

five (5) feet, except at those points where the pipeline intersects a road, pad or caribou ramp. (3-6.4)

(d) Development in floodplains, shoreline areas, and offshore is required to be sited, designed and constructed to minimize loss of life or property due to oceanic storms, sea waves, ice gouging and override, and shore erosion. (5-4.2)

(e) Mining and mineral processing in the coastal area is required to be designed and conducted to minimize impacts on subsistence species habitat, land and water resources, and general environmental conditions. (5-5.3)

19.80.050 Beneficial Impacts The Administrator will consider the following features when making the determination set forth in Section 10.60.030.

(a) The joint siting and use of facilities, and the concentration of development. (3-5.2, 5-2.1)

(b) Accomodation of free cross-migration of tuttu by pipelines. (3-6.4)

- (c) Design and maintenance of residential development associated with industrial and resource extraction which provides for employees to be shuttled into the area for work periods then outside to their permanent residence. (3-8.4, 5-3.3)
- (d) Development of not more than the minimum number of borrow pits to serve all Development in an area. (5-5.4)
- (e) Incorporation of utilities and multimodal transportation facilities in a single corridor. (5-6.1, 7-6)
- (f) Employment of local Borough residents. (6-1.1, 8-1.1)
- (g) Utilization of flexible employment procedures to allow subsistence pursuits by local Borough resident employees. (6-1.2, 8-3, 6-3.3)
- (h) Incorporation of job training programs for local Borough residents. (6-1.3)
- (i) Development which related to or encourages Inupiat arts and crafts. (6-2.1)
- (j) Development which provides local employment in the villages. (6-3.1)

- (k) Utilization of local private businesses or village or regional corporations as suppliers or subcontractors. (6-3.2, 8-2.1)
- (l) Development which provides or materially contributes to lower cost fuel or power to adjacent villages. (6-4.1, 6-5)
- (m) Utilization of locally obtained energy (such as locally produced coal and natural gas) or renewable sources of energy. (6-4.2)
- (n) Resource extraction development that is consistent with subsistence resources and the Inupiat culture and Inupiaq character of life. (9-1)
- (o) Excess of tax revenues over demand for expenditures. (9-2)

CHAPTER 90

DENSITY AND INCENTIVES

19.90.010 Basic Density/Intensity. The following chart sets forth the maximum basic density (for residential uses) and intensity (for nonresidential uses) for Development served by both public/quasi-public water and sewer systems:

STRICT

RESIDENTIAL
(square feet of site
per dwelling unit)

GROUP HOMES,
ROOMING HOUSES *
AND
NONRESIDENTIAL
(floor area ratio)

	EXISTING SUBDIVISION	NEW SUBDIVISION	EXISTING SUBDIVISION	NEW SUBDIVISION
Village	1 du/lot	7,000sq ft/du	1:3	1:3
Barrow Downtown Area	2 du/lot	1,000 sq ft/du	1:1.5	1:1
Barrow Residential Areas	1 du/lot	7,000 sq ft/du	1:2	1:1.5
Conservation	1 du/lot	7,000 sq ft/du	1:2	1:1.5
Resource Development	ESTABLISHED BY MASTER PLAN			

Group homes and rooming houses shall have a minimum of 100 square feet per resident

19.90.020 Basic Density/Intensity Non Public Facilities . For Development not on both public/quasi-public water and sewer facilities, the density or intensity of use shall be determined by the Borough health department as the highest density or intensity which can be justified under public health standards. The density or intensity may not be altered pursuant to the provisions of Subsection 19.90.040, below.

19.90.030 Incentives — Application and Eligibility.

19.90.031 Application. Conditional Uses and rezonings to the Resource Development District may request, as part of their application, any of the incentives set forth in Section 19.90.040 et. seq.. Any application requesting incentives shall state, clearly and concisely, the isolated impact of the requested incentives. The application and evidentiary materials shall be prepared as if the requested incentives will be granted and the application should state whether it is dependent on the incentives being approved or whether the Developer will accept a permit only if some or all of the incentives are granted.

19.90.032 Eligibility. To approve incentives requested by a Development, the Commission must find, at the time of permit or rezoning approval, that:

- (a) The Development, if proposed without the requested incentive(s) would represent a significant net public benefit; and

(b) The Development as proposed (with requested incentives) meets all the standards of Section 19.60.030.

(c) Conditions pursuant to Chapter 80 may be placed on approval of incentives.

19.90.040 Density Bonus. Density bonuses up to 50% may be granted, by the Commission for Development served by both public/quasi-public water and sewer, which either;

* Increases public or private services to local residents;

or

* Improves housing for local residents.

No reduction in the minimum living space set forth for residents of group homes or rooming houses may be granted.

19.90.050 Industrial Development Bonds. The Borough Assembly may approve Industrial Development Bond financing for any nonresidential Development with a viable, continuing program for hiring (and training if applicable) residents of the Borough.

19.90.060 Tap Fee Reduction. The Assembly may approve a reduction in water or sewer tap fees for any of the following:

19.90.061 Development by public or quasi-public agencies;

19.90.062 Rent-subsidized residential Development;

19.90.063 Development which constructs and dedicates to public use, water or sewer lines or treatment facilities in excess of its own needs.

19.90.070 **Operation, Security and Maintenance.** The Assembly may contract to operate and provide maintenance for some or all quasi-public facilities (such as water and sewer treatment facilities, roads, training facilities, recreation facilities, etc) and provide fire protection and security for private Development in Resource Development Districts where the Developer agrees to:

19.90.071 Construct the facilities at its own cost;

19.90.072 Provide a specific public benefit for the service provided by the Borough, such as (but not limited to) allowing limited or complete public access to the facility, agreeing to dedicate it to the public in the future, agreeing to a hiring program (in the case of job-training facilities), paying the Borough for the services, using unusually expensive design or techniques to mitigate negative impacts of the Development, or any other monetary or non-monetary public benefit which the Assembly, in its sole discretion, deems adequate.

19.90.080 **Procedure for Incentives.** A Development Permit application with a request for a density bonus will be decided pursuant to the procedure for variances set forth in Section 19.60.060. A Development Permit application with a request for any other type of incentive, and rezonings with a request for any type of incentives, will be decided pursuant to the procedure for rezonings set forth in Section 19.40.063.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

EXXON COMPANY, U.S.A.

POLICH 6601 • ANCHORAGE, ALASKA 99502 (907) 276-4552

ALASKA OPERATIONS
WESTERN DIVISION

RICHARD H. WEAVER
OPERATIONS MANAGER

December 7, 1982

Re: North Slope Borough Draft
Comprehensive Plan and
Land Management Regulations

Mr. James Stotts
Assembly Chairman
North Slope Borough
Box 69
Barrow, AK 99723

Dear Mr. Stotts:

Exxon appreciates this opportunity to present its comments concerning the referenced Comprehensive Plan and Regulations, scheduled for formal Assembly consideration in the near future. As you may know, Exxon has provided comments on earlier drafts to the Planning Commission. Our goal has been to persuade the Borough to adopt a planning ordinance which will meet its local planning needs without hampering the efforts of state and federal agencies and oil and gas lessees, as well as other developers, from exercising their property rights to develop resources on state and federal lands. To date, our efforts have met with only limited success.

The draft now before you espouses the same fundamental philosophy which has been a matter of primary concern to Exxon throughout the entire process. The planners and their consultants have failed to recognize that the Borough's needs will not be well-served by an ordinance which establishes a cumbersome and duplicative permitting process for activities over which the Borough has only very limited authority.

The current draft has been improved by its stated recognition of geographical limits on Borough authority, and further improved by zoning of existing units of oil and gas leases as Resource Development District. The draft fails, however, to properly recognize the paramount rights of lessees to develop existing and future state and federal leases and future units. Moreover, the draft would attempt to impose numerous technical and operational restrictions upon state and federally approved activities in areas outside the scope of the Borough's geographic authority, including the NPR-A, the Arctic National Wildlife Refuge, the Outer Continental Shelf and other state and federal lands.

The restrictions imposed by the draft ordinance are not only unauthorized by law, but they are also unsupported by scientifically verifiable information. The drafters of this ordinance have placed undue pre-eminence on subsistence uses to the exclusion and/or severe limitation of petroleum development. The drafters have opted for prohibiting development, mandating categorical prohibitions of some activities, and imposing stringent limitations that would effectively block development.

Further, the proposed ordinance does not take into consideration the inescapable fact that Exxon and other industry members have operated safely in the Arctic for many years without a single incident of serious, or even moderate, environmental damage and without any measurable negative effect on wildlife or the subsistence values of the North Slope. The drafters have failed to attribute this safety record to anything more than sheer good luck, ignoring industry's efforts in training personnel to operate safely, designing structures to withstand Arctic conditions, and developing the capability to handle any spills which might occur.

The permitting process which would be established by this proposed ordinance is for the most part unnecessary and, to the extent it applies to oil and gas operations, counterproductive. Although the Borough can and should implement a planning process for the protection of human health and safety, its efforts to establish detailed restrictions on development over a large geographical region are unwarranted for the following reasons: first, there exist state and federal regulatory processes capable of considering and responding to the legitimate concerns of the Borough; second, many of the concerns incorporated in the proposed ordinance are shared by industry as well as state and federal agencies so that the regulations are duplicative; third the provisions of the ordinance are insensitive to developing technology or varied operating conditions; and fourth, to the extent the Borough's restrictions would block development permitted by state and federal agencies having jurisdiction, those restrictions are unenforceable.

The Alaska Constitution, statutes and case law uniformly provide that the regulation of oil and gas activities is a matter of statewide concern. A home rule borough may not adopt regulations that interfere with oil and gas activities authorized by state agencies pursuant to state statute. Alaska cases hold that local regulations cannot block the implementation of a specific statewide policy.

With regard to the ability of a home rule borough to regulate oil and gas exploration and development authorized by a federal agency pursuant to federal law, the Borough's power is limited by the Supremacy Clause of the United States Constitution which provides that the laws of the United States "shall be the supreme law of the land." Federal cases hold that state and local

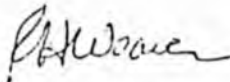
James Stotts
December 7, 1982
Page 3

governments cannot enact regulations which obstruct the achievement of a Congressionally approved use of federal lands.

The Comprehensive Plan and Land Management Regulations before you today have been consciously drafted so as to exceed the limits of home rule authority. The almost certain result of the adoption of this ordinance would be that those limits will be shaped by costly, time-consuming litigation, to the detriment of the Borough, the State, and the nation, as well as our industry.

Exxon fully endorses the comments presented by AOGA. We urge you to carefully consider our comments today and to return the Comprehensive Plan and Land Use Regulations to the Planning Commission for amendment. As we have throughout this process, we wish to work with the Borough and its staff for the development of a workable plan.

Sincerely yours,



R. H. Weaver

RHW:cas/542

Alaska Oil and Gas Association



505 W. Northern Lights Boulevard
Suite 219
Anchorage, Alaska 99503
(907) 272-1481

December 7, 1982

Mr. James Stotts
Assembly Chairman
North Slope Borough
P.O. Box 69
Barrow, AK 99723

Re: North Slope Borough Draft
Comprehensive Plan and Land
Management Regulations

Dear Mr. Stotts:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 39 member companies account for the bulk of oil and gas exploration, production and transportation in Alaska. AOGA appreciates this opportunity to present comments on draft 3 of the Comprehensive Plan and Land Management Regulations which is being considered for adoption by the Assembly at this time.

As you are aware, AOGA, its member companies and state agencies, have been involved in the planning efforts of the NSB since 1978, beginning with the Borough's Coastal Management Program, which was withdrawn in January, 1980. Other efforts of the NSB include the Interim Zoning Ordinance of 1979 and Comprehensive Plan and Zoning Ordinance of 1981. The oil and gas industry and state agencies have expressed serious legal, technical and administrative concerns with those documents. While the documents before us today represent improvements over those previous documents, many of our legitimate concerns remain and new ones have emerged. We hope that the Assembly will accept our expression of these concerns as constructive and will give them full consideration prior to final action. The following remarks highlight our major concerns and recommendations. Attachments to these remarks contain more detailed comments for use in your evaluations.

At the outset, it is important to note that extensive and serious legal problems with the Comprehensive Plan and Regulations still remain unresolved and should be addressed by the Assembly before adoption. These legal issues are detailed in Attachment 1 and will only be briefly addressed in these remarks.

AOGA firmly believes that the Borough is moving much too fast with the adoption of the Comprehensive Plan and Land Management Regulations. During the past three months, three drafts of the proposed Plan and Regulations have been issued in rapid succession for public review and consideration by the Planning Commission. During this period, the oil and gas industry raised a

number of legal, technical and administrative issues with respect to these draft proposals in an effort to assist the Borough in developing a Plan and Regulations which properly address the separate and mutual interests of all parties involved. Many of these issues, which are also important to the Borough's own future development plans, remain unresolved. It is our belief that the public and the Assembly have not had adequate time for consideration of the Plan and Regulations. The present draft is not suitable for adoption at this time.

Aside from the basic issue of the Borough's zoning jurisdiction over oil and gas development of state and federal lands, the petroleum industry is concerned that the proposed Plan and Regulations provide such broad discretionary powers to the Administrator and Planning Commission that oil and gas development projects vital to the state and nation may be seriously impeded. The proposed Plan and Regulations will surely result in many conflicts between the Borough and the state and federal governments. We believe that the only practical and reasonable approach is for the NSB to work through state and federal agencies on oil and gas matters at the various stages of leasing, plan approvals and permitting decisions. The goals, objectives and policies developed by the Borough in the preparation of the Comprehensive Plan and Land Management Regulations will provide the basis for the Borough's participation in state and federal decision-making processes. The establishment of a separate NSB permitting scheme and a Master Plan requirement for oil and gas development, however, would be counterproductive and result in lengthy and expensive litigation.

In addition to these two legal issues, there is a question regarding the ability of the Borough to effectively implement the proposed Comprehensive Plan and Regulations if enacted on January 1. To our knowledge the administrative procedures, forms and checklists necessary to implement the Plan and Regulations are not presently under development and therefore will not likely be available on January 1. Additionally, a major component of the Comprehensive Plan, the proposed Coastal Management Program, to which repeated references are made in the Plan and Regulations, will also not be in place on January 1. As a result, we urge the Assembly to seriously consider delaying adoption of the Plan and Regulations until the Borough's Coastal Management Program has been given conceptual approval. This would provide the necessary additional time to develop the administrative procedures for effective implementation and to more completely address the unresolved issues, thereby assuring an orderly transition from the present program under the Interim Zoning Ordinance.

Should the Assembly nevertheless decide to pursue adoption of the Comprehensive Plan and Land Management Regulations at this time, we offer the following technical changes found in Attachment II for your consideration. Although these changes would not resolve all of the remaining issues, they would go a long way toward facilitating Borough and industry development activities proceeding in a timely manner without significantly compromising the other interests and long range goals of the Borough. These suggested changes can be summarized as follows:

1. The portions of the Land Management Regulations which would require rezoning, master plan approvals and permits should be modified. We commend the Planning Commission for having made modifications in the Land Management Regulations which zone all existing unitized areas as

Resource Development Districts. However, these modifications fall short of satisfying the need that all existing and future state and federal leases and units within the territorial jurisdiction of the Borough be similarly rezoned as a matter of course.

2. The Planning Commission has correctly recognized the priority afforded to uses of state concern under the Alaska Coastal Management Act and has provided some protection for uses of state concern in the proposed Regulations. However, a separate Master Plan and permit approval by the Borough as contemplated in these Regulations will either lead to irreconcilable conflicts with decisions of state and federal permitting agencies or result in a mere duplication of state and federal regulations and permits. The NSB should use the policies developed as part of the Comprehensive Plan and Land Management Regulations and the NSB Coastal Management Program as a basis for its consultation with the appropriate state and federal agencies. Such consultation procedures are established under existing regulations and programs. Where consultation rights are not clearly established in existing processes, the NSB should seek to establish those rights by agreement between the Borough and the appropriate state or federal agency, primarily with the Department of Natural Resources and the Mineral Management Service on oil and gas matters.
3. Vague and discretionary policies which create uncertainty as to their meaning and application should be rewritten to require a conclusive finding of adverse effect and evaluation of possible mitigating measures before prohibitive policies are applied to decisions on development activities.
4. Policies which impose technical or design constraints should be eliminated. Performance criteria with appropriate mitigating measures should be applied on a case-by-case basis. Specific design criteria should not be adopted as Borough policy.
5. Policies not pertaining to land and water uses should be rewritten as goals or objectives, and should not be used as the basis for decisions on development activities.
6. Policies which allow participation by the villages in NSB planning efforts are an important concept adopted by this version of the Comprehensive Plan and Regulations. However, the Borough must ensure that it does not impermissibly delegate decision-making authority to local jurisdictions.
7. Many terms used in the Comprehensive Plan and Regulations are inadequately defined, or are not defined at all, and require further specification before this document is adopted.
8. Miscellaneous corrections, additions or deletions have been suggested to eliminate inconsistencies, clarify intent and otherwise improve the accuracy of the document.

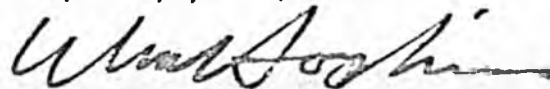
The Alaska Oil and Gas Association recognizes the importance of this planning effort to the Borough. The Assembly must recognize, however, that this document, if adopted, will have far reaching implications for future development in the Borough. We, therefore, urge you to give careful consideration to adoption of our recommendations before this planning effort is brought to a

Mr. James Stotts
Page 4
December 7, 1982

conclusion. We again urge that the Assembly not take action on the Comprehensive Plan and Regulations until the Borough's proposed Coastal Management Program has been adequately developed so that the two documents can be conceptually adopted in concert.

AOGA and its member companies continue to stand ready to offer our advise and assistance to the Borough in bringing these important planning efforts to a satisfactory conclusion.

Very truly yours,



WILLIAM W. HOPKINS
Executive Director

WWH: jlp
NSB008

xc: Mayor Eugene Brower
Members of the NSB Assembly
Mr. Bud Stevens

Attachment I

AOGA Comments

Legal Considerations

NSB Comprehensive Plan and Regulations

Procedural Problems

The North Slope Borough has been in the process of developing a land use management plan since 1978. Starting with its draft Coastal Management Program, which was eventually withdrawn from state consideration in January, 1980, the Borough has sought to gain control over petroleum development across the great expanse of the North Slope of Alaska. In late 1979, the NSB adopted its Interim Zoning Ordinance. Early in 1981, the NSB Planning Commission issued a draft Comprehensive Plan and Zoning Ordinance that has been under revision since August, 1981. Extensive changes were made and on September 15, 1982, the NSB Planning Department issued an entirely new document, entitled Comprehensive Plan and Land Management Regulations (draft 1). This document was the subject of a Comprehensive Plan Policies Workshop on September 24, 1982, in Barrow. Draft 1 was subsequently revised and a new version issued on October 8, 1982. On October 15, 1982, the Planning Commission held a public hearing on draft 2. Another draft, Draft 3, which was not a complete document but merely an addition and partial revision of draft 2, was made available to the public on November 5, 1982; that same day it was adopted by the Planning Commission after a number of amendments had been made. On November 9, 1982, the draft 3 version of the document was presented to the NSB Assembly for action and the Assembly scheduled a hearing for December 7, .

1982. As of this date, an approved complete copy of the Plan, as amended and adopted by the Planning Commission on November 5, has not been made available to the public. Since a complete copy of the Comprehensive Plan is not available, the Borough has failed to provide adequate notice as required by its Charter.

AOGA is very concerned with the lack of opportunity afforded by the NSB for meaningful public participation within the last three months. Members of AOGA have attempted to participate in the development of the Comprehensive Plan and implementing Regulations from the earliest drafts, however, public participation has been frustrated by not having the complete document under consideration by the NSB Assembly and the lack of adequate time for review. Furthermore, industry's comments and recommendations, legal and technical, have been largely ignored, including comments made by industry representatives at the September 24, 1982, workshop.

We firmly believe that the Borough is moving too fast for the adoption of this Plan and Regulations. The Plan is confusing and there are many inconsistencies between the Plan and the Regulations. In addition, it is not clear how the Plan and Regulations will be integrated with the NSB's Coastal Management Program which is currently under development. Lastly, there are serious legal, technical and administrative problems within the documents. We recommend that the NSB Assembly delay action on the proposed Plan and Regulations and develop them in concert with its Coastal Management Program (CMP), since the CMP is a major component of the Plan and Regulations. "Concept approval" by the Assembly should be given both documents simultaneously prior to being submitted to the state for approval.

Substantive Problems

The policies and regulations of the North Slope Borough's (NSB) draft Comprehensive Plan in many cases conflict with both state and federal law. Specifically, the draft Comprehensive Plan and implementing Regulations are in conflict with the Alaska Constitution, Alaska Coastal Management Act, Alaska Lands Act, the Alaska Oil and Gas Conservation Act, the U.S. Constitution, the Federal Coastal Zone Management Act, the Outer Continental Shelf Lands Act, and other federal and state statutes which regulate oil and gas activities.

The goals, objectives and policies of the Comprehensive Plan and implementing Regulations give priority and protection to subsistence activities by right throughout the Borough while restricting or prohibiting other legitimate uses of state and national concern. The proposed Plan and Regulations seek to give the Borough ultimate control over industrial activities (primarily oil, gas, and mineral development) or prohibit/restrict such activities in the Borough. A clear anti-development bias pervades the objectives and policies of the proposed Plan, and the Plan purports to exert control over not only Borough owned lands but also private, state, and federally owned lands. Many of the objectives and policies in the Plan demonstrate the Borough's intention to frustrate oil and gas exploration, development and production operations which are authorized pursuant to federal and state statutes.

The NSB's power to regulate oil and gas activities is limited by the State of Alaska's interest in uniform statewide oil and gas regulations. The Alaska Constitution, its statutes, and its case law uniformly provide that the regulation of oil and gas activities is a matter of statewide concern. Numerous Alaska

statutes have been enacted to control oil and gas activities within the Borough. The principal statutes involved are the Alaska Lands Act (AS 38.05.005-.370) and the Alaska Oil and Gas Conservation Act (AS 31.05.005-.370). The Alaska Coastal Management Act also recognizes petroleum development as a use of a statewide and nation-wide concern [AS 46.40.020(7) and 46.40.210(6)].

Alaska law is clear regarding the limits of a home-rule borough's authority under Title 29 of the Alaska Statutes. A home-rule borough, such as the NSB, may exercise legislative powers so long as they are not "prohibited by law or charter" (Alaska Constitution, Article X, Section 11). The Alaska Supreme Court has stated the test for determining when a local enactment is "prohibited by law or charter" in Jefferson v. State, 527 P.2d 37,43 (1974):

The prohibition must be either by expressed terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.

In resolving conflicts between state statutes and local ordinances, the Alaska Supreme Court has recognized and applied the "local activity rule." Under this approach, the court must determine whether the matter regulated is of statewide or local concern. (MaCauley v. Hildebrand, 491 P.2d 120, 122 (Alaska 1971)).

The rule was applied in Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970), and restated in Johnson v. City of Fairbanks, 483 P.2d 181 (Alaska 1978) where the Court states: "We resolved the conflict [in

Chugach Electric] by applying a rule requiring the local enactment to yield if it directly or indirectly impeded implementation of statutes which sought to further a specific statewide policy." The rule stated above was recently restated and applied to the zoning and planning area in Kenai Peninsula Borough v. Kenai Peninsula Board of Realtors, Inc., slip op., October 15, 1982.

The Alaska Constitution mandates state control in the use of Alaska's natural resources, including oil and gas. The pertinent provisions are found in Article VII:

Section 1. Statement of Policy. The policy of the State is to encourage the settlement of its lands and the development of its resources by making them available for maximum use consistent with the public interest.

Section 2. General Authority. The Legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including lands and waters for the maximum benefit of its people.

Section 6. State Public Domain. Lands and interests therein including submerged and titled lands possessed or acquired by the State and not used or intended exclusively for governmental purposes constitute the State public domain. The Legislature shall provide for the selection of lands granted to the State by the United States and for the administration of the State public domain.

Section 8. Leases. The Legislature may provide for the leasing of and the issuance of permits for exploration of any part of the public domain or interests therein subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from non-compliance with the terms governing concurrent use and for forfeiture in the event of breach of condition.

Section 12. Mineral Leases and Permits. The Legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium phosphate, potash, sulfur, pumice and other minerals as may be prescribed by law. Leases and permits granting these exclusive rights of exploration for these minerals for specific periods and areas subject to reasonable and concurrent exploration as to different classes of minerals may be authorized by law. Like leases and permits giving the exclusive right of prospecting the physical, geochemical and similar methods for all minerals may also be authorized by law.

The clear policy of the State as provided in the Constitution is to encourage the development of the State's natural resources. The Legislature is exclusively charged with the administration of state lands, and specifically directed to provide for the utilization and development of all natural resources belonging to the State. The Legislature is also directed to regulate the issuance of oil and gas leases. In particular, leases and permits granting the right to explore for oil and gas are authorized by law. These provisions form a constitutional mandate for pervasive state administration of its lands, including the use and development of the state's natural resources. The language is mandatory, not

permissive. Its provisions entrusting these matters to the state legislature are unqualified. Local units of government have neither authority nor responsibility in these fields. Even should the State Legislature delegate a portion of this authority to municipalities to enable them to meet varying conditions within the different localities, such delegation could not diminish its constitutionally mandated control of state lands and natural resources. Given the conflict between the NSB's draft Comprehensive Plan and implementing Regulations and the Legislature's exercise of its constitutional authority, the Legislature's enactment must prevail.

The Alaska Lands Act contains an express prohibition preventing any municipality from closing state lands to oil and gas exploration, development, and production. AS 38.05.135(a) provides in part:

Except as otherwise provided, valuable mineral deposits in lands belonging to the State shall be open to exploration, development and the extraction of minerals. All lands, together with tide, submerged, or shorelands, to which the State holds title or to which the State may become entitled, may be obtained by permit or lease for the purpose of exploration, development and the extraction of minerals.

A clear policy in favor of keeping state lands open for oil and gas exploration, development, and production is found in AS 38.05.350, which provides that "[i]t is a policy of the State to encourage the settlement of its lands and the development of its resources by making them available for maximum use

consistent with the public interest." AS 38.05.035(a) also demonstrates that exploration, development, and production of oil and gas is a matter of statewide concern, and that it is Alaska's policy to encourage such development on state lands. AS 38.05.035(a)(14) authorizes the leasing of state lands once it is found that the "interests of the State will be best served." With specific reference to oil and gas, AS 38.05.180(a) provides:

The legislature finds that (1) the people of Alaska have an interest in the development of State oil and gas resources to (A) maximize the economic and physical recovery of the resources; (B) maximize competition among parties seeking to explore and develop the resources; (C) maximize use of Alaska's human resources in the development of the resources;

The Alaska Lands Act is, therefore, clear and unambiguous: the determination of which state land should be leased and the conditions or limitations to be contained in the lease agreements are matters of statewide concern.

In the absence of the adoption by the North Slope Borough of a district coastal management program pursuant to the Alaska Coastal Management Act, the state coastal management program applies to the North Slope Borough.

The NSB draft Comprehensive Plan and implementing Regulations approve subsistence use as a matter of right throughout the Borough, yet severely restrict competing uses in all land use districts outside the Resource Development District. This designation arbitrarily and unreasonably restricts "uses of State

concern," within the meaning of the ACMA. The Borough employs the subsistence designation to potentially exclude other competing uses, including oil and gas operations, within the Borough's boundaries. Although subsistence is certainly one use of State concern if properly substantiated and limited in scope, the Borough cannot avoid its obligation to balance and accommodate competing uses by simply designating its entire coastal zone and three of the four land use districts as subsistence areas. It is not the purpose of the ACMA to protect any single use, and the ACMA does not authorize the Borough to exclude uses of state and national interest based on purely local concern; it instead requires the balancing of legitimate state interests with reasonable standards for the protection of proper local concern.

As in Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970) and other cases establishing the "local activity rule" in Alaska, the matters covered by the ACMA are of statewide concern. By express statutory definition, the siting of energy facilities and other activities pursuant to a state or federal oil and gas lease are uses of state concern. AS 46.40.210(6)(c). The reasoning of Chugach Electric, therefore, is directly applicable to the NSB's proposed permitting plan. The Borough has no authority to interfere with a State statutory scheme by unreasonably restricting uses of state concern.

The Department of Natural Resources has implemented the Constitutional and statutory policy of natural resources development by issuing oil and gas leases. These leases were issued on the condition that oil and gas work was to be performed on the leased area. The draft Comprehensive Plan and implementing Regulations will impede this policy. Under the draft Comprehensive Plan and

implementing Regulations, all oil and gas activity requires a permit from the NSB. Under the "local activity rule," once the Department of Natural Resources has determined that the issuance of an oil and gas lease is in the best interest of the State, this determination may not be nullified because the Borough withholds a permit under narrowly defined local considerations.

The Alaska Supreme Court has recognized the State's interest in regulating and developing oil and gas resources on a statewide basis. In North Slope Borough v. LeResche, 581 P.2d 1,112 (Alaska 1978), the Court held that the Commissioner of Natural Resources had the authority to reject the Borough's application to select State lands overlaying the Prudhoe oil field on the ground that it was in the best interest of the State.

The NSB's attempt to restrict already limited petroleum related activity in State oil and gas lease areas is analogous to previous cases where the Alaska Supreme Court has held that state law preempts a home rule municipality from validly exercising legislative power. The Commissioner of the Department of Natural Resources has made the determination that certain state lands should be open to oil and gas development, and has promulgated extensive regulations governing such activity. This constitutes a prohibition upon the exercise of the Borough's zoning authority to further restrict or exclude petroleum related activities on these lands. The Borough cannot enact regulations which interfere with petroleum related activities in areas which the Commissioner has determined should be open for such activities.

The Alaska Supreme Court has held that ordinances of home rule municipalities are prohibited if they directly or indirectly impede implementation of State

statutes which seek to further a specific statewide policy. The Alaska Constitution, the Alaska Oil and Gas Conservation Act, and the Alaska Lands Act evidence a strong state policy in favor of oil and gas development. The proposed Comprehensive Plan and implementing Regulations greatly restrict oil and gas activity within the North Slope Borough and require a permit for activity in all areas of the Borough. These restrictions act as an impediment to oil and gas activity in irreconcilable contravention of State policy. To the extent that the Borough's proposed Comprehensive Plan and implementing Regulations interfere with the implementation of State policy, they are invalid.

In addition to the state law prohibitions against Borough regulation of state lands, the federal Constitution forbids such regulation by the Borough on federal lands.

A. The Supremacy Clause

The doctrine of federal preemption is derived from the Supremacy Clause of the United States Constitution (Article VI, Clause 2). This clause elevates federal law above that of a State and provides:

[t]his Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby anything in the Constitution or laws of any state to the contrary notwithstanding.

The Supremacy Clause has been found directly applicable to local regulatory schemes. In Ventura County v. Gulf Oil Corporation, 601 F.2d 1080 (9th Cir. 1979), aff'd 445 U.S. 947, 100 S.Ct. 1593 (1980), the Court of Appeals held that federal regulations of oil and gas activities on federal lands pursuant to the Mineral Lands Leasing Act of 1920 preempted local regulation of the same activities. Gulf Oil had received an oil and gas lease pursuant to the Mineral Lands Leasing Act and obtained the necessary federal permits to drill a well under the terms of the lease. Ventura County sought to require Gulf to obtain a county oil exploration and extraction permit pursuant to its local zoning ordinance prior to the commencement of activities under the federal lease and permits. The federal appeals court rejected the County's argument that there was no evidence of either the Congressional intent to preempt local regulation nor any conflict between local and federal law that could be resolved only by exclusion of local jurisdiction. It held:

We need not consider the extent to which local regulation of any aspect of oil exploration and extraction upon federal lands is precluded by federal legislation; the local ordinances impermissibly conflict with the Mineral Lands Leasing Act of 1920 and on this basis alone they cannot be applied to Gulf. (601 F.2d at 1083).

The Court stated its conclusion succinctly: "The states and their subdivisions have no right to apply local regulations impermissibly conflicting with achievement of a congressionally approved use of federal lands. (601 F.2d at 1086).

The Ventura County case is directly applicable to the NSB's draft Comprehensive Plan and implementing Regulations. Like Ventura County, the NSB is attempting to regulate oil and gas operations of a lessee on federal lands by ordinance. The draft Comprehensive Plan and implementing Regulations purport to be based on the Borough's home rule powers. Home rule authority, like all state powers, is necessarily limited by the Supremacy Clause of the U.S. Constitution. The Borough is attempting to limit oil and gas operations on federal lands where Congress has provided for the regulation of these activities in the Outer Continental Shelf Lands Act and the Mineral Lands Leasing Act. These statutes are designed to further the national interest in prompt development of domestic operations, considering their environmental impacts, and encouraging state and local government participation. Nevertheless, the NSB seeks a right of final approval by requiring federal lessees to obtain a Borough permit. The Ninth Circuit's response to this demand is certain:

The federal government has authorized a specific use of federal lands, and [the Borough] cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress.

B. The Commerce Clause

Article I, Section 8, Clause 3 of the U.S. Constitution grants Congress the power to regulate interstate commerce exclusive of state control. The Commerce Clause has long been held to allocate decision making between state and federal governments in limitation of state or local action which may burden free trade between the states. Where Congress has not exercised its commerce power so

fully as to preempt state regulations, the courts must decide whether the Commerce Clause standing alone bars a particular state imposition on national commerce. Case law generally holds that state and local legislation will not be sustained unless it is rationally related to a legitimate state purpose and the resultant burden on interstate commerce is outweighed by the state interest involved.

In weighing the burdens on interstate commerce, which would result from the NSB's draft Comprehensive Plan and implementing Regulations, it is conceivable that the tight restriction on pipelines and onshore activities could make OCS and onshore development impossible or prohibitively expensive. In the absence of a compelling local interest, such as protection of some unique physical or biological resource, a court would be unlikely to find that the promotion of local subsistence and unfounded environmental objections justify interference with the flow of OCS and onshore oil through the state. Under the draft Comprehensive Plan, the Borough attempts to restrict development activity to a single Resource Development District. Such a restriction would effectively deny oil and gas lessees access to onshore transportation and other necessary facilities. The burdens imposed on interstate commerce by the NSB's draft Comprehensive Plan and implementing Regulations would be far greater than the benefits received by the Borough. Federal courts in a number of cases have struck down local zoning ordinances which attempt to regulate LNG pipelines. These cases hold that such restraints imposed by a municipality are unreasonable and without justification in the interest of health, safety, and welfare. Such restraints are, therefore, an undue burden on interstate commerce.

The Borough's regulation of oil and gas activity based on protection of subsistence activities must be weighed against the burdens placed upon interstate commerce by such regulation. Whether the burden thereby placed on interstate commerce can withstand a Commerce Clause attack depends on the extent to which the Borough actually restricts or prohibits oil and gas activities. The NSB's draft Comprehensive Plan and implementing Regulations as presented do not assure the balancing of interests required to justify any such interference.

jlp/bsw

NSB/006

Attachment 2

ALASKA OIL AND GAS ASSOCIATION

Detailed Comments

Proposed NSB Comprehensive Plan
and Land Management Regulations

(Draft 3 - November 3, 1982)

INTRODUCTION

As indicated in attachment 1, many of the provisions in the comprehensive Plan and Land Management Regulations will impermissibly conflict with the state and federal governments' regulation of natural resource development. To the extent they do so, the Plan and Regulations exceed the Borough's jurisdiction and home rule powers. We urge the Borough to delete all provisions in the Plan and Regulations which purport to regulate and restrict or prohibit oil and gas activities. In the event that the Borough determines that it wants to retain such provisions and hope that they will pass legal challenges in the courts, many changes will be necessary. The comments set forth below address, for the most part, portions of the Plan and Regulations which attempt to regulate oil and gas activities. The suggested changes will not be appropriate where the Borough deletes the objectionable provisions. AOGA's suggestion of specific changes in language does not indicate that AOGA or its member companies find the policies or provisions to be appropriate.

COMPREHENSIVE PLAN:

Page 3-3, Section 3.1.4: Impacting Factors

The list of so-called forces with potential direct negative and positive impacts on the biological/subsistence resources is incomplete. Other factors may have as much or more impact on the biological/subsistence resources as those listed. The allegation that natural resource development and extraction results in direct negative impacts on biological/subsistence resources are unsubstantiated by industry experience in the Arctic. See letter dated November 1, 1982, from John W. Katz, Commissioner of the Alaska Department of Natural Resources to Mr. George "Bud" Stevens. Commissioner Katz stated in his comments on the draft Comprehensive Plan and Land Management Regulations that:

"Inherent in the Borough's plan is the assumption that oil and gas activities are incompatible with the subsistence lifestyle of the Borough's residents. I question this assumption, especially in light of the limited impact that the existing oil and gas activity has had on fish and wildlife resources on the North Slope. While some habitat has been altered and some animals have been displaced, the cumulative impacts on fish and wildlife have not been significant. In addition, the impact of existing development on subsistence hunting and fishing activity also has been minor. While there are some who are sincere in their beliefs that oil and gas activity has been the cause of lower subsistence yields, I have not seen convincing evidence to support this cause and effect relationship. In the absence of new evidence, I am also confident that future oil and gas activity will not result in significant impacts to wildlife habitats or subsistence activity if

the present level of environmental protection and concern resulting from state and federal regulations is continued. Also, results from state and federal onshore and offshore oil and gas lease sales indicate that the industry is not interested in exploring and developing the entire North Slope."

Page 3-7, Policy 3-1.1: Development/Subsistence

Suggest modifying this policy to the following:

"Development which can be conclusively shown to result in depletion of a subsistence resource, as set forth in Section 3.5.1 of the Plan, below the subsistence needs of local residents of the Borough is prohibited unless the adverse effects of such development can be appropriately mitigated."

The suggested changes incorporate the need for conclusive evidence of adverse effect and consideration of possible mitigation before proposed development activities can be precluded under this policy.

Page 3-7, Policy 3-1.2: Development/Subsistence

Suggest modifying this policy to the following:

"Development that can be conclusively shown to result in significantly decreased productivity of subsistence resources or their ecosystems is prohibited unless the adverse effects of such development can be appropriately mitigated or no feasible and prudent alternative is available."

Comment - same as for Policy 3-1.1 above.

Page 3-7, Policy 3-1.3: Development/Subsistence

Suggest modifying this policy to the following:

"Development which can be conclusively shown to restrict subsistence user access to a subsistence resource is prohibited unless such restriction can be appropriately mitigated or no feasible and prudent alternative is available."

Comment - same as for Policy 3-1.1 above.

Page 3-7. Policy 3-1.4: Development/Subsistence

Suggest modifying this policy to the following:

"Development which can be conclusively shown to preclude subsistence user access to a subsistence resource is prohibited unless such preclusion can be appropriately mitigated."

Comment - Same as for Policy 3-1.1 above.

Page 3-8, Policy 3-2.1: Critical Habitat/Subsistence Species

Suggest modifying this policy to the following:

"Development within Special Habitat Areas identified on Plan Maps 3-6 and CMP Maps 11-2 and 11-5 is prohibited if it can be conclusively shown to significantly affect adversely the special values of such an area, unless the significant adverse effects can be appropriately mitigated or no feasible and prudent alternative is available."

Comments - Same as for Policy 3-1.1 above.

Page 3-8, Policy 3-2.2: Critical Habitat/Subsistence Species

Suggest modifying this policy to the following:

"Resource Extraction uses within a Special Habitat Area identified on Plan Maps 3-6 and CMP Maps 11-2 and 11-5 are prohibited if it can be conclusively shown to significantly affect adversely the special values of such an area, unless the significant adverse effects can be appropriately mitigated or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above.

Page 3-9, Policy 3-3.1: Marine or Coastal Development

The statement of Policy 3-3.1 involves activities clearly beyond the Borough's territorial jurisdiction and therefore is not enforceable. This statement of policy is also too vague in that it does not adequately define "high-impact

activities" and "the area of bowhead whale migration routes." We recommend deletion of this policy.

If however, this Policy is to be retained in the Comprehensive Plan and Land Management Regulations, we suggest modifying it to the following:

"Development activities that can be conclusively shown to significantly affect adversely the migration of bowhead whales and cannot be appropriately mitigated are prohibited within the area of bowhead whale migration during the migration season."

Comments - See Policy 3-1.1 above. The changes also eliminate appropriately the reference to the undefined and rather subjective term "high impact activities" without modifying the intent of the policy.

Page 3-9, Policy 3-3.2: Marine or Coastal Development

Suggest modifying this policy to the following:

"Development that can be conclusively shown to significantly impact adversely sensitive areas such as estuaries, tideflats, beaches, rivers, streams and lakes, and high energy ice impacted shorelines are prohibited unless appropriate mitigation measures are taken to minimize such significant adverse impacts or no feasible and prudent alternative is available. See Plan Maps 9 and 15 and CMP Maps 2-4 for known major occurrences of Sensitive Areas; the policy will be applied on an actual occurrences basis, however."

Comment - Same as for Policy 3-1.1 above.

Also, map references are confusing - Plan Map 15 does not presently exist and the CMP Map reference is incomplete.

Page 3-9, Policy 3-3.4: Marine or Coastal Development

Suggest modifying this policy to the following:

"Development is prohibited on or in the immediate vicinity of Barrier Islands intensively used by beluga whales as feeding and resting areas if it can be conclusively shown to significantly affect adversely such feeding or resting activities, unless the significant adverse effects can be appropriately mitigated, or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above. The changes also appropriately eliminate the reference to the undefined and subjective term "high-impact activities" without modifying the intent of the policy. Additionally, this change would eliminate the inconsistency with Policy 3-5.3 on page 3-10, which states that barrier islands are preferred over other (non-gravel) structures.

Page 3-10, Policy 3-4.2: Shoreline Development

The revision of this policy to allow development on the shoreline where there is no feasible and prudent alternative available is an improvement. However, coastal dependant industry should not be burdened with the requirement to investigate alternative site locations with the associated economic studies

because the industries are allowed shoreline locations by the Coastal Management Laws. This policy should be written as a relative policy encouraging development outside the shoreline where feasible and prudent inland alternatives exist. This comment applies also to Policy 5-2.3.

Pages 3-10 and 3-11, Policy 3-5.3: Resource Extraction

The Borough should not attempt to regulate the choice and design of offshore structures located outside its territorial jurisdiction. Further, this would needlessly duplicate both federal and state existing authority. We suggest that this policy be modified to the following:

"Offshore exploration, development and production drilling outside the landfast ice area [Plan Map 9, CMP Map 11-2 and Section 5.5.3.5 Zone AO] is required to be conducted from barrier islands, artificial islands or offshore platforms approved by the MMS under its structure verification program or by the State."

Page 3-11, Policy 3-6.2: Transportation and Transportation Facilities

This policy should be written as a relative policy by changing the word "required" to "encouraged." This comment also applies to Policies 3-4.1, 3-7.2, 5-2.2, 5-6.2, 5-7.4 and 7-5 (formerly 7-6).

Page 3-11, Policy 3-6.3: Transportation and Transportation Facilities

This policy has been changed to clearly state that it applies only to public facilities. This is a necessary revision because the policy will now allow roads for oil and gas development.

Page 3-11, Policies 3-6.4 and 3-6.5: Transportation and Transportation Facilities

Recent studies on the North Slope show that pipelines, regardless of orientation, do not present a significant barrier to caribou. We suggest that these two policies be combined and modified as follows to appropriately reflect the latest scientific information while preserving the intent of the original policies:

"Transportation development which can be conclusively shown to significantly obstruct wildlife migration is prohibited unless appropriate mitigation measures are taken or no feasible and prudent alternative is available. Roads and pipelines shall be designed using the best available scientific information to minimize disruptions of migratory patterns and other movements of wildlife. Appropriate mitigation measures for use with pipelines when necessary may include sufficient clearance above ground and provision of crossings satisfactory for the particular wildlife species in question."

Page 3-11, Policy 3-6.6: Transportation and Transportation Facilities

The NSB does not have the authority to prohibit or exercise any jurisdiction over development which accommodates marine oil tankers. This policy could act to prohibit offshore development of future lease sale areas. Such a proposed policy could create an unreasonable burden on interstate commerce in violation of the Commerce Clause of the U.S. Constitution, and would violate the Alaska Coastal Management Act as an unreasonable restriction or exclusion of uses of state concern.

Page 3-12, Policy 3-7.1: Utility Facilities

The words "incidental to drilling, exploration and production," should be deleted from this policy to make it consistent with our understanding of the Borough's intent, and Policy 5-7.2 on page 5-14 (also Policy 3-7.1 as cited in Chapter 10 on page 10-9).

Additionally, the terms "toxic materials" and "untreated solid waste" should be defined. The definitions should conform with applicable state and federal definitions, i.e., under the Resource Conservation and Recovery Act (RCRA), etc.

Page 3-12, Policy 3-7.2: Utility Facilities

The word "significant" should be added before "disturbance" in the fourth line and "special" should be added before "habitat" in the fifth line to make this policy consistent with the identical Policies 3-4.1, 3-6.2, 5-2.2, 5-6.2, 5-7.4 and 7-5 (also Policy 3-7.3/7.2 cited in Chapter 10 on page 10-6).

Page 3-12, Policy 3-7.3: Utility Facilities

Suggest this policy be modified to the following:

"Utility siting and design which can be conclusively shown to preclude subsistence user access to a subsistence resource is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above.

Page 3-12, Policy 3-7.4: Utility Facilities

Suggest this policy be modified to the following:

"Development which can be conclusively shown to restrict subsistence user access to a subsistence resource is prohibited unless appropriate mitigation measures are taken or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above.

Page 3-12A, Policy 3-8.2: Residential Development

This policy should be rewritten to be consistent with Policy 5-3.1 on pages 5-10 and 5-11.

Pages 3-13 and 3-14, Policy 3-A.3: Regulation and Management

The reference to "joint management agreements" needs to be clarified. Is this referring to state agencies or other parties?

Page 3-14, Policy 3-A.7: Regulations and Management

This policy presumes that resource extraction and preservation of Special Habitat Areas are incompatible in all instances. We believe this is an inappropriate generalization. Each circumstance should be considered on its merits. We suggest modifying this policy to the following to incorporate the necessary appropriate considerations of conclusive evidence of effect and mitigation measures:

"Promote the withdrawal of Special Habitat Areas from all resource extraction and non-essential entry and appropriation where such activities can be conclusively shown to significantly affect adversely the values of such areas and no appropriate mitigating measures are available or acceptable."

Page 3-14, Section 3.4.2: Regulation and Management Discussion

We note that the statement "Borough jurisdiction may have, to some degree, been preempted" has been deleted in Draft 3 of the Comprehensive Plan. The Borough should recognize that where regulation purporting to implement its police power invades the jurisdiction of state and federal governmental entities, such regulation is pre-empted, and the Borough retains no jurisdiction in those areas. Specifically, the regulation and management of oil and gas leases and activities have clearly been preempted by state and federal law. The oil and gas industry is willing to work with the NSB and encourages its involvement in existing regulatory processes; however, any attempt by the NSB to disrupt or restrict activities which are authorized by state and federal governments on public lands will be strongly opposed.

Page 3-50, Section 3.5.4.3: Construction

The proposed restriction on geophysical operations noted on page 3-50 should be modified to allow summer seismic operations that use helicopters and rolligons to carry vibroseis and other seismic equipment. Temporary summer seismic operations of this type cause no significant harm to wildlife or the environment.

Page 4.5, Policy 4.1: Development/Cultural & Historical Sites

Suggest this policy be modified to the following:

"Development which can be conclusively shown to significantly disturb cultural or historic sites listed in the National Register of Historic Places

or those which have been substantiated as being eligible for inclusion in the National Register, or to significantly interfere with traditional activities at such cultural or historic sites, is prohibited unless appropriate mitigating measures are taken to minimize this disturbance or interference. Possible interference with traditional activities would include significant visual, noise or other pollution; prolonged increases in activity; driving off subsistence species; or significant surface disturbance."

Suggested changes would clarify the intent of this policy and incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Page 4-5, Policy 4-2: Development/Newly Discovered Sites

Suggest modifying this policy to the following:

"Surface disturbance which can be conclusively shown to significantly effect adversely newly discovered historic sites is prohibited prior to archaeological investigation unless appropriate mitigating measures are taken to minimize such significant adverse effects."

Suggested changes would incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Suggest modifying this policy to the following:

"Development which can be conclusively shown to significantly violate guidelines on the rate or amount of growth adopted by a village as part of its Village District Comprehensive Plan is discouraged. Development which can be conclusively shown to grossly violate such guidelines is prohibited unless appropriate mitigating measures are taken to minimize the significant adverse impacts or no feasible and prudent alternatives are available."

Suggested changes would clarify the intent of this policy and incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Additionally, while we agree that the amount of development within a village should be guided by village policy, development outside the village which occurs on state or federal land is not under the jurisdiction of the NSB. Without detailed maps, the impact of this policy cannot be fully assessed.

Page 4-6, Section 4.4.3: Policy Discussion

The fourth paragraph in this section implies that as a general policy all of the barrier islands along the North Slope should be held "inviolable" with respect to offshore development. This would be inconsistent with what is implied in Policy 3-5.3 on page 3-10, that barrier islands are preferred for offshore drilling over

other (non-gravel) structures. We suggest this paragraph be revised by deleting the fourth and fifth sentences. Standard lease stipulations require identification of such sites prior to development.

Page 4-66, Section 4.5.6.5: Subsistence

The meaning of the third paragraph on page 4-66 is unclear (beginning with "an open-range").

Also, the meaning of the last sentence in the prior paragraph on page 4-66 is unclear. (What is meant by "the subsistence commons will be fragmented"?)

Page 5-1, Section 5.1.1.2: Potential Sources

We suggest that the first sentence in this section be modified to the following:

"Groundwater systems play a relatively minor role in the hydrology of the Borough because the active layer is underlain with permafrost and thaws to a depth of only about two feet during the summer."

The present wording in the draft incorrectly describes the cause and effect relationship between permafrost and the active layer.

Page 5-2, Section 5.1.1.4: Industrial Consumption

We suggest that the first sentence of the third paragraph be modified to the following:

"Mud is normally used only during the drilling phase of a well's life."

Mud is normally not required after a well has been drilled.

Page 5-5, Section 5.1.4.1: Flooding

We suggest the addition of the following before the first full sentence on this page beginning with "In addition to hazards":

"An exception to this is the Sagavanirktok River, which has relatively uniform flow throughout the summer."

Page 5-10, Policy 5-1.1: Development/Environmental Degradation

Suggest this policy be modified to the following:

"Development which can be conclusively shown to substantially pollute the natural environment (including water, air, noise and vibration) is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Suggested changes would incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Page 5-10, Policy 5-1.2: Development/Environmental Degradation

Suggest this policy be modified to the following:

"Development which can be conclusively shown to result in depletion of a subsistence resource, as set forth in Section 3.5.1 of the Plan, below the subsistence needs of local residents of the Borough is prohibited unless the adverse effects of such development can be appropriately mitigated."

Comment - Same as for Policy 5-1.1 above (Also see identical policy 3-1.1 on page 3-7).

Page 5-10, Policy 5-2.3: Development/Commercial and Industrial

The words "fuel or toxic material," need to be added following "Landfills," in the third line of this policy to make it consistent with the suggested revision of the identical Policy 3-4.2 on Page 3-10.

Page 5-11, Section 5.4: Development Policy Discussion

Suggest that the fourth paragraph in this section be modified to the following:

"Approved development activities should incorporate mitigation of impact on the quality of the natural environment, including water quality and air quality, and the local or adjacent environments and habitats."

The present wording is misleading. In general, there will be a certain level of localized impact on the environmental as a result of development.

Page 5-11, Section 5.4: Development Policy Discussion

In the fifth paragraph, we suggest replacing "precedence" with "preferential consideration for siting."

The resulting sentence would more clearly state what we presume is intended.

Pages 5-11 and 5-12, Section 5.4: Development Policy Discussion

In the sixth paragraph, we suggest that the second sentence be modified to the following:

"Non-coastal dependent uses or activities which may interfere with or impact subsistence needs in shoreline areas shall be sited in geographically separate locations."

The resulting sentence would more clearly state what we presume is intended.

Page 5-12, Policy 5-4.1: Development/Geophysical Hazard Areas

Suggest this policy be modified to the following:

"Development in flood plains and other geologic hazard areas identified in Plan Map 9 and CMP Maps 1-2-5 and Section 5.5.3.5 of this Plan is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Suggested change to this policy incorporates the additional appropriate consideration of the availability of technology or other measures which could reduce the risk of such development to acceptable levels.

Page 5-12, Policy 5-4.5: Development/Geophysical Hazard Areas

The Borough should not attempt to regulate the choice and design of offshore structures since this would needlessly duplicate existing federal and state authority. We suggest that this policy be modified to the following:

"MMS approval under its structure verification program or state approval is required for all offshore development outside the landfast ice zone [see Plan Map 9, CZM Map 1-2 and Section 5.5.3.5 Zone AO]."

Page 5-13, Policy 5-5.1: Resource Extraction

We suggest deleting "absolutely" and the second "required" from this policy. These changes would provide increased flexibility in the administration of the policy to allow a developer to operate in the most efficient manner with respect to field support facilities.

Page 5-13, Policy 5-5.3: Resource Extraction

The term "general environmental conditions" should be defined. It should also be noted that such a general term cannot be adequately addressed in a permit application.

Page 5-13, Policy 5-5.5: Resource Extraction

Mining in streams and rivers is regulated by the ADF&G. This should be modified to a relative policy by replacing "prohibited" with "discouraged."

Page 5-13, Policy 5-5.6: Resource Extraction

It should be noted that on state and federal lands and waters, the conduct of mining activities are regulated by the state and federal agencies, and not within the jurisdiction of the NSB. This should be modified to a relative policy by replacing the words "prohibited" with "discouraged".

Page 5-13, Policy 5-6.1: Transportation Facilities

This policy should be identical to Policy 7-6 on page 7-7 (note additional wording in Policy 7-6, "or joint use transportation facilities" and "strongly").

Page 5-14, Policy 5-7.2: Utility Facilities

The terms "toxic materials" and "untreated solid waste" should be defined. The definitions should conform with applicable state and federal definitions, i.e., under the Resource Conservation and Recovery Act (RCRA), etc. (see similar comment for Policy 3-7.1 on page 3-12).

Page 5-14, Section 5-7: Utility Facilities

In the first sentence of the general comments, we suggest replacing "avoid environmental degradation" with "minimize environmental impact."

In the third sentence of the general comments, we suggest replacing "do not degrade the environment" with "minimize environmental impact."

The present wording is misleading - there will be a certain minimum level of localized impact on the environment as a result of development.

Page 5-14, Policy 5-A.2: Public Policies/Geophysical Hazard Areas

Suggest this policy be modified to the following to appropriately recognize state and federal approval processes and the need to minimize redundant reviews and approvals:

"Development in Geophysical Hazard Areas shall be approved only on a site specific basis and in concert with the associated state and/or federal approval requirements."

Page 5-15, Policy 5-A.4: Public Policies/Geophysical Hazard Areas

See previous comment for Policy 3-5.3 on page 3-10 and Policy 5-4.5 on page 5-12.

Suggest the last sentence of this policy be deleted for the reasons stated previously.

Appendix, Table 5.2: Measured Pollutant Levels

Two important footnotes are missing from this table. They are as follows

"3 Ozone standard is attained if the expected number of days per calendar year with maximum hourly average concentration above 0.12 ppm is equal to or less than one."

"4 Guidelines used to achieve compliance of the ozone standard."

Footnote 3 above should be referenced for the 1 hour maximum ozone standard (present reference to footnote 2 should be deleted).

Footnote 4 above should be referenced for the 6-9 AM Maximum Non-Methane Hydrocarbon Standard.

Page 6-8A, Section 6.4(6-1): Development Policies/Full Employment

We support a voluntary local hire policy. However, local hire policies that may be used to influence decisions for approval of permits at any level of government are unconstitutional.

Policies 6-1.1 to 6-1.3 are not appropriate to be used in a permit decision. For Policy 6-1.2, it is important to note that such flexible hiring practices are generally not consistent with prudent management practices and operational requirements of petroleum development.

Page 6-8B, Section 6.4(6-2): Development Policies/Inupiat Industries

Policy 6-2.1 is not objectionable but is not appropriate to be used in a permit decision.

Page 6-8B, Section 6.4(6-3): Development Policies/Local Economic Development

We will continue to diligently pursue any opportunities to utilize the services of local private businesses and regional and village corporations within the Borough. It is contrary, however, to the free enterprise system to regulate by policy the use of local businesses and corporations.

Policies 6-3.1 and 6-3.2 are not objectionable but are not appropriate to be used in a permit decision. For Policy 6-3.3, it is important to note that such flexible hiring practices are generally not consistent with prudent management practices and operational requirements of petroleum development.

Page 7-6, Policy 7-3.1: Haul Road Corridor

The Borough does not have the authority to prohibit facilities in the Haul Road Corridor. Suggest this be modified to a relative policy by replacing "prohibited" with "discouraged."

Page 7-6, Policy 7-4: Disturbance of Habitat

Suggest this policy be modified to the following:

"Disturbance of subsistence resource habitat or migration routes during migration periods by transportation modes or development is prohibited if it can be conclusively shown to significantly affect adversely such habitat or routes, unless such significant adverse effects can be appropriately mitigated, or no feasible and prudent alternative is available."

Suggested changes would incorporate the appropriate considerations of a conclusive finding of adverse effects and mitigation.

Page 8-8, Policy 8-1: Local Employment

We support a voluntary local hire policy. However, local hire policies that may be used to influence decisions for approval of permits at any level of government are unconstitutional. Policies 8-1.1 and 8-1.2 are not appropriate to be used in a permit decision.

Page 8-8, Policy 8-2: Local Business

We will continue to diligently pursue any opportunities to utilize the services of local private businesses and regional and village corporations within the Borough. It is contrary, however, to the free enterprise system to regulate by policy the use of local businesses and corporations. Policies 8-2.1 and 8-2.2 are not appropriate to be used in a permit decision.

Page 8-8, Policy 8-3: Flexible Employment Schedules

It should be noted that such flexible working schedules are generally not consistent with prudent management practices and operational requirements of petroleum development. Policy 8-3.1 is not appropriate for use in a permit decision.

Appendix, Tables 8.5 thru 8.8

It should be noted that the data presented in these tables is very misleading due to the gross measures used for magnitude, term and location, and the fact that a number of the listed actions or impacts have a relatively low probability of occurrence. We suggest that an appropriate comment concerning the use and accuracy of these tables be included on the tables and in the text of Chapter 8 where the tables are referenced.

Page 9-9, Policy 9-2: Public Fiscal Balance

We suggest this policy be modified to the following:

"Development which results in an excess of tax revenues over demand for Borough expenditures necessitated by the development is strongly encouraged."

The comparison of expected increased revenue versus additional expenditures resulting from the proposed development would then be the determinant for this relative policy. We do not believe, however, that this policy is appropriate for use in permit decisions.

Page 9-10, Policy 9-A.2: Consolidated Service Base Facilities

Consolidated service base facilities to be provided by the Borough should be subject to the prior approval of the developer and not forced upon the developer as a permit condition.

Page 10-4, Section 10.3.4: Resource Development District

Item (c) in this section should be modified to be consistent with the Land Management Regulations, Section 19.40.058, which includes Sag Delta/Duck Island, West Mikkelsen and Point Thompson. Also, the section should be modified to include all existing and future state and federal leases for reasons outlined in the comment on Section 19.40.058. Therefore, we suggest the following language:

The last sentence of item (c) should be replaced with:

"The initial Resource Development (RD) Districts are the Prudhoe Bay, Kuparuk, Milne Point, Gwyder Bay, Sag Delta/Duck Island, West Mikkelsen and Point Thompson fields, and all other existing state and federal leases. All future state and federal leases will be automatically re-zoned to Resource Districts upon issuance of the leases."

Pages 10-5 and 10-6, Section 10.4.1.2: Policies/Special Habitat Areas

Policies 3-4.1, 3-6.2, 3-7.2, 5-2.2, 5-6.2 and 7.6 are redundant and should be cited jointly (also should include Policy 5-7.4).

Policies 3-3.1 and 3-3.4 should also be listed as policies affecting Special Habitat Areas.

Policies 3-2.1 and 3-6.5 are cited incorrectly relative to the policies as listed on pages 3-8 and 3-11 of the Plan, respectively.

Policies 3-7.3, 7-5 and 7-6 should be listed as 3-7.2, 7-4 and 7-5 to be consistent with the policies listed on pages 3-12, 7-6 and 7-6 of the Plan, respectively.

Page 10-8, Section 10.4.2.1: Subsistence Use Areas/Purpose

Reference is made in this section to the "great weight" to be accorded village resident comments relative to activities proposed within the "Village Area of

Influence." This reference should be deleted consistent with changes previously adopted for Policy 2-B on page 2-5 of the Plan and Section 19.60.020(c) on page 60-1 of the Land Management Regulations.

Page 10-9, Section 10.4.2.2: Subsistence Use Areas/Policies

Policy 3-7.4 should also be listed as a policy affecting Subsistence Use Areas. Policy 3-1.3 is cited incorrectly relative to the policy as listed on page 3-7 of the Plan.

Pages 10-9 and 10-10, Section 10.4.3.2: Geophysical Hazard Areas/Policies

Policies 5-4.1 (page 10-9), 3-5.3 and 5-4.5 are cited incorrectly relative to the policies as listed on pages 5-12, 3-10 and 5-12 of the Plan, respectively.

The Policy 5-4.1 cited on page 10-10 of this section is incorrectly numbered and does not exist elsewhere in the Plan. If this policy is to be incorporated in Chapter 5 and retained in Chapter 10, we suggest modifying it to the following:

"Drilling in active seismic faults is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Page 10-11, Section 10.4.4.3: Historical and Cultural Areas/Location

We suggest dropping the phrase "a comprehensive archaeological and Land Use Inventory" from the third line in this section to eliminate any confusion. It is

our understanding that the designated "Historical and Cultural Areas" are to include only "sites that are currently on, or that are awaiting approval for, the National Register," as specified in Policy 4-1 on page 4-5 (and page 10-11).

Page 10-12, Section 10.4.6: Special Area Maps

Suggest modifying this section to the following:

"Maps 2-10 indicate the general location of the special zoning areas where the various Comprehensive Plan policies apply. These maps do not provide the actual location of the special area boundaries, and as a result, the applicable policies will be determined on a case-by-case basis. The final determination relative to the applicability of a particular policy will be the responsibility of the Administrator. The Administrator's decision may be appealed to the Planning Commission, as provided in Section 19.60.071. Amendments to the maps are considered major changes to the Comprehensive Plan and therefore require notice, public review and hearing before the Planning Commission, and final approval of the Planning Commission and Borough Assembly."

Suggested changes would clarify the intent of this section, and appropriately set out the responsibilities, appeal process and amendment process as they pertain to the Special Area Maps.

Page 10-13, Section 10.5: Village Areas of Influence

Reference is made in this section to the "great weight" to be accorded to the knowledge and experience of residents of the affected Area of Influence in development related decisions. This reference should be deleted consistent with changes previously adopted for Policy 2-B on page 2-5 of the Plan and Section 19.60.020(c) on page 60-1 of the Land Management Regulations.

LAND MANAGEMENT REGULATIONS

Comments on policies in the Regulations only address inconsistencies with policies found in the Plan. Recommended changes to policies in the Plan should be included in the policies section (Chapter 80) of the Regulations.

Page 10-1, Section 19.10.020(d): Purpose

The word "prohibit" should be deleted.

Page 20-3, Section 19.20.020: Definitions

The definition of "Best Available Technology" should be modified to include a cost/benefit consideration. We suggest the following language:

"Best Available Technology means the technology or technologies that best and most safely implements the relevant policy(ies); that is available to the

applicant at the time of application; and that considers a cost versus benefit analysis."

Page 20-3, Section 19.20.020: Definitions

The definition of "Best Efforts" should be modified to include a cost/benefit consideration. We suggest "and that considers a cost versus benefit analysis" be added at the end of the present definition.

Page 20-3, Section 19.20.020: Definitions

The definition of "Coastal Area" should be modified to be consistent with the proposed Coastal Management Program (CMP). As presently worded the definition is inconsistent with what is outlined in phase II of the background document for the CMP.

Pages 20-4 and 20-5, Section 19.20.020: Definitions

The definition of "Development" is much too broad. Items (b) and (g) should be deleted.

Page 20-13, Section 19.20.020: Definitions

The "Use-by-Right" described in these definitions results from the rezoning of an area to a Resource Development District. Such rezoning is an uncertain and

cumbersome political process that depends on the current membership of the Planning Commission and Borough Assembly. Prospective bidders on State and Federal Leases need to know that, if they are successful on their bids, they will be able to conduct oil and gas operations in accordance with the lease terms; a requirement for rezoning would create prohibitive uncertainty for these lease sales. A rezoning requirement would also be invalid as State and Federal laws preempt the field of oil and gas operations.

We propose the following language:

"Use by Right means a use pursuant to a local, state or federal agency permit."

Pages 20-12 and 20-13, Section 19.20.020: Definitions

The definition of "subsistence use" is vague and overbroad. Administration of the regulations that rely on this definition could be arbitrary and capricious.

We suggest the following language:

"Subsistence Use is a use and includes hunting, whaling, fishing, trapping, camping and food gathering."

Pages 20-3 through 20-13, Section 19.20.020: Definitions

Definitions should be provided for the following terms: "Mandatory," "Best Efforts," and "Beneficial" policies; "highway"; "shoreline"; "general environ-

mental conditions"; "toxic materials"; "untreated solid waste"; "public benefit"; and "public purpose".

Pages 30-5 and 30-6, Section 19.30.062: Enforcement Orders

This provision creates wide discretionary authority to the Administrator, which, if enacted, will subject the Developer to the potential for arbitrary and capricious actions of the Administrator. This provision should be modified since the authority delegated to a borough by the State legislature does not include the power to regulate or discontinue an activity where State law already preempts the field, e.g., oil and gas operations. The burden of proof should be on the Administrator since he/she initiates an action which could result in the developer being deprived of rights.

We propose the following language:

"The Administrator may:

- (a) recommend to the Planning Commission the discontinuance of activity for any development which does not comply with the terms of this Title 19;
- (b) order the removal or abatement of buildings or structures subject to the Revocable Development Permit Provisions of Section 19.60.090; or

- (c) order any action necessary to ensure compliance with all the provisions of this Title 19, including but not limited to, suspension of Use Permits and Development Permits.

Any such enforcement order shall be signed by the Administrator and served upon the Developer or his agent or supervisor on the site (if known), or (if unknown), posted in a conspicuous place on the site. The Administrator shall transmit a copy of the enforcement order to the Chairman of the Commission, and shall keep a copy thereof in permanent record.

Upon application of the Developer, or upon its own motion, the Commission shall review the enforcement order at its next regular meeting. The review shall be limited to the presence of violations stated in the enforcement order, and in such review the burden shall be upon the Administrator to prove that violation does exist or did occur. The Commission by resolution, may modify or rescind the enforcement order."

Pages 30-7 and 30-8, Section 19.30.063: Violations, Penalties and Remedies

This section provides that an aggrieved citizen may institute a civil action to enjoin violations of the ordinance. The Borough should recognize that the violation of a zoning ordinance generally does not establish a private cause of

action for individuals to enforce the ordinance, absent some unique and substantial harm to such individuals resulting from the activity constituting the violation.

We suggest the following language:

In subsection (a), on the fourth and fifth lines, delete "or any aggrieved citizen."

Further, the action to enjoin a violation may not be brought unless it can be established that no adequate legal remedy exists. For the section to mandate to the contrary is legally inappropriate. The prescription that courts shall grant injunctive relief to restrain violations of the ordinance invades the province of the judiciary, in violation of the Doctrine of the Separation of Powers.

In this regard, we propose the following modification:

In subsection (a), delete the last two sentences.

Page 40-5, Section 19.40.042: Conservation District, Uses by Right

Uses authorized and permitted by the state or federal government on state or federal land should be uses-by-right requiring no permit from the Borough.

We suggest the following language:

"Uses-by-Right. There are no uses-by-right in the Conservation District, except uses authorized and permitted by the state or federal government. These regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title."

Page 40-6, Section 19.40.052: Resource Development District, Uses-by-Right

All existing and future state and federal oil and gas leases should be included in the Resource Development District. Further, uses authorized and permitted by the state or federal government on state or federal land should be uses-by-right requiring no permit from the Borough.

We suggest the following language:

"Uses-by-Right. All development indicated on state and federally approved development plans, and minor alterations thereto, and all uses authorized and permitted by state and federal agencies, are uses-by-right in the Resource Development District."

Pages 40-6 and 40-7, Section 19.40.055: Resource Development District,
Application

An excessive amount of material is stipulated for permit applications. This should be reduced to include only such information as necessary for the Administrator and Commission to assess the overall impact of a proposal.

We suggest the following modifications:

Subitem (b) - "Schematic drawings and analyses of all proposed or quasi-public facilities, and all other proposed structures;"

Subitem (c) - delete entirely.

Subitem (d,e) - delete entirely as these are requirements which the Borough would more appropriately provide.

Subitem (g) - delete entirely as this requirement will be satisfied in subitem (b).

Subitem (h) - delete entirely as this requirement and subitem (c) will be included in the required Master Plan.

Pages 40-8 and 40-9, Section 19.40.057: Prudhoe Bay and Kuparuk River
Resource Development District

The purpose of this provision is to 'grandfather' into the Comprehensive Plan

existing operations at the Prudhoe and Kuparuk Units. However, as presently drafted, the provision only includes Plan of Development Maps. This section should be reworded to read as follows:

"Plans for development of unitized areas as approved by the State are hereby adopted as the Master Plan for each District and uses authorized and permitted by the State or Federal government on state or federal lands are uses-by-right requiring no permit from the Borough. Future leases issued by the State are hereby rezoned to the Resource Development District and provisions above apply."

The Milne Point Unit should also be included in this section. An analysis of the level of development that has occurred at Milne Point suggests it is more appropriately grouped with the Prudhoe Bay and Kuparuk River Units rather than other unitized areas on the North Slope involved in earlier stages of development.

Page 40-9, Section 19.40.058: Milne Point, Gwyder Bay, Duck Island, West Mikkelsen and Point Thompson

This section should be modified to include all existing and future state and federal leases. The rationale for this inclusion is that once the state or federal agencies have determined that an area is appropriate for resource development, specifically oil and gas, then prospective successful bidders will be certain that oil and gas operations may be conducted in accordance with the terms of the lease.

This section should be reworded to read as follows:

"Plans for exploration and development as approved by the State for these and future units are hereby adopted as a portion of the Master Plan for the unit and uses authorized and permitted by the State or Federal government on state or federal land are uses-by-right requiring no permit from the Borough. Unitization Plans of Development, should development occur, are hereby adopted as the Master Plan for each unit. Future leases issued by the state are hereby rezoned to the Resource Development District and provisions above apply."

The Milne Point Unit should be deleted from this section and included under Section 19.40.057. (See comment under Section 19.40.057 for explanation).

Page 50-2, Section 19.50.040: Appeals

The burden of proof should not be on the developer, as an aggrieved party.

Pages 60-2 and 60-3, Section 19.60.034: Conditions

The permitting requirements and conditions proposed for oil and gas development by the NSB have been preempted by State and Federal permitting requirements and oversight authorities.

Page 60-5, Section 19.60.061(b): Grounds for Variances

The terms "public purpose" and "public benefit" should be defined and should include consideration of state and national interests.

Page 80-1, Section 19.80.010: Introduction

Suggest that this section be modified to the following to ensure a clear understanding of its purpose and content:

"The policies contained in this Chapter constitute the guidelines to be used in evaluating a proposed development project for approval or denial. Uses granted by right would not be subject to such an evaluation. The Development Policies contained in the Comprehensive Plan are restated here along with citations to the relevant policies in the Plan."

Pages 80-1 thru 80-3, Section 19.80.021: Prohibited Development/Mandatory Policies

- Item (c) - not cited consistent with Policy 3-3.3. Reference to "Borough Coastal Management Program" should be replaced with "Alaska Coastal Management Program."
- Item (f) - for consistency should delete "is prohibited" at end of Policy.
- Item (g) - for consistency should delete "is prohibited" at end of Policy.

Item (i) - should be deleted from this section and added to Section 19.80.031 since it is a "Best Efforts" Policy.

Item (k) - not cited consistent with Policy 7-3. The words "located anywhere within" should be deleted from third line and replaced with the word "in."

This section should also cite the first part of Policies 3-4.2 and 5-2.3, and Policy 3-7.3 as mandatory policies.

Pages 80-3 thru 80-5, Section 19.80.025: Required Features/Mandatory Policies

Item (b) - not cited consistent with Policy 3-5.3. Note difference in citation for variance requirements (one or the other should be changed).

Item (g) - not cited consistent with Policies 5-3.2 and 3-8.3. The words "unless pursuant to Plan policies removal is more harmful than non-removal" should be added to the end of the Policy to be consistent.

This section should also cite Policy 5-2.4.

Page 80-5, Section 19.80.030:° Best Efforts Policies

Item (b) should be modified to the following to incorporate the concept of mitigation:

"The Administrator determines that the Developer has used his best efforts to comply with the policy thru mitigation or otherwise, and that there is no feasible and prudent alternative to the proposed development."

Pages 80-5 thru 80-8, Section 19.80.031: Prohibited Development/Best Efforts Policies

Item (f) - not cited consistent with Policy 3-3.4. Note difference in Map references.

Item (g) - the first part of this cite "Development on a shoreline that does not require a shoreline location" should be deleted from this section and included in Section 19.80.021 as a mandatory policy.

The balance of this cite "Landfills, Fuel or toxic material, storage areas and dumps on or near a shoreline." should be retained as item (g) in this Section (19.80.031).

Item (k) - not cited consistent with Policy 3-6.7. The words "resource extraction" should be replaced with "mine."

Item (n) - the first part of Policy 4-3 should not be cited in this section as a "Best Efforts" Policy, but rather be included in Section 19.80.040 as a requirement to minimize impact. Also, the policy as cited here is not consistent with the first part of Policy 4-3.

Item (p) - the Map and Section references should be included in this cite consistent with Policy 5-4.1.

Item (q) - Policy 7-5 should not be cited in this section as a "Best Efforts" policy, but rather be included along with the identical policies in Section 19.80.040 (see Item (c) on page 80-11).

Item (r) - The Policy citation should be 7-4 rather than 7-5.

Item (s) - not cited consistent with Policy 8-2.2. Note that all words after "Resource development which" are misquoted.

Item (t) - not cited consistent with Policy 8-1.2. The words "unless residents of" should be replaced with "if" and "no" should be replaced with "an."

This section should also cite the second part of Policy 4-3, and Policy 5-5.6, as "Best Efforts" policies.

Pages 80-8 through 80-10, Section 19.80.032: Required Features/"Best Efforts"

Policies

Item (e) - Policy 5-5.7 should not be cited in this Section, but rather be included in Section 19.80.031 as a "Prohibited Development/Best Efforts" Policy.

Item (f) - not cited consistent with Policy 5-4.5. The words "third party" should be added after "Independent" in the first line.

Pages 80-10 and 80-11, Section 19.80.040: Minimization of Negative Impacts

Item (b) - Policy citation for Policy 5-7.5 should be 5-7.4. Also, Policy citation should include Policy 7-5.

Item (d) - not cited consistent with Policy 5-4.2. The words "oceanic storms, sea waves, ice gouging and override, and shore" should be deleted.

This section should also cite the first part of Policy 4-3, and Policy 5-4.6, as policies to minimize negative impacts.

Pages 80-11 through 80-13, Section 19.80.050: Beneficial Impacts

Item (a) - not cited consistent with Policies 3-5.2 and 5-2.1. The words ",as methods of minimizing negative impacts on the environment" should be added at the end of this policy.

- Item (b) - Policy 3-6.4 is appropriately cited in Section 19.80.040 and therefore this cite should be deleted. Also, note that the cite in this section is not consistent with Policy 3-6.4.
- Item (c) - not cited consistent with Policies 3-8.4 and 5-3.3. The words "Design and maintenance of" should be deleted and all the words after "which" are misquoted.
- Item (d) - the word "nor" should be "no."
- Item (e) - not cited consistent with Policies 5-6.1 and 7-6. The words "Incorporation of" should be replaced with "Development" and the words ",or joint use of transportation facilities" should be added at the end.
- Item (f) - not cited consistent with Policies 6-1.1 and 8-1.1. Should read "Development which employs local Borough residents in construction and development activities or its work force."
- Item (g) - not cited consistent with Policies 6-1.2, 8-3 and 6-3.3. The words "Utilization of" should be replaced with "Development which."
- Item (h) - not cited consistent with Policy 6-1.3. The words "Incorporation of" should be replaced by "Development which."
- Item (i) - The word "related" should be "relates."

- Item (k) - not cited consistent with Policies 6-3.2 and 8-2.1. The words "Utilization of" should be replaced with "Resource development which," the word "businesses" should be "business," and the words "as suppliers or subcontractors" should be replaced with "in its operations."
- Item (m) - not cited consistent with Policy 6-4.2. The words "Utilization of" should be replaced by "Development which."
- Item (o) - not cited consistent with Policy 9-2. The words "Development which results in an" should be added at the beginning.

jl:p:bsw

NSB/007

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.