

HB

364

SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER: Resources

DATE TURNED
IN TO OFFICE: 5/5/04

State Affairs Committee considered CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 364(O&G)

HB 364 NATURAL GAS LEASES ON THE KENAI PENINSULA

"An Act prohibiting the issuance of state shallow natural gas leases in the vicinity of Kachemak Bay, modifying the authority to extend certain shallow natural gas leases, and precluding the director of the division of lands from reissuing or otherwise extending shallow natural gas leases within the Kachemak Bay area if there is a breach of a term or condition of the lease; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DNR	3/18/04		✓		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John J. Caudrey</i>			✓	
<i>Bert R. Johnson</i>			✓	
CHAIR: <i>[Signature]</i>				

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSSHB 364(O&G)
 (H) Publish Date: 4/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Natural Gas Leases on the Kenai Peninsula RDU Resource Development
 Component Oil and Gas Development
 Sponsor Rep. Seaton
 Requester House Oil and Gas Component No. 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()	(**Indeterminate)					
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

**HB 364 would impose a moratorium on shallow natural gas leasing around the Homer area. This bill would foreclose future income from shallow natural gas application fees, rentals, and royalties in the Homer area.

Prepared by: Mark D. Myers
 Division: Oil and Gas
 Approved by: Thomas Irwin, Commissioner
 Agency: Natural Resources

Phone 269-8800
 Date/Time 3/8/04
 Date 3/8/04

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

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SSHB 364

"An Act prohibiting the issuance of state shallow natural gas leases in the vicinity of Kachemak Bay, modifying the authority to extend certain shallow natural gas leases, and precluding the director of the division of lands from reissuing or otherwise extending shallow natural gas leases within the Kachemak Bay area if the leases fail to produce gas in paying quantities within the terms of the lease or if there is a breach of a term or condition of the lease; and providing for an effective date."

Sponsor Statement

The Sponsor Substitute for HB 364 (SSHB 364) accomplishes three goals. First, it establishes a moratorium on future shallow natural gas leases (as defined by AS 38.05.177) in the Homer area. Second, it precludes the Commissioner of the Department of Natural Resources (DNR) from reissuing the current shallow natural gas leases in the Homer area if the leases do not produce gas in paying quantities within the terms of the lease (three years) or if there is a breach of contract. Third, SSHB 364 gives the Director of the Oil and Gas Division of DNR criteria to judge the merits of using his/her discretion to extend shallow natural gas leases. The Director would now have to consider the likelihood that extension of the lease would "expedite or lead to shallow natural gas development." This bill would in no way complicate future gas leasing in the Homer area through the Area Wide Lease Sale process, or some other leasing program.

The shallow natural gas leases recently let in the Homer area have created two major problems. First, the public is very concerned about the streamlined process under which these leases were let. The current shallow natural gas program provides for over-the-counter type leases; lacking a best-interest-finding, effective public notice, and regulatory provisions, and also decreasing fees and royalties paid to the state, this program has left local residents critical of the gas development in general.



Second, the gas formation underneath Homer follows the same geologic trend currently supporting the conventional natural gas industry on the Kenai Peninsula. To Homer's immediate north, conventional gas projects are underway in Ninilchik and on the North Fork Road. The industry incentives offered under the shallow natural gas lease program are not necessary to coerce the natural gas industry to the region. Homer was left out of the Cook Inlet Area Wide Lease Sale Program, and thus made available for leases under the Shallow Natural Gas Program, because of a political decision made by a previous administration. There is no geologic or economic reason that the gas in the Homer area should be developed differently than the rest of the Kenai Peninsula.

I ask for your support for this extremely important legislation.

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

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SPONSOR SUBSTITUTE HOUSE BILL 364

"An Act prohibiting the issuance of state shallow natural gas leases in the vicinity of Kachemak Bay, modifying the authority to extend certain shallow natural gas leases, and precluding the director of the division of lands from reissuing or otherwise extending shallow natural gas leases within the Kachemak Bay area if the leases fail to produce gas in paying quantities within the terms of the lease or if there is a breach of a term or condition of the lease; and providing for an effective date."

Sectional Analysis

Section 1 amends AS 38.05.177(a) to exclude "land and water within the Kenai Peninsula Borough east of Cook Inlet and south of the north boundary of Township 5 South, Seward Meridian" from shallow natural gas leasing.

Section 2 amends AS 38.05.177(d) to give the Director of the DNR Division of Oil and Gas discretionary guidelines in making the decision to extend shallow natural gas leases that have not yet produced gas. The Director would now be required to consider the likelihood that extension of the lease will "expedite or lead to shallow natural gas development."

Section 3 amends the uncodified law of the State of Alaska to prohibit the issuance or reissuance of a shallow natural gas lease entered into before the effective date of this Act in the area described in Section 1 of this act, if the lease terminates because of failure to produce under AS 38.05.177(d), as modified by Section 2 of this act, or if part of the lease is relinquished or illegally transferred under AS 38.05.177(h).

Section 4 gives this act an immediate effective date.



Introduced by:	Martin, Moss
Date:	12/16/03
Action:	Adopted
Vote:	6 Yes, 3 No
Action:	Notice of Reconsideration given by Mr. Superman
Action:	Notice of Reconsideration Failed
Vote:	4 Yes, 5 No

**KENAI PENINSULA BOROUGH
RESOLUTION 2003-129**

A RESOLUTION REQUESTING AMENDMENT OF ALASKA STATUTES 31.05.125 AND 38.05.177(O), WHICH AUTHORIZE THE DEPARTMENT OF NATURAL RESOURCES COMMISSIONER TO WAIVE COMPLIANCE WITH LOCAL LAWS FOR SHALLOW NATURAL GAS LEASES IN LIMITED CASES, REQUESTING ADDITIONAL PUBLIC NOTICE REQUIREMENTS, AND REQUESTING THAT THE STATE BUY BACK SOUTH PENINSULA SHALLOW GAS LEASES

WHEREAS, in House Bill 69, effective June 7, 2003, the state legislature amended numerous provisions in state law to encourage the development of shallow natural gas resources; and

WHEREAS, in House Bill 394, effective October 9, 1996, the state legislature also amended numerous statutes to authorize shallow natural gas leasing from sources within 3,000 feet of the surface and including related provisions; and

WHEREAS, while the development of natural resources in Alaska is an important element of Alaska's economy, the recognition of property rights and local authority to regulate uses of property for protection of property rights is similarly important; and

WHEREAS, Sections 4 and 6 of HB 69 enact AS 31.05.125 and 38.05.177(o), which delegate to the Commissioner of the Department of Natural Resources ("DNR") the authority to waive local requirements relating to compliance with local laws upon a demonstration of an overriding state interest; and

WHEREAS, the local planning authority, including planning commissions, councils and assemblies, are best able to understand and implement the needs of the local community respecting land uses; and

WHEREAS, it is in the state's best interest to develop its natural resources utilizing partnerships between the state, mineral lessees, surface owners and the public to ensure public understanding and involvement, as supported by Governor Murkowski in his November 12, 2003 address to the Alaska Municipal League; and

WHEREAS, HB 394 enacted AS 38.055.177 governing shallow gas leases, but only requires notice of the lease application be published in a newspaper of general circulation and not in additional local media if available; and

WHEREAS, requiring publication in the local media will significantly improve notice to members of local communities with local media; and

WHEREAS, the Homer community was not given adequate notice of the proposed shallow gas leases, and was not sufficiently made aware of the impact of HB 394 on the process used for issuing shallow gas leases; and

WHEREAS, because processing a lease application may take more than one year it is appropriate to require additional public notice as circumstances may have changed within the intervening year; and

WHEREAS, at a public meeting held November 10, 2003 in Homer, many residents encouraged the state to buy back the South Peninsula Shallow Gas Leases, and Governor Murkowski preliminarily indicated that he may consider this option after further analysis, if it is feasible and desired by the people, recognizing that any buy back would require legislative approval;

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. For all of the above reasons, the Kenai Peninsula Borough Assembly respectfully requests Governor Frank Murkowski and the Alaska State Legislature buy back the South Peninsula Shallow Gas Leases particularly within the Homer Bridge Creek Watershed and other environmentally sensitive areas in the Homer area.


SECTION 2. The Kenai Peninsula Borough urges the Alaska State legislature to significantly amend Alaska Statutes 31.05.125 and 38.05.177(o), to eliminate the ability of the state to waive local land use regulations without advance public notice and hearings, and to require the adoption of clear and high standards that must be met before any local laws may be waived by the DNR Commissioner to accommodate shallow gas leasing.

SECTION 3. That Alaska Statute 38.05.177(c) be amended to require notice of a lease application be published by local news media if available, as well as in a newspaper of general circulation, and to require additional such publication if more than one year elapses between submission of the lease application and final action on the application by the director.

SECTION 4. That copies of this resolution shall be provided to Governor Frank Murkowski, Representatives Vic Kohring, Carl Morgan, Mike Hawker, Kelly Wolf, Mike Chenault, and Paul Seaton, and Senators Georgianra Lincoln, Con Bunde, Thomas Wagoner, and Gary Stevens.


SECTION 5. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF DECEMBER, 2003.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk



THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

**CITY OF HOMER
HOMER, ALASKA**

Mayor. Ladd.

RESOLUTION 03-147(S)

1 **A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA REGARDING**
2 **LOWER PENINSULA SHALLOW NATURAL GAS LEASES AND COAL BED**
3 **METHANE DEVELOPMENT.**

4
5 **WHEREAS, Leases for Coal Bed Methane (CBM) development in the City of Homer and**
6 **surrounding areas have been approved by the State of Alaska, Division of Oil and Gas, and;**

7
8 **WHEREAS, Notification of said leases by the State of Alaska to the City of Homer has not**
9 **occurred since year 2000 and therefore this community was not given current information in which**
10 **to comment to the State concerning these leases and;**

11
12 **WHEREAS, At a Homer Public Information Meeting, November 10, 2003, the Department**
13 **of Natural Resources, Department of Revenue, Department of Environmental Conservation, and the**
14 **Alaska Oil and Gas Conservation Commission heard a preponderance of public testimony**
15 **questioning the State of Alaska's decision to lease Lower Peninsula coal bed methane sub surface**
16 **land without having provided notification to and timely opportunity for citizen input, and;**

17
18 **WHEREAS, The closed decision-making process utilized by the State of Alaska to lease**
19 **Lower Peninsula coal bed methane land is contrary to widely held beliefs of Homer area residents**
20 **and the City of Homer, and;**

21
22 **WHEREAS, CBM development could severely and adversely impact quality of life as well**
23 **as private and public property including:**

- 24
25 • **the City of Homer water supply that serves approximately 1100 homes and businesses in the**
26 **City via water mains and approximately 450 homes and businesses inside and outside the**
27 **City via water trucks;**
28 • **groundwater vitally important for:**
29 **private water wells,**
30 **health of the general ecology and the local area economics that are heavily dependent**
31 **on a healthy ecology (commercial, sport, charter, guided and subsistence fishing,**
32 **visitor and tourism industries;**
33 **home and land values;**
34 **roads and public safety;**

35
36 **NOW, THEREFORE, BE IT RESOLVED, that the City of Council of Homer, Alaska**
37 **declares that CBM development may not be consistent with the goals of the residential, commercial,**
38 **recreational, and tourism growth of this community and that the potential adverse impacts of CBM**
39 **development may far outweigh the potential benefits; and**

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42 Page Two
43 Resolution 03-147(S)
44 City of Homer
45

46 BE IT FURTHER RESOLVED, that the Homer City Council declares that projects such as
47 natural gas leases and coal bed methane development are very sensitive to local planning and quality
48 of life, and waiving shallow natural gas and CBM developer compliance from local ordinances and
49 regulations based upon HB 69 is contrary to principles of representative government, and;
50

51 BE IT FURTHER RESOLVED, that the Homer City Council requests that the Legislature
52 and the Governor agree to legislation providing the Commissioner of the Department of Natural
53 Resources the authority to buy back the leases, or repurchase leases within the Homer Bridge Creek
54 Watershed including other environmentally sensitive areas within the City, and deny all future
55 applications for CBM development in, or near the City of Homer and surrounding area, and;
56

57 BE IT FURTHER RESOLVED, that the Homer City Council asks that the State of Alaska
58 place a moratorium on any further leasing or permitting of shallow gas leases and CBM activity in
59 the area until the short and long term adverse effects of CBM and shallow gas development shall
60 be studied and properly regulated in Alaska State, and;

61 BE IT FURTHER RESOLVED, that the Homer City Council requests legislators to repeal
62 HB69 so that local governments may properly regulate CBM development within their jurisdictions.

63 PASSED AND ADOPTED by the City Council of Homer, Alaska this 1st day of December,
64 2003.

CITY OF HOMER

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72 ATTEST:

Jack Cushing

JACK CUSHING, MAYOR

Mary L. Calhoun

MARY L. CALHOUN, CMC, CITY CLERK

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82 Fiscal Note: NA

Post-It Fax Note 7071		Date 1/16/04	# of pages 2
To <i>Comison</i>	From <i>Mary Calhoun</i>		
Co/Dept. <i>Urbanowski</i>	Co. <i>Calhoun</i>		
Phone # <i>2 11</i>	Phone #		
Fax # <i>465 3472</i>	Fax #		

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CITY OF KACHEMAK
KACHEMAK, ALASKA

RESOLUTION 2003-12A

A RESOLUTION OF THE CITY OF KACHEMAK, ALASKA
REGARDING LOWER PENINSULA SHALLOW NATURAL GAS
LEASES AND COAL BED METHANE DEVELOPMENT

WHEREAS, leases for shallow gas or coal bed methane (CBM) development in Kachemak City and the surrounding Homer area have been approved by the State of Alaska, Division of Oil and Gas and;

WHEREAS, notification of said leases was never forwarded by the State of Alaska to Kachemak City, the City of Homer, individual property owners, or announced in either of the local papers and therefore this community was not given adequate notice in which to comment to the State concerning these leases;

WHEREAS, shallow gas or CBM development could severely and adversely impact private and public property including home and land values, groundwater, roads and public safety;

THEREFORE BE IT RESOLVED, that the Kachemak City Council declares that shallow gas or CBM development is inconsistent with the goals of this residential, commercial, recreational and tourism-oriented community and that the potential adverse impacts of natural gas or CBM development would far outweigh any potential benefits and;

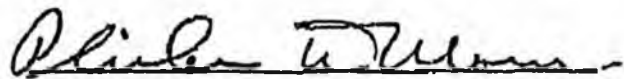
BE IT FURTHER RESOLVED, that Kachemak City requests the Director of the Division of Oil and Gas and all other relevant state agencies to immediately place a moratorium on all permitting activities related to shallow gas or CBM development in, or near, Kachemak City and;

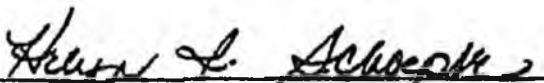
BE IT FURTHER RESOLVED, that Kachemak City requests the Alaska State Legislature to consider buying back the shallow gas leases sold in Kachemak City and the surrounding residential area, and to establish a new shallow gas and CBM program limited to non-residential lands with proper environmental safeguards and citizen participation.

BE IT FURTHER RESOLVED, that Kachemak City directs the Alaska Legislature to repeal HB69 so that local governments may properly regulate shallow gas or CBM development and impacts within their jurisdictions.

ADOPTED BY THE COUNCIL OF THE CITY OF KACHEMAK ON THIS 10th DAY OF December 2003.

CITY OF KACHEMAK


Philemon D. Morris, Mayor


Helyn I. Schoepke, City Clerk



Homer Chamber of Commerce

Post Office Box 541

Homer, Alaska 99603

March 16, 2003

(907) 235-7740

FAX (907) 235-8766

Honorable Paul Seaton
State Capitol
Juneau, AK 99801-1182 via fax 465-3472

Dear Representative Seaton:

The Homer Chamber of Commerce requests your support for legislative reforms to the mineral rights leasing process that would guarantee timely, prior notification of all affected landowners and ensure opportunities for public input. Moreover, we encourage specific legislation to address concerns we have regarding recent Kenai Peninsula coal bed methane lease awards. The Homer Chamber of Commerce supported Governor Murkowski's request for expedited permitting within the Department of Natural Resources. However, we believe there are insufficient safeguards to ensure public participation in the minerals leasing process, generally, and coal bed methane leasing, specifically.


Based on the recent experiences of our members, the Homer Chamber has identified 6 deficiencies within the State's coal bed methane lease procedures that should be addressed:

- **Insufficient Public Notification:** Proposed lease awards were not provided to local municipalities or property owners, nor were lease proposals announced in local media;
- **Insufficient Public Comment:** No mechanism was provided for public input on any proposed leases in advance of their approval;
- **Lack of Governmental Coordination:** No efforts were made to introduce gas development projects to local officials or local government planning bodies;
- **Insufficient Consideration of Local Communities and Values:** No consideration was given to the adverse impacts of gas leases on local property values, groundwater, roads, public safety or natural scenic beauty;
- **Regulatory Confusion:** Conflicting state and local regulation regarding development guidelines; and finally
- State procedures are not consistent with other industry guidelines that address local concerns.

As you know, privately held land in Alaska is a scarce commodity. According to the Department of Natural Resources, land in private ownership (other than Native land) comprises less than 1% of Alaska's total landmass. The Homer Chamber of Commerce believes that State officials and State Lawmakers must be more sensitive to local concerns regarding mineral development in these populated areas.

The Homer Chamber of Commerce believes the State must encourage and incorporate local participation on mineral development projects and adopt regulations that adequately address the concerns noted above.

Sincerely,


Julie F. Woodworth, President

cc: Governor Murkowski



Coastal Realty

Annie Whitney
Associate Broker

March 17, 2004

To Whom It May Concern:

I am writing this letter to express my recent professional experience in regards to the local Coal Bed Methane Lease issue. Because of the leases that were activated without public notice or input and the ensuing controversy, the market for raw land, in my opinion, has been compromised.

I have personally experienced a solid buyer (an investor who had purchased property through me in the past) who decided against several purchases when she found out they were in an area where the subsurface rights had been leased. I also have clients who purchased a property through me last summer call me and express grave concern and alarm because they had just found out that the property they had purchased off East End Road was part of the lease. They had anticipated moving their young family to this property to enjoy a quiet and rural lifestyle not available to them in southern Massachusetts. They are now discussing changing their plans and selling their property. However, the threat, now, of not being able to resell and recoup their losses is very real, since more and more buyers are refusing to purchase properties impacted by these leases.

In my opinion this was a VERY ill-advised decision made within the State of Alaska bureaucracy and it is impacting me personally and my personal ability to do business, as well as impacting property values and the ability of owners to sell their property.

Thank you for your attention to this matter.

Sincerely,

Anne C. Whitney
Associate Broker

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Anchor Point



Location of detail



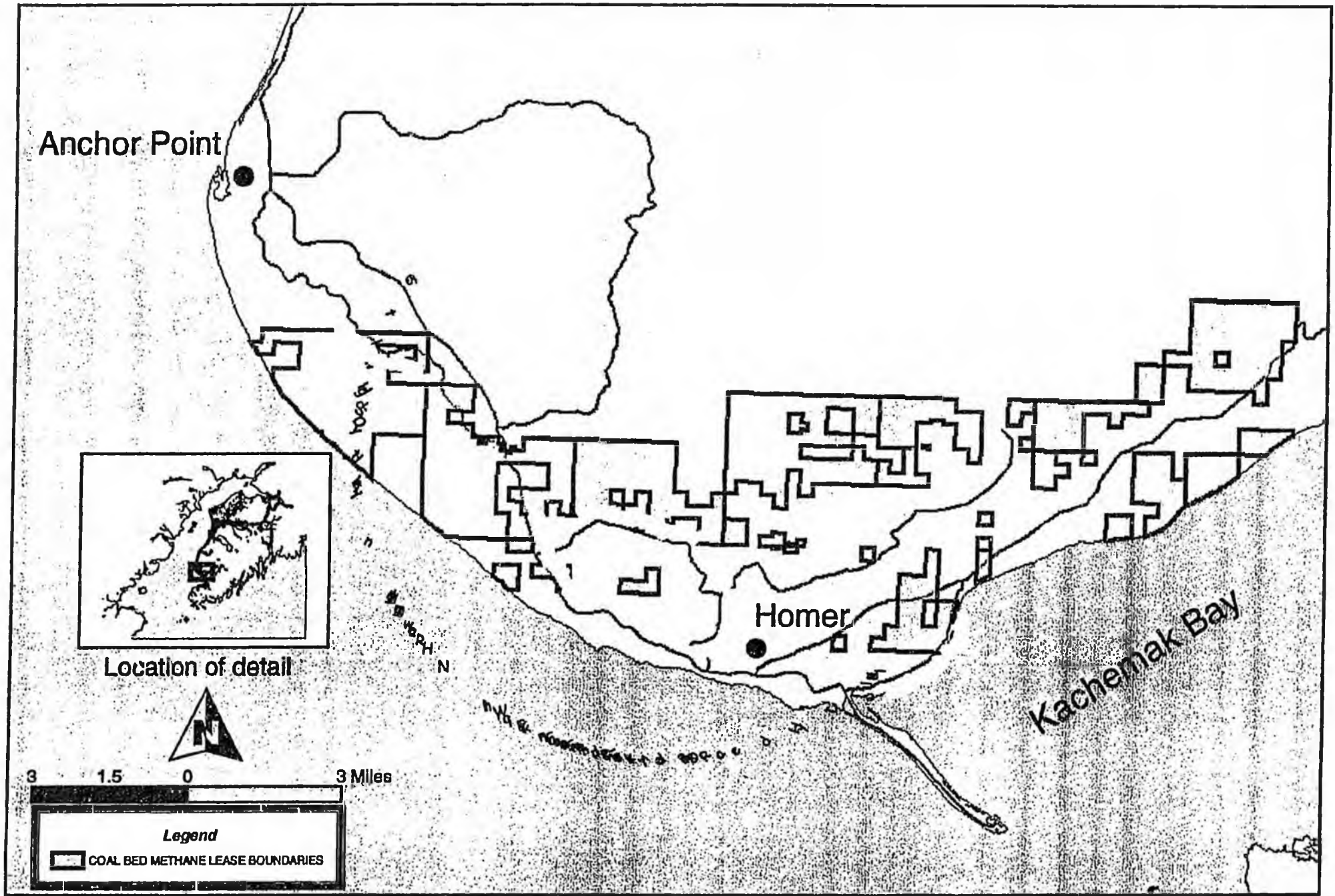
3 1.5 0 3 Miles

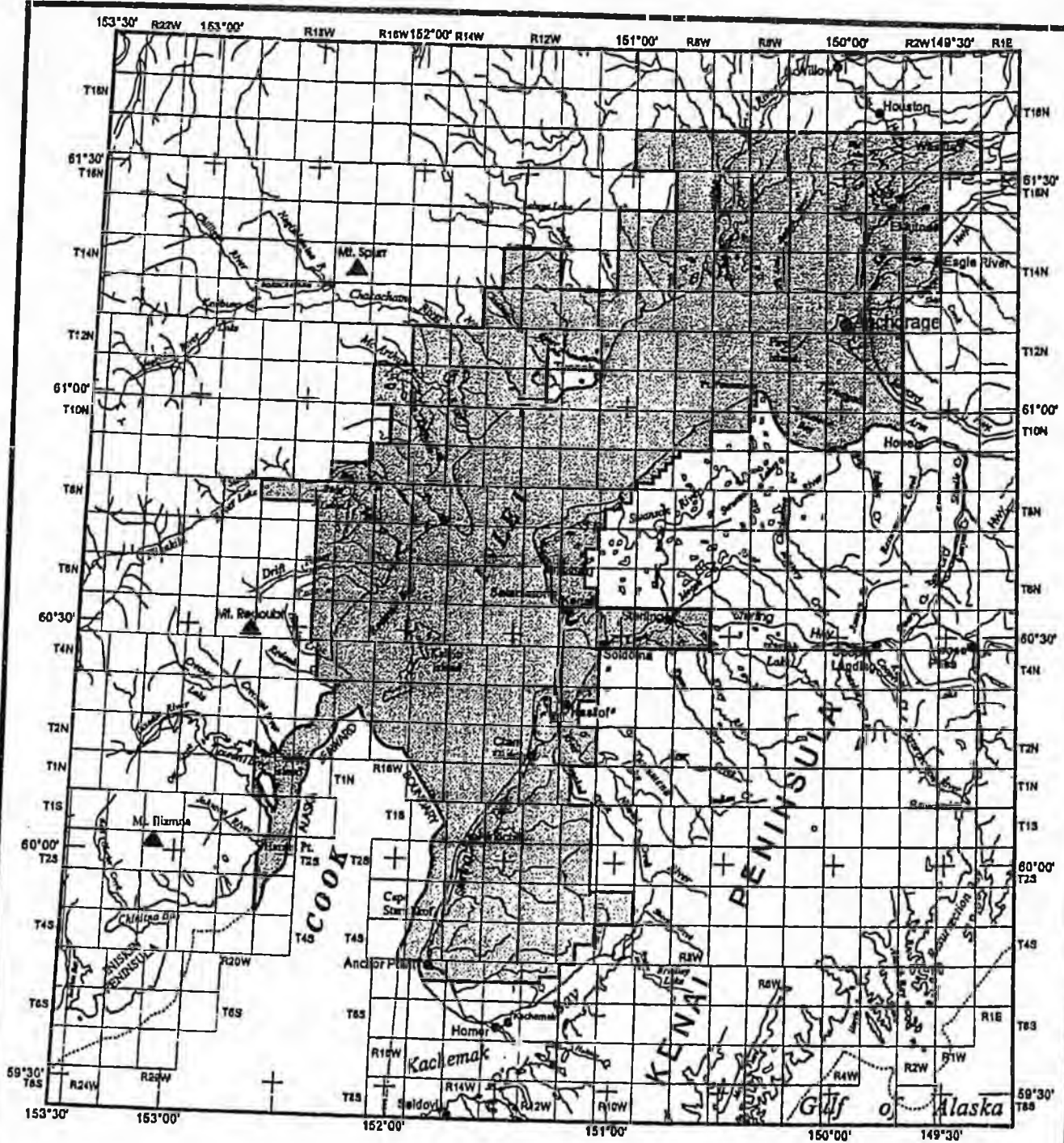
Legend

COAL BED METHANE LEASE BOUNDARIES

Homer

Kachemak Bay

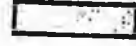




STATE OF ALASKA
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF OIL AND GAS

COOK INLET AREAWIDE

Proposed Sale Area



SCALE 1:1,425,000 ONE INCH EQUALS 22.5 MILES APPROX.