

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8440 SENATE RESOURCES**

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 15, 1994

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

*Dear Senator Miller:*

*As a result of several unfavorable court decisions, the Administration simply cannot guarantee the continued efficacy of the state's oil and gas leasing program. Each of the decisions has had the effect of expanding the scope of best interest findings and coastal zone consistency determinations well beyond the letter of the law, and, we believe, beyond the intent of the Legislature. The court has made clear that, in the absence of specific legislative intent to the contrary, it will set oil and gas leasing policy by imposing its own standards on the scope and content of best interest findings and coastal zone consistency determinations related to lease sales.*

*Following the most recent adverse decision, the Superior Court's injunction of Lease Sale 78, Governor Hickel asked that I coordinate the Administration's review of statutory amendments necessary to address this problem. Participants in that review included the Commissioners of Commerce and Economic Development, Environmental Conservation, Fish and Game, and Natural Resources, as well as the Director of the Division of Governmental Coordination, other representatives of the Governor's Office and me.*

*We have carefully reviewed the language of S.B. 308 and are convinced that it represents a realistic common-sense approach toward resolving the growing threat to the state's leasing program. We believe that its careful definition of the scope of best interest finding and CZM determinations, coupled with an explicit acceptance of phased determinations when the agency has the authority to further condition subsequent project approvals, will discourage litigation based upon speculation and better serve the public interest.*

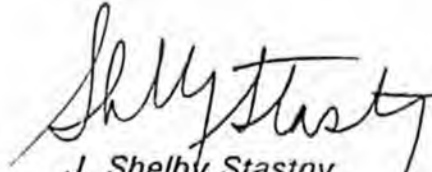
*Your committee's bill will also further several other goals to which the Administration is committed. It will ensure a best interest finding and CZM*

*The Honorable Mike Miller  
February 15, 1994  
Page 2*

*consistency procedure that is factual, fair and timely. It will also reduce litigation risks substantially, and, therefore, reduce litigation costs. We believe that S.B. 308 will accomplish these worthwhile goals while providing for meaningful and undiminished public review and participation in the leasing program.*

*On behalf of the Administration, I appreciate the willingness of you and your committee to promptly address this difficult issue. I pledge our full and undivided support in working to assure passage of S.B. 308.*

*Sincerely,*

A handwritten signature in cursive script, appearing to read "Shelby Stastny".

*J. Shelby Stastny  
Director of Management and Budget*

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

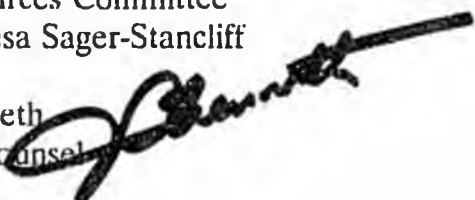
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 17, 1994

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

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

**FROM:** Jack Chenoweth  
Legislative Counsel 

The bill's title describes the measure as one to modify administrative procedures and decisions relating to uses and disposition of state land, property, and resources, and related interests and to similar purposes subject to the state's coastal management program. As introduced, the measure is applicable to administrative procedures and decisions made by the commissioner of natural resources under the Alaska Land Act (AS 38.05)<sup>1/</sup> and by the party charged with making consistency determinations

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

These purposes cannot be accomplished by ignoring cumulative impacts. Based on the policies inherent in these purposes, we conclude that DNR may not ignore cumulative effects of mining and related support facilities by unreasonably restricting its jurisdiction or by permitting facilities separately. These purposes require that at the time DNR reviews any [Surface Coal Mining Control Act] permit application it consider the probable cumulative impact of all anticipated activities which will be part of a "surface coal mining operation," whether or not the activities are part of the permit under review. If DNR determines that the cumulative effect is problematic, the problems must be resolved before the initial permit is approved.

under the coastal management program (AS 46.40).<sup>2/</sup>

\*

Alaska Land Act: Department of Natural Resources --

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

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

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

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

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

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

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

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

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

AS 38.05.035(g) sets additional parameters on the making of a written best interest finding. As to the discussion of the issues that the director is to present in the finding, the amendment proposed by the measure's bill section 2 would (1) incorporate reference to the modified scope of administrative review that the director is authorized to make under the amendment made in the preceding bill section, and (2) insert "nonspeculative" as an additional modifier to two particular elements that are to be addressed in that discussion.

\*

Consistency determinations: Coastal Management Program --

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

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

Senator Mike Miller  
February 17, 1994  
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The addition of AS 46.40.094, added by bill section 3, essentially duplicates the principles outlined for Department of Natural Resources by bill section 1 and makes them applicable in the context of coastal management consistency determination.

\*

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

JBC:gc  
94-132.glc

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 260-5100  
FAX: (907) 276-3697

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

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

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 22, 1994

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

Dear Jim:

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

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

Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interest in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state.

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

<sup>1</sup> This letter addresses only oil and gas leases and does not address subsequent permits or authorizations by other agencies.

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

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

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By: *Barbara F. Fullmer*

Barbara F. Fullmer  
Assistant Attorney General

EFF/lwr

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

**UCIDA****UNITED COOK INLET DRIFT ASSOCIATION**

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

(907) 283-3600 • FAX (907) 283-3306

February 22, 1994

SENT BY TELEFAX

Senator Mike Miller  
Senate Resource Committee

SUBJECT: SB 308

UCIDA Position: Strongly Oppose

Dear Senator Milier,

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 CI, pages 4-5)

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

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

Sincerely,



Theo Matthews  
Administrative Assistant

Senator Miller  
February 22, 1994  
Page 3 of 3

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

UFA  
ADF&G  
ADEC  
Attorney General  
Cook Inlet RCAC

State of Alaska, Department of Natural Resources  
DIVISION OF OIL AND GAS - DIRECTOR'S OFFICE  
3601 C Street, Suite 1380, Anchorage, Alaska 99503

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

F A X T R A N S M I T T A L

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

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

FROM: Roberta Keith

NUMBER PAGES (INCLUDING COVER): 8

COMMENTS:

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

**DEPT. OF NATURAL RESOURCES**

*DIVISION OF OIL AND GAS*

PO BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

(907)762-2547

February 23, 1994

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

Via Fax 561-8870

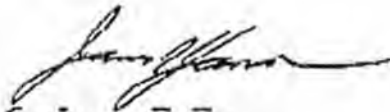
Dear Mr. Furnace:

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

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

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

Sincerely,

  
for James E. Eason  
Director

Enclosure

cc: Kyke Parker

Post-Net brand fax transmittal memo 7871		# of pages = 1	
TO Kyle PARKER		FROM Mary LUNDQUIST	
Ca. Governor's Office		Co. DOL	
Dept.		Phone # 269-5266	
Fax #		Fax #	

APPELLATE COURTS CLERK  
303 K STREET  
ANCHORAGE, AK 99501

RECEIVED  
Department of Law

FEB 22 1994

Case Title: STATE V NINILCHIK TRADITIONAL

Attorney General  
Branch  
Anchorage, Alaska

\*\*\*\*\* O R D E R \*\*\*\*\*

02/22/94

IT IS ORDERED: THE PETITION FOR REVIEW FILED ON JANUARY 20, 1994, IS DENIED, ENTERED AT THE DIRECTION OF THE SUPREME COURT ON FEBRUARY 22, 1994. (CHIEF JUSTICE MOORE NOT PARTICIPATING; JUSTICE BRYNER, PRO TEM).

CC: JUSTICES, JUDGE CRANSTON, CLERK OF THE TRIAL COURT  
AKN-93-1174 CIVIL

TRW

Clerk of The Appellate Courts

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

WALTER J. HICKEL, GOVERNOR

**DEPT. OF NATURAL RESOURCES**P.O. BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

DIVISION OF OIL AND GAS

(907)762-2547

February 23, 1994

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


Dear Senator Pearce:

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

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

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

Sincerely,

  
James E. Eason  
Director

Enclosures



# FIVE-YEAR OIL AND GAS LEASING PROGRAM

ALASKA DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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

A = Proposed Sale Area Added to 5-Year Program.

C = Call for Comments:

1 = New Sales and 5-Year Program Revisions Made 6 months prior to Additions (A).

2 = Request for General Information

3 = Request for Socioeconomic and Environmental Information

L = Preliminary Land Status Check

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

M = Public Meeting or Teleconference

F = Final Finding and/or Notice of Sale and Terms [AS 38.05.945(a)(4)]

S = Sale

12/21/92

FEB-23-94 WED 12:05 DIV OF OIL AND GAS FAX NO. 9075623852 P. 05/08

## Oil and Gas Lease Sale 78 Public Notification Process

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

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

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

- Oct 9, 1989 : Call for Comments (lists areas to be added to leasing schedule)  
sent to all on mailing list
- Jan 1991: **Sale Added to Five-Year Leasing Program**  
published in Five-Year Oil and Gas Leasing Program
- Feb 26, 1991: Call for Comments (General Information)  
sent to all on mailing list
- Oct 22, 1991: Supplemental Call for Comments (area expanded to Homer)  
sent to all on mailing list
- Jul 21, 1992: Call for Nominations  
sent to oil companies on mailing list
- Oct 27, 1992: Call for Comments (Socioeconomic and Environmental Info)  
sent to all on mailing list
- Jul 15, 1993: **Notice of Intent to Issue Final Finding and Decision**  
sent to all on mailing list  
ads in newspapers (Anchorage, Juneau, Fairbanks, Kenai, Homer\*)  
*\*Also published on Jul 22*  
sent to all affected post offices within sale area for posting

**Certified Letter to Boroughs and Municipalities**

sent to affected boroughs and municipalities

**Preliminary Finding of the Director**

sent to state and federal agencies

multiple Copies sent to local libraries and to State Library in Juneau

sent to boroughs and municipalities

sent to organizations and individuals who have commented

**Public Service Announcement**

sent to local radio and TV stations

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

Aug 13, 1993: Notice of Extension of Deadline for Comments Until Aug 24  
published in Anchorage, Juneau, Kenai, Fairbanks, and Homer papersOct 19, 1993: **Final Finding of Director**

sent to state and federal agencies

sent to legislators from affected area

sent to all who commented on Preliminary Finding

multiple copies sent to local libraries and to State Library in Juneau

**Certified Letter to Boroughs and Municipalities**

sent to affected boroughs and municipalities

**Sale Announcement**

sent to all on Mailing List

published in local and statewide papers (same as for Aug 13 Notice)

posted at all affected post offices within sale area

**Public Service Announcement**

sent to local radio and TV stations

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

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

WALTER J. HICKEL, GOVERNOR

**DEPT. OF NATURAL RESOURCES**

DIVISION OF OIL AND GAS

PO BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

(907)762-2547

February 23, 1994

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

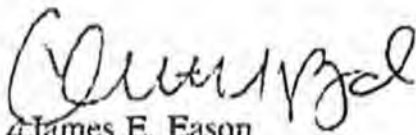
Dear Senator Adams:

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

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

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

Sincerely,



James E. Eason  
Director

## Enclosures:

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

cc: Kyle Parker

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

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

Alaska Supreme Court—Goodnews Bay Decision

### **WHAT WOULD BE THE COST?**

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

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

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

#### **Would The Number Of Sales Decrease? YES!**

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

#### **Would EIS's Prevent Lawsuits? NO!**

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

**CONCLUSION:**

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

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

**DESPITE THE STUDIES, DESPITE THE TREMENDOUS EXPENSE**

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

## SALE 78 – THE PROBLEM – A CASE STUDY

### TRUSTEES CREATE A CONFLICT:

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

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

### REALITY:

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

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

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

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

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

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

**Adopt This Legislation To Fix The System**

## TITLE 38 AND THE ACMP STATUTES NEED TO BE AMENDED

### IF THIS LEGISLATION IS NOT ADOPTED

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

### WITHOUT THIS LEGISLATION

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

### THE RECORD SENDS THE FOLLOWING MESSAGES . . .

#### Consistency with the ACMP (Sale 78)

##### *Trustees for Alaska:*

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

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

*Alaska Superior Court:*

"...the Court cannot divine the basis for the consistency determination. First, there is no discussion of the priority required in 6 AAC 80.040. Has the Commissioner considered both offshore oil and gas development and a fishery as water dependent and (sic) activities? Or, is oil and gas a water related activity?... There is no discussion of a significant public need for the lease sale ...6 AAC 80.130(d) requires a finding of no feasible prudent alternative to meet the public need for the proposed use and a finding that all feasible and prudent steps to maximize conformance with standards will be taken."

*DNR:*

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

*Trustees for Alaska:*

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

### **Best Interest Finding (Sale 78)**

*Trustees for Alaska:*

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

### **Geophysical Hazards (Sale 50)**

*Trustees for Alaska:*

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

*Alaska Supreme Court:*

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

*DNR:*

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

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

DNR's petition for rehearing was denied.

## **Archeological Resources (Sale 50)**

### *Trustees for Alaska:*

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

### *Alaska Supreme Court:*

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

### *DNR:*

"Because unrestricted availability to information concerning the nature and location of any archeological resource increases the threat to site destruction, access to such information is closed to the general public by the Alaska Office of History and Archeology. Authority for this policy is contained in AS 9.25.120 and 16 U.S.C. § 47 (O)....DNR is required to withhold specific information regarding those sites until the plan of operations stage..."

DNR's petition for rehearing was denied.

## **Transportation (Sale 55)**

### *Trustees for Alaska:*

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

### *Alaska Supreme Court:*

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

### *DNR:*

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

## The Porcupine Caribou Herd (Sale 55)

### *Trustees for Alaska:*

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

### *Alaska Supreme Court:*

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

### *DNR:*

"[AS 38.05.035(g)] requires that DNR thoroughly consider the effects of an oil and gas lease sale on fish and wildlife species and the subsistence uses of those species in the sale area (emphasis added). However, it does not require DNR to extend its consideration to potential effects on species located outside the sale area. As the Porcupine Caribou Herd is clearly not found in the sale area, DNR did not violate the statute."

DNR's petition for rehearing was denied

## Goodnews Bay Offshore Prospecting Permit (OPP) Disposal

### *Alaska Supreme Court:*

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

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

# THEY SAY OIL & GAS LEASING IS BROKEN

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

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

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

Superior Court order staying Lease Sale 78

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

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

Brief to the Supreme Court by:

Trustees for Alaska  
Alaska Environmental Center  
The Sierra Club  
Nat'l Parks and Conservation Assoc.  
The Wilderness Society

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

Brief to the Superior Court on Sale 78 by:

Trustees for Alaska  
Ninilchik Traditional Council  
Alaska Environmental Center  
Greenpeace  
Kenai Peninsula Fishermen's Assoc.  
United Cook Inlet Drift Assoc.

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

Alaska Supreme Court

## YOU CAN FIX IT

# IT'S A FACT

Since The Inception Of Competitive Leasing in 1959:

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

## **AFTER 35 YEARS OF OIL & GAS LEASING**

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

## **WHAT IS THE PROBLEM?**

With 85% of State Revenue At Stake

## **HOW DO WE FIX IT?**

## FIRST, UNDERSTAND THE PROBLEM

- Under Title 38, the commissioner must take a “hard look” at “the salient factors” in best interest findings that an oil and gas lease sale should be held.
- However, through a series of Supreme Court decisions beginning in 1987 and continuing through this year, the court has systematically rejected the commissioner's authority both to determine what are the salient factors and “how much” analysis is “enough” before proceeding with a lease sale.
- Both the Alaska Supreme Court, and now the Superior Court, have ruled that best interest findings under Title 38 and ACMP consistency determinations for lease sales under title 46 cannot rely upon deferred consistency reviews of post-sale projects until specific exploration or development projects are proposed.
- Since no one can predict the consequences of a lease sale, litigants are encouraged to speculate on the sufficiency of the commissioner's considerations on future events, and the courts have become the arbiter of what is “proper weight” and “adequate analysis.” Arguments over “how many angels might someday come to sit on the head of the pin” are disrupting the leasing program, frustrating legislative intent and threatening the state's future economic health.

## **TO FIX IT**

### **THE STATUTES MUST BE CHANGED**

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

### **IF LEGISLATION IS NOT PASSED**

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

## **WHAT THIS LEGISLATION DOES**

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

## **BOTTOM LINE**

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



# UNITED FISHERMEN OF ALASKA

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2/22/94

## TESTIMONY FOR SENATE RESOURCES ON SB 308

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

This bill does not protect the public interest.

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

This bill increases the risk of environmentally unsound projects.

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

This bill is fiscally irresponsible.

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

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

### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Selnors Association  
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen  
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai 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 • Seafood Producers Cooperative  
Southeast Alaska Selnors Association • Southern Southeast Regional Aquaculture Association  
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

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

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

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

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

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

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

**This legislation will invite litigation.**

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

**The coastal management program is not problem.**

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



**AMENDMENTS TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

*Section 46.40.010 is amended as follows:*

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

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

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

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

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

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

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

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

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



4. These bills allow best interest findings to be limited to discrete phases of a project. Such a limited focus would diminish consideration of the long term and cumulative impacts of a project. Furthermore once the initial permits are approved, and the project begins to move forward, it would be very difficult for the permitting agency to deny subsequent permits. If it were to do so, the state might be legally liable for project costs, repurchase of the leases, penalty fees and lawsuits.

**These bills are not needed.** The problem is not in Title 38 or the Alaska Coastal Management Program. The problem lies with DNR's inability to competently prepare a best interest finding. When the Supreme Court rejected DNR's finding for Lease Sale 55 for example, it noted that DNR had copied "*without alteration*" the Lease Sale 50 finding which the Court had previously rejected. It is hard for DNR to defend its competency or its commitment to the public interest when it reuses a rejected finding.

The Alaska Supreme Court has found that "DNR must take a hard look at any salient problems associated with a [lease] sale," and that it must "consider the probable cumulative impact of all anticipated activities which will be a part of [the project]." The public, industry and the state must be provided with all the relevant concerns before a project begins, to ensure that it proceeds responsibly and with minimal impact on local communities, other resources and the environment.

2/21/94

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

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

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

**Create New Section, Insert as 46.40.025:**

Sec. 46.40.025. Alaska coastal management program consistency

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

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

**Section 46.40.210 is amended as follows:**

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

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

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

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

(4) "council" [NO CHANGE];

(5) "department" [NO CHANGE];

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

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

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

AS 38.05.035(e) is amended as follows:

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state.

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

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

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

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

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

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

(4) Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that, in accordance with (1) of this subsection, sets out the material facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

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

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

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

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

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

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

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

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

AS 38.05.035(g) is amended as follows:

(g) When the director prepares a written finding required under (e) of this section for an oil and gas lease sale scheduled under AS 38.05.180, the director shall consider and discuss in the finding

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

*(A) property descriptions and locations;*

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

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

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

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

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

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

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

*(I) the reasonably foreseeable, non-speculative fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and*

communities, including the explicit and implicit subsidies associated with the lease sale, if any;

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

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

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

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

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

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

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

**CFR 930.37(c)**

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

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

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Post-It™ brand fax transmittal memo 7671 # of pages 13

To TERRY CALLACHER	From B. FULLMER
Co.	Co.
Dept.	Phone #
Fax #	Fax #

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

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

Appellants;

v.

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

Appellees.

Case No. 3KN-93-1174 CI

ORDER ON MOTION TO STAY

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

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

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

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

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

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

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

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

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

The United States Supreme Court has noted that "the actual opening of the bids does not involve a commitment of any kind" since all bids can be rejected and "even after the bids are accepted . . . [the court could have the] power to declare the leases invalid if the court determined that the Government entered into a lease without compliance with the requirements of the [law]." New York Natural Resources Defense Council, Inc. v. Kleppe, 429 U.S. 1307 (1976), Hammond v. North Slope Borough, supra. Under the lease terms, the State has the authority to cancel a lease at any time, if for example, information came to light which compelled it to withdraw a tract from exploration or drilling. On the other hand, the State cannot deprive a lessee of the reasonable use of the leasehold interest. See Finding at 126, Appendix D, Sample Lease at para. 9(f); 11 AAC 83.158. The revocation of a lease or the deprivation of the reasonable use of a lessee's property, would result in the State having to pay just

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

compensation to the lessee. Therefore, once it issues the lease, the State is under tremendous pressure to let the lessee go forward with its exploration and extraction.

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

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

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

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

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

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

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

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

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

Hammond v. North Slope Borough, 649 P.2d 750, 761 (Alaska 1982).

Pursuant to statutory authority, the Alaska Coastal Policy Council has established regulations for the administration and enforcement of the Alaska Coastal Management Program, 6 AAC 80.010 - 900.

6 AAC 80.010(b) provides in part:

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

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

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

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

In addition 6 AAC 80.130(d) provides:

"Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

- (1) there is a significant public need for the proposed use or activity;
- (2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and
- (3) all feasible and prudent steps to maximize conformance with the standard contained in (b) and (c) of this section will be taken."

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

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

plaintiffs contested the ACPMP consistency determination. The Supreme Court found the consistency determination insufficient.

It said:

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

Id., 645 P.2d at 762.

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

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

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

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

In this case the Court cannot divine the basis for the consistency determination. First, there is no discussion of the priority required in 6 AAC 80.040. Has the Commissioner considered both offshore oil and gas development and a fishery as water dependant and activities? Or, is oil and gas a water related activity? The Court cannot determine whether the sale is consistent with either standard absent a finding.

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

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

6 AAC 80.130(d) requires a finding of no feasible prudent alternative to meet the public need for the proposed use and a finding that all feasible and prudent steps to maximize conformance with the standards will be taken.

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

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

Slip Op. at 21.

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

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

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

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

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

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

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

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

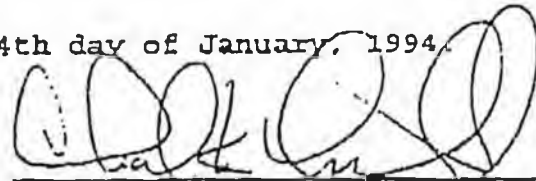
Anchorage Daily News v. Anchorage School District, 803 P.2d 402, 404 (Alaska 1990). NTC asserts it satisfies all these requirements. First, this appeal has been filed to effectuate public policies embodied in the Alaska Constitution, Art. VII, sec. 1 which encourages settlement of state land and development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

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

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

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

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



CHARLES R. CRANSTON  
SUPERIOR COURT JUDGE

SEARCHED  
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**SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL**

DATE: 2/14/94

FURTHER: Finance

Date of 5-Day Notice: 2.10.94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2.23.94

Resources Committee considered SB 308

"An Act modifying administrative procedures and decisions by state agencies that relate to uses and dispositions of state land, property, and resources, and to the interests within them, and that relate to land, property, and resources, and to the interests within them, that are subject to the coastal management program; and providing for an effective date."  
and recommends:

replace with \_\_\_\_\_ CS SB 308 (Res)

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**FISCAL NOTE INFORMATION**

Department	Date	Zero	Fiscal
DNR		✓	
ADF & G		✓	
OMB/DGC		✓	
DEC		✓	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

**DO PASS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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**OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
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 \_\_\_\_\_

Mike Miller Do Pass

Chair: Signature and Recommendation

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 308

Revision Date: \_\_\_\_\_  
Title: AE Act Modifying Administrative Procedures  
Sponsor: Senate Resources Committee  
Requestor: Senate Resources Committee

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

COMPONENT SERIAL NO. 645

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE**

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY94) cost: \$ \_\_\_\_\_

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Bob Poe, Director  
Division: Information & Administrative Services

Phone: 465-5010  
Date: 2/14/94

Approved by Commissioner: [Signature]  
Agency: Department of Environmental Conservation

Date: 2/14/94

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 308

Revision Date: \_\_\_\_\_ Dept. Affected: Office of the Governor  
 Title: Modifying administrative procedures and decisions by State agencies that relate to uses of State land BRU: Office of Management & Budget  
 Component: Governmental Coordination  
 Sponsor: Senate Resources Committee  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0018

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of any current year (FY94) cost: \$ 0

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Paul C. Rusanowski, Director *PK* Phone: 465-3562  
 Division: Governmental Coordination Date: 2/14/94  
 Approved by Commissioner: *Richard P. Ryan* Date: 2-14-94  
 Agency: \_\_\_\_\_

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 308

Revision Date: \_\_\_\_\_  
Title: "An act modifying administrative procedures related to land disposal."  
Sponsor: Senate Resources  
Requestor: Senate Resources

Dept. Affected: Fish and Game  
BRU: Habitat and Restoration  
Component: Habitat  
COMPONENT SERIAL NO. 486

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Frank Rue  
Division: Habitat and Restoration  
Approved by Commissioner: \_\_\_\_\_  
Agency: Alaska Department of Fish and Game

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

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB308

Revision Date: Original Dept Affected: Natural Resources  
 Title: "An Act modifying administrative procedures  
and decisions by state agencies that relate to uses and dispositions..." BRU: Resource Development  
 Sponsor: Senate Resources Committee Component: All  
 Requestor: Senate Resources Committee Component Serial No. All

Expenditures/Revenues (Thousands of Dollars)

Expenditures/Revenues	FY95	FY96	FY97	FY98	FY99	FY00
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Jerry Gallagher, Legislative Liaison Phone: 465-2400  
 Division: Commissioner's Office Date: 14-Feb-94  
 Approved by Commissioner: Harry A. Noah Date: 14-Feb-94  
 Agency: Natural Resources

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

**SB**

**310**

**DEPARTMENT OF NATURAL RESOURCES**

P. O. BOX 107005  
ANCHORAGE, AK 99510-7005  
PHONE: (907) 762-2501

**DIVISION OF FORESTRY**

March 24, 1994

The Honorable Mike Miller  
Alaska State Senate  
Chairman, Senate Resources Committee  
Room 423, State Capitol  
Juneau, Alaska

Dear Senator Miller:

This letter and its attached table responds to a request for information. You asked me for timber volumes sold by the state for the past five years. The attached table shows both the amounts cut and sold during the past six calendar years.

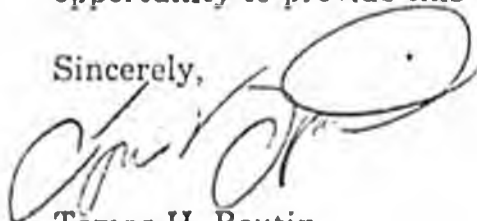
The amount sold is in parenthesis and has ranged from as much as 35,782 thousand board feet (MBF) in 1990 to as little as 10,773 MBF in 1992. The average over the six years shown has been 22,542 MBF.

The annual amount sold has varied for a number of reasons. Fairbanks area sales from the Rosie Creek burn were over by 1988. There were some staffing cutbacks reflected in 1991 and 1992 sales volumes. There was a large Icy Bay sale in 1990. Two large Fairbanks sales were returned to the state in 1992, reducing the volume for that year. Those sales will be sold this Spring.

The amounts planned to be offered for sale for the years 1995 through 1998 as shown in 5 year harvest schedules are; 132,700 MBF; 56,600 MBF; 73,700 MBF; and, 130,400 MBF. There will be delays moving some volumes to later years and no doubt some sales will not be offered at all due to circumstances which cannot be known now. Not included in these volumes is the sale of interior hardwood now in the 5 year harvest schedules for Fairbanks, Delta and Tok beginning in 1997.

I would be glad to provide any information you would like. I appreciate the opportunity to provide this information.

Sincerely,



Tomas H. Boutin  
State Forester

mm  
February 24, 1994

Senator Mike Miller  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Miller:

I wish to comment in opposition to Senate Bill 310, the forest management bill. By way of background, I am a wildlife biologist, a hunter and a life-long Alaskan.

In all honesty, your bill scares me. It opens the door to industrial forest practices that threaten the very values that make the Tanana valley and Fairbanks attractive to me. It stridently removes planning and review options that allow the public to influence forest management policies and actions. The only ones I see benefiting from this legislation are big outside business interests who would exploit our forests at the expense of existing businesses, activities and lifestyles.

How are we to ensure that current uses do not foreclose future options if we do not create a vision of what we collectively desire from our forests and systematically move in that direction? Many local residents who will have to live with the results of large-scale timber development do not share industry's vision for our forests. I strongly feel the public should have a say in the direction that forest management takes. The specter of secret deals between the state and big business is totally unacceptable.

Senate Bill 310 removes other opportunities for public involvement as well, and excludes involvement by agencies that might argue for public interests other than timber production. This is contrary to the direction the Division of Forestry has been taking in the Interior recently to broaden opportunities for public involvement in the formulation of forest management decisions and certainly contrary to public expectations.

The forests of interior Alaska provide many products and uses besides timber, and these diverse needs can all be met if the demand for logging is kept reasonable. Unfortunately, the type of value-added industry some people want requires huge amounts of cutting. Division of Forestry documents on the Fiberform proposal in 1992 indicated that it would take the total allowable cut from the hardwood component of the Tanana Valley State Forest to feed their proposed oriented-strand-board plant.

Cuts of this magnitude are of great concern to me. Large-scale industrial cutting is more likely to be detrimental to the long-term welfare of the forest and associated fish and wildlife than smaller-scale sales geared to meeting local needs. It is also harder to provide for other uses of the forest when one use is carried to an extreme.

It seems unavoidable that this proposed legislation will lead to timber exploitation or "tree farming" on a scale that will have profound effects on the integrity and quality of our forests. For myself and many others who value the forest for more than sawlogs and fiber, it will make Fairbanks and the rest of the Tanana basin a less desirable place to live. Thus, I urge you to reconsider. Let this bill die the early death it deserves.

Sincerely,

*Dale A. Haggstrom*

Dale A. Haggstrom  
P.O. Box 61056  
Fairbanks, Alaska 99706-1056

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 24, 1994

**SUBJECT:** Sectional Summary of SB 310. (Work Order No. 18-LS1558VJ)

**TO:** Senator Steve Frank  
Attn: Rick Solie

**FROM:** Jerry Luckhaupt *JLB*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 38.05.112 dealing with the sale of state timber.

Section 2 of the bill amends AS 38.05.113(c) by providing that sales under 500,000 board feet are exempt from the requirement of AS 38.05.113 that all sales must be reflected in the two five-year schedules of sales preceding the sale.

Section 3 of the bill amends AS 38.05 by adding a new section to provide that the commissioner of natural resources may enter into forest management agreements with persons so that the person may enter on state forest land and select, harvest, and regenerate timber. Detailed procedures for these forest management agreements are provided. It is not clear if "state forest land" means state forests established by the Legislature under AS 41.17.210, a unit of land classified by the commissioner as forest land, or forested land that's owned by the state as the term "forest land" is used in AS 41.17.950(5).

Section 4 of the bill amends AS 38.05.300(a) to provide that land may not be classified by the commissioner of natural resources so as to preclude the harvesting of timber except in certain limited circumstances.

SECTIONAL ANALYSIS

Section 5 of the bill amends AS 38.05.300(c) to provide an exception to section 4 of the bill that allows the commissioner of natural resources to classify land so that the harvest of timber is precluded if the legislature approves the classification.

Section 6 of the bill amends AS 41.17.060(b) relating to reforestation standards on state, municipal, and private forest land.

Section 7 of the bill amends AS 41.17.060(c) relating to standards for the administration of state and municipal forest land.

Section 8 of the bill amends AS 41.17.090(a) to exclude state forest land from the reach of AS 41.17.090's requirement that the commissioner of natural resources be notified prior to timber operations being commenced.

Section 9 of the bill amends AS 41.17.090(c) to make a conforming change to that provided in section 8 of the bill.

Section 10 of the bill amends AS 41.17.118(b) to make a conforming change to the rewrite of AS 38.05.112 provided in section 1 of the bill.

Section 11 of the bill amends AS 41.17.200 to restate the primary purpose of state forests.

Section 12 of the bill amends AS 41.17.200 by adding a new subsection by providing the commissioner of natural resources with direction for the management of state forests.

Section 13 of the bill amends AS 41.17.210(a) by removing some of the requirements for the proposal of new state forests.

Section 14 of the bill amends AS 41.17.400(c) by making a conforming change to the change made in section 1 of the bill to AS 38.05.112.

Section 15 of the bill amends AS 41.17.400(c) by instructing the Department of Natural Resources how to determine sustained yield for forestry purposes.

Section 16 of the bill repeals AS 38.05.113(b).

Section 17 of the bill provides an immediate effective date.

2 / 25 / 94

Senator Steve Frank  
Alaska State Legislature  
State Capitol ( MS 3100 )  
Juneau, Alaska 99801-1182

RECEIVED FEB 20 1994

Re: SB 310

Dear Senator,

I am writing as an individual Planning Commissioner of the Fairbanks North Star Borough to express my concern at provisions of Senate Bill 310, which proposes to amend the Forest Practices Act. The Tanana Basin Area Plan and the Tanana Valley State Forest Management Plan were carefully worked out during the last decade with tremendous public, industry, and official input to provide for the balanced management of the resources of much of Interior Alaska, specifically recognizing and protecting a variety of public and private interests, consistent with our Forest Practices Act. The proposed SB 310 would fundamentally disrupt that balance and violate those public plans by making commercial forestry the sole significant criteria for future decisions and by removing public hearing and comment from much of the decision making process. While attempting to balance interests is a difficult task, it is the fundamental task of any government, and no-one ever said that government is easy. To put it bluntly, I am appalled at SB 310's violation of the public trust and abdication of basic governmental responsibility. How can our Planning Commission responsibly attempt to coordinate our planning with an agency that is given license to violate its own plans? Whatever practical short-term administrative convenience SB 310 might provide to the State, it is a clear disservice to the long-term public interest

Thank you very much for your consideration on this matter. I look forward to your response.

Sincerely,



William Walters  
Planning Commissioner  
Fairbanks North Star Borough  
P. Box 71267  
Fairbanks, Alaska 99707-1267

cc: Alaska State Senators  
Alaska State Representatives  
James Sampson, Mayor, Fairbanks North Star Borough  
Rex Nutter, Director, FNSB Planning Dep't  
Fairbanks Daily News-Miner

LETTERS OF OPPOSITION

Husky Wood, Inc.  
2900 Boniface Parkway #672  
Anchorage, AK 99504

Phone (907) 333-9462  
Telefax (907) 333-9462

February 26, 1994

Senator Steve Frank  
Alaska State Senate  
Room 518 State Capitol  
Juneau, AK 99801 1182

Dear Senator Frank:

By this letter I endorse Senate Bill No. 310, "An Act relating to management and sale of state timber; relating to the classification of state land that would preclude harvesting of timber or would designate timber harvesting as an incompatible use; relating to the administration of forest land, proposals for state forest, and the determination of sustained yield; and providing for an effective date."

Enclosed are several documents that I feel will strengthen the argument in favor of contracting with private firms for Forest Management Agreements.

- What is Sustained Yield?
- An Independent Report concerning the 1992-1993 Forest Health Initiative
- A draft of a Forest Stewardship (Management) Agreement
- Draft of the Economic Impact, 1993, of the spruce bark beetle epidemic.
- A series of charts putting Alaska's forests in perspective, vis a vis the nation and the western states.
- A February 1993 announcement that this firm is prepared to build a modern plywood/LVL facility in Alaska's Railbelt Region, provided raw material is available.

This material is self-explanatory.

If there is any further help I or this firm can give to further the reasonable utilization of the renewable forests resources of Alaska (all ownerships) please contact me directly.

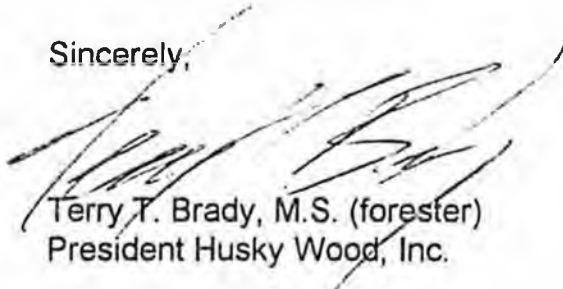
The Forest management Concept works well where it is an honest attempt between governments (the Owner State) and private industry in the business for the "long haul."

This is a means to stop the export of round logs from state lands, and still meet constitutional requirements. It is a means to encourage private land holders to work with companies who will add value (provide jobs) to wood.

The State of Alaska hold about one-third of the commercial timber in Alaska. The State can "set the pace" as to utilization, development and maintenance of the timber resource.

Unfortunately, to date, the State's Bureaucratic dominated system has failed, at the current rat of nearly \$1 billion per year in opportunity costs --- just from the spruce bark beetle alone.

Sincerely,



Terry T. Brady, M.S. (forester)  
President Husky Wood, Inc.

encl:

cc: Sherman C. "Red" Smith, chairman  
Darrell Pierson

Dear Senator Miller.

27 Feb. 1994

I recently heard of S.B. 310 which will be coming up for hearing on March 2nd.

I don't think the provisions of the bill are for the best interests of the many Alaskans who want to use our forests for hunting, trapping, recreation, fishing, subsistence, and for small logging operations. The present legislation for the Haines and Tanana Valley State Forests provides for multiple use. The proposed bill would change this legislation, making the TVSF's primary purpose the development of commercial forest land by big timber companies.

Also, the Commissioner of Natural Resources would be mandated to solicit 20-year guaranteed timber-cutting contracts with no public knowledge until after a tentative contract agreement were struck. These contracts could provide a 20-year maximum extension.

A provision includes permission by the state to allow variable periodic output; this means that the harvest could exceed annual regrowth.

I urge you to vote against this bill.

Yours,

William H. Fuller  
Box 123  
Ester, Alaska  
99725



STATEMENT OF SUPPORT BY THE ALASKA FOREST ASSOCIATION  
FOR SENATE BILL 310 WHICH WOULD ALLOW  
FOR FOREST MANAGEMENT REQUIREMENTS AND OTHER  
CHANGES IN TITLE 38 OF THE ALASKA STATUTES  
FEBRUARY 28, 1994

The Alaska Forest Association is a coalition of individuals and companies who are dependent or believe in the importance of the forest products industry in Alaska. AFA represents over 300 companies, their employees and communities across all of Alaska.

AFA believes the changes proposed in this legislation are important for the growth of the forest products industry. In the Interior and South Central, this legislation would make it possible to establish an industry which will provide year around employment and tax revenues.

In addition to fixing many of the hurdles which now prevent a traditional State timber sale program, it also provides a means to make forest management profitable to State government. The forest management agreements which could be produced by this legislation would mean private enterprise would be paying for the management of State lands, but in turn increase net revenues to the State treasury.

While this legislation would provide an avenue toward the management of Alaska State forest lands, it would not do so at the detriment of the forest environment. The State of Alaska would still retain control of the land and the practices undertaken. However, this would result in much less cost to State government. AFA believes that the Forest Practices Act and provisions of this legislation would result in protection of fish, wildlife and other public resources.

The legislation still provides for public comment and comments by all public agencies. In no way would this legislation lock anyone out of the process. It would also not damage any of the other important industries which rely on forest environment. Southeast Alaska has already exhibited that a significant forest products industry is consistent with tourism and fishing.

Alaska's state forest lands are in need of careful management activities if we are to protect wildlife, watersheds and the economic values they contain. If we do not soon start the management of our State forest lands, the chance of some natural disaster wiping out these values will continue to increase.

# Alaska State Legislature

STEVE FRANK

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701  
(907) 452-3421



While in Juneau  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3709  
Capitol Rm. 417

## Senate

### SPONSOR STATEMENT - SENATE BILL NO. 310 Management and Sale of State Timber

The purpose of SB310 is to encourage investment in the timber industry to enhance the potential for the creation of long term employment in the forest industry.

The legislation would authorize the Department of Natural Resources to utilize Forest Management Agreements (FMA's) on state land. Forest Management Agreement legislation was passed by the Senate in 1987 by a vote of 20-0. Also, some of the duplicative planning requirements currently in law would be modified, while maintaining a public process.

Forest Management Agreements have become an desirable tool in accomplishing responsible timber development because the government owner can spell out in a contract the specific terms and conditions of timber harvest, and the cost of that development is born by the operator.

Further, because FMA's are negotiated, they can provide a long term stable supply of timber to the operator which is a critical element in a companies' decision to invest because value added timber development is usually capital intensive and those investments require a long time to pay back.

Finally, FMA's can be negotiated to provide for local value added manufacturing, something that the Department cannot do today, because current law does not allow for negotiated agreements on timber sales.

I believe the general public wants new long term jobs and I believe that they support responsible development of our timber resource.

Thank you for your consideration.

SPONSOR STATEMENT

## VOLUME CUT AND SOLD (MBF)

	1993	1992	1991	1990	1989	1988
<b>SOUTHEAST</b>	3,700	15,328	2,728	7,558	8,311	14,762
	(9,721)	(92)	(72)	(18,065)	(5,738)	(6,452)
KETCHIKAN						
JUNEAU						
HAINES						
<b>SOUTHCENTRAL</b>	1,046	1,530	2,513	507	1,859	1,529
	(1,098)	(1,546)	(565)	(3,399)	(1,990)	(4,513)
KENAI						
MAT-SU						
MCGRATH						
COPPER RV						
<b>NORTHERN</b>	5,412	12,067	11,000	10,565	12,541	8,883
	(18,648)	(9,135)	(9,519)	(14,318)	(13,873)	(16,510)
FBX						
DELTA						
TOK						
<b>TOTAL</b>						
<b>CUT</b>	10,158	28,925	16,241	18,630	22,711	25,174
<b>(SOLD)</b>	(29,467)	(10,773)	(10,156)	(35,782)	(21,601)	(27,475)

MBF= 1000 BOARDFEET

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB310

Revision Date: Original Dept Affected: Natural Resources  
 Title: "An Act relating to the management and sale of BRU: Resource Development  
state timber; relating to the classification of state land..." Component: Forest Management and Development  
 Sponsor: Senator Frank  
 Requestor: Senator Frank Component Serial No. 435

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There is no incremental cost expected to the Department of Natural Resources.

Prepared by: Tomas H. Boutin, Director Phone: 465-3379  
 Division: Forestry Date: 2-Mar-94  
 Approved by Commissioner: Harry A. Noon Date: 2-Mar-94  
 Agency: Natural Resources

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A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 310( ), Draft dated 3/18/94

Page 2, line 18, following "section":

Insert "if public notice of the proposed sale is provided in the manner specified in AS 38.05.945(b)"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 310( ), Draft dated 3/18/94

Page 3, line 10:

Delete "exceed 30"

Insert "be less than 30 days nor more than 60"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 310( ), Draft dated 3/18/94

Page 5, lines 10 - 11:

Delete all material.

Reletter the following subparagraphs accordingly.

Page 6, following line 31:

Insert a new subsection to read:

"(1) Upon the completion of three-quarters of the total term of the agreement, the commissioner shall review the operation and performance of the agreement and determine whether it is in the best interest of the state to renew the agreement. If the commissioner determines that it is in the best interest of the state, the commissioner shall solicit and evaluate proposals as provided in this section, for renewal of the agreement, including a proposal from the current operator."

Reletter the following subsections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 310( ), Draft dated 3/18/94

Page 6, line 3:

Delete "and"

Page 6, line 4, following "years":

Insert "; and

(O) provisions for deactivation or termination, that may include bonding, to ensure reforestation, stabilization, monitoring, and other residual obligations"