SB 308

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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December 20, 1993

Duncan C. Fowler
State of Alaska Ombudsman
P.O. Box 113000
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Dear Mr. Fowler:

I appreciate the opportunity to comment on your Preliminary Finding and Recommendations concerning Ombudsman Complaints AO93-4506 et al. about the state's Oil and Gas Lease Sale 78. I consider the oil and gas leasing program to be of critical importance for the economic well being of Alaska. The Division of Oil and Gas's current lease sale preparation process demonstrates that the division is very interested in obtaining public input prior to making a decision whether or not to hold a sale.

From the time an area is proposed for leasing there are no less than three calls for comments (designated C1, C2 and C3) issued by the division to those on its mailing list, for the sole purpose of obtaining data and information about the area. These calls for comments are mailed to government agencies, legislators, the media, and organizations and individuals who have expressed a desire to be on the division's mailing list. Information received by the division as a result of these calls for comments is used in preparing the best interest finding, in accordance with AS 38.05.035. In addition to these calls for comments, a preliminary best interest finding is issued for public comment three months prior to the final finding. The public is then given 30 days to comment on this document. Concurrent with the issuing of the final finding, the division mails out a sale announcement, which is given the widest possible distribution. These five public notifications of proposed sales take place over at least a two year period. Additionally, supplemental calls for comments and notices are sent out when necessary.

This is why I am most troubled by your report. Division staff have gone well beyond what the law requires; this you acknowledge in your report. But you also go on to say that the division is being "unfair" to the public. It is apparent to me that what this report is really saying is that the law is unfair. In all fairness, this report should make it very clear to the reader that it is the legislature, not the division, that is responsible for establishing and funding a fair public notification procedure.

My comments on your report consist of four sections: the first corrects factual errors and notes what I believe to be important omissions of information; the second discusses misconceptions I see in the three allegations; the third is my response to the eight recommendations, and their

effect on the division's budget; and the fourth, general conclusions. In addition, as an appendix to this letter, I am including an analysis of your report that was done at my request by the Attorney General's Office.

Before proceeding I would like to make a general comment about the report's structure. It appears to be criticizing the division instead of the framework within which the division has been given to work. Throughout, the division is criticized for not meeting your subjective standard of fairness, yet in the *Special Comments* section it is applauded for its efforts to go beyond the letter of the law. I would like to see this section placed at the beginning of the final report so that the reader will understand, up front, that the division in fact did exceed its statutory requirements in all cases, and that it has adopted policies, at its own initiative, which are intended to increase the scope of its public notices and to engender greater public participation in the lease sale planning process.

I. Factual Errors and Omissions:

P. 2; *Legal Authority*, Paragraph 4: The last sentence states that: "In other words, statutes require the department to give public notice only once prior to holding a lease sale -- 30 days before it issues the best interest finding." The statute actually requires two public notices for each lease sale -- one at least 30 days before it issues the best interest finding and a second at least 30 days before the lease sale itself is held.

Paragraph 5: The five-year plan does not state the location of tracts to be offered in a proposed lease sale, only the general area proposed for leasing. Specific tracts are identified much later in the evaluation process once land title, environmental and socioeconomic factors relative to the potential sale area have been evaluated.

P. 3; *Call two and the supplemental call*, Paragraph 2: The date for the close of the comment C2 period was stated to be September 1, 1991. The comment period was extended to April 30, 1992 in the supplemental Call for Comments dated October 22, 1991.

P. 4; *Compliance with the statutory notice requirement*: The division also published a copy of its public notices in the Alaska Administrative Journal.

P. 5; *Public Hearing*: Approximately 80 people attended the hearing; 27 testified against the lease sale, two testified in favor.

The final consistency determination and best interest finding: It should also be mentioned that there was no request for elevation to the director of the final consistency determination by any of the affected boroughs, municipalities or state resource agencies.

The director and the commissioner do not issue final findings concurrently. The director issued the final finding and the commissioner concurred with that finding.

The Complaints, Paragraph 1: The division did not hold a public hearing; the Kenai Peninsula Borough held its own hearing and, under AS 38.05.946, the commissioner's designee (in this case, personnel from the division) attended the hearing. Again, of the 80 in attendance, 27 testified in opposition to leasing, two testified in favor.

P. 7; *Oil and Gas Director Jim Eason*, Paragraph 1: Letters to industry

requesting nominations are sent every two years. Industry comments are evaluated with the division's own geological and geophysical data.
The statement that the division never increases the sale area unless the acreage is exempt is not, strictly speaking, accurate. Exempt additions are made only within the two year window prescribed under AS 38.05.180(c). Nonexempt acreage can be added at any time prior to the two year cutoff.

Paragraph 3: The commissioner has 10 days in which to act on a request for reconsideration, if filed on the 20th day after the release of the decision. According to 11 AAC 02.020, a decision for reconsideration must be made within 30 calendar days after the date of delivery of the decision.

Paragraph 6: For one of the two sales cited in this statement, Sale 75A, the entire surface estate was owned by the Kuukpik Village Native Corporation. This private land owner was on the division's mailing list and was notified of each step of the lease sale preparation process.

Paragraph 7: The statement that "the division is sued over nearly every lease sale" is inaccurate. Since September 1985, the division will have held 28 oil and gas lease sales (including Sale 78). Of these, the division has been sued over only six-- Sales 50, 55, 74, 57, 75A and 78, roughly a quarter of the sales. The litigant for Sale 74 was a private individual, and the case was eventually dismissed by the Court. The litigants for Sales 57 and 75A are attempting to reach an out-of-court settlement with the state.

P. 8; *Division sale manager Jim Hansen*, Paragraph 2: There has been only one division director since 1986. Commissioner Heinze added two tiers of townships south of the Seward Base Line. Division staff prevailed upon Commissioner Heinze to add three additional township tiers below this line, not at industry's urging, but based on industry nominations of acreage to be included in a lease sale.

Paragraph 3: A set of maps was also sent to the Mat-Su Borough and the Municipality of Anchorage.

P. 11: *Comments from the environmental community*, Paragraph 7: It should be clarified that the legislature only designated the offshore portion of Kachemak State Park in its determination of lands which may not be offered for oil and gas leasing. The onshore portions, originally included in the sale, do not carry any provisions that prohibit leasing.

P. 15: *Fairness*, Paragraph 2: The 48 tracts withdrawn included both private and state-owned land.

II. Allegations:

Your report addresses only the period after issuance of the preliminary best interest finding for Sale 78, and concentrates on the fact that the division did not individually notify each property owner who might be affected. However, the division solicited public comment numerous times during the years preceding this proposed sale. The sale was added to the five-year leasing program in 1990. In October 1989 the division asked for comments on this proposed addition. In February 1991 a call for general comments was issued, a supplemental call for comments was issued in October 1991 when the lower Kenai peninsula acreage was added, and a request for specific socioeconomic and environmental information was issued in October 1992. All of these requests for public comment went to the individuals and groups who had previously requested to be on the mailing list for Cook Inlet sales, or who had been added to the list at the division's behest, such as Kenai Peninsula fishing organizations. After issuance of the preliminary best interest finding in July 1993, division staff attended a public hearing in Homer and a meeting in Ninilchik. Additionally, Director Eason and I held informal meetings with residents of Homer and Kenai. At the request of Kenai

Peninsula Borough Mayor Don Gilman, staff from the division as well as the Attorney General's office met with concerned property owners in Nikiski in December. The division believes that its efforts to obtain public comment on Sale 78 were extensive.

The division has instituted the policy of distributing its large tract maps free of charge to municipalities and boroughs within sale areas. These maps will then be available to members of the general public who desire more detailed information on the land being offered for lease than can be shown on the 8-1/2 by 11 inch maps included with notices of sale.

III. Recommendations

Your report has been useful from the standpoint that it has caused us to review the division's leasing procedures to determine what steps can be taken now to increase public awareness. Operating within today's fiscal restraints, the division has already begun scheduling public hearings in local communities and will be utilizing display ads in statewide and local newspapers announcing calls for comments and notices for upcoming sales. In addition, the department has recommended modification of Title 38 that will allow for more flexibility in the sale schedule.

Recommendation 1; Placing the five-year plan notice and comment process into statute: This would lock the division into procedures that it may need to change in the future, particularly if declining oil revenues result in budget/staff cuts. Typically, the early notices given by the division draw few comments. Substantive comments are generally given only after the preliminary best interest finding has been published, and mitigation measures have been proposed. The mailing list for each sale area is extensive, and includes the names of people who have commented on earlier sales. Everyone on the list is sent all notices, including the early notices.

Recommendation 2; Publishing notices as display ads: The division's contractual services budget for the Leasing/Evaluation project was $163,800 in FY '93. The amount of money actually allocated for advertising oil and gas lease sales was roughly $12,000, or 7% of the total. In FY '93, the division's leasing staff worked on 13 oil and gas lease sales and publication of the five-year oil and gas leasing program. The division issued 21 separate informational mailings including two C1s, two C2s, five C3s (including supplementals), three preliminary notices, and nine sale notices (including supplementals). With the reality of the division's current allocated funding or contractual money, it will not be possible to run display ads to the extent recommended in your report. In order to adopt this recommendation in its entirety, the division would be required to seek a substantial increase in its annual contractual services budget from the legislature. Considering the economic realities, it is unlikely an increase in funding will be granted.

Within the constraints dictated by allocated funding, the division will be able to increase its level of public notification. Publications of public notices for calls for comments or a limited number of display ads running concurrently with legal notices in local papers can be accomplished by stretching existing financial resources. These additional advertisements would only be accomplished when and where the division deemed it necessary and prudent, and if funds are available. The division will also strongly encourage local governments to advertise proposed lease sales in an effort to gather comments and to identify concerns of local residents for the formulation of their official response to the proposed sale.

Recommendation 3; With respect to your recommendation that the preliminary finding comment period be extended to 90 days, a more flexible and preferable

alternative would be passage of the department's bill to allow a lease sale to be postponed longer than 90 days after the quarter in which it is scheduled. While an extended comment period might be advisable for controversial sales, it may not be necessary for non-controversial sales. Passage of this legislation will give the division the ability to extend public comment periods without fear that a sale will have to be postponed for two years. Amending the statute to extend the comment period would apply to all lease sales, even those that do not generate public opposition.

Recommendation 4; Individual letters to all private landowners of record: The considerations in responding to this recommendation are similar to those raised in response to the second recommendation, in that the legislature is the only body that can change state law and allocate sufficient funds for the associated costs.

You should be made aware, however, that the costs of even a bare bones program may still be prohibitive. As referenced in your report, the division has already performed an analysis which assesses costs for sending notices via certified mail, at each step of the lease sale process, to all land owners "affected" by a sale. For Sale 78, this analysis indicated that the personal notification costs would have been close to $2.9 million[1]. The division currently holds from three to seven oil and gas lease sales per year. Even adjusting for the fact that not all sales involve the complex land ownership issues found in the Cook Inlet basin, the annual costs would still be significant, and would likely exceed the division's entire operating budget.

If, as your report suggests, the division were to send all notifications by regular mail[2] and limit personal notification to known affected property owners at the time of the third call for comments, notice of intent to issue a best interest finding and the notice of sale, anticipated costs could be reduced by approximately 77%. However, this would still require an estimated expenditure of at least $690,000 in FY '95 in addition to the division's existing notice costs.

Even if the legislature were to authorize and fund this recommended notification procedure, the ability of the division to accurately identify affected landowners and effectively notify them is still questionable. The division's capability to know who is to be notified is limited by the accuracy and accessibility of records at local municipal platting and recorders offices. Currently, only the Kenai Peninsula Borough has the computer capability to sort land records by legal description to determine the corresponding property owners. Because of this limitation, the manual effort to determine who should be a recipient would be Herculean at best. Property ownership changes on a daily basis; the only way to ensure that notification is sent to those who need it would be to notify everyone within affected borough or municipality service areas.

Aside from the legislature's responsibilities and costs for personal notification, I have several concerns with this recommendation. First, it appears to confuse the public's right to notice regarding disposal of publicly owned natural resources and the legal relationship between the surface and the subsurface land owners. The state clearly fulfills its responsibility under the

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[1]These costs were determined assuming that the title information would be supplied by the municipalities and boroughs. Additional land research by the department would significantly increase costs.

[2]certified mail was the preferred method of the two members of the legislature who originally proposed the requirement.

constitution and state law in providing the public notice of its planned oil and gas lease sales. This recommendation, however, suggests that because the state is the lessor of the underlying mineral estate, it owes some higher standard of notification to overlying surface estate owners than to other, private landowners. Nowhere in state, federal or common law is this right to extra notification, expressed or implied. The intent of the public notice clause of the state constitution is to provide all state residents with an equal opportunity to become involved in the decision making process regarding publicly owned resources. To allow certain property owners a separate and additional personal right of notification would give them inequitable influence in the process and may violate Article Eight, Section 17, of the state constitution.

Second, this recommendation lacks a clear or realistic definition of to whom personal notifications are to be sent. It makes several statements attempting to define groups of property owners that should receive notice, though each effort defines a potentially different group. The recommendation did appear to limit itself to property owners who had property directly over the oil and gas estate to be leased. However, it could be argued that owners of property adjacent to, or even in close proximity to, lease tracts might be affected by an oil and gas lease. Then it would also be reasonable to argue that these property owners have a similar right of notification. Therefore, if personal notifications are to be sent, the only prudent and fair position would be to err on the side of caution and send notification to the largest set of potentially affected property owners within the leasing area, rather than the smallest.

Lastly, local municipalities and boroughs, the most obviously qualified and prepared organizations to be involved in any personal notification effort, are in no way addressed in the recommendation. These local governments possess all the information regarding the existence of private property within their boundaries, as well as the ownership, use, and existence of sensitive issues that might exist within the communities. They were also organized as political subdivisions of state government with the responsibility of providing local services, including the assessment of local citizens' concerns regarding government actions within the municipality and borough borders. Any program to provide personal notification to local property owners must involve these governmental bodies in order to be economical and effective.

Recommendation 5: Require department to hold public hearings: AS 35.05.946 requires municipalities, boroughs, or regional corporations to hold hearings on DNR disposals, and the commissioner of DNR is required to attend those hearings. There is a concern within the division that requiring the department to also hold public hearings could result in unnecessary multiple hearings in certain communities. To alleviate this possibility the department will be contacting the local governing bodies to propose a jointly-held public hearing prior to each lease sale.

Recommendation 6; Revision of mailing list: The division rarely revises its mailing list and does so only to remove recipients who are no longer interested in receiving information or whose addresses are no longer valid. The division's budget is limited and this is done periodically in order to be fiscally responsible.

No recipients are removed from the mailing list until after the division has first sent a letter asking whether they wish to remain on the list. If they decline or if no response is received, then the name is reviewed for possible removal. If the unresponsive recipient has been actively involved in the sale review process then that name remains on the list.

Also, the division works year-round preparing for a number of oil and gas lease sales. Calls for comments, notices or supplemental mailings are sent to recipients on a regular basis. One could argue that any time during the year is always right before an important mailout. That being said, the division will, to the best of its ability, avoid editing its mailing lists immediately prior to

what it considers to be important information mailings.

Recommendation 7: Ensure comment period does not fall during major commercial or subsistence harvest period: The division has taken the step of scheduling future Cook Inlet sales in July. The preliminary best interest finding (PBIF) would then be available in January, with the public comment period ending in February. There are three lease sales per year scheduled for the months of April, July and November. These months were selected in order to spread out over a number of months the staff workload involved with administering state leases, which includes such actions as collection of rental fees, approval of assignments and others.

Since the PBIF is made available approximately six months prior to each sale, comment periods for the April and November sales would occur during September/October and May/June. For the North Slope and Beaufort Sea sales, these time periods coincide with the subsistence harvest of bowhead whales, caribou and seals. The only times Natives on the North Slope are not involved in some form of subsistence harvest is from December through February. Therefore, if the division accommodates commercial fishermen in Cook Inlet, it will not be possible to schedule sales around subsistence activity in other regions of the state.

Recommendation 8: Provide tract maps to affected communities: This recommendation asks that the division make every effort to see that tract maps are easily available in affected communities. The division has already implemented a program of providing local boroughs and municipalities with preliminary and final copies of protraction diagrams (small scale tract maps). The $50 fee for these maps will continue to be waived under 11 AAC 05.010(c)(3). Additional funding would need to be provided by the legislature before the division would be able to provide these maps to every potentially affected community.

Further, the division has contacted local boroughs regarding the possibility of providing tract location information early in the leasing process so that the platting offices can incorporate tract boundaries on their computer databases. Local governments with platting authority would then have the capability of producing composite maps showing oil and gas tracts in comparison to local land use and ownership patterns. This would also provide the local governments with the information needed to effectively gather residents' comments for formulation of the borough's response to the division.

IV. Conclusion:

A major consideration which this report fails to address is the role local government should have in informing its residents of proposed leasing activity. the boroughs and municipalities are fully informed of lands to be included in a lease sale, and are involved throughout the decision making process. Both have easy access to vast amounts of cultural information such as local landmarks, roads, platting and ownership that would presently be difficult, if not impossible, for the division staff to acquire in order to produce maps. And, as the local land management experts, their staffs are aware of sensitive local issues and of land status. It should be remembered that borough and municipal governments were, in part, established in order to act as an intermediary between the local residents and state government.

In summary, I believe the complainants', as well as your recommendations are misdirected. The division has gone beyond the statutory requirements and is making every effort to involve the public. It has consistently sought to increase public participation, notwithstanding a declining budget, and it has on its own initiative expanded the types of notice given, as well as the frequency of those notices and sale-related findings. Those facts do not support findings of unfairness. However, should they be found to be unfair, the conclusion that

must follow is that the law is unfair. You cannot have it both ways. You cannot find that the division has exceeded the requirements of the law, but that it must do yet more in your view to be fair, without concluding that the legislature is unfair. Necessarily, that result would lead to your redirecting your recommendations to the legislature, where they properly belong. As Representative Kay Brown said, "In determining what is 'fair' look first to the statute. It establishes the legislature's policy. If people don't like it, they should complain to the legislature."

As to whether the division's notice and comment process provides for meaningful public participation in the lease sale process, the facts speak for themselves. The notice was certainly effective in generating the requests for the Ombudsman review; it was equally effective in mobilizing 30 local residents to attend the hearing held in Homer, as well as a greater number of residents at the later hearing in Ninilchik; and it was effective in eliciting the numerous letters and phone calls to date to the division, the Commissioner and the Governor's office. It was also effective in that those comments led to the withdrawal of numerous uplands tracts near Homer, the adoption of additional mitigation and Terms of Sale provisions in the Final Finding, and other outreach efforts in response to public concern. Under the circumstances, it is difficult to make the case that the process has not encouraged public participation in the lease planning process.

By its own admission, the Ombudsman's Policy and Procedures Manual at 3040(3) defines unfair as:

"...implies that the act was violative of some principle of justice..." Nevertheless, the report characterizes the division's actions as "unfair" without defining the principle(s) of justice supposedly violated.

In its discussion of fairness, the Report notes "...Until the division released its preliminary finding, all but one of the complainants was unaware of the division's plans to hold Sale 79. This suggests that the division's efforts at broad public notice, however much it exceeded the statutory minimum, failed to reach a large segment of the public." Based upon this premise, the Ombudsman then determined the division's notice to be inadequate, and therefore, unfair. However, the premise is imply unfounded. Unless the Ombudsman can demonstrate that it received complaints from a "large segment of the public", it cannot infer that a large segment was uninformed. The 21 complaints received by the Ombudsman cannot be characterized as a "large segment" relative to the total number of private landowners throughout the sale area. Unless it can demonstrate such a relationship, it cannot support the conclusory statement that "...surface owners were therefore deprived of an opportunity to comment on the proposed action."

In discussing whether the division acted "fairly" in encouraging public participation in the lease sale planning process, the Report considered the statutory provisions governing the holding of hearings, noted that requiring an affected community to request a hearing indicates a bias in favor of the state over the public and concluded "This is improper." The propriety of that requirement is a matter of legislative policy. The legislature explicitly chose that scheme when it enacted the statutes governing oil and gas leasing. The Ombudsman cannot sustain a finding that the division is unfair for implementing the statutory scheme which the legislature has adopted.

Sincerely,

Harry A. Noah
Commissioner

enc.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

December 20, 1993

Duncan C. Fowler
Ombudsman
P.O. Box 113000
Juneau, AK 99811-3000

Re: Investigative Report Oil & Gas Lease Sale 78

Dear Mr. Fowler:

At the request of the Department of Natural Resources (DNR), the Department of Law has reviewed your preliminary investigative report concerning Oil and Gas Lease Sale 78 (Lower Cook Inlet) and DNR's response to your report. After reviewing these documents, we concur with DNR's evaluation and comments. We also feel, however, that it is necessary for us to address further your preliminary report's discussion of the Title 38 notice requirements. Overall, the structure of your preliminary report is misleading. Your report obscures the fact that not only did DNR fully comply with the notice requirements as set out in the statutes, but that DNR in fact went far beyond those requirements.

Pursuant to Alaska Statute 38.05.945(b), DNR is obligated to provide notice of its intent to lease lands for oil and gas exploration and development at least 30 days before the lease sale by "publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action." AS 38.05.945(b). Additionally, DNR must provide notice in one or more of the following methods:

> (1) publication through public service announcements on the electronic media serving the area affected by the action;
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> (2) posting in a conspicuous location in the vicinity of the action;
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> (3) notification of parties known or likely to be affected by the action; OR
>
> (4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform public of the nature of the action and the opportunity of the public to comment on the action.

AS 38.05.945(b) (Emphasis added).

As noted in your preliminary report on page four, DNR fully complied with the requirements set out in AS 38.05.945(b). DNR complied with the statutory notice requirements by publishing notice in local and statewide newspapers, in addition to the Alaska Administrative Journal. Additionally, DNR chose to provide notice by not only sending a public service announcement to statewide and local electronic media, but by: (1) providing local postmasters and libraries with notices for conspicuous display; (2) sending notice of its intent to lease the Sale 78 acreage to all government agencies in the affected area including the mayors, borough representatives, and legislators; and (3) sending notice of its intent to state and federal agencies, companies, groups and individuals on its mailing list maintained pursuant to 11 AAC 88.150, in addition to those requesting a copy or responding to previous calls.

As your preliminary report tacitly acknowledges, DNR fully complied with the statutory notice requirements. We feel, however, that the structure of your report obscures this reality and, in fact, blames DNR for any perceived problems, by continually criticizing DNR for being "unfair." This is the fundamental problem with your report, and to correct it we recommend that you restructure the report to: (1) identify the concerns raised by the complainants; (2) outline the legislatively enacted notice requirements; (3) explain that DNR fully complied with those requirements and give DNR credit for fulfilling its obligations under the law; and (4) present your "recommendations" as suggested legislative initiatives which the complainants are free to direct to their legislators.

Your final report should make it clear that the legislature, not DNR, is responsible for establishing statutory notice requirements and providing the funding to fulfill those requirements. Your preliminary report, as written, misleads by suggesting that DNR has some control over the creation of statutory requirements and allocation of money. In the interest of fairness, we trust you will correct this problem in the final report.

Finally, we must respond to a misquote of Barbara Fullmer, one of the Assistant Attorneys General with whom your investigator consulted. On page nine of your preliminary report you quote Ms. Fullmer as saying that "the subsurface's dominant status allows the state not to give notice to surface owners about actions affecting the subsurface. 'The issue of notice is so moot it doesn't come up.'"

Ms. Fullmer specifically recalls telling your investigator that when the estates are severed, no need exists to notify the other estate owner about transactions that do not affect

the other estate. For example, leasing or selling of mineral rights does not affect the surface estate. Ms. Fullmer provided a copy of an article discussing surface/mineral estate owner disputes, showing the type of issues which require notice (leasing or title transfers not being one) and even referred your investigator directly to AS 38.05.130, which provides that when rights are exercised (i.e., when dirt is moved and the surface estate is actually affected), the surface owner must not only be notified, but reasonably compensated for all damages sustained by reason of entering upon the surface estate. Your report fails to discuss with any significance the surface/mineral estate relationship with respect to leasing or transfer of title to either estate. Moreover, although Ms. Fullmer acknowledges telling your investigator that the issue is so moot that it does not even come up in oil, gas or mining law, the "it" Ms. Fullmer clearly was referring to was LEASING or title transfers, not just any action affecting the mineral estate.

We hope you will consider seriously our suggestions, as well as those submitted by DNR, when preparing your final report. If the Department of Law can provide any further assistance in this matter, feel free to contact the attorneys in the Oil, Gas, and Mining section in Anchorage.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

CEC/KWP.sb

cc: Harry Noah, Commissioner, Department of Natural Resources

State of Alaska
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Duncan C. Fowler

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January 18, 1994

Senator Rick Halford, Senate President
Capitol Building, Room 111
Juneau, Alaska 99801

RE: Final Investigative Report on Ombudsman Complaints A093-4506 et al.

Dear Sen. Halford:

I released the final investigative report about several complaints received against the Division of Oil and Gas today. The investigation found that state laws and division informal procedures governing public notice and opportunity to comment on proposed lease sale 78, which is in the Kenai Peninsula area, did not provide adequate and reasonable notice to those most likely to be affected. The report cites as unfair the lack of notice to individual landowners most likely to be affected by eventual oil development, the short 30-day comment period following issuance of the preliminary best interest finding and the difficulty of obtaining tract maps in the lease sale area, among other features.

You need to know the division not only complied with the law, but it went further than what the law required it to do in giving public notice. But those efforts, as commendable as they were, shortchanged the public's ability to participate in a meaningful way in the oil lease sale planning process. State statutes need to be changed to provide better notice.

This letter summarizes the investigation and provides the highlights of the report's analysis and my recommendations. The enclosed report contains the details of the sale, legal background and my investigation. Because the department has declined to request changes in statutes governing public notice on oil lease sales, I am making several recommendations directly to the legislature.

Twenty-one individuals critical of the way the Division of Oil and Gas was handling proposed lease sale 78 contacted my office in mid-August 1993. They alleged:

Allegation 1: The division has unfairly failed to give notice to private owners of land in the proposed lease sale 78 area.

Allegation 2: The division unfairly failed to provide public notice of the proposed lease sale 78 by failing to make its published maps of the affected area broadly and easily available to the public and by failing to provide sufficient information in commonly understood terms on its published maps to inform the public of the action and the opportunity of the public to comment on the action.

Allegation 3: The division unfairly failed to provide for meaningful public participation in the lease sale planning process.

It was clear from the outset of the investigation that the division met or exceeded statutes for providing notice and the opportunity for public comment on proposed oil lease sales. However, the ombudsman is empowered by statute to review the fairness of agency administrative acts. For that reason, the three allegations were analyzed first to determine the division's conformity with the law and, second, to determine the overall fairness of those acts even though the informal notice and comment process the division uses complies with the law and expands upon it.

Analysis of allegation 1: The division has unfairly failed to give notice to private owners of land in the proposed lease sale 78 area.

Conformity with the law

AS 38.05.945(b)(3), which provides that the division given notice to "parties known or likely to be affected" by a proposed action, is not mandatory. Rather, it is only one of the division's notice options. In the case of sale 78, the division published notices in local and statewide newspapers more than 120 days before the director released his final decision. It also sent public service announcements to radio stations and notices to all area post offices for posting. Division Director James Eason said the division sought to reach other affected persons by mailing notices to persons on its mailing list and to all local, borough and state elected representatives. The division met the legal requirements of notice in AS 38.05.945(b).

Fairness

Until the division released the preliminary finding, all but one of the complainants was unaware of the division's plans to hold sale 78. This suggests that the division's efforts at broad public notice, however much this exceeded the statutory minimum, failed to reach a large segment of the public. As a consequence, affected surface owners were unaware that leasing might take place under their property. The complainant surface owners were therefore deprived of an opportunity to comment on the proposed action. Many did comment after the release of the preliminary finding when press accounts and local government action raised the level of public awareness about the proposed sale. However, up to that point, the surface owners were deprived of an opportunity to affect the division's decision making. Perhaps more than any other segment of the public, the surface owners had a personal stake in the division's decision. It was therefore essential that the division notify persons in this group about the proposed action.

It is true that the commissioner withdrew 48 tracts, including both private and state-owned land, where leasing was proposed under private land. However, had the commissioner decided differently, the complainants could be facing the real prospect of having to allow lessees entry onto their land to drill for oil without having had notice or the opportunity to comment at a point where they could still affect the department's actions. Good public policy would accord surface owners notice and an opportunity to be heard during the decision-making phase of a proposed state action.

Conclusion

The department and the division's actions complied with common law and statute. However, both the statute and informal process under which they acted were unfair because they did not provide a method of giving adequate and reasonable notice to the complainants. On balance, I find the equities lie with the complainants. Because I find that the division exceeded the statutory requirement but the statutory and informal process were unfair in not providing adequate and reasonable notice to the complainants, I find this allegation partially justified.

Analysis of allegation 2: *The division unfairly failed to provide public notice of the proposed lease sale 78 by failing to make its published maps of the affected area broadly and easily available to the public and by failing to provide sufficient information in commonly understood terms on its published maps to inform the public of the action and the opportunity to comment on it.*

Conformity with the law

Under AS 38.05.945(b), "[a] notice shall contain sufficient information in commonly understood terms to inform the public of the action and the opportunity to comment on it." Some complainants objected that the small-scale tract maps the division published failed to meet this standard because they were hard to read and did not show proposed tracts in relation to common landmarks such as roads.

The division met the notice requirements of AS 38.05.945(b) before it published the tract maps. Thus it was not legally obligated to give additional notice "calculated to reach affected persons" under AS 38.05.945(b)(4). Because the division's maps contained the statutorily required information and because it exceeded the notice requirements by publishing the maps, the division clearly met the legal standard.

Fairness

The division is under no legal obligation to provide detailed maps of a proposed sale area to the public. Fairness, however, dictates that the division make an effort to inform the public exactly where leasing may occur so individuals can offer informed comment. The first time south Kenai peninsula residents saw a detailed map of the sale area was at the August 12 public hearing in Homer. Until then, the division had published large-scale maps of the initial sale area and a large-scale map that showed the general location of the proposed tracts. The division made small-scale tract maps and tract legal descriptions available at a cost of $50 plus $3 postage on July 15.

Complainants who attended the public hearing reported seeing the maps and learning for the first time that the subsurface under their land was proposed for leasing. Other complainants reported trying to find out whether their land might be affected by drilling and being unable to find a map set in Homer. Many were affronted at the high cost of the maps.

Both the commissioner and the director said they rely on specific public comments in considering whether to proceed with a sale. All published maps of the sale area

available before July 15 are so vague as to be useless. Absent access to a map that conveys meaningful information, the public cannot hope to offer the division the specific comments it values.

Conclusion

The division gave "sufficient information in commonly understood terms" to inform the public of tract locations, but it failed to make the information widely and easily available to the public. As a result, complainants who stood to be most affected by the proposed action could not find out whether the land under their property was proposed for leasing. While the division's actions exceeded statutory requirements, the statute and informal process were unfair in not providing adequate and reasonable notice to the complainants because the maps were not widely and easily available. I therefore find this allegation partially justified.

***Analysis of allegation 3:** The division unfairly failed to provide for meaningful public participation in the lease sale planning process.*

Conformity with the law

The legislature requires public notice of a proposed lease sale at least 30 days before a best interest decision under AS 38.05.035(e). That notice must be published in local and statewide newspapers. The division must also give notice in one or more ways set out in AS 38.05.945(b)(1-4). Since 1979, the division has on its own initiative established a more far-reaching notice and comment process. This process, set out in the five-year plan, commits the division to giving notice via a series of calls for comments and publication of the preliminary best interest finding. The process commonly takes as long as four years. In the case of sale 78, the process took a year and 10 months from the time the lower peninsula acreage was added until the complaints were filed.

It is indisputable that the division exceeded its statutory mandate in providing notice and soliciting comment on proposed sales. The division is to be commended for its initiative in instituting the notice and comment program.

Fairness

Despite the division's best efforts, problems exist with the notice and comment process. Interviews with individual complainants reveal that few complainants heard about the sale before the preliminary finding's release. This suggests that the division was unsuccessful in notifying the general public in an affected area of the proposed sale.

Certain features of the informal process developed and currently in use by the division are barriers to meaningful public participation in the lease sale process. One is the reliance on publishing the calls for comments in the legal notice section of the newspaper. Another problem is the length of the comment period. As one complainant said, 30 days is insufficient for the media and word of mouth to spread the news before comments are due. Another weakness in the process is the statutory requirement that affected communities request a public hearing before one will be held in their community. This assumes that local representatives will respond to public demand, and division personnel

will coordinate with local representatives to schedule a hearing early in the 30-day comment period. Since the burden is on the community to request a hearing, one may not be held until near the end of the 30-day period. The hearing held in Homer took place only five days before the end of the comment period, and public pressure to extend the period was so intense the commissioner extended it a week.

Conclusion

The division far exceeded the statutory notice requirement and has, on its own initiative, instituted a notice and comment process that encourages public participation in the lease sale process. Certain features of the process, however, were unfair to the complainants. These features limited adequate and reasonable notice or limited adequate opportunity for complainants to comment on the proposed action. Because neither statute nor the division's informal process required publication of display advertisements, the public comment period was limited to 30 days, tract location maps were only limitedly available during the initial 30-day comment period and the burden fell on affected communities to request a public hearing, I find this allegation partially justified.

FINAL RECOMMENDATIONS

(1) The division's existing informal notice and comment process should be placed in statute.

Section VIII, article 1 of the Alaska Constitution gives the public an interest in the development of state resources. A public notice and comment process allows the state agency to communicate with the public and the public to express opinions on the proper development of state resources. The division has followed its notice and comment process since voluntarily instituting it in 1979. Placing the process in statute will lend credibility to the agency's public interest decisions.

(2) The new statutory notice and comment process should require concurrent publication of notices in the newspapers as display advertisements and as legal notices. The new process should require publication of display ads for seven days.

(3) The new statutory notice and comment process should extend the preliminary finding comment period to 90 days.

(4) The department should contact representatives of local governments to schedule jointly held public hearings in affected communities prior to each lease sale.

This recommendation was modified at the department's suggestion after it proposed the new program of organizing public hearings on lease sales.

(5) The division should time the release of its preliminary finding so that the comment period does not fall during a major commercial or subsistence harvest period.

The entire sale 78 comment period came during the peak fishing season. This put commercial and subsistence fishers at a considerable disadvantage in filing comments.

(6) The division should make every effort to see that tract maps are easily available in affected communities. The division is allowed by 11 AAC 05.010(a)(16)(H)(c) to waive the $50 tract map fee for federal, state or municipal agencies. The division should send tract map sets free of charge to state and local agencies in a sale area, especially when the division proposes to lease under private land. The division should make tract map sets available to the public as soon as the maps are prepared.

Because the department declined to ask the legislature to amend the notice and comment statutes and has already implemented or agreed to consider further some of the recommendations made in this report, the investigation will be closed as partially rectified. I agreed with the division that many practical, financial and possible legal consequences make giving direct notice to affected landowners unworkable. I therefore withdrew an earlier recommendation that the division give owners of property overlying known tracts direct notice. A revised statutory notice process that incorporates many of the features of the division's existing informal notice and comment process remains a goal.

I recommend the legislature enact final recommendations 1, 2 and 3 into law.

If I can be of any assistance to you or your staff in answering questions about the report or my recommendations, please call me at 465-4970.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:JFC:pjc
Enclosure: Investigative report

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

January 19, 1994

The Honorable Mike Miller
Alaska State Legislature
Room 423
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Miller:

The Alaska State Ombudsman recently issued his final Investigative Report related to a number of complaints regarding the procedures used by the Division of Oil and Gas for public notice, comment and participation in Lease Sale 78. The Ombudsman noted, "The Division not only complied with the law, but went further than what the law required it to do in giving public notice...but those efforts, as commendable as they were, have short-changed the public's ability to participate in a meaningful way in the oil and gas lease sale planning process. State statutes need to be changed to provide better notice." The Ombudsman provided six specific recommendations which he believes should be implemented "...to enhance the public's ability to participate in lease sale planning."

As the substance of the Ombudsman's investigation and its recommendations are likely to be the subject of hearings and potentially new legislation affecting the state's oil and gas leasing program this session, I believe it is important that you have a full understanding of the basis for the Ombudsman's conclusions, as well as the Departments of Natural Resources' and Law's written responses to the draft report which preceded the final Investigative Report. Accordingly, I have enclosed a number of documents which I urge you to read in their entirety. They include:

1. State of Alaska Office of the Ombudsman Investigative Report of Department of Natural Resources Division of Oil and Gas, Ombudsman's Complaints A 093-4506 et al. dated January 18, 1994.

2. January 18, 1994 letter from Duncan C. Fowler, State of Alaska Ombudsman, to Senate President Rick Halford regarding Final Investigative Report on Ombudsman's complaints A 093-4506 et al.

3. January 18, 1994 press release from the Office of the Ombudsman, subject: Division of Oil and Gas Lease Sale 78 Investigation.

4. December 20, 1993 letter from Commissioner Harry Noah to Duncan Fowler responding to the draft Ombudsman's report on the Sale 78 investigation.

5. December 20, 1993 letter from then-Attorney General Charlie Cole to Ombudsman Duncan Fowler regarding the draft Ombudsman's report on the Sale 78 investigation.

I would be happy to discuss any of the Ombudsman's conclusions and recommendations, as well as our responses to those, at your convenience. Please feel free to call.

Sincerely,

James E. Eason
Director, Division of Oil and Gas

Enclosures

cc: Harry A. Noah, Commissioner, DNR
Bruce Botelho, Attorney General, DOL

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,

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

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Juneau, Alaska 99801-2105

MEMORANDUM February 9, 1994

SUBJECT: Draft bill relating to modification of certain administrative procedures (Work Order No. 8-LS1689\A)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Counsel

Enclosed is my redraft of the material provided. Even broadening the title, I believe that inclusion of the material in the draft's section 3--modifying oil and gas lease sale schedules--and section 4--requiring an "annual" review of the content of the Alaska coastal management program--may be enough to make the measure subject to a successful "single subject violation" challenge under the first sentence of article II, section 13 of the state constitution. The current court test is this:

> To determine if a bill is confined to one subject, [a]ll that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be part of, or germane to, one general subject.

Citing Gellert v. State, 522 P.2d 1120, 1123 (Alaska 1974), quoting Johnson v. Harrison, 50 N.W. 923, 924 (Minn. 1891); the material is quoted in State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982), at 415, and appears in 1993 Manual of Legislative Drafting, at page 12. I am hard pressed to find in this measure the "one general subject" or "one general idea" that interconnects all parts of the bill. Not prevailing in the recent litigation over proposed Lease Sale 78 doesn't do it, and I was told that inserting "things that have gotten in the way of the administration" into the bill title wouldn't be acceptable.

In addition, to the extent this contemplates "separate standards" for separate projects, having separate standards of review for each decision (proposed AS 38.05.035(e)-(1)(A)) may violate the Equal Protection Clause of the state constitution.

I don't even know whether I've captured what the bill's sponsor(s) were intending. The serious "single subject" and possible equal protection problems notwithstanding, you may want to ask them to review the draft and respond critically.

JBC:pl
94-116.plm

Enclosure

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

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-2105

MEMORANDUM February 17, 1994

SUBJECT: Senate Bill 308 -- Sectional Analysis (Work Order No. 8-LS1689\E)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Counsel

The bill's 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 subject to the state's coastal management program. As introduced, 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 charged with making consistency determinations

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[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 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.

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) 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, nonspeculative, direct effects of the uses proposed to be authorized by the disposal";

-- (2) restrict the scope of the review and the written finding, consistent with the "nonspeculative" element,

-- 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

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[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.

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

-- (3) 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. As to the discussion of the issues that the director is to present in the finding, the amendment proposed by the measure's bill section 2 would (1) incorporate reference to the modified scope of administrative review that the director is authorized to make under the amendment made in the preceding bill section, and (2) insert "nonspeculative" as an additional modifier to two particular elements that are to be addressed in that discussion.

*

Consistency determinations: Coastal Management Program --

Like considerations motivate the proposed modification of the consistency determination process under the Alaska coastal management program, and like results are intended.

Borrowing the term from the federal program, 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 standards 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 activity involves the permits of two or more state agency, the division of governmental coordination is the party 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 AS 46.40.094, added by bill section 3, essentially duplicates the principles outlined for Department of Natural Resources by bill section 1 and makes them applicable in the context of coastal management consistency determination.

*

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

JBC:gc
94-132.glc

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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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-C5LH

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

---

[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.

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

State of Alaska, Department of Natural Resources

DIVISION OF OIL AND GAS - DIRECTOR'S OFFICE
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PHONE 907/762-2549

FAX TRANSMITTAL

DATE & TIME: February 23, 1994 11:45 a.m.

TO: Teresa Sager Stancliff Fax 465-3883
c/o Senator Mike Miller

FROM: Roberta Keith

NUMBER PAGES (INCLUDING COVER): 8

COMMENTS:

Jim Eason asked that I fax these materials to you - he said you may want to include in the record.

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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

(907)762-2547

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 File No. S-6172

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

IT IS ORDERED: THE PETITION FOR REVIEW FILED ON JANUARY 20, 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

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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

(907)762-2547

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

0ZZ94dp.je

FIVE-YEAR OIL AND GAS LEASING PROGRAM

ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

Proposed Sale Area & Date			1992			1993												1994												1995												1996												1997											
			O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	C	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
76 &	Cook Inlet	1-93	F			S																																																								
67A-W	Cook Inlet	1-93	F			S																																																							
77 &	Nanushuk	5-93		P		M	F			S																																																			
70A-W	Kuparuk Uplands	5-93					F			S																																																			
57	North Slope Foothills	9-93						P		M	F			S																																																
78	Cook Inlet	1-94									P			M	F			S																																													
79	Cape Yakataga	7-94				L		C 3										P		M	F			S																																							
80	Shoyolvik	11-94								L		C 3										P		M	F			S																																		
81	Beaufort Sea	4-95												L		C 3										P		M	F			S																													
82	Icy Cape	7-95																L		C 3										P		M	F			S																									
83	Western Beaufort Sea	11-95			C 2																	L		C 3									P		M	F			S																					
84	Copper River	4-96				A			C 2																L		C 3										P		M	F			S																	
85	Cook Inlet / Shelikof Strait	7-96				A					C 2																			L		C 3										P		M	F			S												
86	Western Beaufort Sea	11-96				A									C 2																			L		C 3										P		M	F			S								
87	Kuparuk Uplands	4-97				A														C 2																	L		C 3										P		M	F			S				
88	North Slope Foothills	7-97				A																		C 2																			L		C 3									P		M	F			S	
89	Eastern Beaufort Sea	11-97				A																						C 2																	L		C 3							P		M	F			S

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

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

(907)762-2547

February 23, 1994

The Honorable Albert Adams
Alaska State Legislature
Room 417
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Adams:

There is legislation in the Senate, SB 308, and in the House, HB 474, which responds to a number of Superior Court and Alaska Supreme Court decisions affecting the state's ability to continue its competitive oil and gas leasing program. Passage of this legislation this session is vital to assuring the viability of that program and the continuation of the many benefits which it provides to all Alaskans.

I have enclosed a number of documents related to this legislation in anticipation that you may have questions concerning either the need for this legislation or what the legislation is intended to accomplish. Among the enclosures is the Alaska Supreme Court's February 22, 1994 denial of the state's petition for its review of the Superior Court's injunction of Sale 78. This final action by the Alaska Supreme Court underscores the need for addressing and passing this legislation this session.

Meanwhile, I would appreciate the opportunity, at your convenience, to discuss the legislation with you. If you have any questions concerning the enclosures, please feel free to call.

Sincerely,

James E. Eason
Director

Enclosures:
Letter from Shelby Stastny
4 speaking documents.
Copy of amended legislation.
Order from the Supreme Court.

cc: Kyle Parker

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.

However, doing so would mean a tremendous increase in operating costs; a significant reduction 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

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

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

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.

Alaska Environmental Lobby, Inc.
P.O. Box 22151 Juneau, Alaska 99802
Phone: 907-463-3366
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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.

AMENDMENTS TO THE ALASKA COASTAL MANAGEMENT PROGRAM

Section 46.40.010 is amended as follows:

Sec. 46.40.010. Development of Alaska coastal management program. (a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed <u>annually</u> by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040.

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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

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(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040.

Create New Section, Insert as 46.40.025:

Sec. 46.40.025. Alaska coastal management program consistency determinations. (a) The scope of the evaluation of a project against Alaska coastal management program standards shall address only the applicable law, the reasonably foreseeable, non-speculative, direct effects of the proposed project, and facts known to the commissioner or made a part of the agency record during the project consistency review and found material to the evaluation of the project.

(b) When a discrete phase of a multi-phased development project is evaluated against the standards of the Alaska coastal management program, and the coordinating agency's approval is required before each phase can proceed and the coordinating agency can condition its approval to ensure that any additional uses or activities authorized thereunder will be consistent with the Alaska coastal management program, the commissioner may, in his or her discretion, limit the scope of the evaluation to that discrete phase.

Section 46.40.210 is amended as follows:

Sec. 46.40.210 Definitions. In this chapter, unless the context otherwise requires,

(1) "areas which merit special attention" [NO CHANGE];

(2) "coastal resource district" [NO CHANGE];

(3) "Commissioner" means commissioner of the agency responsible for coordinating and facilitating the Alaska coastal management program consistency review and rendering the evaluation;

(4) "council" [NO CHANGE];

(5) "department" [NO CHANGE];

(6) "evaluation" means a document issued by the coordinating agency containing a brief description of the project, and the findings of the consistency review together with stipulations, conditions, or modifications to the project;

(7) "use of direct and significant impact" [NO CHANGE];

(8) "uses of state concerns" [NO CHANGE].

AS 38.05.035(e) is amended as follows:

(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.

(1) the scope of the administrative review on which the director's determination is based, and of the written finding supporting that determination, shall be established by the director, in the exercise of his or her discretion and with the consent of the commissioner, for the specific disposal of land, resources, property, or interests in them proposed, and shall address only reasonably foreseeable, non-speculative, direct effects of the uses proposed to be authorized by the disposal. The director may, in his or her discretion and with the consent of the commissioner, limit the scope of the administrative review and written finding for a proposed disposal:

(A) to the applicable law and the facts pertaining to the lands, resources, property, or interests in them which the director finds are material to the determination and which are known to the director or made available to the director during the administrative review and issues which, based on such information and on the nature of the uses to be authorized, the director finds are

relevant to his or her determination of whether the proposed disposal will best serve the interests of the state; and

(B) to applicable law and material facts as described in (A) pertaining solely to a discrete phase of a multi-phased development project when the only uses to be authorized by the proposed disposal are part of that discrete phase, if the department's approval is required before the next phase can proceed and the department can condition its approval to ensure that any additional uses authorized thereunder will serve the best interests of the state.

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

(3) 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) Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that, in accordance with (1) of this subsection, sets our the material 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. A written finding is not required before the approval of

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

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

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

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

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

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

[(7)] (G) 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

[(8)] (H) 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.

AS 38.05.035(g) is amended as follows:

(g) 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 in the finding

(1) facts are known to the director at the time of preparation of the finding and that are material to the following matters or to issues within the scope of the administrative review as established by the director pursuant to (e) of this section that were raised during the period allowed for receipt of public comment:

(A) property descriptions and locations;

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

(C) fish and wildlife species and their habitats within the lease sale area;

(D) the current and non-speculative projected uses in the area, including uses and value of fish and wildlife;

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

(F) the reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation;

(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;

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

(I) the reasonably foreseeable, non-speculative 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;

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

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

(2) a summary of agency and public comments received and the department's responses to those comments; and

(3) the basis for the director's determination that, on balance, leasing the area would be in the state's best interest.

**SEC.22.AS 38.05.180(c) is amended to read:*

(c) Except as provided in (d) and (w) of this section, an oil and gas lease sale may not be held unless it was included in the proposed leasing programs submitted to the legislature during the two calendar years preceding the year in which the sale is held. [A LEASE SALE SHALL BE HELD DURING THE CALENDAR QUARTER FOR WHICH IT IS SCHEDULED IN THE PROPOSED OIL AND GAS LEASING PROGRAM BUT MAY BE DELAYED BY THE COMMISSIONER FOR NOT MORE THAN 90 DAYS AFTER THE LAST DAY OF THE CALENDAR QUARTER FOR WHICH IT WAS SCHEDULED IF THE COMMISSIONER DETERMINES THAT A DELAY IS IN THE BEST INTEREST OF THE STATE. A LEASE SALE WHICH IS NOT HELD DURING THE CALENDAR QUARTER FOR WHICH IT WAS SCHEDULED IN THE OIL AND GAS LEASING PROGRAM, OR IN THE FOLLOWING 90-DAY PERIOD

AUTHORIZED BY THIS SUBSECTION, MAY BE HELD ONLY IF RESCHEDULED AS PROVIDED IN (b) OF THIS SECTION.] A lease sale may not be held before the date it is scheduled in the proposed oil and gas leasing program.

CFR 930.37(c)

Federal Register, Vol. 44, No. 123, 6-25-79, p. 92

(c) In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consistency determination will be required. However, in cases where major Federal decisions related to a proposed development project will be made in phases based upon developing information, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project continues to be consistent to the maximum extent practicable with the State's management program. (emphasis added)

IN THE SUPERI

THIRD J

NINILCHIK TRADITIONAL C
ALASKA CENTER FOR THE E
GREENPEACE, TRUSTEES FOR ALASKA,
KENAI PENINSULA FISHERMEN'S ASSOCIATION,
UNITED COOK INLET DRIFT ASSOCIATION,

Appellants,

v.

HARRY NOAH, Commissioner,
state of Alaska Department of Natural
Resources, JAMES EASON, Director,
Division of Oil and Gas, State of Alaska
Department of Natural Resources and STATE
OF ALASKA, DEPARTMENT OF NATURAL RESOURCES,

Appellees.

Case No. 3KN-93-1174 CI

ORDER ON MOTION TO STAY

Appellants, Ninilchik Traditional Council, Alaska Center For the Environment, Greenpeace, Trustees For Alaska, Kenai Peninsula Fishermen's Association, and United Cook Inlet Drift Association (hereinafter "NTC") are appealing the Department of Natural Resources' (DNR) finding that lease sale 78 is in the State's "best interests" and the finding that the lease sale is "consistent" with the Alaska Coastal Management Plan (ACMP). NTC argues that the appellee's (hereinafter "Noah") have not met the legal requirements of the "best interests" finding or the ACMP. Specifically, NTC asserts that Noah has impermissibly deferred consideration of important issues such as: 1) conflicts between the oil and gas industry and commercial fishing, 2) subsistence use, and 3)

environmental degradation, until after the lease sale. Further, sale 78 is not consistent with the ACMP which gives preference to water dependant and water related uses, such as fishing.

As background, in order for the State to dispose of State lands, under AS 38.05.035(e), there must be a finding that the lease sale is in the "best interests" of the State. Further, under the ACMP, the lease sale must be consistent with the ACMP. NTC has moved this Court to stay oil and gas lease sale 78 until the merits of this appeal are decided. The sale is planned to go forward on January 25, 1994.

In reviewing Noah's "best interest determination the Court is reviewing a policy decision involving complex issues beyond this Court's ability to decide." Hammond v. North Slope Borough, 645 P.2d 750, 758 (AK 1952). Accordingly, this Court must decide whether Noah had a reasonable basis for his decision on each issue. Trustees for Alaska et al. v. State of Alaska, Department of Natural Resources, et al., Alaska Supreme Court, Slip Op. 4039. (December 23, 1993) the Court said:

> ". . . this Court must ensure that DNR has taken a "hard look" at the salient problems and has genuinely engaged in reasoned decision making . . . . A decision will be regarded as arbitrary "where an agency fails to consider an important factor in making its decision." (Citing Trustees for Alaska v. State, DNR, 795 P.2d 805 (Alaska 1990), Slip op. at 5).

NTC has moved this Court for a stay of lease sale 78 until the merits of this appeal are decided. The two alternate tests for determining whether a stay should be granted are: 1) "a clear

showing of probable success" on the merits, State v. Kluti Kaah Native Village, 831 P.2d 1270, 1272 (Alaska 1992), or 2) a "balance of the hardships." Id. The Court must limit is scope of review under either theory by the reasonable basis test. The first test, probable success on the merits, is invoked "where the party asking for relief does not stand to suffer irreparable harm, or where the party against whom the injunction is sought will suffer injury if the injunction is issued." Id. at 1272. If, on the other hand, the non-moving party can be protected from injury, and "the party seeking the injunction stands to suffer irreparable harm," the "balance of the hardships" test is appropriate. Id. The "balance of the hardships" test is divided into three parts: "(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise 'serious' and substantial questions going to the merits of the case; that is, the issues raised cannot be 'frivolous or obviously without merit.'" Meggarli v. Department of Natural Resources, 768 P.2d 1112, 1122 (Alaska 1989)(citing and quoting Alaska Public Utilities Comm'n v. Greater Anchorage Area Borough, 534 P.2d 549, 554 (Alaska 1975)).

In determining which test to apply, this court must consider the harm to each of the parties. The delay of the lease sale, according to Noah, will result in the loss of potential lessees as well as having to put the lease sale back in the five year

schedule.[1] Thus, the State will lose money by not being able to go forward with the lease sale as planned. NTC contends that irreparable harm will result if the lease sale is allowed to go forward because the proposed sale will directly conflict with and harm fishing activities in the region and will harm subsistence use in the area. If plaintiffs will not suffer irreparable harm, the balance of hardship test is inappropriate.

The United States Supreme Court has noted that "the actual opening of the bids does not involve a commitment of any kind" since all bids can be rejected and "even after the bids are accepted . . . [the court could have the] power to declare the leases invalid if the court determined that the Government entered into a lease without compliance with the requirements of the [law]." New York Natural Resources Defense Council, Inc. v. Kleppe, 429 U.S. 1307 (1976), Hammond v. North Slope Borough, supra. Under the lease terms, the State has the authority to cancel a lease at any time, if for example, information came to light which compelled it to withdraw a tract from exploration or drilling. On the other hand, 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

[1] The court should also note that under AS 38.05.180(c), a lease sale can be held up to ninety days "after the last day of the calendar quarter for which it was scheduled . . ." Id.

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.

Nevertheless, this analysis of the lease sale process does not mask the fact that precedent compels this court to find that NTC has not shown it will suffer irreparable harm, since the State may buy back an offending lease. However, under the "probable success on the merits" test, a showing of irreparable harm is not necessary. The court will apply the "probable success" test.

NTC alleges that Noah has deferred consideration of environmental concerns and has put off imposing environmental protection on oil and gas exploration and development activities until the oil industry lessee has presented a specific plan of operations to DNR. According to NTC, this consideration must take place after the lease sale. NTC cites evidence of direct conflicts between oil and gas activities and existing uses of the sale area. Further, under the ACMP, Noah has failed to evaluate the impacts by oil and gas exploration and development in relation to the standards imposed by the ACMP which are listed in 6 AAC 80.130(b) and (c).

Lease sale tracts between Kasilof and Anchor Point are particularly contested by NTC because of the heavy commercial, sport and subsistence fishing in that area. Hundreds of setnetters and driftnet fishers fish in this corridor from June through August. See Appellant's Exhs. 5, 24. In his findings, Noah

identifies the extent of the fisheries within the lease sale area and even recognizes 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 areas is restricted or if industry operations occur at the same place and time has harvest activities." See Findings at 36. Further, Noah states that "[i]nterference with subsistence and commercial fishing could present a conflict of interest in the sale area." However, Noah believes its mitigation measures will "assure that potential conflicts are avoided to the fullest extent possible." Id.

NTC points out that the problem with considering problems or conflicts at the plan of operations stage, is that it "mask[s] appreciation [of] cumulative environmental threat[s]." Trustees for Alaska v. State, DNR, 851 P.2d 1340 (Alaska 1993).

This court finds that based on the limited amount of briefing and after reading the Final Findings by Noah, as to the "best interest" issue, NTC has failed to show probability of success on the merits. Noah has identified the potential for conflicts between fishing interests and the oil and gas industry in some of tracts located in the lease sale and has detailed either how the lease sale terms apply to the conflicts (findings page 32) or relies on mitigating measures. At this time, in terms of the reasonable basis test, the Court cannot find that it is probable that Noah failed to consider an important fact in making the "best interest" determination or that he failed to take a hard look at

the salient problems. While plaintiffs may disagree with Noah's conclusion that some problems must await further study as to individual tracts, that conclusion does not imply that Noah's best interest finding is arbitrary. Accordingly the Court denies the motion to stay lease sale 78 on the basis of Noah's non-compliance with AS 35.05.035(a).

AS 46.40.010 - 210 provides for the establishment of an Alaska Coastal Management Program,

> ". . . which is partly designed to ensure that the development of industrial and commercial enterprise is consistent with environmental and cultural interests in the State. AS 46.40.020."

Hammond v. North Slope Borough, 645 P.2d 750, 761 (Alaska 1982). Pursuant to statutory authority, the Alaska Coastal Policy Council has established regulations for the administration and enforcement of the Alaska Coastal Management Program, 6 AAC 80.010 - 900. 6 AAC 80.010(b) provides in part:

> "Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority each state agency shall grant authorization if in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standard contained in this chapter."

Among the standards of the chapter are these contained at 6 AAC 80.040(a):

> "In planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to:

> (1) water-dependent uses and activities;
> (2) water-related uses and activities; and
> (3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

In addition 6 AAC 80.130(d) provides:

> "Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:
>
> (1) there is a significant public need for the proposed use or activity;
> (2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and
> (3) all feasible and prudent steps to maximize conformance with the standard contained in (b) and (c) of this section will be taken."

On September 9, 1993 the Division of Oil and Gas issued a conclusive consistency determination for proposed Sale 78. The determination stated that "as the coordinating agency for this review process, the Division of Oil and Gas now conclusively determines that proposed Sale 78 is consistent with the ACMP". The memorandum constituted final agency action under AS 44.19.145(a)(11). Apparently because the September 9, 1993 memorandum was final agency action the Director does not address the consistency represented in his final finding dated October 19, 1993.

In Hammond v. North Slope Borough, supra, plaintiffs challenged the decision of the Department of Natural Resources to issue oil and gas leases in the Beaufort Sea. Among other things

plaintiffs contested the ACMP consistency determination. The Supreme Court found the consistency determination insufficient. It said:

> The Commissioner concluded the lease sale is consistent with both the State standards in the ACMP and the proposed North Slope Borough coastal management program. However, since the Commissioners consistency determination with regard to the State standards is stated in a conclusory manner, it is unclear which of the methods stated in the proceeding paragraph the Commissioner used in making the consistency determination.

Id., 645 P.2d at 762.

The two methods by which the commissioner may find consistency are either finding that all specific environmental protections have been met, or if there will be conflicting uses, finding that the provisions of 6 AAC 80.130(d) have been satisfied. In this case, since there are conflicting uses, the commissioner must find and explain compliance with that regulation. The Department has failed do this.

Footnote 7 to the opinion in Hammond, supra, at 762 discusses the scope of the required findings. The Court notes the hesitancy to require findings in informal agency decisions absent an express statutory requirement. But the Supreme Court states:

> "If the reviewing Court cannot divine the basis for the decision from a bulky record, this language clearly leaves the door open for the requiring of findings under common law or a basis for reviewability.

Id. (Citing Mobile Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 97 n.11 (Alaska 1974)).

In this case 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 dependant and activities? Or, is oil and gas a water related activity? The Court cannot determine whether the sale is consistent with either standard absent a finding.

There is no discussion of a significant public need for the lease sale, 6 AAC 80.140(d), except that at page 35 of the findings Noah states that:

> "Sale 78 is likely to make out modest additions to State revenues given the low to moderate potential for oil and gas discoveries in the sale area".

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 the standards will be taken.

Satisfaction of the latter two requirements of 6 AAC 80.130(d) may raise an issue as to the Commissioner's reliance on possible mitigating factors. In short, while the reliance upon mitigating factors devised after formation of the plan of operations may not imperil the "best interest" finding, the failure to address and resolve specific conflicts as to the proposed use may imperil the consistency finding. For example, in Kuitsarak Corporation, et al, v. Red Swope, et al, Slip Op. 4042 Alaska Supreme Court, (January 14, 1994) footnote 30, the Court said:

> The primary danger associated with lease determinations made on a case-by-case basis is that the cumulative environmental threat posed by mining is not adequately considered.

Slip Op. at 21.

The reasoning of the Court in Kuitsarak applies by analogy with equal logic to an oil and gas lease sale.

Since the plaintiffs have demonstrated a probability of success on the merits of its claim that Noah's ACMP consistency finding is deficient, the Court may appropriately order a stay of oil and gas lease sale number 78.[2]

The last issue to be considered is whether NTC qualifies as a public interest litigant thereby waiving any bond requirement which might be imposed to cover the State's estimated losses.[3] NTC cites to the Ninth Circuit which has repeatedly held that when requiring a bond would "effectively deny access to judicial review"

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[2] Noah argues that NTC has waived its right to appeal the consistency determination because the determination was a final agency action and an appeal was not filed by NTC within the allotted thirty days. NTC argues that the consistency determination is part and parcel of the "best interests" finding and thus, it was only appropriate that the two be appealed together. Noah responds that the two determinations are separate and distinct statutory requirements and separate final agency decisions.

Since, as the Court found in Trustees for Alaska v. State, 851 P.2d 1340 (Alaska 1993), the "consistency determination is one section of its finding," this court finds it was proper to appeal the consistency determination along with the "best interests" finding. Id. at 1342 n.2.

[3] This decision also impacts another pending motion. NTC is asking this court to waive the cost of preparing the record. Noah maintains that filing the record in this case will cost $10,000. NTC, as a public interest litigant, believes it is entitled to have the costs waived. The ruling on this issue is dispositive of the Motion to Waive Costs and will be considered as such.

no bond, or only a nominal bond will be imposed. People ex rel. Van de Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1319 (9th Cir. 1985). There are four factors used in identifying a public interest litigant:

> (1) Is the case designed to effectuate strong public policies?
> (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?
> (3) Can only a private party have been expected to bring suit?
> (4) Would the purported public interest litigant have sufficient economic interest to file suit even if the action involved only narrow issues lacking general importance?

Anchorage Daily News v. Anchorage School District, 803 P.2d 402, 404 (Alaska 1990). NTC asserts it satisfies all these requirements. First, this appeal has been filed to effectuate public policies embodied in the Alaska Constitution, Art. VII, sec. 1 which encourages settlement of state land and development of resources "consistent with the public interest." Moreover, this appeal is to ensure the compliance with AS 38.05.035(e) which requires that disposal of state land be within the State's best interests. Second, the beneficiaries of this appeal are those who use the resources of Cook Inlet such as traditional subsistence users, environmental and recreational users, and commercial and sport fishers. Third, since the appellees include DNR, a state agency, only a private party could be expected to bring this action. See Southeast Alaska Conservation Council v. State, 665 P.2d at 544, 554 (Alaska 1983). Lastly, no claim for monetary damages has been made in this appeal and no monetary gain will

result from a successful appeal. While it is true that the appellant's include fishing organizations, which the State alleges have an obvious economic interest in bringing this appeal, NTC argues that it is public rights that are at stake here.

The fact that an organization may have an economic interest in whether or not tracts of land are sold to oil companies, does not obscure the fact that it is a public right being litigated.

IT IS HEREBY ORDERED that Appellants Motion to Stay is GRANTED.

Dated at Kenai, Alaska this 24th day of January, 1994.

CHARLES K. CRANSTON
SUPERIOR COURT JUDGE

Filed
1/24/94

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 _____ CS SB 308 (Res)

[ ] 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

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:

Peace

Mike Miller Do Pass

OTHER RECOMMENDATIONS:

Drew Scheuman N.R.

Do Not Pass

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 308

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

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

COMPONENT SERIAL NO. 645

Expenditures/Revenues: (Thousands of Dollars)

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.)

Prepared by: Bob Poe, Director
Division: Information & Administrative Services
Phone: 465-5010
Date: 2/14/94

Approved by Commissioner: For IAS
Agency: Department of Environmental Conservation
Date: 2/14/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 308

Revision Date:
Dept. Affected: Office of the Governor
Title: Modifying administrative procedures and decisio
by State agencies that relate to uses of State land
BRU: 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)

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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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 308

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 Rue
Division: Habitat and Restoration
Approved by Commissioner:
Agency: Alaska Department of Fish and Game

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

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FISCAL NOTE

STATE OF ALASKA

1994 LEGISLATIVE SESSION

BILL NO. SB308

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.

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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