts to open up the public process, such as Senator Little's SB 324 promise to go much farther toward assuring a stable and beneficial program of resource use. I urge you to adopt a similar, more constructive approach to reforming administrative procedures, after discarding SB 308 (HB 474) and other efforts to circumvent public and judicial oversight of our resource agencies.

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366
Fax: 907-463-3312

SB 308/HB 474: Amendments to Title 38 and the Alaska Coastal Management Program

The Alaska environmental Lobby (AEL) opposes SB 308 and HB 474. 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 and HB 474 attempt 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. This legislation would narrow the scope of the factors that the state must consider when preparing a public interest finding.

AEL's specific concerns are:

1. These bills narrow the scope of a best interest finding to: reasonably foreseeable, **nonspeculative, direct effects** of the uses to which the resources will be put. The words, "nonspeculative" and "direct" will only invite additional lawsuits as the public and the courts try to determine their meaning. Was the Exxon Valdez oil spill a speculative or a nonspeculative effect? Was it a direct or indirect effect of oil drilling in the Arctic?

2. These bills give the resource agency directors the authority to decide which facts are material and which issues are relevant to the public's interest. This authority is currently vested in the local communities. Removing it from them will reduce their ability to manage and plan for their own futures. It will also insert a powerful bias into a finding since the director usually operates under a mandate to develop the resource.

3. These bills limit the best interest finding to the consideration of impacts on fish and wildlife only **within** the lease area. Clearly air and water emissions, oil and hazardous substance spills, noise and other impacts can affect fish and wildlife species and their habitats outside the lease area but within the coastal zone.

4. These bills allow best interest findings 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. Furthermore 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.

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.

2/21/94

ANADARKO PETROLEUM CORPORATION 17001 NORTHCHASE DRIVE • P.O. BOX 1330 • HOUSTON, TEXAS 77251-1330

DIRECT (713) 874-3253

Anadarko

JAMES D. JOHNSON
MANAGER OF GOVERNMENT AND ENVIRONMENTAL AFFAIRS

February 17, 1994

The Honorable Mike Miller
Chairman
Senate Resources Committee
Capitol Building, Room 423
Juneau, AK 99811

Dear Senator Miller:

Anadarko Petroleum Corporation, one of the largest independent domestic oil and gas exploration and production companies, was disappointed to learn of the recent delay in Cook Inlet Oil and Gas Lease Sale 78.

Although our interests in Alaska to date are non-operating in partnership with others, we have considerable technical staff devoted to developing ventures in Alaska and our management considers Alaska to be an integral part of our future exploration strategy. However, an orderly and predictable leasing program is crucial. Our business is already fraught with considerable geological, technological, financial and political risk. The expectation that leases will be available to implement or continue exploration programs in a routine fashion is a driving force in any exploration strategy.

We are not encouraged by this latest development in Alaska's leasing program and would therefore like to lend a voice of support to any efforts that can be made to get the program back on track -- particularly a legislative solution. Please call on us if we can be of help.

I've enclosed a copy of our last Annual Report in case you would like to become more familiar with Anadarko.

Very truly yours,

James D. Johnson

JDJ:vjb
enclosure

c:\wp\johnson\senator.ltr

Marathon
Oil Company

P.O. Box 3128
Houston, Texas 77253
Telephone 713/629-6600

February 7, 1994

Mr. Howard Weaver
Editor
Anchorage Daily News
1001 Northway Drive
Anchorage, AK 99508

Dear Mr. Weaver,

The court decision staying oil and gas Lease Sale 78 in the Cook Inlet is disappointing for Marathon Oil Company and our Alaska-based employees and contractors. Marathon helped pioneer Alaska's oil industry, and, excluding the North Slope, we have been one of the leading producers of oil and natural gas in Alaska for nearly four decades. Our future in Alaska hinges on our ability to prolong and extend our operations on the Kenai Peninsula and Cook Inlet.

During the past several years, we have completed major capital investments which will enable us to increase sales of natural gas. We have also added personnel in Alaska. The aim is to extend and expand the potential of our existing production operations and evaluate the exploration potential of the Cook Inlet. We believe that increasingly sophisticated technology will allow the industry to compensate for the natural production declines as long as new lands are made available. It is vital then, to have a consistent, predictable leasing schedule.

Without the opportunity to replace existing production with new reserves, our industry will become no more than liquidators of a declining production base. This will obviously influence our thinking related to both staffing and investment levels. With nearly 85 percent of the state's revenues coming from a declining petroleum resource base, the State of Alaska has a significant stake in the future of our industry. To deny industry access to state lands today, is to curtail Alaska's greatest source of potential revenues tomorrow.

I do not question the legitimate concerns of fishing and environmental interests. But I believe that reasonable people and sound regulation can accommodate the interests of the petroleum industry, the fishing industry and the people of Alaska in an environmentally sound way.

Governor Hickel is to be commended for his condemnation of the delay of Sale 78 and for his aggressive actions to seek possible legislative solutions. Every citizen who supports sound, responsible development of Alaska's oil and gas resources, should join the governor in seeking a quick legislative solution by calling or writing Alaska's representatives and senators and giving them your perspective.

Yours truly,

SB 308

34824 Kalifornsky Beach Road • Suite E • Soldotna • Alaska • 99669 • (907) 262-2492

February 23, 1994

Senator Drue Pearce, Chair
Senate Finance Committee
State Capital, Room 508
Juneau, Alaska 99801

Dear Senator Pearce:

The Kenai Peninsula Fishermen's Association (KPFA) is opposed to SB 308. This is bad legislation from a state planning and public policy standpoint. At the very time others (ie Coastal Zone Management Council, Senator Little) are working toward improving public notification and involvement in coastal planning the state administration has now decided to introduce legislation that would limit public and local government input into the process.

State planning for oil lease sales should be conducted up front and should not be a piecemeal operation. At the time of a lease the state must address potential problems and impacts of activities that could result from a lease. Not to do so is inviting more problems in the courts, not less.

SB 308 is fiscally irresponsible. The general public and the oil industry need to know the rules at the lease sale stage. Once a lease is granted the lessee has a legitimate property interest. If the state later decides to revoke a lease or impose mitigation measures that diminish the economic value of the lease, the state may be forced into a costly buy back situation. To protect it's financial interests and in fairness to potential lessees, the state should resolve issues dealing with foreseeable conflicts or environmental concerns at the lease sale stage.

KPFA believes there are substantive legal issues inherent in SB 308 that need full review by the attorney general prior to moving this bill further. We would urge the finance committee to explore these issues prior to moving the bill out of committee. An alternative might be to refer this bill to judiciary prior to taking any action.

Sincerely,

Loren Flagg

Loren Flagg
Executive Director

Hickel overreacted beyond reason to Lease Sale 78 injunction

LOREN FLAGG

On commercial fishing

The Hickel administration has overacted beyond reason to Judge Cranston's stay of Oil and Gas Lease Sale 78. Within one day of Cranston's decision Hickel fired off a two page news release titled "Court Decision on Lease sale is Wrong." The governor blasted the Superior Court's decision stating "it is based on an incorrect reading of the statutes governing the Alaska Coastal Management Program" (ACMP). Hickel added that part of the problem is that many of the state's judges do not fully understand resource development and how important it is to the state's economy.

Having lost a round in court the Hickel administration would now like to change the rules of the game. With the introduction of SB 308 and HB 474 the administration is now trying to circumvent the public process. This legislation would basically gut the ACMP and put all the trump cards into the hands of DNR resource directors. Mid-level bureaucrats would then have the power to limit the range of issues presented and resolved at the lease sale stage. DNR would not be required to look at relevant information at the initial phase of a proposed project under this legislation.

SB308 and HB474 are bad legislation and represent bad public policy. Concerns of local governments and the public will not be resolved at the lease sale stage. The way in which these bills are being fast tracked through the legislature does a disservice to the public.

The laws and regulations that are currently in place are not the problem. DNR's unwillingness to abide by the rules under the ACMP is the problem. DNR has attempted in some lease sales to circumvent the requirements under the ACMP by ignoring certain problem areas, such as water dependent priorities, and by ignoring the advice of other state agencies like the Department of Fish and Game (ADF&G). Attempts to ignore the advice of ADF&G can be traced back to the beginning of the Hickel administration when Hickel attempted to gut the Habitat Division and transfer the remnants to DNR where objective, perhaps dissenting voices could be easily muffled. When that move failed DNR simply began to ignore many of the recommendations of ADF&G.

A prime example of the short shrift that ADF&G received from DNR occurred during the planning stages for Cook Inlet Lease Sale 76 back in 1992. DNR virtually ignored most of ADF&G'S recommended mitigation measures for this sale. ADF&G Regional Supervisor Lance Trasky raised his concern in a September, 1992 memo to DNR'S chief petroleum geophysicist. Addressing the Statement of Issues for Proposed Sale 76 Trasky wrote, "The proposed mitigation measures in the issues statement do not address a majority of the ADF&G'S comments and indicate that DNR intends to pursue elimination of many of the existing Cook Inlet lease sale terms and conditions. The Department continues to oppose this action because it diminishes protection of fish and wildlife resources, and could create conflicts with existing uses of these resources."

DNR'S disregard for ADF&G'S concerns surfaced again during Lease Sale 78 preparation. DNR again rebuffed ADF&G'S recommended mitigation measures that were developed over a period of nearly 15 years and were based on the combined expertise and cooperative efforts of both agencies.

Having ignored ADF&G'S habitat and fishery concerns it was then quite easy for DNR to ignore the concerns of commercial and recreational fishermen. That is exactly what DNR did in preparing their Final Finding on Lease Sale 78 and that is what led to Judge Cranston's injunction. The courts stay was not based on a technicality" as suggested in a recent Alliance article.

The standards that DNR has lost on in this case and two others are based in the Alaska constitution and in Federal law and are designed with the best interest of all Alaskans.

Those who think that the Kenai judge sided with "a very small, albeit vocal, opposition group to lease sale Cook Inlet" had best think again. The groups represen in the appeal of Lease Sale 78 — including commerci fishermen, Native, and environmental organizations — represent thousands of citizens residing within the sta

The commercial fishing industry has not "come du firmly on the side of no exploration in Cook Inlet," as recently stated. Fishermen are not anti-oil as claimed some protagonists. The commercial fishing industry i however, pro-fish and pro-environmental protection. Fishing groups worked hard for many years to assure their industry was given adequate respect and protecti while the oil industry continued to operate and expan Many of our members are employed by the oil industr and many others participate with industry as part of oi spill response teams. We believe in a cooperative rela ship with respect and cooperation between oil interest fish interests and the state. To ignore our concerns, as DNR did in Lease Sale 78, or to limit our participatio during the review process, as DNR is attempting to do with new legislation, is taking a giant step backwards the positive relationships that have been built during 3 years of Cook Inlet oil development.

Finally, we would like to note that SB308 and HB4 are fiscally irresponsible. The general public and the oi industry need to know the "rules" of the game at the le sale stage. Once an oil lease is granted the lessee has a legitimate property interest. If the state later decides to revoke a lease or impose mitigation measures that dimi the economic value of the lease, the state may be force buy back the lease. To protect it's financial interests an fairness to potential lessees, the state should resolve iss dealing with foreseeable conflicts or environmental con cerns at the lease sale stage, not after the fact!

Loren Flagg is executive director of Kenai Peninsul Fishermen's Association. This column is a joint effort United Cook Inlet Drift Association and the Kenai Peninsula Fishermen's Association. The viewpoints pre sented here are not intended to represent the viewpoint the Peninsula Clarion.

City of Pelican

BOX 737 · PELICAN, ALASKA 99832 · PHONE 735-2202 · FAX 735-2258

FEB. 23, 1994

TO: SENATE FINANCE COMMITTEE MEMBERS
FROM: TOM ARMOUR, CITY ADMINISTRATOR, CITY OF PELICAN, AK.

SUBJECT: SB 308

Having just learned late this afternoon that this bill is up for Hearings tomorrow morning (Feb. 24, 1994) I apologize the lateness in getting these concerns expressed to you. I also have been advised that Thursday's hearing will be limited to fiscal impact aspects only.

Nonetheless I would to briefly advise you that at the municipality level, SB 308 does raise some questions. Further that for several reasons, quite a few of us haven't been able to track that bill. Weather forcing delays of well over a week for mail flights has resulted in our just now getting abreast of where the bill is and <u>what in very broad terms</u> it is.

The latter is actually the point of concern at this time. We don't know what SB is doing or going to do to the Coastal Zone Management Districts or where local governments fit into the picture.

At first, very fast reading, I get the impression that there is the authority for such districts to be circumvented by the DNR and maybe other state level agencies. <u>This is cause for concern.</u> We have worked very hard adding the CZ program into municipal government. Is it to no avail?

Secondly, the rapidity with which SB 308 is progressing without giving locals adequate time for consideration and to determine impacts doesn't seem fair. I would urge that this bill be held for additional review. And especially allow local government a time to analyze it.

Thank you for hearing this at such short notice. We just hadn't gotten any info about this.

Put in 308
file

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

Rep. David Finkelstein
Alaska House of Representatives
State Capitol
Juneau, AK

Re: HB474/SB308

Dear Representative Finkelstein,

Thank you for asking for the position of the Alaska Sportfishing Association on HB474 and its companion bill, SB308.

The Association is opposed for the following reasons:

The bills amend AS 38.05.035 (e). The present law requires the Director of the Division of Lands to make findings as to the state's "best interest" whenever the state considers land disposal, timber sales or oil and gas leases. These findings must meet criteria that protect fish and wildlife habitat, such as sport fishing.

Section 1 of the bills would amend the statute to make the best interest determinations subject--not to specific criteria--- but to simply whatever facts and issues the Director of the Division of Lands believes are "material". This defeats public planning, and the requirements that agencies respond to public concerns. It changes agencies into some "divine hand" that knows best, rather than requiring that they respond to the public.

Section 1 of the bills would also defeat considerations of cumulative impacts in multi-phased disposal of lands, leases or timber sales. For twenty years, resource agencies (beginning with the President's Council on Environmental Quality in the early 1970's) have consistently recognized the importance of addressing the cumulative impacts in resource matters. This shoddy draftsmanship of the bills should not be allowed to persist.

Finally, this issue of cumulative impacts also arises in section 3 of the bills by limiting coastal zone consistency determinations to incremental phases of a project rather than the overall project. That's bad news for fish.

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To Dave	From Doug
Co.	Co.
Dept.	Phone #
Fax #	Fax #

This legislation arises because of in three recent court cases, the Department of Natural Resources has lost in challenges to its best interest determinations. While the latest involved oil lease sale No 78 on the east side of Cook Inlet, which is right in the heart of the relatively new and expanding Deep Creek recreational fishery and in the heart of the long established set net and drift gill net fisheries, DNR could have easily made a sustainable decision if, as the public requested, it had simply required directional drilling from ashore in order to protect the fisheries and the aesthetic value of the area.

While the Alaska Sportfishing Association has long objected to management of the mixed stock commercial fisheries that intercept many fish other than Kenai Sockeye, and while ASA did not join in the litigation to stop that sale, we believe that maintaining the existing law regarding best interest determinations transcends such matters. That issue transcends any particular sale, transcends oil and gas matters because other dispositions such as timber sales and land sales are involved, and transcends the allocation and intercept issues. The best interests statutes are at the heart of all state land management, not just oil and gas leases.

The Legislature would be unwise to amend the statutes to legalize what the courts have determined to be illegal. In our opinion, DNR has been correctly told three times that it performs poorly on these matters. Three strikes and you're out ought to be the law on DNR. To have DNR now come to ask that the statutes it violated be amended to excuse its conduct amounts to nothing more that any law violator coming to the Legislature to ask that the law violated be expunged. If this were a criminal statute, with a petty thief making such a request, we would all recognize the absurdity of the request. Because this is a civil statute with DNR as the violator and the oil industry as a protagonist, we too easily think the issues are different. They are not. What DNR needs is a lesson in respecting the law, the public and the enactments of the Legislature.

Please convey our sentiments to others in the House and the Senate, and please keep us informed if the legislation progresses. It should not.

Sincerely,

Phil Cutler 3/1/94

Phil Cutler, President

ALASKA SCHOOL ACTIVITIES ASSOCIATION, INC.

March 22, [illegible]

The Honorable Senator Drue Pearce
Cochair Senate Finance Committee
Alaska Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Pearce:

The Alaska School Activities Association (ASAA), Inc. supports passage of CS for Senate Bill 312 (HES) which includes an amendment repealing AS 14.07.058 and 14.07.059. The repeal is being accompanied by adoption of regulation.

The state Board of Education is proposing to adopt a new regulation which will grant ASAA, Inc. the authority to govern interscholastic activities in the high schools of Alaska. It reads as follows:

> 4 AAC 06.115 is proposed to be adopted to make clear that school districts are allowed to voluntarily join and pay dues to non profit associations that govern interscholastic activities, such as the Alaska School Activities Association, Inc., subject to adherence to educational policy set by the state Board of Education and compliance with state laws.

The effective date of the regulation, July 1, 1994 will coincide with the proposed effective date of the repeal.

Thank you for considering this opinion.

Respectfully,

Gary D. Matthews
Executive Director

SB 308

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To Kyle Parker	From P Rasmussen/OCRM
Co.	Co.
Dept.	Phone #
Fax #	Fax #

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Washington, D.C. 20235

Riki Ott, Ph.D.
United Fishermen of Alaska
211 Fourth Street, Suite 211
Juneau, Alaska 99801

MAR 2 1994

Dear Dr. Ott:

Thank you for your letter of March 1, 1994, regarding Alaska Senate Bill 308 (SB 308). SB 308 would affect the way the Alaska Coastal Management Program (ACMP) reviews decisions by state agencies regarding the disposition of state land, property and resources. Your letter raises several issues regarding SB 308 and asks for clarification on the federal role in this particular legislation. Because we have not had time to conduct an in-depth review or legal analysis of SB 308, the comments that follow must be viewed as a preliminary programmatic response.

The Office of Ocean and Coastal Resource Management (OCRM) is the federal office responsible for overseeing the implementation of state coastal management programs developed pursuant to the Coastal Zone Management Act of 1972, as amended (CZMA). In addition to initially approving state programs, OCRM is charged with reviewing and approving or denying changes to the state's coastal management program. Thus, if SB 308 were enacted, the resultant changes to the ACMP would have to be submitted to OCRM for approval as a program change pursuant to 15 C.F.R. 923 Subpart I.

As mentioned above, we have completed a preliminary review of SB 308, and it would be premature to decide whether OCRM would approve the changes resulting from SB 308. We can, however, point out several aspects of SB 308 for which OCRM has significant concerns. First, as presented, SB 308 would narrow the scope of review for state agency decisions including disposition of state land, property and resources. In essence, this would create a double standard for review under the ACMP: one standard for federal agency actions, and a narrower, less strict standard for state agency actions. In order to apply state coastal management enforceable policies to federal agencies through the CZMA's federal consistency provisions, the standard of review applicable to the federal agency must be the same standard that applies to all public and private entities under the state's jurisdiction.

Second, in narrowing the scope of review, SB 308 would be contrary to the direction set by Congress in the 1990 reauthorization of the CZMA regarding state review of direct federal activities under section 307(c)(1) of the CZMA. Specifically, the changes require that each federal agency activity affecting any land or water use or natural resource of the coastal zone be conducted in a manner which is consistent to the maximum extent practicable with the enforceable policies of an approved state coastal management program. Further, Congress intended that in determining the effects of the activity, the federal agency must consider both direct and indirect effects, including reasonably foreseeable cumulative effects of the proposed activity.[1] It is also important to emphasize that the trigger for review of an activity is whether it affects the land or water uses or natural resources of the coastal zone, not the location of the activity.

Finally, you have raised the question of whether the federal program allows for phasing the review of certain activities. Federal regulations at 15 C.F.R. 930.37(c) allow, under certain circumstances, for the phased review of federal activities. This section is not intended to curtail the scope of the review at any particular phase. In fact, this section provides an opportunity for state review at major decision points for a long-term project and ensures that the project, taken as a whole, is consistant to the maximum extent practicable with the state coastal management program.

I hope that this letter answers your questions. Enclosed are some background materials regarding the reauthorization of the CZMA and federal consistency. If you would like to discuss the matter further, please contact John King of my staff at 301/713-3121.

Sincerely,

Clement Lewsey, Acting Chief
Coastal Programs Division

enclosures

cc: Paul Rusanowski, OGC
Beth Kerttula, DOL

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[1] H.R. Conference Report No. 964, 101st Congress, 2d Session at 970, 971 (1990)

UNITED FISHERMEN OF ALASKA

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

John King
Office of Oceans & Coastal Resource Management
National Oceanic & Atmospheric Administration
Rockville, MD

VIA FAX: (301) 713-4367

March 1, 1994

Dear Mr. King:

Several days ago, we provided you with a copy (via fax) of Senate Bill SB308 and background information. From our perspective, SB308 is a radical shift in public policy regarding the public input process under Alaska's coastal management plan of the Coastal Zone Management Act. We have several key concerns.

#1) This bill gives resource agency directors the power to limit the scope of issues addressed during the initial administrative review. Would similar powers be granted to federal resource agency directors on federal land disposals under the consistency determinations? Or would two standards go into effect: one on federal lands and one on state lands?

#2) This bill institutionalizes multi-phasing on state lands by allowing review of "relevant" public concerns during the appropriate project phase. We are concerned that multi-phasing increases the likelihood of erroneous land disposals because the process lacks a thorough cost/benefit analysis and best interest finding during the initial review phase. This seems counter to the entire concept of the CZMA. Does the federal government allow multi-phasing of projects on federal lands as maintained by state officials?

#3) Limiting the range of effects during the review process to "foreseeable, significant and direct" seems to eliminate most effects. Didn't Congress clarify "direct" to include secondary, cumulative and indirect? If so, how can the federal government approve language that they themselves do not use?

#4) Limiting the range of effects on fish and wildlife to "within the scope of the lease sale area" seems extremely arbitrary and unrealistic. This would exclude effects on migratory wildlife, including fish, marine mammals and birds, and also effects on wildlife immediately adjoining the lease sale area.

In summary, could you clarify the role of the federal Government in this legislation? Would the federal government have to approve the changes proposed in SB308 should this bill become law? What is the likelihood of federal approval given the legal history of the CZMA?

This bill is on an extremely fast track. Your haste in answering these questions--even a preliminary review--would be greatly appreciated.

Sincerely,

Riki Ott

Riki Ott, Ph.D.
Chairman of the Habitat Committee

Info. Pkg.

Coastal Zone Management Act
Federal Consistency Requirements

The Coastal Zone Management Act of 1972 (CZMA) section 307, as amended, requires that federal activities (including activities performed by the federal government, private activities requiring federal permits and licenses, and federal financial assistance to states and local governments) be consistent with the enforceable policies of a state's federally approved coastal program. Generally, federal activities are subject to the federal consistency requirements based on an "effects test."

Direct Federal Activities – CZMA section 307(c)(1), (2)

The federal consistency effects test requires that federal agencies proposing activities (direct federal activities), whether in or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone must provide a state with a federally approved coastal management program (CMP) with a determination that the activity is consistent to the maximum extent practicable with the state CMP's enforceable policies. A "Federal activity" is defined as "any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities." 15 C.F.R. § 930.31(a).

The issue of whether a direct federal activity affects any land or water use or natural resource of a state's coastal zone is a question of fact to be determined, on a case-by-case basis, by the federal agency performing the activity. 15 C.F.R. § 930.33(a). In determining the effects of the activity, the federal agency must consider both direct and indirect effects, including reasonably foreseeable cumulative effects of the proposed activity. H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. at 970, 971 (1990). While the form of the consistency determination may vary, it must include a detailed description of the proposed activity, its effects upon the land or water uses or natural resources of the state's coastal zone, and an evaluation of the proposed activity in light of the applicable enforceable policies in the state's CZM program. See 15 C.F.R. § 930.39.

There is no categorical exemption for any federal activity. If a federal activity affects the coastal zone then consistency applies. However, the President may exempt a specific federal activity (but not a class of federal activities) under certain circumstances. 16 U.S.C. § 1456(c)(1)(B). In addition, as indicated above, a federal activity affecting the coastal zone must be consistent to the maximum extent practicable. This requires federal activities "to be fully consistent with [state coastal] programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations." 15 C.F.R. § 930.32(a). Thus, a federal activity may deviate from full consistency if legally required (as opposed to a general notion or claim of national security). Finally, federal agencies "may deviate from full consistency with an approved

and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

The conference report does not include the statutory language from section 7307 (Federal Agency Consistency) of the House bill. This language provided:

> The consistency requirements of section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) shall apply to federal agency activities or federally permitted activities under title I of the Marine Protection, Research, and Sanctuaries Act of 1972 if the federal activity or permitted activity affects land uses, water uses, or natural resources of the coastal zone.

This amendment provided specific clarification that federal agency activities and federal permits under the Ocean Dumping Act, including ocean dumping site designations, and operation and maintenance dredging, are subject to the requirements of section 307. The conferees agreed that this statutory provision is unnecessary because the amendments to section 307(c)(1) leave no doubt that all federal agency activities and all federal permits are subject to the CZMA's consistency requirements. The conferees support and endorse the intent of the House provision, but agreed that a statutory "listing" of activities should be avoided to prevent any implication that unlisted activities are not covered.

Finally, the conferees are aware of the argument that the application of federal consistency to activities under the Ocean Dumping Act amounts to state regulations of ocean dumping for purposes of section 106(d) of that Act. The conferees reject this argument.

A new section 307(c)(2) is added to the CZMA which authorizes the President to exempt a specific federal agency activity if the President determines that the activity is in the paramount interest of the United States. The provision is based on similar exemption provisions in other environmental statutes, including section 313(a) of the Clean Water Act, section 118(b) of the Clean Air Act, section 4(b) of the Noise Control Act, section 6001 of the Solid Waste Disposal Act, the Medical Waste Tracking Act of 1988, the Safe Drinking Water Act, and section 408 of the Powerplant and Industrial Fuel Use Act of 1978. The exemption authorized in subsection (c)(2) is not applicable to a class of federal agency activities but only to a specific activity.

This exemption provision reinforces the conferees' position that no federal agency activities are categorically excluded from the consistency provisions of section 307. Section 307(c)(2) is the only exemption authorized or intended for section 307(c)(1) activities.

Section 6208(c)(1)(C) clarifies the requirement that each federal agency carrying out an activity which affects the coastal zone must provide a consistency determination to the appropriate state agency. This determination must be provided at the earliest possible time but not later than 90 days prior to final approval of the activity. This new statutory provision codifies an existing CZMA regulation (15 CFR 930.34(b)).

Section 6208(b) makes technical and conforming changes to the other existing federal consistency provisions of sections 307(c)(3) (A)

Conf. Rpt

Section 6205. Management program development grants

Much of the existing law relating to "program development" is transferred to section 306 or repealed. Discretionary program development assistance is authorized for fiscal years 1991, 1992, and 1993. A state may receive up to $200,000 in federal assistance for two successive years.

Section 6206. Administrative grants

This section amends section 306 of the CZMA substantially. Since section 306 governs approval and administration of state management programs, concern has been expressed that enactment of these provisions may create the implication that existing programs must be reapproved pursuant to the amended section 306. The conferees unequivocally reject this view. These amendments neither require nor authorize the reapproval of state management programs, and existing state programs shall remain eligible for grants after enactment. To the extent that new requirements have been added, the conference report contains deadlines, sanctions, or incentives for compliance which are the exclusive mechanisms through which the Secretary is authorized to act.

Section 6207. Resource management improvement grants

This section is amended to specifically authorize grants under this section to restore and enhance shellfish production from publicly owned lands.

Section 6208. Coordination and cooperation

This section amends the "federal consistency" provisions of the CZMA. The conferees' principal objective in amending this section is to overturn the decision of the Supreme Court in *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984) and to make clear that outer Continental Shelf oil and gas lease sales are subject to the requirements of section 307(c)(1).

The amended provision establishes a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to the CZMA requirement for consistency if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

Whether a specific federal agency activity will be subject to the consistency requirement is a determination of fact based on an assessment of whether the activity affects natural resources, land uses, or water uses in the coastal zone of a state with an approved management program. This must be decided on a case-by-case basis by the federal agency conducting the activity.

The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place,

Alaska Wilderness Recreation & Tourism Association
Sustainable recreation and tourism for a quality future

P.O. Box 1353
Valdez, AK 99686
Phone: 907-835-4300
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To: Chairman Pearce and Frank, Senate Finance Committee members.
From: Nancy R. Lethcoe, President NRLethcoe
Date: February 25, 1994

I have reviewed the fiscal note and have the following questions:

1) Changes in the state Coastal Zone Management Program will require reapproval from the Federal Coastal Zone program. Where are the administrative costs for this in the fiscal note?

2) Changes in the state Coastal Zone Management program will require all the communities with coastal zone management plans to work with the state to revise their plans. Where is the money budgeted to help the local communities revise their plans? Will the State help the local communities pay for this additional local expense caused by a state action?

3) Will the bill entail retraining costs for state employees? Will there be printing costs for the new statute? Will there be new regulations or guidelines implementing this? Where are these costs indicated on the fiscal note?

4) Mr. Eason indicated that it was unlikely that this bill could be implemented without some law suits. Where is the fiscal note for this?

5) Testimony has indicated that this bill may lead to an increase in State buybacks. Where is the fiscal note for this?

As a business organization, AWRTA can appreciate the wishes of the Department of Natural Resources to have the legislature pass a bill that will decrease litigation costs and avoid increased unemployment. However, AWRTA believes that this bill may increase unemployment and litigation costs by giving priority to Alaska's extractive industries — timber, mining, and oil and gas — at the expense of the tourism industry which is also based on Alaska's natural resources. We have reached this conclusion after listening to Mr. Eason's testimony before the Senate Resources and Finance committees. When questioned about the meaning of the words "direct" and "indirect," Mr. Eason explained that the fact that spills will occur is a direct effect, whereas the resource and economic damages to other industries is an indirect effect. Currently, both direct and indirect effects are considered when making a written finding. SB 308 limits findings to considering only the direct effects.

This change directly affects the tourism industry. As many of you know, the courts have ruled that tourism businesses do not have legal standing to recover economic damages sustained by a spill. Following the 1989 spill, tourism business operating in areas physically oiled, either went out of business completely, significantly reduced their business, or relocated to other areas. The economic effects lasted for several years. Businesses in the spill impacted areas also suffered. For example, in the years following the spill, Valdez, which was 25 miles from the oiled area, had a 40% decline in cruise ship landings. The summer of 1994 will be the first year that cruise ship landings will have equaled or exceeded the 1988-1989 level. The loss of cruise ship traffic cost Valdez tourism businesses such as gift shops and restaurants a minimum of 2 million dollars. According to the State Visitor Statistics Program, the total loss of tourism business to Valdez in 1989 alone was $12 million. It is, of course, true that the spill caused an economic boom in other parts of the Valdez economy, but this was at the expense of tourism businesses. None of these damages are recoverable. Prevention is the tourism industry's only protection.

Alaska needs a diversified economy. AWRTA supports laws and regulations that promote mutually compatible development of all of Alaska's industries, not the exclusive development of a few at the expense of others. We support laws that seek informed public input from all affected businesses and seek to balance the needs of competing industries without jeopardizing either one's existence. SB 308 does not accomplish this. It limits the scope so narrowly that legitimate economic concerns of the tourism industry will not be considered. Actual and potential adverse economic impacts on tourism within the site and adjacent to it should be considered.

AWRTA supports oil development where there are adequate safeguards to protect other industries. Good government provides those protections. The State's current Coastal Zone Management Program is working. The courts have not stopped lease sales. They have only asked the Department of Natural Resources to look at the indirect impacts and to seek ways of minimizing or mitigating adverse effects on the environment and businesses dependent upon the environment.

AWRTA strongly opposes this bill. It is not a fair bill. It seeks to advance the profits of one segment of the state's economy at the expense of other parts of the business community. It is not a bill that is good for Alaska. Alaska needs both a strong, responsible oil industry and strong, locally owned and operated tourism, including guided sport fishing, businesses. We ask that you not support this bill.

Alaska Wilderness Recreation & Tourism Association
Sustainable recreation and tourism for a quality future

P.O. Box 1353
Valdez, AK 99686
Phone: 907-835-4300
Fax: 907.835.5679

To: Chairman Pearce and Frank, Senate Finance Committee members.
From: Nancy R. Lethcoe, President NRLethcoe
Date: February 25, 1994

I have reviewed the fiscal note and have the following questions:

1) Changes in the state Coastal Zone Management Program will require reapproval from the Federal Coastal Zone program. Where are the administrative costs for this in the fiscal note?

2) Changes in the state Coastal Zone Management program will require all the communities with coastal zone management plans to work with the state to revise their plans. Where is the money budgeted to help the local communities revise their plans? Will the State help the local communities pay for this additional local expense caused by a state action?

3) Will the bill entail retraining costs for state employees? Will there be printing costs for the new statute? Will there be new regulations or guidelines implementing this? Where are these costs indicated on the fiscal note?

4) Mr. Eason indicated that it was unlikely that this bill could be implemented without some law suits. Where is the fiscal note for this?

5) Testimony has indicated that this bill may lead to an increase in State buybacks. Where is the fiscal note for this?

As a business organization, AWRTA can appreciate the wishes of the Department of Natural Resources to have the legislature pass a bill that will decrease litigation costs and avoid increased unemployment. However, AWRTA believes that this bill may increase unemployment and litigation costs by giving priority to Alaska's extractive industries — timber, mining, and oil and gas — at the expense of the tourism industry which is also based on Alaska's natural resources. We have reached this conclusion after listening to Mr. Eason's testimony before the Senate Resources and Finance committees. When questioned about the meaning of the words "direct" and "indirect," Mr. Eason explained that the fact that spills will occur is a direct effect, whereas the resource and economic damages to other industries is an indirect effect. Currently, both direct and indirect effects are considered when making a written finding. SB 308 limits findings to considering only the direct effects.

This change directly affects the tourism industry. As many of you know, the courts have ruled that tourism businesses do not have legal standing to recover economic damages sustained by a spill. Following the 1989 spill, tourism business operating in areas physically oiled, either went out of business completely, significantly reduced their business, or relocated to other areas. The economic effects lasted for several years. Businesses in the spill impacted areas also suffered. For example, in the years following the spill, Valdez, which was 25 miles from the oiled area, had a 40% decline in cruise ship landings. The summer of 1994 will be the first year that cruise ship landings will have equaled or exceeded the 1988-1989 level. The loss of cruise ship traffic cost Valdez tourism businesses such as gift shops and restaurants a minimum of 2 million dollars. According to the State Visitor Statistics Program, the total loss of tourism business to Valdez in 1989 alone was $12 million. It is, of course, true that the spill caused an economic boom in other parts of the Valdez economy, but this was at the expense of tourism businesses. None of these damages are recoverable. Prevention is the tourism industry's only protection.

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AWRTA strongly opposes this bill. It is not a fair bill. It seeks to advance the profits of one segment of the state's economy at the expense of other parts of the business community. It is not a bill that is good for Alaska. Alaska needs both a strong, responsible oil industry and strong, locally owned and operated tourism, including guided sport fishing, businesses. We ask that you not support this bill.

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(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 developement 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

ability of local governments and the public to participate in the development of mitagation 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 Flats 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 CI, 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 leasee 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

Theo Matthews
Administrative Assistant

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

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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.

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 CI, 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

Theo Matthews
Administrative Assistant

cc Governor Hickel
House Resource Committee
Senator Little
Senator Salo
Representative Davis
Representative Navarre
Representative Phillips
UFA
ADF&G
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UCIDA

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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 developement 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

ability of local governments and the public to participate in the development of mitagation 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 Flats 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

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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 leasee for exploration, design, etc. after the lease is granted.

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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

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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

CC Governor Hickel
House Resource Committee
House Oil & Gas Committee
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Senator Little
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Cook Inlet RCAC

UCIDA

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February 24, 1994 SENT BY TELEFAX

Senator Jaimar 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 oppossed Lease Sale 78 and I replied that in fact UCIDA had never oppossed 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 mitagation 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 hao 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 allisions "(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

Theo Matthews
Administrative Assistant

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
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COPY

November 8, 1993

SENT BY TELEFAX
HARD COPY TO FOLLOW

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 Kasilof River OR 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."

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 Kasilof River. Although Mayor Gilman 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 Kasilof 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,

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

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.

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 Glick, KPB Assembly Pres.
Kenai Peninsula Fisherman's Assoc.
UFA
Trustees for Alaska
Green Peace
Kachemak Bay Conservation Society

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE (907) 344-0541
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

11-K16LH

U.S. Department of Transportation
United States Coast Guard

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

510 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 manueverability 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

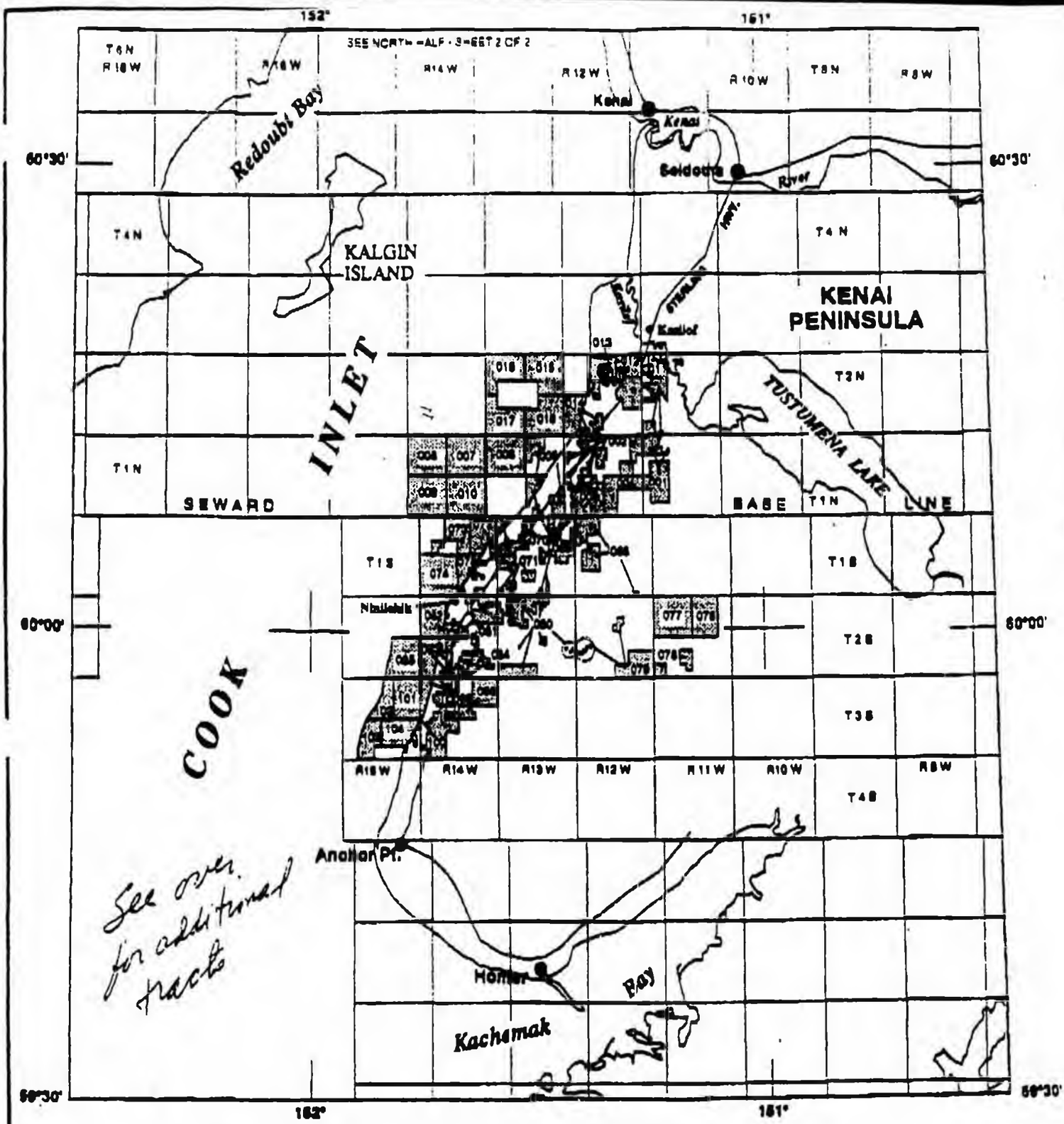
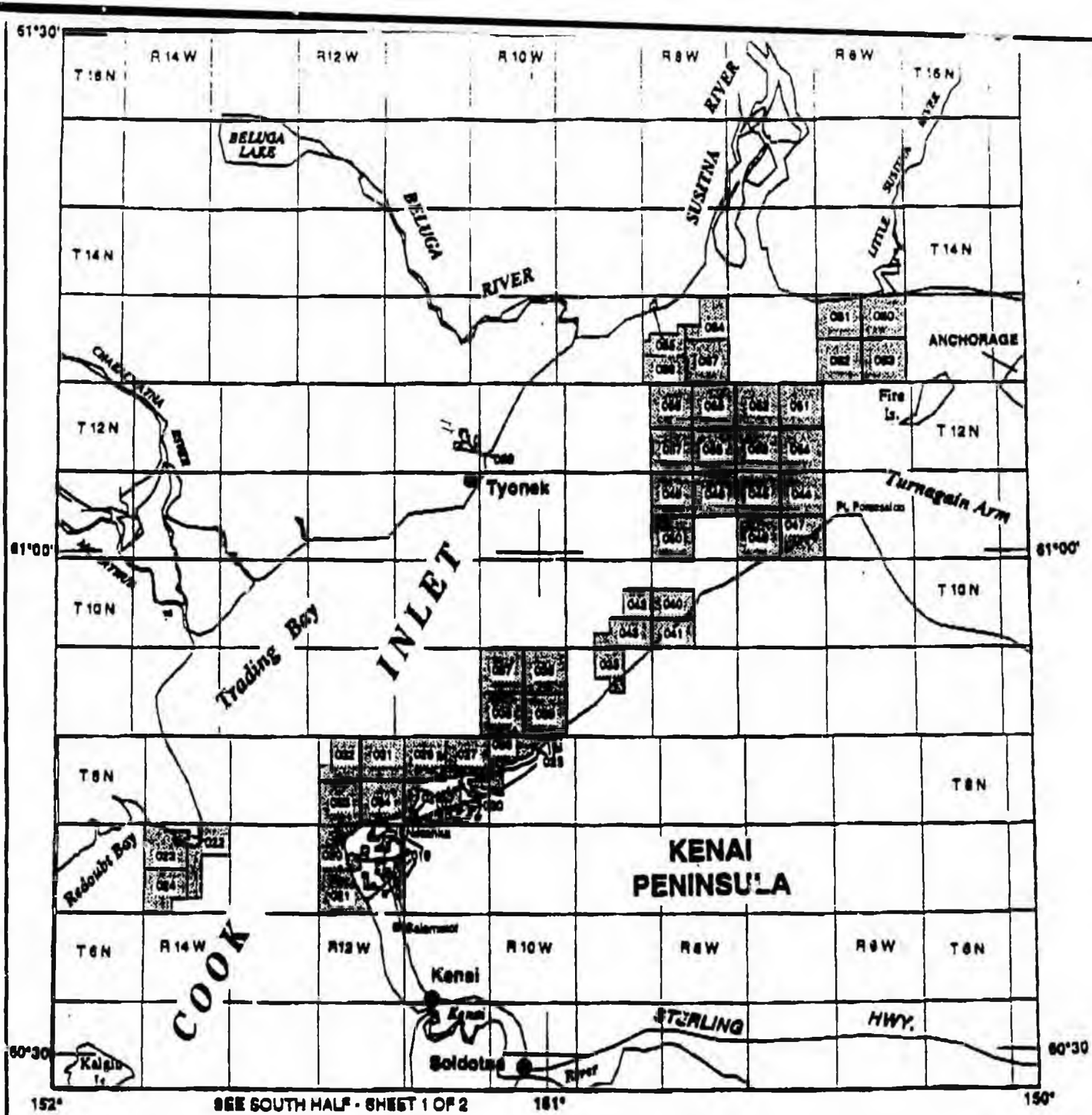

152°
151°
SEE NORTH HALF - SHEET 2 OF 2
T6N
R15W
R14W
R13W
R12W
R11W
R10W
T5N
R9W
Kenai
Redoubt Bay
Kenai River
Soldotna
60°30'
T4N
KALGIN ISLAND
KENAI PENINSULA
Kasilof
T3N
TUSTUMENA LAKE
T2N
T1N
SEWARD
BASE LINE
T1S
T2S
T3S
T4S
Ninilchik
60°00'
COOK INLET
Anchor Pt.
Homer
Kachemak Bay
59°30'
See over for additional tracts
MAP AREA
South Half
SHEET 1 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.
10 0 10 20 30 Miles
DIRECTOR, DIVISION OIL & GAS
JAMES E. EASON
PETRO. GEOPHYSICIST,
JAMES HANSEN
DRAWN BY: M.P. & C.D.E.
CHECKED BY:
DATE APPROVED 10/12/93
BASE MAP: TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. AND DRAWN IN AUTOCAD AND CLARIS CAD.
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 1380, P.O. BOX 10700 ANCHORAGE, ALASKA 99510-70 PHONE (907) 762-2560

FIGURE 2A



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 1:500,000 ONE INCH = 10 MILES approx.

10 0 10 20 30 Miles

DIRECTOR, DIVISION OF OIL AND GAS
JAMES E. EASON

PETRO. GEOPHYSICIST,
JAMES HANSEN

DRAWN BY: M.P. & O.D.S.

CHECKED BY:

DATE APPROVED 10/12/93

BASE MAP: TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. REDRAWN IN AUTOCAD AND CLARIS CAD.

NOTE : THIS MAP IS NOT T
OFFICIAL TRACT MAP. A SET
OFFICIAL TRACT MAPS
AVAILABLE AT THE DEPARTM
OF NATURAL RESOURC
DIVISION OF OIL AND GAS, 300
ST., SUITE 1396, P.O. BOX 107
ANCHORAGE, ALASKA 99510-7
PHONE (907) 762-2186

FIGURE 2E

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(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 fisherman 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 similarily 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 isuues 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

Theo Matthews
Administrative Assistant

UCIDA

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

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

Theo Matthews
Administrative Assistant

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(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 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 mitagation 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 uss 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

Theo Matthews
Administrative Assistant

UCIDA

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

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 PM)

Theo Matthews
Administrative Assistant

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(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.

WALTER J. HICKEL
GOVERNOR

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 15, 1994

The Honorable Mike Miller
Chairman
Senate Resources Committee
Capitol Building, Room 423
Juneau, AK 99811

Dear Senator Miller:

As a result of several unfavorable court decisions, the Administration simply cannot guarantee the continued efficacy of the state's oil and gas leasing program. Each of the decisions has had the effect of expanding the scope of best interest findings and coastal zone consistency determinations well beyond the letter of the law, and, we believe, beyond the intent of the Legislature. The court has made clear that, in the absence of specific legislative intent to the contrary, it will set oil and gas leasing policy by imposing its own standards on the scope and content of best interest findings and coastal zone consistency determinations related to lease sales.

Following the most recent adverse decision, the Superior Court's injunction of Lease Sale 78, Governor Hickel asked that I coordinate the Administration's review of statutory amendments necessary to address this problem. Participants in that review included the Commissioners of Commerce and Economic Development, Environmental Conservation, Fish and Game, and Natural Resources, as well as the Director of the Division of Governmental Coordination, other representatives of the Governor's Office and me.

We have carefully reviewed the language of S.B. 308 and are convinced that it represents a realistic common-sense approach toward resolving the growing threat to the state's leasing program. We believe that its careful definition of the scope of best interest finding and CZM determinations, coupled with an explicit acceptance of phased determinations when the agency has the authority to further condition subsequent project approvals, will discourage litigation based upon speculation and better serve the public interest.

Your committee's bill will also further several other goals to which the Administration is committed. It will ensure a best interest finding and CZM

consistency procedure that is factual, fair and timely. It will also reduce litigation risks substantially, and, therefore, reduce litigation costs. We believe that S.B. 308 will accomplish these worthwhile goals while providing for meaningful and undiminished public review and participation in the leasing program.

On behalf of the Administration, I appreciate the willingness of you and your committee to promptly address this difficult issue. I pledge our full and undivided support in working to assure passage of S.B. 308.

Sincerely,

J. Shelby Stastny
Director of Management and Budget

Kenai/Soldotna

04/06/94
09:11:30

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:40625 SCHEDULED FOR:04/06/94 08:30 TO 11:00
PUBLIC HEARING SENATE FINANCE

LTN1150
BY:SOL
FOR:SOL

LOCATION:KEN/SOL

SB 300		[redacted]		TESTIFY
SB 308	MR.	THEO	MATTHEWS	UCIDA TESTIFY
SB 308	MR.	[redacted]	KFFA	TESTIFY

Anchorage

04/08/94 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN:1150
09:21:22 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC
TCN:40625 SCHEDULED FOR:04/08/94 08:30 TO 11:00 FOR:ANC
PUBLIC HEARING SENATE FINANCE

LOCATION:ANCHORAGE

~~SB 308~~	~~PETER~~	~~VAN TUTN~~	TRUSTEES FOR AK	TESTIFY
SB 308	~~BRAD~~	PENN	MARATHON OIL	TESTIFY
SB 308	~~JON~~	ISAACS	COAST DIST	TESTIFY
SB 308	~~FRAN~~	BENNIS	AK MARINE CONS	TESTIFY
~~SB 308~~	~~MIKE~~	~~MACY~~		TESTIFY
SB 308	~~NANCY~~	~~WEINWRIGHT~~		TESTIFY
SB 308	~~ALI~~	~~FURNACE~~	THE ALLIANCE	TESTIFY
SB 308	~~STEVEN~~	~~PORTER~~	ARCO	TESTIFY
SB 203	DANIEL	MOORE	MOA	TESTIFY

TCN: 40625 DATE & TIME: 04/08/94 06:30 TO 11:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****
SPONSOR: SFIN SENATE FINANCE CHAIRS: FRANK
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE PEARCE
CONTACT: BILLY TEL#: (907)465-4923
CHAIRING SITE: JUNEAU CAPITOL CAP518
TOLL FREE: (800)478-7612 DIAL-UP: LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 5 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 5 MINUTE LIMIT.
SB 308 WILL BE HEARD FROM 8:30 - 10 AND SB 203 WILL BE HEARD FROM 10-11

SPONSOR REMARKS(LIO): BACKUP MATERIAL:Y MEETING IN PROGRESS:N MAX. SITES:10
BACK-UP FAXED ON 4/7.
OTHER SITES MAY ADD.
TCN REQUESTED ON 04/08/94 AND HAS 6 UPDATES

**** AGENDA ****
1 SB 308 ADMIN ACTION RE LAND/RESOURCES/PROPERTY
2 SB 203 MUNICIPAL POLICE SERVICES

**** PARTICIPATING LIOS ****

ANC	ANCHORAGE	716 W 4TH, #200		LOCATION STAFF
COR	CORDOVA	705 2ND STREET		LOCATION STAFF
DLG	DILLINGHAM	KANGIIQUTAQ BLDG		LOCATION STAFF
HOM	HOMER LTC	126 W PIONEER #4		LOCATION STAFF
* JNU	JUNEAU	CAPITOL	CAP518	LOCATION STAFF
KOD	KODIAK	112 MILL BAY RD.		LOCATION STAFF
SOL	KEN/SOL	34824 KALIFONSKY		LOCATION STAFF
VAL	VALDEZ	STATE BLDG. #13		LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

SIT YAK	YAKUTAT	CITY HALL	MONA SWANSON	(907)784-3323
ZZZ OF1	OFFNET 1	UNALAKLEET	C. DEGNAN	(907)624-3062

PARTICIPANTS IN:ANCHORAGE ANC

1	PETER	VAN KUYK	TRUSTEES FOR AK	AK	TSFY. SB 308	(907)000-0000
1	[illegible]	PENN	MARATHON OIL	AK	TSFY. SB 308	(907)000-0000
4	DON	ISAACS	COAST DIST	AK	TSFY. SB 308	(907)000-0000
9	FRAN	BENNETT	AK MARINE [illegible]	AK	TSFY. SB 308	(907)000-0000
5	MIKE	MACY		AK	TSFY. SB 308	(907)000-0000

PARTICIPANTS IN:CORDOVA COR

2	MS.	DORN	[illegible]		TSFY. SB 308	
	PO BOX 939		CORDOVA	AK 99574	(907)424-3447	

PARTICIPANTS IN:DILLINGHAM DLG

3	ALICE	RUBY	BRISTOL BAY CRSA [illegible]	AK	SB 308	(907)000-0000
10	SUE	FLENSBURG	BRISTOL BAY CRSA		OBSV. SB 308	

TCN: 40625 DATE & TIME: 04/08/94 06:30 TO 11:00 STATUS:5 IN PROG.

PARTICIPANTS IN:DILLINGHAM DLG

			AK	(907)000-0000	

PARTICIPANTS IN:KODIAK KOD

4	MR.	WAYNE	COLEMAN	PCAC	TSFY. SB 308	
				AK	(907)000-0000	

PARTICIPANTS IN:VALDEZ VAL

1	MS.	NANCY	LETHCOE	AWRTA	TSFY. SB 308	

Homer

04/08/94
08:52:13

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)

LTN1150
BY:HOM
FOR:HOM

TCN:40625 SCHEDULED FOR:04/08/94 08:30 TO 11:00
PUBLIC HEARING SENATE FINANCE

LOCATION:HOMER LTC

SB 308	MS.	NANCY	LORD	TESTIFY

Online

Chuck Degnan

Unalakleet

SB 308

Kodiak

04/08/94 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
08:35:38 PARTICIPANT LIST (ALL PARTICIPANTS) BY:KOD
TCN.40625 SCHEDULED FOR:04/08/94 08:30 TO 11:00 FOR:KOD
PUBLIC HEARING SENATE FINANCE

LOCATION:KODIAK
SB 308 MR. WAYNE C EMAN RCAC TESTIFY

Dellingham

04/08/94 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
08:56:46 PARTICIPANT LIST (TESTIFIERS ONLY) BY:DLG
TCN:40625 SCHEDULED FOR:04/08/94 08:30 TO 11:00 FOR.DLG
PUBLIC HEARING SENATE FINANCE

LOCATION:DILLINGHAM

~~SB 306~~	~~ALICE~~	~~RUBY~~	~~BRISTOL BAY CPSATESTIFY~~
SB 308	TERRY	JOHNSON	UOFA,MARINE ADV TESTIFY

SENATE FINANCE COMMITTEE
April 8, 1994
8:30 A.M.

***SB 203 - MUNICIPAL POLICE SERVICES**
SB 308 - ADMIN ACTION RE LAND/RESOURCES/PROPERTY
***SB 368 - HUMAN SERVICES COMMUNITY MATCHING GRANTS**

(BILLS PREVIOUSLY HEARD)

S I G N - I N

NAME: Michael Walleri Subj/Bill No: SB308

Co./Dept/Title: Tanana Chiefs Conference, Inc - General Counsel Phone: 452-8251

Address: 122 First Ave., Suit 600, Fairbanks, Alas. Zip: 99707

Do you wish to testify? X Yes ___No ___Respond to Questions

NAME: _____ Subj/Bill No: _____

Co./Dept/Title: _____ Phone: _____

Address: _____ Zip: _____

```
04/08/94                 LEGISLATIVE TELECONFERENCE NETWORK                LTN1405
15:19:03  N     CONFERENCE DISPLAY PAGE 05 - PARTICIPANTS BY SITE
TCN 40625       T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED
SITE: LIO SOL VTS     KEN/SOL
     1 _____ BETTY          GLICK              KEN PEN BORO      T 01 SB 308
       PO BOX 528                 KENAI              AK 99611    (907)283-7644
     2 MR.   THEO           MATTHEWS           UCIDA             T 01 SB 308
       BOX 389                    KENAI              AK 99611    (907)283-3600
     3 MR.   LOREN          FLAGG              KPFA              T 01 SB 308
       34824 K-BEACH RD           SOLDOTNA           AK 99669    (907)262-2492
     4 _____ MARY           PEARSALL           _________________ O 01 SB 308
       144 N. BINKLEY             SOLDOTNA           AK 99669    (907)000-0000



 MSG: 1410 NO FURTHER INFORMATION
 ENTER PG# 10 PF2 NEXTC# YNNNN PF3 EXIT                PF7 BWD  PF8 FWD   PF12 QUIT
4B                                                          =-=31 LINE 5  COL 12
```


```
4B                                                          =-=31 LINE 5  COL 12
 ENTER PG# 10 PF2 NEXTC# YNNNN PF3 EXIT                PF7 BWD  PF8 FWD   PF12 QUIT
 MSG: 1410 NO FURTHER INFORMATION
```


```
04/08/94                 LEGISLATIVE TELECONFERENCE NETWORK                LTN1405
15:17:12  N     CONFERENCE DISPLAY PAGE 05 - PARTICIPANTS BY SITE
TCN 40625       T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED
SITE: LIO HOM VTS     HOMER LTC
     1 MS.   NANCY          LORD               HOMER             T 01 SB 308
       PO BOX 558                 _____              AK 99603    (907)235-8252
```

```
04/08/94                LEGISLATIVE TELECONFERENCE NETWORK                LTN1405
15:16:27  N     CONFERENCE DISPLAY PAGE 05 - PARTICIPANTS BY SITE
TCN 40625       T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED
SITE: LIO DLG VTS     DILLINGHAM
     1 MS.     ALICE          RUBY                BRISTOL BAY CRSA T 01 SB 308
       BOX 121                     DILLINGHAM          AK 99576    (907)842-5218
     2 MRS.    SUSAN          FLENSBURG           BRISTOL BAY CRSA T 01 SB 308
       BOX 849                     DILLINGHAM          AK 99576    (907)842-2666
     3 MR.     TERRY L.       JOHNSON             UOFA,MARINE ADV  O 01 SB 308
       BOX 1067                    DILLINGHAM          AK 99576    (907)842-2102


 MSG: 1410 NO FURTHER INFORMATION
 ENTER PG# 10 PF2 NEXTC# YNNNN PF3 EXIT                PF7 BWD  PF8 FWD   PF12 QUIT
4B                                                          =-=31 LINE 5  COL 12
```

```
04/08/94                LEGISLATIVE TELECONFERENCE NETWORK                LTN1405
15:15:32  N     CONFERENCE DISPLAY PAGE 05 - PARTICIPANTS BY SITE
TCN 40625       T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED
SITE: LIO COR VTS     CORDOVA
      1 MS.     DORN          HAWXHURST         CDFU              T 01 SB 308
        PO BOX 939                  CORDOVA          AK 99574    (907)424-3447
      2 DR.     RIKI          OTT               UFA               O 01 SB 308
        PO BOX 1430                 CORDOVA          AK 99574    (907)424-3915




 MSG: 1410 NO FURTHER INFORMATION
 ENTER PG# 10 PF2 NEXTC# YNNNN PF3 EXIT                PF7 BWD  PF8 FWD   PF12 QUIT
4B                                                              =-=31 LINE 5  COL 12
```

```
04/08/94                LEGISLATIVE TELECONFERENCE NETWORK                LTN1405
15:08:55  N     CONFERENCE DISPLAY PAGE 05 - PARTICIPANTS BY SITE
TCN 40825       T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED
SITE: 210 ANC VTS     ANCHORAGE
     1 _____ PETER          VAN TUYN          TRUSTEES FOR AK   T 01 SB 308
       725 CHRISTENSEN DR, NO 4 ANCHORAGE          AK 99501     (907)276-4244
     2 _____ BRAD           PENN              MARATHON OIL      T 01 SB 308
       PO BOX 196168             ANCHORAGE     AK 99501     (907)276-4244
     3 _____ JON            ISAACS            COAST DIST        T 01 SB 308
       309 G ST, NO 313          ANCHORAGE     AK 99517     (907)274-9719
     4 _____ FRAN           BENNIS            AK MARINE CONS    T 01 SB 308
       BOX 101145                ANCHORAGE     AK 99510     (907)277-5357
     5 _____ MIKE           MACY              _____________     O 01 SB 308
       308 G ST, NO 222          ANCHORAGE     AK 99501     (907)272-5534
     6 _____ NANCY          WAINWRIGHT        _____________     U 01 SB 308
       13030 BACK RD             ANCHORAGE     AK 99515     (907)345-5995
     7 _____ WALT           FURNACE           THE ALLIANCE      T 01 SB 308
       4220 B ST                 ANCHORAGE     AK 99503     (907)563-2226
     8 _____ STEVEN         PORTER            ARCO              T 01 SB 308
       PO BOX 100360             ANCHORAGE     AK 99510     (907)265-6269

MSG:
ENTER PG# 10 PF2 NEXTC# YNNNN PF3 EXIT          PF7 BWD  PF8 FWD   PF12 QUIT
4B                                                    =-=31 LINE 5  COL 12
```

```
04/08/94                LEGISLATIVE TELECONFERENCE NETWORK                LTN1404
15:07:49  N   CONFERENCE DISPLAY PAGE 04 - VOLUNTEER & OFF-NET SITES
TCN 40625      T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED

  * LIO VTS   NAME            ADDRESS         CONTACT                 TELEPHONE
    SIT YAK YAKUTAT           YAKUTAT          ZZZ MONA SWANSON       907 784 3323
    ZZZ OF1 OFFNET 1          UNALAKLEET            C. DEGNAN         907 624 3062


 MSG: 1410 NO FURTHER INFORMATION
 ENTER PG# 05 PF2 NEXTC# YNNNN PF3 EXIT PF4 MENU              PF7 BWD  PF8 FWD
4B                                          NUM             =-=31 LINE 24 COL 12
```

```
04/08/94                LEGISLATIVE TELECONFERENCE NETWORK                LTN1405
15:19:54  N     CONFERENCE DISPLAY PAGE 05 - PARTICIPANTS BY SITE
TCN 40625       T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED
SITE: LIO VAL VTS     VALDEZ
     1 MS.     NANCY          LETHCOE          AWRTA              T 01 SB 308
       PO BOX 1353                 VALDEZ            AK 99686   (907)835-4300
     2 MR.     GREG           WILLIAMS         KCHU               O 02 SB 203
       PO BOX 467                  VALDEZ            AK 99686   (907)835-4665

MSG: 1410 NO FURTHER INFORMATION
ENTER PG# 10 PF2 NEXTC# YNNNN PF3 EXIT                PF7 BWD  PF8 FWD   PF12 QUIT
4B                                                          =-=31 LINE 5  COL 12
```

```
04/08/94                LEGISLATIVE TELECONFERENCE NETWORK                LTN1410
15:09:38  N          CONFERENCE DISPLAY PAGE 10 - FINAL STATS
TCN 40625       T/C DATE: 04/08/94  TIME: 08:30 TO 11:00    STATUS: 6 ADJOURNED

  LIO VTS   NAME              STATUS          STARTED ENDED    PARTICIPANTS
  ANC       ANCHORAGE         3 STATS IN       08:30  10:00          21
  COR       CORDOVA           3 STATS IN       08:30  10:00           2
  DLG       DILLINGHAM        3 STATS IN       08:30  10:00           3
  HOM       HOMER LTC         3 STATS IN       08:50  09:58           1
  JNU       JUNEAU            3 STATS IN       08:30  11:00          46
  KOD       KODIAK            3 STATS IN       08:30  09:25           1
  SIT YAK   YAKUTAT           2 NO INTEREST                            0
  SOL       KEN/SOL           3 STATS IN       08:40  10:00           4
  VAL       VALDEZ            3 STATS IN       08:35  10:45           2
  ZZZ OF1   OFFNET 1          1 OUTSTANDING                            1



 MSG: 1410 NO FURTHER INFORMATION
 ENTER PG# 01 PF2 NEXTC# YNNNN PF3 EXIT PF4 MENU              PF7 BWD  PF8 FWD
4B                                      NUM                 =-=31 LINE 24 COL 12
```

Chuck Degnan - Unalaska

Yakutat - observers

03/02/94 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
01:26:09 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC
TCN:40414 SCHEDULED FOR:03/02/94 03:00 TO 09:00 FOR:ANC
PUBLIC HEARING SENATE FINANCE

LOCATION:ANCHORAGE

SB 308	JAMES	EASON	DNR/OIL & GAS	TESTIFY
SB 308	KEN	HUDSON	MAT-SU BORO	TESTIFY
SB 308	NORMA	CALVERT		TESTIFY
SB 308	JON	ISAACS		TESTIFY
SB 308	WALT	FURNACE		TESTIFY

MAT SU Borough
MARATHON OIL
PLANNING CONSULTANT
OIL SUPPORT INDUSTRY ALLIANCE

03/02/94 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
08:09:42 PARTICIPANT LIST (ALL PARTICIPANTS) BY:FBX
TCN:40414 SCHEDULED FOR:03/02/94 08:00 TO 09:00 FOR:FBX
PUBLIC HEARING SENATE FINANCE

LOCATION:FAIRBANKS

SB 308	LISA	JAEGAR	TCC	TESTIFY

OPPOSES

SENATE FINANCE COMMITTEE

WEDNESDAY, MARCH 2, 1994

SB 251 COMM'L FISH LOANS FOR CERTAIN OBLIGATIONS

SB 308 ADMIN ACTION RE LAND/RESOURCES/PROPERTY

SB 331 APPROP: BUDGET RESERVE FUND TO GEN.FUND

S I G N - I N

NAME: Theo Matthews Subj/Bill No: SB 308

Co./Dept./Title: UCIDA Phone: 283 9540

Address: Box 384 Kenai Zip: 99611

Do you wish to testify? ✓ Yes ___ No ___ Respond to Questions

NAME: _____ Subj/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___ Yes ___ No ___ Respond to Questions

NAME: _____ Subj/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___ Yes ___ No ___ Respond to Questions

NAME: _____ Subj/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ✓ Yes ___No ___Respond to Questions

NAME: Donna Parker Subj/Bill No: 251

Co./Dept./Title: Fisheries Specialist DCED Phone: X54664

Address:_____ Zip:_____

Do you wish to testify? ___Yes ___No ___Respond to Questions

NAME:_____ Subj/Bill No:_____

Co./Dept./Title:_____Phone:_____

Address:_____ Zip:_____

Do you wish to testify? ___Yes ___No ___Respond to Questions

NAME:_____ Subj/Bill No:_____

Co./Dept./Title:_____ Phone:_____

Address:_____ Zip:_____

Do you wish to testify? ___Yes ___No ___Respond to Questions

NAME:_____ Subj/Bill No:_____

Co./Dept./Title:_____ Phone:_____

Address:_____ Zip:_____

Do you wish to testify? ___Yes ___No ___Respond to Questions

NAME:_____ Subj/Bill No:_____

Co./Dept./Title:_____ Phone:_____

Address:_____ Zip:_____

Do you wish to testify? ___Yes ___No ___Respond to Questions

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/14/94

FURTHER: Finance

Date of 5-Day Notice: 2·10·94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2·23·94

Resources Committee considered SB 308

"~~An Act~~ modifying 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 that relate to land, property, and resources, and to the interests within them, that are subject to the coastal management program; and providing for an effective date."
and recommends:

[√] replace with ~~and recommends it be replaced with~~ CS SB 308 (Res)

[ ] attaches amendment(s) mg do pass

[ ] same title
[√] new title
[ ] technical title change (HB only)

[ ] adopts _____ Letter of Intent

[ ] further referral to the _____

[ ] do pass

[ ] do not pass

[ ] no recommendation

4 0 1 SN

[ ] individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DNR		√	
ADF&G		√	
OMB/DGC		√	
DEC		√	

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

[ ] Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Ira

Rea

OTHER RECOMMENDATIONS:

(2) Drew N.R.

(3) Do Not Pass

M Le Miller Do Pass

Chair: Signature and Recommendation

Kelly - Members should have all this stuff. If not, let me know + I'll provide. S

2/23/94

SB 308...IN MEMBERS' FILES

. Resources CS.

. Original Bill.

. DNR fiscal note = zero.

. Fish and Game fiscal note = zero.

. OMB fiscal note = zero.

. DEC fiscal note = zero.

. Resources Sign-out sheet = 3 DP; 1 NR; 1 DNP.

. Attorney General's letter.

. OMB letter.

. Jim Eason letter to Walt Furnace of The Alliance.

. Jim Eason information to Sen. Pearce.

. Am #1 by Sen. Donley, failed in Senate Resources.

. Am #2 by Sen. Donley, failed in Senate Resources.

. Packet of Miscellaneous testimony, correspondence and position papers.

. DNR: Overview Packet on Lease Sale 78.

regarding AK Supreme Ct. decision on Judge Cranston's injunction (Lease Sale 78)

2/27/94

NEW SINCE LAST MEETING IN MEMBERS' FILES...

. Correspondence from
- City of Pelican,
- the Alaska Wilderness Recreation and Tourism Association,
- the Kenai Peninsula Fisherman's Association,
- United Cook Inlet Drift Association,
- Bering Straits Coastal Resource Service Area,
- Department of Law (2/10/94 Attorney General to Trustees for Alaska,)
- Department of Natural Resources (2/24 Eason to SFC,)
- Division of Legal Services (a sectional from Jack Chenoweth.)

DRUE: WE'LL BE ON STATEWIDE TELECONFERENCE ON SB 308 AND SB 322.

NOTE

TO: Deborah Looney
c/o Dept. of Law, Anchorage

FROM: Kathy Holmquist
Senate Finance Committee
Juneau

DATE: March 24, 1994

RE: SB 308 - ADMIN. ACTION RE: LAND/RESOURCES

Enclosed per your telephone request of yesterday, are tapes for Senate Finance Committee hearings on SB 308. Minutes of the February 24 and February 28 meetings are in very rough draft, but I have sent them along for whatever value they might be as a guide to location of tapped testimony. Also enclosed are cover pages for minutes of March 2 and 22. Unfortunately, I cannot estimate when theses minutes might be drafted. The cover sheets are enclosed in the hope that they too might serve as a guide to the tapes.

Please give me a call at 465-2618 if our office can be of further assistance.