

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7920

HOUSE JUDICIARY

183

April 17, 1994

Honorable Senator Drue Pearce  
Chair, Senate Finance Committee

Dear Senator Pearce:

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

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

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

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

Sincerely,

Jon Isaacs  
Linda Freed

# Alaska State Legislature



House of Representatives  
House Judiciary Committee

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

## HOUSE JUDICIARY LETTER OF INTENT

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

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

April 28, 1994

*Brian D. Porter*



# Kodiak Island Borough

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

April 15, 1994

VIA FAX 465-3872

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

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

Dear Senator Pearce:

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

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

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

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



## Kodiak Island Borough

Senator Drue Pearce  
Page 2 of 2  
April 15, 1994

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

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

Sincerely,

Linda L. Freed, Director  
Community Development Director

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



TELECOPY COVER SHEET

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

TO: (H) Judiciary

ATTN: Rep. Potter FAX: 465-3834 PHONE: \_\_\_\_\_

FROM: Anch. LIO - PHONE: \_\_\_\_\_

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

SENT: Date 4/29 Time \_\_\_\_\_

DISPOSAL OF ORIGINAL: Discard \_\_\_\_\_ Hold for Pickup \_\_\_\_\_

NUMBER OF PAGES: 3 (counting cover sheet)

TRANSMITTED BY: Jean

April 28, 1994

Testimony of Jon Isaacs  
Jon Isaacs and Associates

Honorable Representative Brian Porter  
Chair, House Judiciary Committee

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

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

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

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

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

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

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

Sincerely,

Jon Isaacs

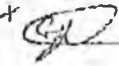
PostNet 10290

Fax Transmittal Memo 7672

To: *Rep. Brian Porter & House Judiciary Com.*  
 Company: *AK House of Rep's*  
 Location: *JUNEAU*  
 Fax #: *465-3834* Telephone #

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

Comments: *Please distribute to all members of the Judiciary Committee prior to their consideration of SB 308.*

*Tux*  


# AVCP

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



April 26, 1994

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

Re: CSSB 308 (Fin)

Dear Chairman Porter:

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

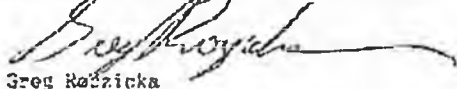
The practical effect of this bill is a step backward for all Alaskans regardless of past differences in philosophical or political tendencies. Ordinarily opposing factions such as sport/commercial fishing associations, native advocacy groups, oil & gas lobby representatives and the coastal management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

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

Thank you for positive and appropriate consideration of our concerns.

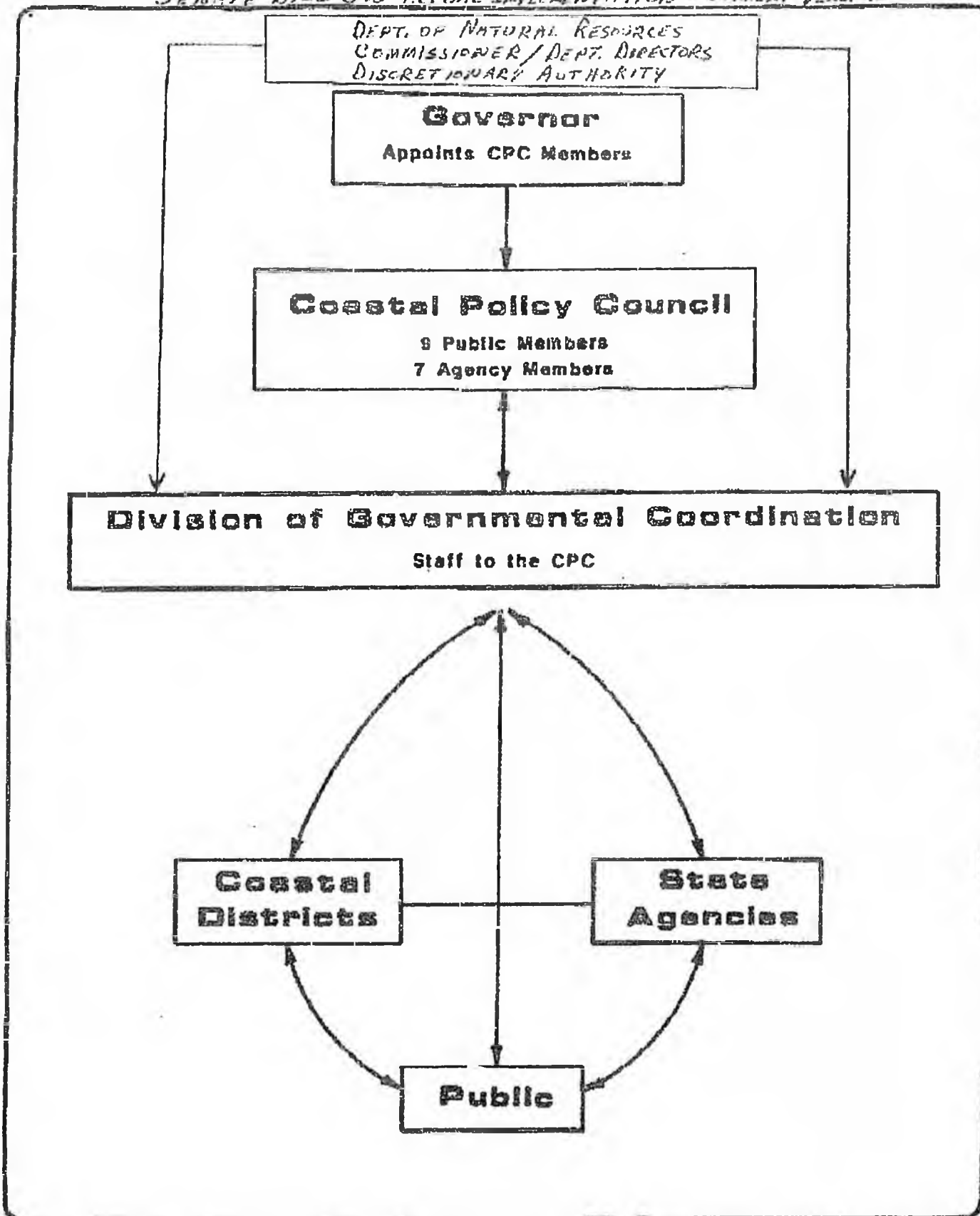
Sincerely,

Myron Naneng, President - AVCP Inc.



Greg Rozicka  
 Resource Mgmt. Specialist II

REVISION NUMBER AND REASON FOR REVISION - CURRENT VERSION



**COASTAL MANAGEMENT PROGRAM RELATIONSHIPS**

Figure 3E-2

## Chapter 2: Policies, Objectives and Standards of the Program

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

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

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

## Chapter 2: Policies, Objectives and Standards of the Program

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

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

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

## PURPOSE OF COASTAL MANAGEMENT IN ALASKA

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

The Alaska Coastal Management Program is designed to:

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

## COASTAL MANAGEMENT: THE LEGISLATIVE FRAMEWORK

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

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

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

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

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

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

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



# UNITED FISHERMEN OF ALASKA

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

## SB 308 DISPOSALS OF INTERESTS IN STATE LANDS

### WHAT DOES THIS LEGISLATION DO?

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

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

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

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

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

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

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

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

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

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

#### MEMBER ORGANIZATIONS

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

# Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

April 26, 1994

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

Re: House Bill 474 CSSB 308 (FIN)

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

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

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

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

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

Sincerely,

  
Peter Van Tuyn  
Acting Litigation Director



# Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

April 6, 1994

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

Re: SB 308 and DNR's Litigation Summary

Dear Senators,

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

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

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

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

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

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

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

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

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

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

analysis in the findings for the Camden Bay and Demarcation Point lease sales were remarkably similar, indeed practically identical, in their failure to discuss transportation methods and the relative risks of such methods. See Demarcation Point, slip op. at 8-11.<sup>1</sup> Instead of voluntarily supplementing the transportation analysis in the Demarcation Point finding as result of the Supreme Court's ruling in Camden Bay, DNR chose to argue the issue, contending that its earlier briefing of the transportation issue in the Camden Bay appeal was "incomplete." Id. at note 5. Not surprisingly, the Court unanimously rejected DNR's argument and remanded the issue to DNR for a supplemental finding, similar to that ordered in Camden Bay. Interestingly, DNR's Litigation Summary wholly fails to discuss this aspect of the Demarcation Point appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Peter Van Tuyn

## ISSUES OF CONCERN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \*

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

# NATIVE VILLAGE OF TUNUNAK

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

April 25, 1994

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

Subject: House Bill 474/CSSB308(Fin)

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

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

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

## PHASING

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

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

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

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

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

### IGNORES SCIENCE AND OBSERVED KNOWLEDGE

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

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

### DIRECTOR HAS FULL DISCRETION

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

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

**RECOMMENDATION:** Delete "*material*".

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

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

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

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

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

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

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

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

As written, the bill restricts standing to appeal to:

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

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

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

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

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

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

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

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

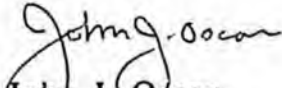
resources, and the blind sighted approach to haphazard development. We do not wish to see the creation of a bulldozing bureaucratic monster for lack of equitable language.

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

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

Thank you for the opportunity to comment.

Sincerely,  
NATIVE VILLAGE OF TUNUNAK  
Department of Natural Resources

  
John J. Oscar  
President

TESTIMONY TO HOUSE JUDICIARY COMMITTEE  
CS SB308 (FIN) am

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

Cook Inlet commercial salmon permit holder

Representing Cook Inlet commercial fishing and UCIDA.

-3,500 harvesters

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

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

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

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

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

*→ list concerns out of letter to Porter* <sup>Per:</sup> *1) paper transactions*  
*2) non oil*  
*3) standing*

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

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

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

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

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

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

BUT, the fundamental problem hasn't been fixed.

THE CAR STILL WON'T RUN.

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

-1st, 308 inappropriately includes all state disposals.

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

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

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

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

February 25, 1994

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

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

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

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

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

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

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

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

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

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

AOGA supports SB308/HB474.

Nancy Lord  
P. O. Box 558  
Homer, Alaska 99603

(907) 235-8252 phone  
(907) 235-8253 fax

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April 26, 1994

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

RE: SB 308

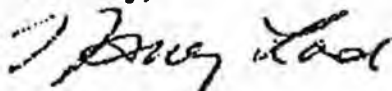
Please provide copies of this, my written testimony, to all members of the House Judiciary Committee at your Wed., 4/27 meeting. Thank you.

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

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

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

Sincerely,



Nancy Lord

TESTIMONY TO HOUSE JUDICIARY COMMITTEE  
CS SB308 (FIN) am

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

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

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

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

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

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

**WE THINK:**

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

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

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

TESTIMONY TO HOUSE JUDICIARY COMMITTEE  
CS SB308 (FIN) am

a lessee without any consideration of even reasonably foreseeable effects.

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



Post-It™ brand fax transmittal memo 7671 # of pages 1

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



# Alaska Sportfishing Association

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

4/27/94

Via Fax

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

Re: SB 308

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

Thank you  
Jeff Parker

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 27, 1994

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

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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

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

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

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

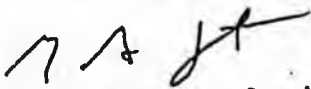
Dear Representative Phillips:

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

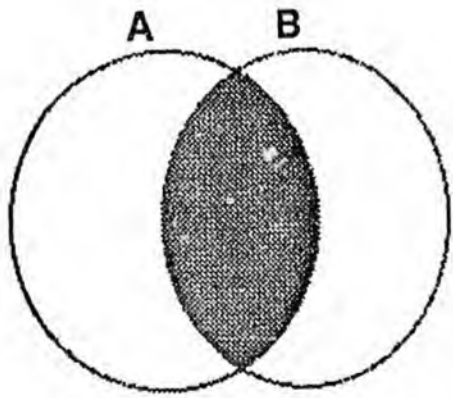
The use of "or" requires the director to discuss first, facts that are known and "material to issues that were raised during the period allowed for receipt of public comment" AND second, facts that are known and material to the matters listed in subparagraph B (page 7, line 22 through page 8, line 21).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

Sincerely,

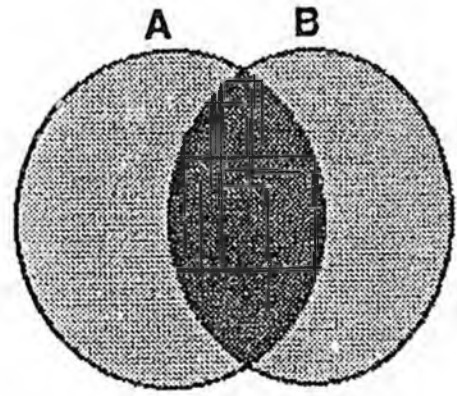
BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Mary Ann Lundquist  
Assistant Attorney General

MAL:tg  
Attachment



AND



OR



**UCIDA**

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

---

April 19, 1994

SENT BY TELEFAX

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

SUBJECT: CS SB310 (RES)  
UCIDA POSITION: Opposed

Dear Representative Williams,

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

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

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

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

Rep. Bill Williams

April 19, 1994

Page 2 of 3

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

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

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

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

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

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

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

Sincerely,



Theo Matthews  
Administrative Assistant

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



**UCIDA**

**UNITED COOK INLET DRIFT ASSOCIATION**

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

(907) 283-3600 • FAX (907) 283-3306

---

February 22, 1994

SENT BY TELEFAX

Senator Mike Miller  
Senate Resource Committee

SUBJECT: SB 308

UCIDA Position: Strongly Oppose

Dear Senator Miller,

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

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

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

**SB308 is fiscally irresponsible.**

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

Senator Miller  
February 22, 1994  
Page 2 of 3

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

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

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

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

Sincerely,



Theo Matthews  
Administrative Assistant

Senator Miller  
February 22, 1994  
Page 3 of 3

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

UFA  
ADF&G  
ADEC  
Attorney General  
Cook Inlet RCAC



**UCIDA**

**UNITED COOK INLET DRIFT ASSOCIATION**

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---

February 23, 1994

SENT BY TELEFAX

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

**SUBJECT: CSSB 308 (RES)**

**UCIDA Position: Strongly Oppose**

Dear Senators Frank and Pearce,

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

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

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

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

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

Senators Frank and Pearce

February 23, 1994

Page 2 of 3

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

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

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

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

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

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

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

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

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

Finally, we respectfully submit that, at a minimum:

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

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

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

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

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

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

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

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

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

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

Sincerely,



Theo Matthews  
Administrative Assistant

Senators Frank and Pearce

February 23, 1994

Page 4 of 4

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

UFA

ADF&G

ADEC

Attorney General

Cook Inlet RCAC



**UCIDA**

**UNITED COOK INLET DRIFT ASSOCIATION**  
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(907) 283-3600 • FAX (907) 283-3306

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February 24, 1994

SENT BY TELEFAX

Senator Jalmar Kerttula  
Senate Finance Committee

SUBJECT: CSSB 308 (RES)

Dear Senator Kerttula,

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

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

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

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

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

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

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

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

4) A map of the Lease Sale tracts.

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

Sincerely,



Theo Matthews  
Administrative Assistant



UCIDA

**UCIDA**

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

---

November 8, 1993

SENT BY TELEFAX  
HARD COPY TO FOLLOW

COPY

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

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

Dear Mr. Eason,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

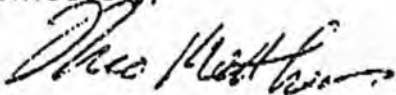
The Dec. 1990 spill at Drift River is correctly reported at approximately 630 gal. (Finding, p. 56). However, the Final Finding does not report that the oil pumps were not operating when the oil lines broke free. Had the pumps been operational, a large spill would probably have resulted and no cleanup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

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

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

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

Sincerely,



Theo Matthews  
Administrative Assistant

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

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

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

November 2, 1993

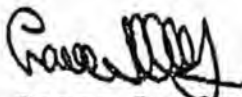
Mr. Theo Matthews  
Administrative Assistant  
United Cook Inlet Drift Assn.  
Post Office Box 389  
Kenai, Alaska 99611-0389

Dear Mr. Matthews:

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

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

Sincerely,



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

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

U.S. Department  
of Transportation

United States  
Coast Guard



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

310 L Street  
Suite 100  
Anchorage, AK  
99501-1946

16705/DNR  
22 November 1993

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

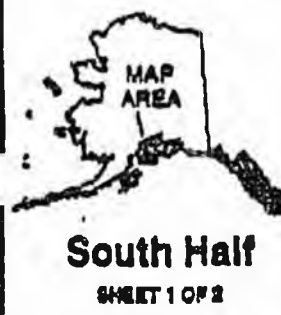
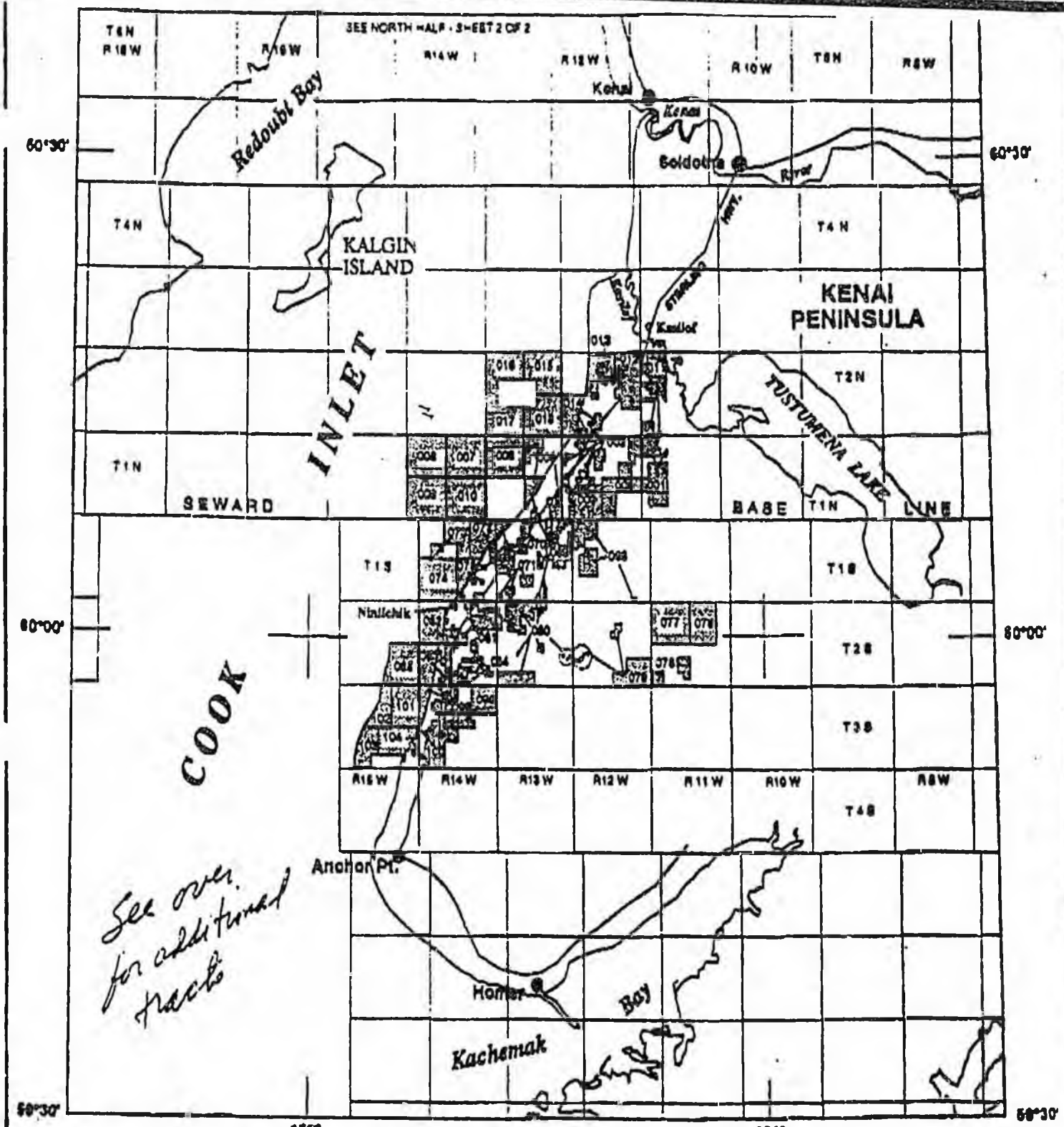
Dear Mr. Eason;

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

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

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

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



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

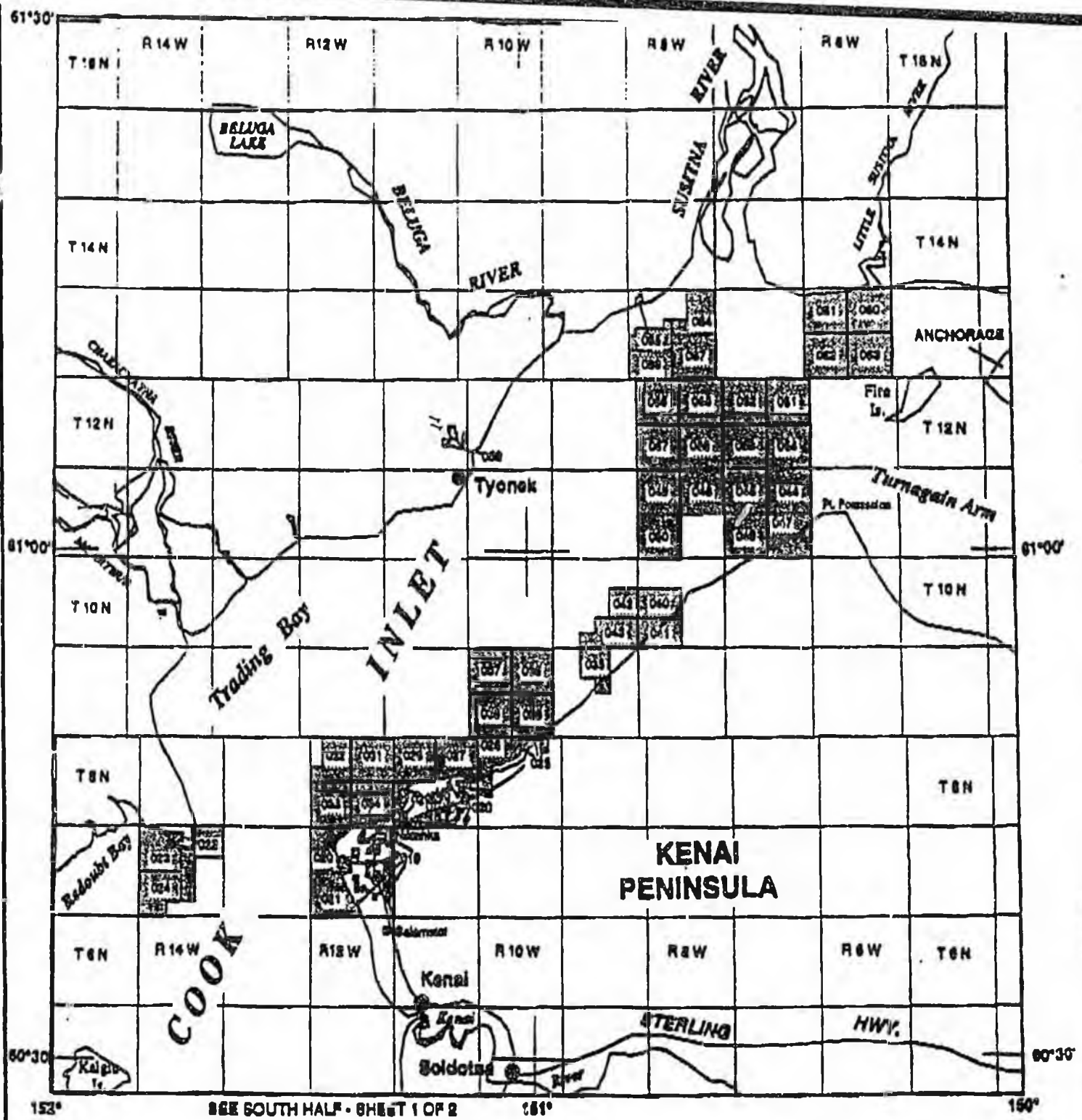
**OIL AND GAS LEASE SALE 78  
COOK INLET FINAL TRACT MAP**

SCALE 1:600,000 ONE INCH = 10 MILES

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

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

**FIGURE 2A**



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



North Half  
SHEET 2 OF 2

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

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

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

DIRECTOR, DIVISION OF OIL AND GAS <b>JAMES E. EASON</b> <i>[Signature]</i> PETRO. GEOPHYSICIST, <b>JAMES HANSEN</b> <i>[Signature]</i>	DRAWN BY M.P. d O.A.S. CHECKED BY J.M. DATE APPROVED <b>10/12/83</b> BASE MAP TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. REDRAWN IN AUTOCAD AND CLARIFIED.
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NOTE: THIS MAP IS NOT THE OFFICIAL TRACT MAP. A SET OF OFFICIAL TRACT MAPS IS AVAILABLE AT THE DEPARTMENT OF NATURAL RESOURCES DIVISION OF OIL AND GAS, 3601 ST., SUITE 1963, P.O. BOX 10708, ANCHORAGE, ALASKA 99510-7. PHONE (907) 762-2188

**FIGURE 2B**



**UCIDA**

**UNITED COOK INLET DRIFT ASSOCIATION**

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

(907) 283-3600 • FAX (907) 283-3306

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**Theo Matthews Testimony**

**Senate Finance Committee - SB 308, March 2, 1994**

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

**UCIDA opposes CS for SB 308**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Theo Matthews  
Administrative Assistant



**UCIDA**

**UNITED COOK INLET DRIFT ASSOCIATION**  
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(907) 283-3600 • FAX (907) 283-3306

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March 10, 1994

Sent by telefax

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

Dear Representative Williams,

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

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

Sincerely,

Theo Matthews  
Administrative Assistant



**UCIDA**

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

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

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

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

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

included in Lease Sale 78:

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

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

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

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

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

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

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

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

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

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

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

Thank you Mr. Chairman.

Sincerely,



Theo Matthews

Administrative Assistant

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**UCIDA**

**UNITED COOK INLET DRIFT ASSOCIATION**

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March 4, 1994

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

Dear Representative Williams,

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

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

Sincerely,

*Theo Matthews (by P.M.)*

Theo Matthews  
Administrative Assistant



**UCIDA**

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

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

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

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

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

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

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

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

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

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



**UCIDA**

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April 19, 1994

SENT BY TELEFAX

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

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

Dear Senator Little,

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

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

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

Senator Little  
April 19, 1994  
Page 2 of 4

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

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

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

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

Senator Little  
April 19, 1994  
Page 3 of 4

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

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

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

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

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

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

- Phasing under Title 46 (ACMP)

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

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

- Standing to Request Reconsideration/Appeal

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

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

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

- Clarification of "Economic Feasibility"

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

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

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

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

### **Conclusion**

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

Respectfully submitted,

**Kodiak Island Borough**

**North Slope Borough**

**Northwest Arctic Borough**

**Bering Straits Coastal Resource Service Area**

**Bristol Bay Coastal Resource Service Area**

**Cenaliuriiit Coastal Resource Service Area**

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

cc: Hon. Governor Walter Hickel

BERING STRAITS COASTAL RESOURCE SERVICE AREA BOARD

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

26 April 1994

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

Dear Members of the House Judiciary Committee:

Subject: Senate Bill 308

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

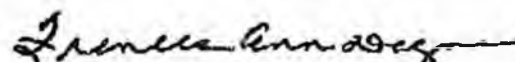
This Bill also attempts to limit the citizens (of the State of Alaska) standing and the citizens ability for meaningful comment unless the Director agrees with the citizens.

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

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

Sincerely,

BERING STRAITS CRSA BOARD



Frances Ann Degnan, Chair

cc: BSCRSA Board

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

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

19 April 1994

Dear Representative Williams,

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

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

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

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

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

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

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

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

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

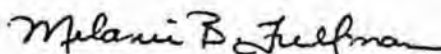
Section 8 'New Section 46.40.094 Consistency Determinations for Phased Uses and Activities (b): "When a use or activity is authorized or developed in discrete phases and each phase will require decisions relating to a permit, lease, or authorization for that particular phase, the agency responsible for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

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

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

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

Sincerely,



Melanie B. Fullman  
Associate Planner - Projects



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

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

April 26, 1994

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

Re: Senate Bill 308

Dear Honorable Members of the House Judiciary Committee:

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

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

## Issues Remaining to be Resolved

### Phasing under Title 46 (ACMP)

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

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

### Standing to Request Reconsideration/Appeal

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

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

### Clarification of "Economic Feasibility"

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

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

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


### Phasing of all land disposals under Title 38

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

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

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

Sincerely,

  
Stan Stephens  
President

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

Dr. George C. West

**BEECHSIDE STUDIOS**

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27 April 1994

Memorandum

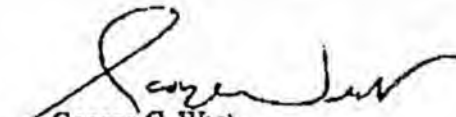
To: House Judiciary Committee  
Attention: Gail Phillips

Re: House Bill 474, CSSB 308 (fin)

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

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

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

  
George C. West

April 27, 1994

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

RE: SB 308

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

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

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

#### **Remaining Issues in SB 308**

- Phasing of all land disposals under Title 38

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

Senator Little  
April 19, 1994  
Page 4 of 4

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

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

Sincerely,



Theo Matthews  
Administrative Assistant

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