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Chapter No.
101

AN ACT

Amending the Alaska Land Act to clarify the requirement of a single written best interest finding required for the sale, lease, or other disposal of state land or resources or an interest in them, and relating to certain disposals involving multiphased development; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: July 11, 2001
Actual Effective Date: July 12, 2001

AN ACT

1 Amending the Alaska Land Act to clarify the requirement of a single written best interest
2 finding required for the sale, lease, or other disposal of state land or resources or an interest in
3 them, and relating to certain disposals involving multiphased development; and providing for
4 an effective date.

5

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 LEGISLATIVE PURPOSE. (a) In 1994, the legislature amended AS 38.05.035 in
9 reaction to a series of decisions by the Alaska Supreme Court concerning what the court
10 characterized as the Department of Natural Resources' "phasing" of its review of various
11 mining and oil and gas projects and deciding that phasing generally should not be allowed.

12 (b) The amendment to AS 38.05.035(e) provided that, in preparing its best interest
13 finding, the Department of Natural Resources may limit the scope of its review and finding to

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1 the disposal phase of a multiphase project if certain conditions were met.

2 (c) Although the legislature did intend that there would be a detailed review of the
3 project at any later phase, the legislature did not intend that the Department of Natural
4 Resources would have to issue another best interest finding as part of that review.

5 (d) When passing the 1994 amendments, the legislature was aware that the post-
6 disposal phases, which are exploration, development, and transportation, would be subjected
7 to numerous federal, state, and local laws, regulations, policies, and ordinances; reviewed by
8 numerous agencies; and subjected to public review and comment. For example,

9 (1) before an onshore exploration well can be drilled in the Cook Inlet, a
10 lessee, in addition to complying with the lease's stipulations and mitigation measures,
11 typically must

12 (A) conduct a cultural resource study with the Department of Natural
13 Resources, division of parks, office of history and archaeology; and

14 (B) obtain

15 (i) from the state and borough an Alaska coastal management
16 program consistency determination;

17 (ii) from the Division of Oil and Gas of the Department of
18 Natural Resources approval of a plan of operation;

19 (iii) from the Department of Natural Resources, division of
20 mining, land, and water a land use permit;

21 (iv) from the Department of Fish and Game a special area, and
22 possibly a fish habitat, permit;

23 (v) from the Department of Natural Resources, division of
24 mining, land, and water a temporary water use permit;

25 (vi) from the Department of Environmental Conservation a
26 wastewater disposal permit;

27 (vii) from the Department of Environmental Conservation
28 approval of an oil discharge prevention and contingency plan;

29 (viii) from the Department of Environmental Conservation a
30 solid waste disposal permit;

31 (ix) from the Department of Environmental Conservation a

1 certificate of reasonable assurance that state water quality standards are met;

2 (x) from the United States Army Corps of Engineers a permit
3 issued under 33 U.S.C. 1344 (sec. 404 of the Clean Water Act);

4 (xi) from the Alaska Oil and Gas Conservation Commission a
5 conservation order; and

6 (xii) from the Alaska Oil and Gas Conservation Commission a
7 permit to drill; and

8 (2) for a typical offshore exploration well in the Cook Inlet, in addition to
9 complying with the lease's stipulations and mitigation measures, a lessee typically must

10 (A) obtain

11 (i) from the state and borough an Alaska coastal management
12 program consistency determination;

13 (ii) from the Department of Natural Resources, division of oil
14 and gas, approval of a plan of operation;

15 (iii) from the Department of Environmental Conservation an air
16 quality permit;

17 (iv) from the Department of Environmental Conservation
18 approval of an oil discharge prevention and contingency plan;

19 (v) from the Department of Environmental Conservation an
20 annular injection approval under a general permit;

21 (vi) from the Department of Environmental Conservation a
22 certificate of reasonable assurance that state water quality standards are met;

23 (vii) from the United States Army Corps of Engineers a permit
24 issued under 33 U.S.C. 403 (sec. 10 of the Rivers and Harbors Act of 1899);

25 (viii) from the United States Environmental Protection Agency
26 a National Pollutant Discharge Elimination System (NPDES) waste disposal
27 permit;

28 (ix) from the Alaska Oil and Gas Conservation Commission a
29 conservation order; and

30 (x) from the Alaska Oil and Gas Conservation Commission a
31 permit to drill; and

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1 (B) meet the requirements, under the Alaska coastal management
2 program, of public notice and the opportunity to comment.

3 (e) In *Kachemak Bay Conservation Society v. State*, Department of Natural
4 Resources, 6 P.3d 270 (2000), the Alaska Supreme Court considered the 1994 amendment;
5 the Court recognized that it empowered the department to phase, but declared that the
6 department "is obliged, at each phase of development, to issue a best interests finding . . .
7 relating to that phase before the proposed development may proceed."

8 (f) This Act is intended to make clear that

9 (1) no other best interest finding is required after the disposal phase;

10 (2) the best interest finding shall be based upon known information or
11 information that is made available to the director, even if all potential cumulative impacts of
12 the project are not known; and

13 (3) public notice and the opportunity to comment shall be provided at each
14 phase of the project.

15 * Sec. 2. AS 38.05.035(e) is amended to read:

16 (e) Upon a written finding that the interests of the state will be best served, the
17 director may, with the consent of the commissioner, approve contracts for the sale,
18 lease, or other disposal of available land, resources, property, or interests in them. **In**
19 **approving a contract under this subsection, the director need only prepare a**
20 **single written finding.** In addition to the conditions and limitations imposed by law,
21 the director may impose additional conditions or limitations in the contracts as the
22 director determines, with the consent of the commissioner, will best serve the interests
23 of the state. The preparation and issuance of the written finding by the director **are**
24 **[IS]** subject to the following:

25 (1) with the consent of the commissioner and subject to the director's
26 discretion, for a specific proposed disposal of available land, resources, or property, or
27 of an interest in them, the director, in the written finding,

28 (A) shall establish the scope of the administrative review on
29 which the director's determination is based, and the scope of the written
30 finding supporting that determination; the scope of the **administrative** review
31 and finding may address only reasonably foreseeable, significant effects of the

1 uses proposed to be authorized by the disposal;

2 (B) may limit the scope of an administrative review and finding
3 for a proposed disposal to

4 (i) applicable statutes and regulations;

5 (ii) the facts pertaining to the land, resources, or
6 property, or interest in them, that the director finds are material to the
7 determination and that are known to the director or knowledge of which
8 is made available to the director during the administrative review; and

9 (iii) issues that, based on the statutes and regulations
10 referred to in (i) of this subparagraph, on the facts as described in (ii) of
11 this subparagraph, and on the nature of the uses sought to be authorized
12 **by the disposal**, the director finds are material to the determination of
13 whether the proposed disposal will best serve the interests of the state;
14 and

15 (C) may, if the project for which the proposed disposal is
16 sought is a multiphased development, limit the scope of an administrative
17 review and finding for the proposed disposal to the applicable statutes and
18 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
19 pertain solely to **the disposal** [A DISCRETE] phase of the project when

20 (i) the only uses to be authorized by the proposed
21 disposal are part of that [DISCRETE] phase;

22 (ii) **the disposal is an oil and gas disposal and, before**
23 **the next phase of the project may proceed, public notice and the**
24 **opportunity to comment are provided under regulations adopted**
25 **by the department unless the project is subject to a consistency**
26 **review under AS 46.40 and public notice and the opportunity to**
27 **comment are provided under AS 46.40.096(c);**

28 (iii) the department's approval is required before the
29 next phase of the project may proceed; and

30 (iv) [(iii)] the department describes its reasons for a
31 decision to phase [AND CONDITIONS ITS APPROVAL TO

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1 ENSURE THAT ANY ADDITIONAL USES OR ACTIVITIES
2 PROPOSED FOR THAT OR ANY LATER PHASE OF THE
3 PROJECT WILL SERVE THE BEST INTERESTS OF THE STATE];

4 (2) the director shall discuss in the written finding prepared and issued
5 under this subsection the reasons that each of the following was not material to the
6 director's determination that the interests of the state will be best served:

7 (A) facts pertaining to the land, resources, or property, or an
8 interest in them other than those that the director finds material under (1)(B)(ii)
9 of this subsection; and

10 (B) issues based on the statutes and regulations referred to in
11 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
12 subsection;

13 (3) a written finding for an oil and gas lease sale under AS 38.05.180 is
14 subject to (g) of this section;

15 (4) a contract for the sale, lease, or other disposal of available land or
16 an interest in land is not legally binding on the state until the commissioner approves
17 the contract, but if the appraised value is not greater than \$50,000 in the case of the
18 sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or
19 interest in land, the director may execute the contract without the approval of the
20 commissioner;

21 (5) public notice requirements relating to the sale, lease, or other
22 disposal of available land or an interest in land for oil and gas proposed to be
23 scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), except
24 for a sale under (6)(F) of this subsection, are as follows:

25 (A) before a public hearing, if held, or in any case not less than
26 180 days before the sale, lease, or other disposal of available land or an interest
27 in land, the director shall make available to the public a preliminary written
28 finding that states the scope of the review established under (1)(A) of this
29 subsection and includes the applicable statutes and regulations, the material
30 facts and issues in accordance with (1)(B) of this subsection, and information
31 required by (g) of this section, upon which the determination that the sale,

1 lease, or other disposal will serve the best interests of the state will be based;
2 the director shall provide opportunity for public comment on the preliminary
3 written finding for a period of not less than 60 days;

4 (B) after the public comment period for the preliminary written
5 finding and not less than 90 days before the sale, lease, or other disposal of
6 available land or an interest in land for oil and gas, the director shall make
7 available to the public a final written finding that states the scope of the review
8 established under (1)(A) of this subsection and includes the applicable statutes
9 and regulations, the material facts and issues in accordance with (1) of this
10 subsection, and information required by (g) of this section, upon which the
11 determination that the sale, lease, or other disposal will serve the best interests
12 of the state is based;

13 (6) before a public hearing, if held, or in any case not less than 21 days
14 before the sale, lease, or other disposal of available land, property, resources, or
15 interests in them other than a sale, lease, or other disposal of available land or an
16 interest in land for oil and gas under (5) of this subsection, the director shall make
17 available to the public a written finding that, in accordance with (1) of this subsection,
18 sets out the material facts and applicable statutes and regulations and any other
19 information required by statute or regulation to be considered upon which the
20 determination that the sale, lease, or other disposal will best serve the interests of the
21 state was based; however, a written finding is not required before the approval of

22 (A) a contract for a negotiated sale authorized under
23 AS 38.05.115;

24 (B) a lease of land for a shore fishery site under AS 38.05.082;

25 (C) a permit or other authorization revocable by the
26 commissioner;

27 (D) a mineral claim located under AS 38.05.195;

28 (E) a mineral lease issued under AS 38.05.205;

29 (F) an exempt oil and gas lease sale under AS 38.05.180(d) of
30 acreage subject to a best interest finding issued within the previous 10 years or
31 a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a

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1 best interest finding issued within the previous 10 years, unless the
2 commissioner determines that substantial new information has become
3 available that justifies a supplement to the most recent best interest finding for
4 the exempt oil and gas lease sale acreage and for the reoffer oil and gas lease
5 sale acreage; however, for each oil and gas lease sale described in this
6 subparagraph, the director shall call for comments from the public; the
7 director's call for public comments must provide opportunity for public
8 comment for a period of not less than 30 days; if the director determines that a
9 supplement to the most recent best interest finding for the acreage is required
10 under this subparagraph,

11 (i) the director shall issue the supplement to the best
12 interest finding not later than 90 days before the sale;

13 (ii) not later than 45 days before the sale, the director
14 shall issue a notice describing the interests to be offered, the location
15 and time of the sale, and the terms and conditions of the sale; and

16 (iii) the supplement has the status of a final written best
17 interest finding for purposes of (i) and (l) of this section;

18 (G) a shallow gas lease authorized under AS 38.05.177 in an
19 area for which leasing is authorized under AS 38.05.177;

20 (H) a surface use lease under AS 38.05.255;

21 (I) a permit, right-of-way, or easement under AS 38.05.850;

22 (7) the director shall include in

23 (A) a preliminary written finding, if required, a summary of
24 agency and public comments, if any, obtained as a result of contacts with other
25 agencies concerning a proposed disposal or as a result of informal efforts
26 undertaken by the department to solicit public response to a proposed disposal,
27 and the department's preliminary responses to those comments; and

28 (B) the final written finding a summary of agency and public
29 comments received and the department's responses to those comments.

30 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).