W.P.

Coastal Zone
Information
Center

10772

Management of OCS-Related Industrial Development

A Guide for Alaskan Coastal Communities

COASTAL ZONE
INFORMATION CENTER

Prepared for the
Alaska Department of Community
and Regional Affairs

SEP 2 1977

Division of Community Planning

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by
David M. Dornbusch and Company, Inc.

Alaska Dept. of Community + Regional Affairs

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ALASKA DEPARTMENT OF COMMUNITY
AND REGIONAL AFFAIRS

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by

DAVID M. DORNBUSCH AND COMPANY, INC.

San Francisco, California

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STATE OF ALASKA
DEPT. OF COMMUNITY & REGIONAL AFFAIRS
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This report, Management of OCS-related Industrial Development is one of a series of special studies the Division of Community Planning is undertaking on OCS planning issues of common interest to local governments and other public agencies, the petroleum industry and the general public.

The pattern of onshore development could take many forms depending on the location and extent of offshore discoveries, shoreside siting requirements and local growth management policies. Facilities which are carefully conceived and efficiently operated can make positive contributions to a community's economic diversification and stability. Conversely, poorly planned or located facilities can be detrimental to a community's interests and cause adverse public reaction to proposed OCS development.

Marine service bases, oil terminals, treatment plants, LNG plants and, possibly, petrochemical plants are the major shoreside industrial facilities which may accompany petroleum exploration and development along Alaska's outer continental shelf. These industrial facilities will be capital-intensive and technically sophisticated. Because of the large scale and specialized operating requirements of such facilities, their design and operation will require extraordinary care, competence, and cooperation on the part of industry and government to ensure that the legitimate and diverse needs of the private and public economies, safety, resource conservation, local life-style preferences and other valid interests are met in a responsible and balanced manner.

Strategies for management of OCS development are just now being developed by our State and local governments. The industrial management concepts in this report are presented as tools for planning OCS onshore facilities in a manner compatible with the interests of local residents and the goals of industry.

We hope this report will be of use both to local governments and to the offshore industries in their planning for OCS industrial development.

Sincerely,

Kevin Waring
Director

INTRODUCTION AND SUMMARY OF ACTION PRIORITIES

Oil and gas exploration, development, and production occurring on Alaska's outer continental shelf will require the use of onshore sites to support offshore operations and to store and transport petroleum products. Many of these onshore facilities are expected to locate in or near established coastal communities where there are sheltered harbors and access to airports, water, and supplies.

If a community chooses to accept the OCS-related development, it has an opportunity to reap sizeable economic benefits, but it also becomes vulnerable to adverse impacts resulting from the development. To obtain maximum economic benefits and alleviate fiscal pressures and negative social and environmental impacts, a community must make informed policy decisions and then implement those policies with effective management tools and procedures.

The Alaskan Department of Community and Regional Affairs, Division of Community Planning is assisting communities anticipate, plan for and manage the onshore industrial development by providing information on the types of onshore support facilities that will be required, the implications of onshore development for Alaskan communities, and the role that the state government will play in setting policy and helping to manage developments. As a part of the Division's program, David M. Dornbusch & Company, Inc. prepared this report of the alternative management tools and procedures available to Alaskan communities.

This report does not focus on any particular community. Issues and problems common to all Alaskan communities under development pressure are addressed, and the report offers a range of alternative management procedures and tools which can be used to achieve diverse community needs and objectives related to OCS activity.

Recognizing that small communities have limited resources and staff to perform analysis, planning, and management activities, the report focuses on management techniques which are easiest to administer. It indicates

how communities can benefit from a division of task responsibilities among the community officials, the developer, and those state agencies which can provide professional assistance. This division of responsibility reduces the community's planning and administrative burden without relinquishing its ability to guide or modify the development and its impacts.

Priorities for Community Action

The steps listed below are fundamental actions necessary for communities to manage OCS-related developments.

- STEP 1 Determine what to expect from OCS developments.

  The Division of Community Planning has prepared and compiled analyses of OCS oil and gas developments. These should be reviewed to develop an understanding of the industry's operations and to determine what will be required of coastal communities which accommodate the onshore support facilities.

- STEP 2 Evaluate community ability to serve industry needs.

  Determine the locations and areas of land available for development and estimate the community's potential for providing needed facilities, services, and utilities.

- STEP 3 Determine what the community wants.

  Formulate objectives and policies to express what the community hopes to obtain from the OCS-related developments, and what it hopes to avoid.

- STEP 4 Examine and revise local zoning and other regulations.

  Determine what changes may have to be made in local codes and regulations to accommodate the development and to achieve the community's objectives and policies.

- STEP 5 Annex (or acquire) land to extend jurisdiction.

  Determine which areas may be exposed to OCS-related developments and bring those areas under the community's jurisdiction.

- STEP 6 Develop a financial plan.

  The financial plan should consist of a capital improvement pro-

gram to expand or add new infrastructure; an operations and maintenance program for additional services that will be provided; and a revenue program which balances the costs of capital improvement, service, and maintenance with the funds to pay for them.

- STEP 7 Establish procedures for reviewing development proposals.

  The proposals should contain sufficient information to permit an analysis of how well the development will conform with community policies and meet community objectives. Proposal review staff should have adequate skills and time to analyze proposals. The review procedures should allow for sufficient interaction between applicant and reviewer to permit a resolution of conflicting objectives.

How to Use the Report

The actions noted above are described in more detail in Part I. Each task is essential. Part II contains a discussion of the three types of tools available to manage onshore developments--leases, public powers, and indirect methods. It should be used first to gain a basic understanding of these tools, and then to select a general management approach. The last section suggests ways to use the management tools to achieve particular financial, economic, social, and environmental objectives. It describes many actions which supplement the seven basic tasks. The reader should refer to the chapters of Part III which will help him deal with the particular issues facing his community.

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I. PREPARING FOR OCS-RELATED INDUSTRIAL DEVELOPMENT

I. PREPARING FOR OCS-RELATED INDUSTRIAL DEVELOPMENT

If local leaders are to plan and manage OCS-related development effectively, they must anticipate the industry's requests and proposals. This involves understanding the basics of the oil industry's operations, specifying the community's desires for the development, and understanding how its desires may conflict with--or conform to--industry's objectives.

Even very small local governments can learn the basics of OCS operations. This information will be an invaluable aid. It will assist local officials in--

gaining confidence in their dealings with the industry

assessing the reasonableness of their desires

reacting to proposals in an informed and capable manner.

Communities must also formulate--and explain--their objectives for OCS-related development. For, until internal conflicts about local goals are resolved, community leaders will be unable to achieve a coordinated management approach.

Finally, local governments must understand what actions their objectives necessitate. They must evaluate the adequacy of existing regulations, and enact new ones if necessary. Land availability and jurisdiction should be reviewed. Financial capabilities have to be examined, and a procedure developed for reviewing OCS-related proposals.

Communities which choose to accommodate OCS-related development can benefit from that development--provided that they are adequately prepared to guide and influence it. The fundamental elements of such preparation are described in this section.

1. UNDERSTANDING OCS OPERATIONS

Background Readings

Although the process of seeking and extracting offshore oil and gas is technically complex, it is quite simple in concept. Representatives of coastal communities should feel confident of attaining sufficient understanding of the operations to enable them to evaluate proposals wisely.

To develop a working knowledge of OCS operations and onshore facility requirements, local officials should study the reports which the State Division of Community Planning has prepared concerning OCS-related developments. Perhaps the most important information can be found in--

- a series of onshore industrial profiles compiled by the Department of Community and Regional Affairs (Subjects include: service bases, concrete platform fabrication yards, pipelines, treatment facilities, crude oil terminals, LNG plants, refineries, and petrochemical plants.)
- Marine Service Bases for Offshore Oil Development, a report prepared for the Department of Community and Regional Affairs by Alaska Consultants, Inc.

The following documents may also be useful:

Factbook--Onshore Facilities Related to Offshore Oil and Gas Development (New England River Basins Commission, 55 Court Street, Boston, Mass. 02108)

Onshore Planning for Offshore Oil: Lessons from Scotland (Pamela A. Baldwin and F. Malcolm Baldwin, The Conservation Foundation, 1717 Massachusetts Avenue NW, Washington, DC 20036)

Keeping Up-to-Date

As OCS activities proceed, a considerable amount of information will become available from the federal government, the State of Alaska, local governments, and the industry itself. Information about OCS activities will be contained in various applications, plans, reports, and notices submitted in compliance with federal, state, and local regulations. Communities are encouraged to read and maintain a file of the documents as they are made available. Table I-1 on the following page identifies these documents.

In addition to the sources cited in Table I-1, petroleum industry representatives are generally available to answer specific questions. The companies which are the principle offshore leaseholders may be best qualified to provide information. Many already have Anchorage offices.

TABLE I-1

INFORMATION FLOWS[a]

Subject	To	From	Comments
Geophysical, Archaeological and Other Surveys Pertaining to Cultural Resources	Federal Government	Oil Companies	These surveys may be required by the Bureau of Land Management under Stipulation No. 1 of the oil and gas leases.
Report of Discovery of Cultural Resource	Federal Government	Oil Companies	Required by Stipulation No. 1 of the oil and gas leases if a cultural resource is found.
Exploratory and Development Plans	Federal Government	Oil Companies	These plans must be filed in accordance with Stipulation No. 1 of the oil and gas leases. They must identify the anticipated placement and grouping of necessary structures, including pipelines, showing how such placement and grouping will have the minimum practicable effect on the other significant uses of the Outer Continental Shelf, including commercial fishing and marine mammals and bird rookeries; include a detailed description of materials and energy to be introduced into the marine environment; and, if required by the BLM, include site-specific biological surveys and monitoring programs to ensure that operations will have minimum adverse effects to biotic communities, commercial fishing, recreation, and other significant uses of the Outer Continental Shelf.

TABLE I-1

INFORMATION FLOWS

(Continued)

Subject	To	From	Comments
Notice of support facilities for the Exploration Program in the Northern Gulf of Alaska	Regional Oil and Gas Supervisor, U.S. Geological Survey, Impacted Communities, and Governor of Alaska	Oil Companies	Under Stipulation No. 5 of the oil and gas leases, this report must describe anticipated onshore activities including personnel requirements, subcontractors, locations, facilities, frequency of boat and aircraft arrivals and departures, addition to local population, and supplies to be bought within Alaska. Any amendments to this Notice must also be published.
Public Notice of Lease of State-Owned Lands	Local Citizens	Department of Natural Resources (DNR)	Public Notice is published in local newspapers. Notices include a description of the land, the interest to be leased, and the time, place, and general terms of the lease. Applies to all State-owned lands where annual rental exceeds $250 and term exceeds five years.
Public Notice of Tideland Lease	Local Citizens	DNR	Public notice is published in local newspapers. Notices include same information as for lease of State-owned lands.
Alaska Native Management Report	Subscribers	The Alaska Native Foundation	This bi-weekly publication describes all major native projects.

TABLE I-1

INFORMATION FLOWS

(Continued)

Subject	To	From	Comments
Federal Oil/Gas Lease	Local Jurisdictions, Public	Federal Government	Includes stipulations.
Action on Exploration Plan	Public	Federal Government	State's approval or disapproval of Lessee's Exploration Plan.
General Plans, Policies	Public, Industry	Local Governments	
Zoning Map, Subdivision Ordinance, Building Permit, etc.	Public, Industry	Local Governments	

[a]Some permit procedures require that information be submitted and some allow for public hearings. Refer to Table IV-2 for details.

As exploration proceeds in the Gulf of Alaska, Lower Cook Inlet, the Kodiak Shelf, and the Bering Sea, the experience gained will be valuable to communities that have not yet faced development and management decisions. An important service which the Division of Community Planning could perform would be to collect and distribute information on the sequence of events, types of management tools used, and the outcome of negotiations and activities. The information ought to be published frequently, perhaps in the form of a summary newsletter with special reports containing important details. The newsletters should address the following general questions:

- What development proposals were made, and which were accepted?

  What lease terms were acceptable and which were unacceptable?

  What proposal review and management procedures were used, and which seemed to work well or poorly?

  How did the accepted proposals conform with or differ from a community's plan for OCS-related development?

What were the particular roles of native corporations, boroughs, and cities in the planning, proposal review, management, and development processes?

What technical assistance was provided by the State or by outside consultants?

What financing arrangements were considered and utilized, and what were the reasons for acceptance and rejection?

What problems were encountered in the financing program selected?

The most comprehensive system for gathering this information would entail a cooperative effort on behalf of industry, the State, and local representatives. Communities could collect much of the information for their region. Their findings, supplemented by responses from industry representatives, would be sent to the State for compilation and distribution. To be most effective, such a system would have to work efficiently, providing rapid--and accurate--dissemination of results.

After the initial period of OCS activity, the newsletter could be expanded to include information on social, economic, and environmental impacts. Even data from ordinary records (changes in traffic counts, sales receipts, property values, number of arrests, etc.) would be informative to communities still planning for development. Descriptions of methods being used to manage impacts would be useful to localities experiencing similar changes.

2. EVALUATING COMMUNITY ABILITY TO SERVE INDUSTRY NEEDS

If a community knows how well it is able to serve the industry's needs, it can take maximum advantage of its assets and minimize its shortcomings. By also comparing its own relative strengths and weaknesses with those of other coastal communities, local officials can judge how flexible industry can be in choosing locations for onshore sites. This information will help them assess the industry's willingness to modify its plans to conform to local objectives.

When a petroleum company, or one of its subcontractors or suppliers, considers a particular site for development, several general factors are evaluated:[1]

- Access to offshore activities and to origins of supplies and workers
- Harbor conditions

  Sheltered and offering a minimum of tidal problems
  Sufficient depth at quayside and acceptable sedimentation
  Sufficient frontage at quayside
  Adequate turning basin

- Infrastructure and services

  Airport (with scheduled service)
  Fresh water
  Roads connecting airport with harbor area and supply/service bases
  Telecommunications
  Power

- Developable land

  Adequate area
  Adjacent or accessible to port area
  Adequate slope, stability, and bearing capacity

---

[1]For detailed requirements, see Alaska Consultants, Inc., Marine Service Bases for Offshore Oil Development, prepared for the State of Alaska, Department of Community and Regional Affairs, Division of Community Planning (Anchorage, 1976); and A. MacGregor Hutcheson and Alexander Hogg, eds., Scotland and Oil, 2d ed. (Edinburgh and New York: Oliver & Boyd, 1975), pp. 42 - 64.

- Labor force

  For construction
  For supply/service activities
  For support services

Communities should understand the relative importance of each of these needs for the types of development being considered in their area. The table on the following page summarizes this information. The services and facilities shown are not necessarily preconditions for development; in some instances the industry can provide the service (or facility) itself, or modify its operations so as to lessen or eliminate the need. But, the cost of these actions should indicate where community support will be necessary.

A community should also assess its flexibility in providing for industry's needs. A principal issue may be the availability of alternative locations for the development. Considerations in offering alternative sites for development include:

the amount of land available in different locations for potential sites

ownership of the developable land and the need for parcel assembly

accessibility to transhipment points, services and utilities

ownership of access routes and implications for acquisition or easements

necessity for zoning changes

potential negative impacts--social and environmental--to be mitigated

The better a community understands its ability to serve the industry's needs, the easier it will be for the industry to work with that community and the greater will be the community's chances of achieving benefits from the development while minimizing undesirable impacts.

TABLE I-2

ONSHORE REQUIREMENTS
OF OCS OIL-RELATED
OPERATIONS

Operations (in sequence of development)	Access to Offshore Activities & to Origins of Supplies	Harbor Conditions				Infrastructure & Services			Developable Land	Labor Supply
		Sheltered	Quayside Depth	Quayside Frontage	Turning Basin	Airport	Fresh Water	Telecommunications		
1. Presale Testing		x				x		x		
2. Servicing Offshore Exploration	x	x	x	x	x	x	x	x	x	x
3. Servicing Development	x	x	x	x	x	x	x	x	x	x
4. Platform Installation	x					x		x		
5. Pipe-Laying - Sea	x	x	x	x	x	x		x		x
5. Pipe-Laying - Land	x							x		x
6. Oil & Gas Separation	x					x		x	x	
7. Storage & Transhipment	x								x	
8. Management of Exploration & Production						x		x		

Source: Alaska Consultants, Inc., Marine Service Bases for Offshore Oil Development, prepared for the State of Alaska, Department of Community and Regional Affairs, Division of Community Planning (Anchorage, 1976); and A. MacGregor Hutcheson and Alexander Hogg, eds., Scotland and Oil, 2d ed. (Edinburgh and New York: Oliver & Boyd, 1975).

3. FORMULATING OBJECTIVES AND POLICIES

A community's policies and objectives will form the basis for all its major actions in regard to OCS. A set of clearly defined objectives will provide local leaders with guidelines for evaluating the industry's proposals. Agreed-upon policies will enable a community to respond promptly and decisively, and may indicate issues which warrant local initiative.

Diverse local interests may complicate policy formulation. Nevertheless, open discussions or public forums on specific OCS-related issues can help to resolve many differences.

The community's position on issues of municipal finances, the local economy, land use, environmental quality, and community participation in commercial ventures should be specified through its objectives. In the sections which follow, each of these policy areas is discussed more fully. Examples are given of policies and objectives which a community might adopt.[1]

Municipal Finances

Even if no publicly owned land is sold or leased, communities have extensive financial interests in onshore facilities. The developments will require public services that entail public expenditures. Local jurisdictions are likely to incur greater costs for power and water supply, waste disposal, schools, roads, health care, fire and police protection, snow removal and government administration.

In order to meet such costs as they are incurred, community financial objectives should be well conceived and explicit. The following are examples of policies and objectives related to municipal finances:

Objective: Assure that revenues derived from OCS activities are adequate to cover all capital, operating, and maintenance expenditures.
Policy: The community will not subsidize public services and facilities that support OCS onshore operations.

Objective: Avoid large capital outlays.
Policy: Promote full utilization of existing public facilities: for example, route solid waste to existing disposal site instead of developing new sites; extend hours of snow removal operations instead of purchasing new equipment.

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[1] These examples are illustrative only, and do not cover the range of policies and objectives which a community might find necessary.

Local Economy

OCS-related operations will disrupt local economic conditions both directly and indirectly. For example, local workers may be lured away from their present jobs by the prospect of higher wages (a direct effect), and their extra earnings stimulate the local economy (an indirect effect). Community policies and objectives may seek to minimize the disruption, or to capitalize on it financially.

Land value escalation typically accompanies pressure for rapid development. While it is impossible to eliminate this problem, delineating areas where growth is to occur can considerably limit its extent.

The following are examples of policies and objectives concerning the local economy:[1]

Objective: Encourage local hire.
Policy: Reserve 15% of all new OCS-related jobs for local residents.

Objective: Support training programs for local workers.
Policy: Train twenty unskilled laborers in supply and service base skills.

Land Use

Service and supply base design is subject to much variation. Through its land use policies, a community can facilitate an efficient and compact operation which will serve both public and industrial purposes.

Concentration of OCS support activities avoids extra service costs associated with dispersal. It limits certain adverse impacts (noise, visual disruption, etc.) to circumscribed areas.

Judicious location of industrial facilities can minimize interference with other economic activities (e.g., fishing) and prevent industry-community conflicts. Housing for new workers can be located to further financial, social, and aesthetic objectives.[2]

Policies and objectives may pertain to the quality of land uses, in addition to their spatial character. Standards of layout, structural design, and ex-

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[1] The numbers cited below are to serve as examples only.

[2] For example, keeping service costs low might be a financial objective, racial desegregation a social objective, and screening trailor parks from view an aesthetic objective served by housing location actions.

ternal appearance can be developed. The use of natural features in the design can also be regulated.

Since the OCS-related facilities will undoubtedly be abandoned at the conclusion of operations, the community ought to formulate policies for dealing with derelict sites. Examples of land use policies and objectives are given below:

Objective: Minimize conflicts over harbor usage.
Policy: Locate service base away from major fishing wharfs.

Objective: Restore site to acceptable standards at conclusion of OCS operations.
Policy: Unused structures, paved surfaces, and overhead wiring must be removed, or provisions made for their reuse.

Environmental Quality

Certain local policies should be directed toward minimizing environmental degradation. Policies can address prevention of adverse impacts, restoration of damaged areas, and compensation for damages. Potential problems such as noise and vibration, air pollution and odors, visual nuisances, and waste disposal and treatment should be given consideration.

Natural hazards and physical constraints to development should be acknowledged. Community objectives might include restricting development from geologically unstable areas, or from locations with outstanding wildlife, aesthetic, historical or cultural features.

Damage from chronic oil spills can be minimized by having well-rehearsed spill contingency plans, and cleanup equipment readily available. Native corporations involved in marine terminal development should formulate policies to this effect.

Local policies should cover restitution for injured parties--both public and private.[1] Compensation should be assured for damages from oil spills or pipeline fouling.[2] If undersea pipelines deprive fishermen of access to trawl fishing areas, compensation may also be desirable.

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[1]Public policies should address damage to public facilities, while private injury would be dealt with by private means (e.g., native corporations).

[2]In the case of an oil spill, A.S. 46.03.822 does not require proof of negligence to collect damages. For other causes, however, negligence must be proven in order to collect.

Potential policies and objectives include the following:

Objective: Prevent accelerated erosion, and loss of life and property from natural disasters (earthquakes, landslides, seismic sea waves).
Policy: Restrict development from specified geologically hazardous or unstable areas.

Objective: Minimize noise disturbance from on-site operations and materials transfer.
Policy: Require supply base sites to be distant or screened from residential areas.

Community Participation in Commercial Ventures

A community or native corporation may wish to participate directly in OCS-related activities and gain a share of the profits from OCS development. Lands owned by the community or corporation could be leased or sold for onshore facilities. Native corporations might even wish to join in management of the operations, as the Yak-Tat Kwaan, Inc. has done in Yakutat.

Objective: Take advantage of the control allowed by lease stipulations, and obtain income from rental.
Policy: Lease land for development to oil companies and subcontractors.

Having determined their policies and objectives in the areas mentioned above, local authorities should not delay in informing the parties involved in OCS-related operations. Mutual understanding, achieved at an early date, can greatly facilitate later community-industry interaction.

Policies and objectives can be adopted publicly through council resolutions, referendums, or community plans. Other channels might further publicize local objectives--local government memorandums, position papers, press releases and editorials, and presentations made at early meetings or hearings.

4. PREPARING REGULATIONS

Many Alaskans, and hence many communities, dislike regulations of any kind. Yet there must be some way to implement public objectives. Communities are encouraged to utilize their regulatory power, because in many situations it may be the only means for assuring that local objectives will be achieved. Regulations, and not policy itself, are the direct legal means to implement public objectives.

The Need for Regulations

If public lands are publicly developed for OCS-related activities, then the appropriate governing body can implement its own policies directly. Or, if public land is leased to private parties, then the governing body can assure policy implementation through lease stipulations. The "indirect" management tools described in Part II can help to ensure that local public policy will be followed.

If OCS-related development occurs on privately owned land (which the community cannot control through leases), and if control options through indirect tools are not strong or specific enough, a community's remaining management options lie in the application of various codes, covenants, and restrictions, hereafter to be collectively called "regulations."

Public Policies as the Basis for Regulations

Adopted policy plans, objectives, or guidelines should serve as the criteria for the regulations a community prepares. The policies which could have the most influence on the location or basic character of OCS-related development are--

- the industrial land use and public facilities sections of the community's Comprehensive Plan
- special subject policies and plans for OCS-related activities and facilities, and for growth sequencing, and
- specific area plans for locations of prospective onshore OCS-related activities and facilities.[1]

Other policy documents will have an important, but slightly lesser influence on onshore activities and facilities. These include the transportation and circulation sections of the community's Comprehensive Plan, and special

[1] These topics are discussed in greater detail in Part II, Chapter 1.

subject plans which communities might adopt for coastal management, environmental and resource management, or air and water pollution prevention and control.

Adopting Regulations

The processes of preparing, and eventually adopting regulations will entail the following tasks:

- drawing up initial draft regulations, based upon local policies and objectives
- reviewing and revising the draft regulations
- holding public hearings and meetings
- making final revisions
- having regulations adopted by the borough assembly or city council.

The considerations involved in administering and monitoring the regulations a community adopts are reviewed in Part II, Chapter 1 of this report.

5. ANNEXING AND ACQUIRING LAND

A community must have jurisdiction over sites for OCS support facilities in order to adequately guide that development. Consequently, when potential sites lie outside present city boundaries, annexation will be necessary. Acquisition, on the other hand, gives the community the opportunity to exercise even greater control over the development's location and character. A community can also exert control by establishing service areas.

Annexation

A municipality should annex a territory when one or more of the following conditions hold:[1]

- The territory is presently in need of a municipal service or services which the city can provide more efficiently than another municipality.

- It is likely that future growth and development of the city will occur within the territory, and annexation of the territory will enable the city to plan for and control the new development.

- The extension into the territory of certain municipal facilities or services (e.g., water, sewer, street facilities; police, fire, or health services) is necessary to provide adequate service to city residents, and it is impossible or impractical for the city to extend such facilities or services unless the territory is within the city's boundaries.

- Residents or owners of property in the territory receive the benefit of city services without commensurate tax contributions.

Annexation requests are generally received favorably by the Local Boundary Commission, provided a sound case is made for the request. For example, in a decision concerning annexation to the City of Yakutat, the Local Boundary Commission approved the city's petition subject to inclusion of a larger area than that petitioned for by the city. The Commission stated:[2]

- The proposed boundaries in the petition are too restrictive as they do not encompass areas presently provided service

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[1]Adapted from the Local Boundary Commission's nine standards for annexation. Refer to 19 A.A.C. 05.010 for a complete listing.

[2]Local Boundary Commission Decision concerning annexation petition by the City of Yakutat (January 12, 1976), pp. 1, 2.

by the City of Yakutat and do not include the proposed industrial park as well as areas necessary for offshore development support facilities.

- Evidence presented indicates that there would be immediate growth due to the outer continental shelf development.

- Further evidence indicates that these support services should not be located within the downtown area of Yakutat.

- The City has inadequate land at present for needed residential development.

- A small boat harbor is within the proposed area and it would be important for the City to have public control over the activities of a small boat harbor in the areas of land use control and taxation.

Territory should be annexed before it is developed. This enables the community to utilize its public powers to guide the development, and to collect tax revenues at the earliest opportunity.

Annexation can be accomplished by one of two methods:

- by direct action of the Local Boundary Commission, subject to disapproval by the state legislature

- by local action, through the established procedures of the Commission

A boundary provision effected by the Local Boundary Commission, however, shall prevail over a boundary change initiated by local action regardless of priority in time.[1]

One of three requirements for annexation of land by local action must be met:

- Majority voter approval in the area proposed to be annexed is necessary.

- Land owned by the municipality may be annexed by ordinance without voter approval.

- Land may be annexed without voter approval if all property owners

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[1]Center for Natural Areas, An Inventory of Existing Land Management Tools in Alaska, Part I, produced through the Alaska Coastal Zone Management Program, Office of the Governor (Juneau, 1975), p. 171.

and voters within the area petition the borough assembly or city council.[1]

Thus, while requirements for annexation of land by local action may involve voter approval, annexation by direct action of the Commission does not. Choice of one or the other procedure depends upon the city's estimates of local support for annexation, of support from the Local Boundary Commission, and of the relative expediency of the two procedures.

The jurisdiction proposing an annexation by the Local Boundary Commission's direct action prepares a "petition for territory annexation" for submission to the Commission at the Department of Community and Regional Affairs (DCRA). The petition must discuss how the required standards for annexation are met. While the bulk of the petition consists of a discussion of such reasons for annexation, the following additional information is also appropriate: legal description of the area proposed to be annexed; quantity of land involved; estimated value of taxable land; number of residents; rate at which real property will be assessed; applicability of sales taxes, if any; and bonded indebtedness of the area proposed to be annexed.

The DCRA reviews the petition and writes a report to the Local Boundary Commission reviewing the entire case, including how the case meets the Commission's required annexation standards. DCRA makes its recommendations to the Commission, and a public hearing on the petition and DCRA's report is held before the Commission. The Commission must approve the petition by a majority vote. Its approval may be contingent on certain changes proposed by the Commission.

The Commission presents its proposed boundary change to the legislature during the first ten days of any regular session, whether that proposed change results from its own direct action in initiating a boundary change or from local action related to an annexation petition. Changes proposed have the effect of law 45 days after presentation unless disapproved by a majority of both houses.[2] Since annexations are subject to full administrative hearings and legislative review, and the policy decisions as to the mode of annexation is an exercise of administrative discretion, annexations are subject to judicial review only to determine violations of legislative or constitutional mandates or an abuse of discretion.[3]

Annexation of municipally owned territory lying outside city boundaries is especially important. A city may request state or federal development

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[1]Ibid.

[2]Ibid., pp. 161 and 171.

[3]Ibid., p. 162.

funds only for land within its jurisdiction. Furthermore, if the land ever were to be sold to private parties, municipal control would be lost unless the land had been previously annexed.

Finally, annexation is a complex procedure. Assistance is available both from DCRA and the Local Boundary Commission; legal counsel will also be required for guidance through the process.

Public Acquisition of Land

Where traditional means of regulating land use (i.e., zoning) seem inadequate, a city may wish to exercise the stronger forms of control available through land ownership. Such ownership may be either in full, or in partnership with private interests.[1]

Land acquisition by public authorities and subsequent development by, or in cooperation with, OCS operators provide the most effective means to establish desirable urban patterns and to recapture part of the value created by the provision of public services and utilities.[2] The major benefits from such direct investment in the land market are described below:

- Receipts from land sales or leases come in more quickly than property taxes and can be timed to coincide with increased demand for city services when the yield of property taxes is still inadequate.

- Through the lease of lands, the local government achieves a powerful means to prevent harmful development and to assure furtherance of community objectives.[3]

- More efficient patterns of development are possible, thereby economizing on total resource use.

- The supply of adequately serviced land can be increased at a rate

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[1]Ruth L. Mace, Industry and City Government (Raleigh: Institute of Government, University of North Carolina, 1963).

[2]IBRD, Urbanization: Sector Working Paper (Washington, DC, 1972), pp. 39, 40.

[3]"Whenever possible, the City should acquire potential industrial tracts. This would enable the City to lease the land as needed to attract desirable industrial developers and, in doing so, require local employment and environmental protection measures."--Alaska State Housing Authority, Comprehensive Development Plan, Vol. 1, prepared for the City of Yakutat (Anchorage, 1971), p. 84.

sufficient to reduce land prices or reduce their rate of increase.

- Land speculation, detrimental to efficient land use allocation and costly to consumers, can be curbed.

- A substantial part of the betterment values associated with the provision of public infrastructure and services can be captured.

Land may also be acquired by public bodies to phase future growth, or to ensure that land developers pay for certain social costs of their development.[1]

There are three means by which a community can acquire land. Land can be purchased, exchanged, or acquired by eminent domain.

Land Purchase or Exchange

When public bodies have sufficient funds, land should be purchased in either of the following cases:

- The land is needed for a specific public use or facility (e.g., public dock or municipal outdoor storage area).

- The land is to be protected from development (e.g., for wildlife protection or other environmental purposes).

"Land swaps," exchanging city-owned land for privately owned land (or land owned by another public entity), are feasible given both of the following hold:

- The municipality owns parcels which are sufficiently desirable, and available, for trade.

- The private (or public) owner is willing to accept land in lieu of cash as payment for his property.

The acquisition of state- or federally owned lands needed for OCS-related activities is advisable. The major ownership transfer of federal lands will continue to go to native corporations over the next several years under terms of the Native Claims Settlement Act. The State may also acquire federal lands under Section 6(a) of the Statehood Act. Currently,

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[1]The Urban Land Institute, Management and Control of Growth (Washington, DC, 1975), pp. I:137, 142.

[2]Although the federal government can convey lands directly to municipalities, land transfer to cities is normally accomplished through the State.

however, the federal government is conveying lands to the State much less readily than in the past. After the selected lands are conveyed to the State, it will be more difficult for communities to acquire federal land. As growth pressures increase in certain areas, however, it may be reasonable to expect that federal agencies such as the Forest Service will make some of their lands available for urban expansion, unless that land is designated as a park or natural resource area.

State lands in Alaska are more available for urbanization than are state-owned lands in the Lower 48. While most state-owned lands outside of Alaska are retained for their park and natural resource values, some state lands in Alaska may be viewed as "transitional." They cannot, however, be disposed of by the State for uses other than those consistent with local municipal regulations. Where such regulations do not exist, the State is making a concerted effort to assure that development proposals and uses proposed for the land are sound.

There are various opportunities for the small community or native corporation to receive assistance in acquiring land. They include--

- The Alaska Municipal Bond Bank Authority

This is a public organization established by a state act. Its purposes are to help cities obtain funds and borrow money at a low interest rate, and to assist cities in becoming less dependent on grants.

Admission to this program requires a simple application and verification that a proper election for the bonds has been held. The Bond Bank handles the technical and administrative activities.

To date, the Authority has made four loans, totalling 10.3 million dollars. Bonds for six other cities are being processed.

- The Small Business Development Corporation

The Small Business Development Corporation works in cooperation with the Federal Small Business Administration. The Corporation makes loans through a Local Development Corporation (LDC) composed of citizens interested in promoting business in their area. It enables small businesses lacking sufficient resources to obtain financial assistance on their own, to borrow funds.

Between 1967 and 1974, twenty-one loans valuing $419,752 were made. No loans were made by this organization during the 1974 and 1975 fiscal years.

- The Department of Community and Regional Affairs

Non-monetary assistance is available from this state agency. The DCRA may provide land use studies and other planning documents to cities, boroughs, or planning authorities.

In isolated, sparsely populated areas affected by industrial development, "Development Cities" may be incorporated. The industrial developer must submit to DCRA an outline of development expenditures and proposed capital improvement program. The program must be designed to serve the public interest and "demonstrate a probability of being carried forward to a successful conclusion."[1]

Eminent Domain

Eminent domain refers to the government's power to take property for public use without the owner's consent. The concept of "public use" (or alternatively, "general welfare," "public good," "public benefit" or "public utility or necessity") has been inseparably connected with the proper exercise of the power since its inception. Also connected to the power of eminent domain, although not part of its strict definition, is the requirement of "just compensation" for any property taken by its exercise.[2]

Public bodies can acquire land by eminent domain when both of the following conditions prevail:

- There is a need to acquire the property without the owner's consent for certain public uses which include--

  all public uses authorized by the federal government; public buildings; grounds for use by the State or any of its political subdivisions; sewage and electric power lines; and pipeline purposes

  airport operations

  roadways (but no more than 660 feet from the highway right-of-way)[3]

- The land cannot otherwise be acquired or purchased with the owner's consent.

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[1]Center for Natural Areas, op. cit., p. 169.

[2]Ibid., p. 42.

[3]A.S. 09.55.240, 02.15.070, and 19.22.020, respectively.

A jurisdiction cannot expand, unreasonably, the use of its police power (regulation without compensation) so that it in reality becomes a taking. Once a property owner is deprived of complete use and enjoyment of his property by exercise of such public power, this exercise is unreasonable and arbitrary, and falls within the purview of the law of eminent domain.[1]

Eminent domain power is not inherent in municipalities, as with certain other public bodies. The power must be conferred on them by the state legislature either by statute or charter, and may be subject to any restrictions or limitations the legislature deems necessary.[2]

Alaska Statutes 09.55.240--09.55.460 enumerate the uses for which eminent domain is authorized by the State, boroughs and municipalities. Other Alaska Statutes enable other types of eminent domain, e.g., for airport operations (A.S. 02.15.070) and roadways (A.S. 19.22.020).

Alaska Statute 29.73.020 describes the process which a municipality must follow to exercise eminent domain powers. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with Alaska Statutes 09.55.250--09.55.460. In second class cities, before exercising the power, the council shall request or petition the Department of Community and Regional Affairs.

The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the qualified voters at the next regularly scheduled general election or special election called for that purpose. A majority of the qualified voters voting on the question is required for approval of the ordinance.

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[1]Despite this limitation, however, an emerging judicial approach is toward expansion of the police power when regulation is for conservation or environmental purposes.--Center for Natural Areas, op. cit., p. 43.

[2]Ibid., p. 44.

6. FINANCIAL PLANNING

Meeting the costs of expanded services, facilities, and administrative activities will be of primary concern to small coastal communities. Their first financial planning decision will be who will pay these costs. At one extreme, the oil industry might construct all its required facilities and services. At the other extreme, a community might provide all services and construct docks and service bases, leasing them to the oil companies, their subcontractors and suppliers.

In order to assure that public expenditures are covered by adequate funds, a fiscal management program is necessary. Such a program has three components--a capital improvement program, an operation and maintenance program, and a revenue/cost analysis.

Capital Improvement Program

A community's capital improvement program provides for the orderly expansion of public facilities by establishing a timetable for new construction.

The program should include--

- a forecast of the additional demand for public facilities, including the times when such demand will become manifest
- an inventory of existing facilities and a determination of where they fall short of projected needs
- an analysis of the costs of providing the required additional facilities

Operation and Maintenance Program

Operation and maintenance outlays for new services and facilities as well as for expansion of existing operations should be incorporated into the fiscal management program. Increases in administrative costs should also be included. Again, a time schedule for these expenditures is necessary.

Revenue/Cost Analysis

Combining its capital improvement projections with those for operation and maintenance, a community can estimate its total required expenditures and their timing. Evaluation of present revenues in light of future needs

will reveal the amounts of deficit anticipated. Then, necessary funding measures can be selected and steps taken to put them into operation as the finances are required. Such financial planning will enable a community to establish appropriate tax rates and user charges, and to assess its need for funds from other sources. (See Part III, Chapter 1 for a detailed review of financial sources available to small communities.)

7. MANAGING DEVELOPMENT PROPOSALS

Development requests for onshore OCS-related projects may be received at any time. Their conformance with a community's objectives for the type, location, and phasing of development may vary widely. Proposals might be submitted without the community's previous knowledge, or they may be submitted in response to its active solicitation.

This chapter discusses the procedures which communities and other bodies, such as native corporations, ought to consider for managing OCS-related development requests.

Variables Involved in Development Proposals

When a development proposal is received, a community must be prepared to act upon it. Final decisions should take into account the total development package presented by a project applicant.

Elements of the package should include, at a minimum, the following:

- stage of OCS activity to be served (exploration, development, production)
- type of facility (specific onshore OCS-related activity, e.g., service base, marine terminal, LNG plant, pipe storage yard; support activity, e.g., ship repair, machine repair, drill bit manufacture)
- scale of project--acreage and level of activity (small, probably involving one parcel of land; medium; large, involving an aggregated development such as for a service base, or involving scattered development on noncontiguous parcels)
- ownership of property (public; private, including native corporations; combination of the above)
- proposed management of the project (by one industry on the site, by several industries on the site, by one broker or manager, by a public agency, combination of the above)
- extent of need for related public services both onsite and offsite, e.g., roads, water, sewers (none, minor, moderate, major)
- payment for all or portions of project infrastructure--roads, water, sewers, dock (private parties, e.g., native corporation, one or more industries, broker; public body; combination of private and public)

- contractor for all or portions of project infrastructure, building and facilities (private parties or more industries, public body, combination private and public)

- construction schedule--dates (project infrastructure, buildings, and facilities built simultaneously; phased development schedule)

- responsibility for property maintenance (private parties, public body, combination private and public)

- extent of environmental and social implications (direct and indirect implications for traffic, water pollution, air pollution, noise, use of land, waterfront and harbor areas, etc.; indirect implications for community growth, housing, commerce, schools and other public facilities)

- extent of economic implications (revenues and costs to the community; potential conflicts with existing industry, e.g., fishing and fish processing)

- extent and responsibility for monitoring pollution control activities and onsite activities of concern (by federal, state, local public or private agencies, or combination of them)

- extent of social implications (jobs provided; ratio of local to nonlocal employment; training programs)

The list above shows only the minimum elements that should be included in a project proposal. Other topics which could be included concern the proposed planning, design, and development of the site, buildings and facilities --either in rough conceptual form for initial discussion, or in a more detailed form. (Refer to discussion of site plan review in Part II, Chapter 2 pertaining to these topics.)

Types of Development Proposals

A development proposal submitted to a property owner or community usually concerns a plan for the use and design of a specific property or properties. If the project is small, for instance a pipe storage yard on an existing industrial site, then the community may not need to be overly concerned about a project development schedule, project management or similar factors. In large projects, however, these factors should be of concern.

Other requests may involve only a specific aspect of a development project and not the project as a whole. For example, if a community or native corporation were to build a major new dock, or even a complete service base, the following types of proposals might be submitted separately during the

development process:

a planning and design proposal

a construction proposal (usually on a bid basis)

a combination design/construction proposal

a management proposal.

Here, a community would necessarily address its reviews and decisions to the specific proposal at hand.

First Actions: Preparing to Receive Development Proposals

To be in a favorable position to make sound decisions on development proposals, certain actions should be completed before the proposals are received. As indicated in Part I, Chapter 3, preparation of policies and objectives is the first step.

Local officials should determine the conditions on which approval of various types of development will be contingent, such as responsibilities for building and financing certain public facilities. Facilities which the community or native corporation intends to build and/or manage itself should be identified, and a position on the development of publicly owned land for OCS purposes should be made at this early stage.

Next, local leaders must formulate a strategy for receiving proposals. If a community (native corporation or other body) passively accepts development requests, it is likely that the initial proposals will deviate considerably from its desires. Rather than passively awaiting requests, the community could better promote its goals by actively publicizing its objectives for OCS-related development. It could also initiate the proposal process by requesting competitive bidding for development. Constructing certain OCS-related facilities as public facilities (e.g., dock) is another option, although one which involves financial risk.

- Publicize Objectives

A community would be well advised to publicize its objectives for OCS-related development to all interested parties. Plans and other materials describing community objectives can be distributed to leaseholders of OCS exploration rights, to groups interested in development such as industry suppliers and the Gulf of Alaska Operators Committee, and to major community landowners, such as native corporations. Meetings can be held for presentation and discussion of those materials.

This action would assist the oil companies in planning to meet local objectives, and thus ease their way through the processes required for project approvals. Such action establishes an initial, cooperative form of communication between local leaders and industry representatives.

- Initiate Competitive Bidding

Competitive bidding can be requested for projects sponsored by public or private landowners. It is best applied when the sponsor owns or has major control over the property. The restrictiveness of development criteria, standards, and objectives can reflect the sponsor's desires; industry can be asked to respond to a general concept or to a detailed project.

This technique has been commonly used in urban rehabilitation and redevelopment activities, and in other public projects on publicly owned land. When a community is the sponsor, it has the opportunity to establish policies and regulations for the property, and subsequently to accept, modify or reject proposals which are submitted. And, if it acts early enough, the community can head off other development proposals which might be less responsive to public objectives. Since the review of proposals may be a lengthy and complicated process, sufficient time and manpower should be allocated to it.

If proposals are submitted on a random basis, the relative merits of any single proposal is difficult to assess. In contrast, by limiting the submission of proposals to a definite time period, the review process can be better planned and coordinated with outside assistance. Furthermore, by receiving all proposals within a given period, a better perspective can be gained with regard to the range of opportunities available to the community.

- Construct Portions of a Project as a Public Facility

The 1976 amendments to the Coastal Zone Management Act of 1972 authorized grant and loan programs by which the State of Alaska and local governments might plan for and construct certain OCS-related community facilities. Much, however, remains unclear--for instance, when and how much money will be available, what the application procedure will be, and how a community can qualify. Until these basic aspects of the programs are resolved, communities should not expect Coastal Zone funds to be forthcoming.

Although local governments may build portions of a facility (docks, roads, utilities) without this assistance, few have the financial capacity to build facilities without some type of financial support.

Actions Following Receipt of a Development Request

A community should take certain actions after it receives a development request:

- First, review the proposal for its conformance with all public plans, policies, and regulations. (Possible assistance for such review is discussed later in this chapter.)

- Review the proposal against other conditions which may not have been officially adopted as public policy (e.g., industry's provision of funds to help finance public services, preferred housing arrangements or types, etc.).

- Compare the proposal to the development expectations which the State Department of Community and Regional Affairs has included in its OCS planning documents.

- Consider the implications that approval of this request may have if the proposal addresses only a small part of total development expected.

- Examine the discrepancies between the proposal and community plans, policies, and regulations. Determine which are acceptable and which are not. Decide whether modifications in plans, policies, or regulations are warranted.

- Re-examine the community's ability to require specific modifications to the request. Assistance from state or federal agencies should be sought in making this determination. Their comprehensive knowledge about statewide or regionwide implications for certain decisions will be helpful inputs to local decisions.

- Act on the development request.

Actions on Development Requests

A community has many options after it receives a development request. Where projects are proposed on community-owned land, a community has total regulatory and discretionary authority and its options, therefore, are very extensive. Options for projects proposed on privately owned land are more limited, and must rely on negotiations and public regulations (federal, state and local codes, ordinances and other restrictions). In deciding upon a course of action, the extent of the community's bargaining power and the indirect tools available to it in support of its decision (as outlined in Part II, Chapter 3) should be taken into account.

The development proposal can, of course, be accepted if it conforms or largely conforms to local objectives and state guidelines for OCS-related development. The community may wish to negotiate for minor modifications to be accommodated by the developer.

However, more extensive nonconformity with local objectives and regula-

tions or with state guidelines may require the community to take other action. In this event, the community should consider the following examples of possible actions. These examples are not meant to exhaust all of the options available, but to indicate the types of actions which communities may take.

- Reject the proposal if it clearly does not conform to local regulations, objectives, and policy plans. Cite reasons for the rejection, especially the significant adverse impacts that might occur, or the apparent obvious inability of the proposal to be modified sufficiently to comply with regulations.

- Do not approve zoning or policy changes requested by the proposal, such as rezoning land for industrial uses.

- Refuse the proposal if it involves a facility on publicly owned land not designated for such use.

- Suggest that the applicant submit a different proposal more consistent with community objectives. Discuss the form such a proposal might take.

- Require the applicant to coordinate his activities and plan with other potential developers of onshore OCS-related facilities. This might involve the submission of a joint proposal more consistent with community objectives, e.g., for a larger facility, or different construction or management program than proposed in the original request.

- Negotiate for specific changes, for example, relocation or postponement of the project. These actions might apply to situations where needed expansion area is unavailable, or where the proposed project conflicts with the total development plan envisioned by the community. During negotiations, stress both the benefits potentially attainable by the applicant, and the constraints potentially applicable to the proposal (i.e., local, state, or federal permits requiring approval).

  Negotiations may be necessary when: local policy for OCS-related development is not explicitly stated; local policy would not specifically disqualify the proposal; the proposal essentially conforms to federal, state and local regulations; or the proposal is for a project on privately owned land.

- Assist the applicant in finding a more suitable parcel, e.g., one large enough to accommodate the proposed facilities, or one in a more desirable location.

Managing Manpower Problems Associated with Project Review and Evaluation

Small Alaskan communities are almost certain to face manpower problems in dealing with OCS-related development proposals. Few communities possess staff with the technical expertise to handle the preliminary discussions, review, evaluation, and final selection of proposals. To date, limited budgets have prevented hiring additional full- or part-time staff. Consultant support has been an option, but an expensive one to be reserved for urgent situations.

Thus, there are three major problems associated with manpower:

limited number of available personnel

limited range of available technical skills

insufficient funds to pay for the necessary persons and skills.

These problems are not new to city managers. Nevertheless, they will tend to become more severe as proposals for the different activities associated with OCS development are received. The options suggested in this section are intended to help relieve these problems.

A project sponsor might require a dozen or more highly trained professionals in the initial conceptualization and planning of onshore OCS support facilities--including marine facilities specialists, water pollution specialists, economists, engineers, financial analysts, etc. During subsequent design phases yet other professionals will be involved: site planners, architects, soils engineers, hydrologists, civil and mechanical engineers, and still others.

The difficulty of evaluating the technical aspects of OCS-related development proposals is evident. Small coastal communities are likely to have a building inspector, and possibly a city engineer or planning technician on their staff. It is unreasonable to expect these persons to deal effectively with the technical details of a proposal which may have required the combined talents of twenty or more specialists. For less complex projects, one staff member (perhaps the city engineer) may be able to manage the entire review and approval process. But, when projects are very complex, utilize specialized building techniques, or may adversely affect the environment, further expertise is needed.

Alternatives do exist. Communities may decide to utilize the developer's technical expertise. They may choose to hire independent professionals, either as staff or as consultants. Finally, assistance may be obtained from borough, state, or federal sources. Various forms of these options are described below:

- Depend upon professionals who are associated with the sponsor's project.

This option should not be expected to achieve the full range of public benefits and safety potentially available to the community, and thus should not be heavily relied upon. A major drawback is that these people, however technically competent, can be expected to have biases in favor of the project applicant's position. Moreover, they are not oriented to the needs of the community. Their expertise is in planning a project for a specific site, and not necessarily in the offsite implications of the project.

This report does suggest that the project sponsors be required to "red flag" certain aspects of their development proposals to ease the project review burdens of local officials. (This point is also discussed in Part II, Chapter 1.)

- Hire additional full-time or part-time professional staff.

This approach may be beyond the community's fiscal capacity, unless grants or loans for planning assistance are received.

- With public funds, hire professional consultants as their skills are needed.

This approach permits flexibility both in acquiring skills and in setting time periods for completing development review tasks. Cost considerations are the same as for hiring full- or part-time staff. Administrative burdens will be involved in locating appropriate consultants and then drafting a contract for each task or group of tasks to be performed.

- Require the project applicant to pay for the independent professional services selected by the community to evaluate the project.

The financial benefits of this alternative are very attractive. Administrative burdens would be the same as if the community were hiring its own consultants.

Sponsors have paid for public activities in many projects where nonpartisan input was considered essential for the benefit of the general public. For example, many developers have paid for independent consultants, selected and hired by a city, to review and evaluate potential impacts of a proposed project. This is typical of the environmental impact report (EIR) process for non-federal projects in California. Sponsors have also paid the staff and administrative costs for citizen participation programs in which local citizens both assisted and monitored the planning and design of the sponsor's project.

This option is likely to be opposed by project sponsors if state or federal

funds are available, when needed, for the same tasks.

- Seek free technical assistance now available from federal and state agencies.

Many professional skills are available from staffs at federal and state agencies. Communities should actively seek that assistance, but they should not rely on such agency staff as a permanent "extended arm" of the community. In-depth analysis of specific community problems may be limited because of other demands on the time of agency personnel. After some initial investigation, however, communities will learn where assistance can be found and what types of help can be depended upon most consistently.

Federal and state agencies having professional staff which might be available to communities are shown in Table I-3 on page I-35.

- Encourage the State to organize, contract with, and pay for a pool of technical consultants.

The services of these consultants would be able to help communities review, evaluate, and process development requests for onshore OCS support activities. Such assistance could be organized under provisions of the Coastal Zone Management Act.

Several organizational options are possible for a multi-disciplinary team of consultants:

> A community could discuss its consulting needs with the designated state agency. A work program would be developed and confirmed in writing, and the appropriate type(s) of consultant services authorized by the State. Specific arrangements would then be made between the community and the consultant.
>
> The community might ask the State for a list of consultants under contract to the State, and then devise a specific work program directly with the chosen consultant.
>
> Communities could inform the designated state agency of their needs for technical assistance. Based on the collective needs of several communities, the State would organize a monthly or bi-weekly meeting of the appropriate technical consultants, and the community representatives would attend as a group. This option might be the most economical and, as a decided advantage, would permit cross-comparisons of proposed development projects. Follow-up local meetings could be arranged for specific problems not resolved at each meeting. Alternatively, the group meeting could be programmed for as long as seemed necessary to finish the problems at hand.

TABLE I-3

FEDERAL AND STATE PROFESSIONAL STAFF ASSISTANCE POTENTIALLY AVAILABLE TO LOCAL GOVERNMENTS FOR REVIEW AND EVALUATION OF DEVELOPMENT REQUESTS

Subject Area		Assistance By
Federal Oil and Gas Lease Program; Notices of Support Activity for the Exploration Program		U.S. Department of the Interior, Bureau of Land Management State Department of Community and Regional Affairs, Division of Community Planning
General planning (site location, size of site and facilities, site design, relationship to adjacent land uses and community, etc.)		State Department of Community and Regional Affairs, Division of Community Planning
Planning, zoning, platting, regulations		State Department of Community and Regional Affairs
Design and Construction of facilities:	Oil facilities (storage, tanks, pipelines)	State Department of Natural Resources State Department of Public Works
	Docks, wharfs, breakwaters	U.S. Corps of Engineers State Department of Public Works
	Highways, roads, local service roads	State Department of Highways
	Utilities	State Department of Commerce and Economic Development
Navigation, harbors		U.S. Coast Guard State Division of Waters and Harbors
Airports, ferries		State Department of Public Works
Environmental Conservation, water pollution control, air pollution control		U.S. Environmental Protection Agency State Department of Environmental Conservation
Oil spills		U.S. Coast Guard State Department of Environmental Conservation
Natural Resources		State Department of Natural Resources
Fish and game, fisheries		U.S. Marine Fisheries Service State Department of Fish and Game

TABLE I-3

FEDERAL AND STATE PROFESSIONAL STAFF ASSISTANCE POTENTIALLY AVAILABLE TO LOCAL GOVERNMENTS FOR REVIEW AND EVALUATION OF DEVELOPMENT REQUESTS

(Continued)

Subject Area	Assistance By
Geology and geophysical factors	U.S. Geological Survey State Department of Natural Resources
Water supply, sewage, refuse disposal standards	State Department of Health and Social Services State Department of Environmental Conservation
Water rights	State Department of Natural Resources
Cultural resources (historic, archaeological)	U.S. Department of the Interior State Department of Natural Resources Alaska Historic Preservation Advisory Committee
Annexation	State Department of Community and Regional Affairs
Legal	Legal section within federal agency concerned with subject at issue State Department of Community and Regional Affairs

8. ORGANIZATION FOR MANAGEMENT

Organizational alternatives for managing OCS-related development include lease or purchase arrangements, joint ventures, and the creation of special districts, authorities, and other entities. The choice of a particular management approach depends largely on ownership of the development sites and the type of facility proposed.

Lease or Purchase

Perhaps the simplest form of organization a public or private landowner may choose is to make his site available to the land user without modification. The land user purchases or leases the site and provides all necessary capital improvements, operations, and maintenance. Public control is exercised through lease stipulations and regulatory powers.

Joint Venture

Joint venture arrangements may be between multiple landowners or between the landowner(s) and the land user. In a joint venture, the rights and responsibilities of each party (one of which might be the community) are specified in a formal agreement. The major advantage to the community as a partner is that the joint venture affords it an opportunity to share directly in the venture's profits. However, citizens may oppose such a close local government-industry alliance as a conflict of interest, and so preclude this arrangement as a viable alternative.

Authorities and Districts

Another alternative is the establishment of authorities or districts for stimulating and controlling industrial development. Where developable land is held in varied (public-private) ownership, where the industrial land user will not provide sufficient improvements, or where intense use of a particular port might warrant overall management which a single user cannot provide, the creation of such public or quasi-public entities may be beneficial.

They provide good mechanisms for obtaining revenues through taxing powers which may be used to acquire and improve land and water areas for attracting maritime-oriented tenants and users. They also provide management expertise for coordinating potentially conflicting activities and for organizing maintenance and safety operations.

Port or harbor districts are sometimes granted state-owned tide- and submerged lands. Although such entities do not presently exist in Alaska, they are common in other states. Authorities and districts are often complex. They contribute to governmental bureaucracy, and may duplicate powers already held.

Authorities and districts are usually created under the general laws of the state, but they must be organized at the local level and meet local requirements as well. They are sometimes complemented by non-profit industrial development corporations.

Districts or authorities might also be formed by private landowners. These entities are similarly created under state law and possess regional planning and fiscal capabilities.

Joint Powers Agreements

Where two public agencies wish to perform specific functions mutually, joint powers agreements are often enacted. The agreements can cover planning, land acquisition, and/or construction activities, and they may be created between cities, borough and city, or city and state. In Alaska it appears that city-state joint powers agreements would be most appropriate to aid in the planning and development of OCS-related industrial facilities.

Economic Development Corporations

Economic development corporations are normally non-profit corporations supported by general government and qualifying for governmental loans and grants. While such entities may provide finances for development, the financial gains are not likely to be in proportion to the problems associated with creating and administering another layer of government.

Regional Development Authorities

Regional development authorities are established to stimulate economic development in larger areas. A classical example of such an authority is the Tennessee Valley Authority. If regional considerations are deemed to be of significant importance in Alaska, the state government could create such an authority. Problems with this approach are similar to those of economic development corporations.

II. MANAGEMENT TOOLS

II. MANAGEMENT TOOLS

Part II describes mechanisms for managing OCS-related development. The communities which will exercise these "management tools" differ in many respects--in size, in technical and financial capabilities, and most importantly, in their objectives concerning the new development. In view of these differences, the tools discussed here cover a wide range of situations and may be applied to promote diverse local objectives.

The three types of management tools analyzed are--

- public powers
- lease agreements
- "indirect" management tools

Although it is often possible to accomplish a particular objective via <u>any</u> of the three management tools, there are major differences which should be recognized:

- Public powers generally apply throughout a local jurisdiction. They are not confined to publicly owned land, yet <u>may</u> be specific to OCS-related development.
- Lease agreements can be negotiated by public <u>or</u> private parties--whoever owns the land to be developed. Communities which do not own the sites themselves can benefit from lease agreements only through influencing the actual landowner.
- "Indirect" management tools (utilization of permit or reporting procedures) are most effective when used as measures of last resort.

Often a local jurisdiction will find it most expedient to use a combination of tools to achieve a given objective. However, even when public powers, lease agreements, and indirect management tools are used in combination, they should compliment rather than duplicate one another.

1. PUBLIC POWERS

This chapter reviews the planning and regulatory powers available to Alaskan coastal communities for managing OCS-related growth and development. Community plans are important in concretizing local policies, and community regulations are essential for transforming those policies into reality. Because plans and regulations set forth general policies in explicit terms, care should be taken that they accurately represent local policies and objectives.

A broad spectrum of public powers is available to communities, should they wish to use them.

Planning, zoning, and platting powers have been granted to local jurisdictions by the State.[1] It would be wise for local officials to--

- study the planning and regulatory options available to them (as discussed in this chapter),
- exercise these powers by adopting appropriate plans and regulations (if they have the direct power), or
- urge other delegated jurisdictions to use the powers and participate actively in the planning and regulatory processes conducted for their jurisdiction.

Every community should have a comprehensive plan which adequately expresses local objectives. If such a plan does not exist, the community should take one of two actions--update relevant portions of an existing document to conform to the new circumstances, or if no plan currently exists, prepare one. Such actions should begin well in advance of OCS impacts. Communities located near future lease sale areas should embark upon the planning process no less than two years before the date of the scheduled sale.[2]

All regulatory controls are not equally powerful, nor will they be equally desirable to different communities. Certain regulations will affect the location of development, while others will have greater influence on its timing or character (for example, its design, extent of noxious emissions, etc.). As the importance of each type of control varies from community to community, so will the desirability of any particular regulatory procedure. Thus, each locality should adopt a unique set of regulations strictly in accordance with

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[1] Planning powers for unincorporated areas in the unorganized borough are retained by the State legislature.

[2] Funds to assist local agencies in this process may be obtained from the State Department of Community and Regional Affairs.

its own values and objectives, and specific regulations which should be prepared by all communities are impossible to suggest.

Furthermore, there is considerable interdependence among regulations. For example, if a community has a reasonably complete and current Zoning Ordinance, then other regulations needed for particular subjects, e.g., a Specific Area Plan for an OCS-related development area, may be relatively brief and just supplementary to the Zoning Ordinance. But if there is no Zoning Ordinance, then regulations implementing a Specific Area Plan would have to be much more lengthy and detailed.

Bearing in mind that regulations must be tailored to specific needs, finances, and the personnel and time available in each community, communities are advised to take the following actions:

- Adopt a Zoning Ordinance including as a minimum: a zoning map showing the location of zones; zone designations indicating uses permitted, conditionally permitted, or administratively permitted in each zone; conditional use permit procedures; site plan review regulations and procedures; and rezoning procedures.[1]

- Adopt a Subdivision Ordinance. Note that such ordinance would apply to OCS development areas only if a land subdivision is involved.

- Adopt Specific Area Plan Regulations if the community has adopted its own objectives in the form of a Specific Area Plan for one or more OCS-related development areas. Such regulations might serve as an alternative both to a Zoning Ordinance and a Subdivision Ordinance. Such a plan would have to be quite lengthy and detailed if there were no Zoning Ordinance.

- Adopt Planned Unit Development Regulations if the community has a Zoning Ordinance which is relatively rigid and site-specific and if the community wants to allow design flexibility and innovative approaches to the development of sites.

- Adopt Growth Phasing Regulations to assure that the timing of development with respect to specific locations in the community is considered.

- Adopt Building Permit Regulations, a Building Code, and Related Construction Codes to assure the structural safety of all buildings.

- Adopt Development Design Standards, e.g., for streets, utilities, public facilities within rights-of-way, and any other design elements

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[1]See Table II-1 for other elements typically included in a Zoning Ordinance.

which the community wishes to regulate, such as lot sizes, yards, terracing and grading. Some of these standards are appropriately adopted as engineering standards; others are appropriately included either in a Zoning Ordinance or a Subdivision Ordinance.

The types of regulations and procedures which may influence the location, timing, basic character or other aspects of OCS-related activities or facilities are shown on Table II-1. Those regulations and procedures which are normally included in a Zoning Ordinance are grouped together, as are those which may either be included in a Zoning Ordinance or stand as separate ordinances. The relative potential influence of each regulation or procedure over OCS activities and facilities is categorized as "extensive," "major," "moderate," or "slight." Those which are most influential are discussed in more detail on the following pages.

TABLE II-1

REGULATORY POWERS OF LOCAL JURISDICTIONS

	Type of Regulation or Procedure	Aspect of Development Influenced				Influence Over OCS Activities and Facilities
		Location	Timing	Basic Character	Other	
NORMALLY INCLUDED IN A ZONING ORDINANCE	Zoning (map and related regulations for land use activities and facilities which are permitted, conditionally permitted, or administratively permitted)	x				extensive
	Conditional Use Permit			x		extensive
	Site Plan Review			x		extensive
	Specific Area Plan (only needed if community prepares specific area plans)[a]	x		x		extensive
	Planned Unit Development (only needed if community permits planned unit developments)[a]			x		extensive
	Rezoning	x				extensive

TABLE II-1

REGULATORY POWERS OF LOCAL JURISDICTIONS

(Continued)

	Type of Regulation or Procedure	Aspect of Development Influenced				Influence Over OCS Activities and Facilities
		Location	Timing	Basic Character	Other	
NORMALLY INCLUDED IN A ZONING ORDINANCE	Safety for the following types of potential hazard areas: avalanche, fire, flood fringe, floodway, landslide, seismic, and subsidence	x				major
	Resource Areas: Natural, Cultural and Visual Resources	x				moderate
	Access and Accessibility			x		moderate
	Grading/Terracing			x		moderate
	Landscaping, Buffering, Screening			x		moderate
	Performance Standards including those for noise, light and glare, odors and others not included elsewhere			x		moderate
	Setbacks and Facility Spacing			x		moderate
	Dedications				x	moderate
	Variances				x	moderate
	Accessory Uses			x		slight
	Height			x		slight
	Lot Dimensions and Area			x		slight
	Nonconforming Uses			x		slight
	Signs			x		slight
	Fee Schedules				x	slight
	Administrative Use Permit				x	slight
	Appeals				x	slight

TABLE II-1

REGULATORY POWERS OF LOCAL JURISDICTIONS

(Continued)

	Type of Regulation or Procedure	Aspect of Development Influenced				Influence Over OCS Activities and Facilities
		Location	Timing	Basic Character	Other	
MAY BE INCLUDED IN A ZONING ORDINANCE OR ISOLATED AS A SEPARATE ORDINANCE	Regulations for OCS-Related Activities and Facilities (only needed if community prepares an OCS Policy Plan)	x		x		extensive
	Growth Phasing	x	x			extensive
	Air Pollution Control (only needed if community supplements federal and state regulations)	x		x		major
	Water Pollution Control (only needed if community supplements federal and state regulations)	x		x		major
	Coastal Management	x		x		major
	Subdivision Regulations[b]			x		major
OTHER ORDINANCES, CODES OR REGULATIONS	Building Permit			x		extensive
	Building and Related Construction Codes			x		major
	Development Design Standards for streets, utilities, and public facilities within rights-of-way			x		moderate

[a] Applicable only to large parcels or to groups of parcels forming a large project, e.g., 5+ acres.

[b] Applicable only where land subdivision is involved. For details, refer to State of Alaska, Department of Community and Regional Affairs, Division of Community Planning, Model Subdivision Ordinance for Small Municipalities (Juneau, 1973).

Source: Arthur S. Goldman

In the past, community development regulations have typically included a zoning ordinance, a building code and related construction codes, a subdivision ordinance, and the regulations of a public works department. In recent years, however, several new public concerns have arisen and appropriate regulations (e.g., for potential hazard areas, resource areas, coastal management areas, growth phasing, and air and water pollution control) have been adopted either as part of the zoning ordinance or as separate ordinances.

The six regulations discussed on the following pages are estimated to have potentially extensive influence for the location or basic character of onshore OCS development. All typically are placed in a zoning ordinance.

Discussion is quite detailed for regulations concerning site plan review, conditional use permits, and planned unit development so that communities may realize the extent of influence they may exert through these regulatory processes. Note that specific objectives can be achieved through more than one type of regulation. For instance, dedication of facilities could be achieved either through a subdivision ordinance, specific area plan regulations, or planned unit development regulations. A community should consider the merits of each type of regulation, or combination of regulations, before choosing those for adoption.

Zoning Regulations

Zoning is the most powerful single tool for influencing the location and basic characteristics of onshore OCS-related development. It can include most of a community's regulations for the development, conservation, and rehabilitation of land and buildings.

The zoning map is a community's primary regulatory mechanism for mapping its Comprehensive Plan, policy documents, and details of the zoning ordinance. It commonly indicates the land uses and their related development standards (or makes reference to such standards) that are allowable in specific areas or properties. The zoning map usually pertains to the entire community, or at least to its developed and anticipated development areas.

This report strongly recommends that a community which may be affected by OCS-related development either adopt zoning regulations or update its existing regulations to reflect current community objectives for such development. In particular, a community should establish criteria for determining whether particular types of industrial land uses are appropriate or inappropriate for a specific area, even though that area may be zoned for general industrial use. Then complementary regulations should be adopted. This recommendation is especially important for a community in which OCS-related development will occur primarily on private land, and thus on land over which the community's major management control will be regulations.

The only case where a zoning map might be unnecessary is where a community has adopted one or more specific area plans and regulations for implementing those plans for potential OCS-related development sites. A zoning map would complement such specific area plans and regulations, but would not be necessary.

The zoning map and its regulations constitute a very influencial tool, and should be recognized as such by communities which wish to regulate the location and basic character of onshore OCS support activities.

Conditional Use Permits and Procedures

The conditional use permit is an excellent regulatory tool for establishing project approval criteria and additional requirements which may not be covered adequately by other local policies or regulations. The purpose of the conditional use permit procedure is to allow a community greater control over its environmentally sensitive areas and over unusual or potentially harmful land uses. The procedure requires that such projects undergo special review, and allows conditions to be imposed by the community before projects are approved.

Conditional use permits should be required--

> when special sites, designs, or operations are involved,
>
> when adverse impacts on surrounding areas may be anticipated,
>
> when temporary use of land is desired, or
>
> when conditions and procedures for review and approval are anticipated to be more involved than for other regulatory actions (e.g., for an "administrative use permit").

A community may designate specific categories of land uses (such as onshore OCS-related activities and facilities) as subject to a conditional use permit. Sensitive locations in the community could also be so designated. The conduct of activities or construction of facilities in those areas would then require and be subject to a conditional use permit.

An early opportunity for influencing onshore OCS-related development occurs when decisions are made concerning the potential acceptability or nonacceptability of particular land uses in specific locations. For example, in one area a service base facility and its related ancillary land uses might be designated as acceptable uses, subject to a conditional use permit. But, land uses not requiring a service base, direct water frontage, or a location near water frontage might be excluded from that area.

The next leverage opportunity occurs when a conditionally approvable land use is proposed for the area and the community determines the specific conditions for granting a conditional use permit.

Although local officials may be reluctant to impose further administrative burdens upon their staffs, they should recognize that the conditional use permit process may well be worth the effort. It provides the community with a means to impose provisions not covered by other regulations. More importantly, it affords the community another bargaining point where "red tape" can be cut in exchange for compliance with local objectives. The conditional use permit procedure, however, cannot substitute for policy documents; also other regulatory elements of a zoning ordinance (such as those listed on page II-3) are needed to complement the procedure.

General Criteria for Conditional Use Permits

Local regulations should specify the basic criteria to be met before a conditional use permit may be issued. A requirement that "all the following criteria" specified by the regulation be met is preferable to one which states that "most" of the criteria be met. An example of an appropriate clause follows:

> A conditional use permit may be granted <u>only</u> if the proposal conforms to <u>all</u> of the following general use permit criteria, as well as to other applicable use permit criteria:
>
> (a) that the location, size, design, and operating characteristics of the site and the proposed development will be compatible with and will not adversely affect the functioning, livability, or appropriate development of abutting properties and the surrounding neighborhood--with consideration to be given to the appropriateness and harmony in scale, bulk, coverage, and density of facilities, to the availability of civil facilities and utilities, to any harmful effect upon desirable community or neighborhood character, to the generation of traffic and the capacity and character of surrounding streets, and to any other relevant impact;
>
> (b) that the location, design, and planning of the site and the proposed development will provide a functional and convenient living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant; and
>
> (c) that the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

Additional Conditions

For each development, the community should append other specific conditions to a conditional use permit. Such conditions should serve to assure that the above criteria are satisfied. They ought to relate to the community's objectives for OCS-related development, and so should almost certainly include the following as high priority items:

operating characteristics within the harbor area

dedications of facilities

operating characteristics of the facilities

Conditions might also be included relating to--

transportation and materials handling, both on and off the site

yards and open spaces

fences, walls and buffers

parking and vehicular ingress and egress

storage and loading areas

signs

landscaping and screening

maintenance of facilities

Procedures

The community's regulations should specify all conditional use permit procedures, including: requirements for submission of applications; procedures for consideration, hearings, and appeals; requirements for adherence to submitted plans; a statement permitting termination of the permit if certain specified actions are not undertaken or completed by the project applicant; and procedures for revoking conditional use permits.

The community may wish to charge the applicant a fee to cover the costs it incurs in processing a conditional use permit.

Site Plan Review Regulations and Procedures

All OCS-Related development will involve proposals and plans which must be reviewed and acted upon by local government. Therefore, communities should adopt site plan review regulations and procedures which specify the approval criteria and contents of site plans and the actions required both of

a project sponsor and the local government concerning the submission, review, and approval of all development proposals.

Although site plan review regulations typically are included in the community's Zoning Ordinance, they may be adopted as a separate ordinance. The regulations should ensure that the projected use and design of facilities conform with community policies, community concerns, and the welfare of surrounding areas, and that building (or other) permits will not be issued unless such conformance is verified.

Requirements for Site Plan Approval

The following is an example of site plan review criteria and the specific findings which the community should be required to make before it can approve a site plan:

(a) The proposal fully complies with all provisions of community regulations, including those the community may have concerning lot size, lot dimensions, placement of facilities on the land, accessory uses, access, off-street parking, off-street loading, performance standards, signs, illumination, landscaping, buffering, screening, etc.;

(b) The proposal is consistent with the community's General Plan and other adopted policy plans or statements;

(c) All elements of the design of the land, including water-oriented facilities, vehicular ingress, vehicular egress, internal circulation of vehicles, buildings, structures and related facilities, pedestrian walkways, landscaping, signs and illumination, are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, and no significant adverse impact on surrounding property or the environment will result;

(d) The proposal ensures compatibility and harmony with natural features of the site and adjoining properties, considering topography, native vegetation, wildlife habitats, watercourses and other features;

(e) The proposal fully complies with all special area regulations (as may have been adopted by the community) which are applicable to the site for floodway hazards, flood fringe hazards, landslide hazards, avalanche hazards, subsidence hazards, fire hazards, visual resources, oil and gas development, and specific planning areas; and

(f) If an environmental assessment survey is required by these regulations, that assessment clearly demonstrates that no significant adverse impacts will result from the project, and that the project sponsor has taken or will undertake actions to mitigate the effects of all potential adverse impacts.

Projects Requiring Site Plan Review and Specific Requirements

Regulations should specify the types of development for which site plan review is required. If the community wishes to undertake environmental review as a part of this process, the types of development requiring an environmental assessment survey and the contents of such a survey should be described.

Specific requirements might also be imposed. For example--

- requirements for dedication of public facilities, e.g., roads, utilities, common open space

- requirements for improvements which must be provided by the developer, such as may include, but not be limited to, grading, street surfacing, curbs and gutters, sidewalks, driveway approaches, water mains and lines, sanitary sewers, storm sewers, other utilities, culverts, bridges, traffic control devices, and other appropriate items

- requirements for developer to maintain during a specified time (e.g., one year after dedication) all improvements which are dedicated to the community

- findings that must be made before building permits may be issued, such as the conformity of buildings with the approved site plan, the completion of required project improvements, and the completion of all required dedications

Site Plan Contents

Site plan regulations should also state the contents of site plans and information to be submitted with them. This would probably consist of the following:

- a plan of the site showing dimensions and orientation of parcels, locations and proposed uses of all buildings, and all other structures or site features including streets, waterfront facilities, storage facilities, parking, loading, walkways, fences or walls, and landscaping

- building and structure characteristics (not in the detail required for approval of building plans), showing building height, size, architectural forms, lighting, exterior materials, etc.

- utilities and related rights-of-way and easements

- site features related to safety, prevention of accidents, and the prevention of water pollution and air pollution

- other measures to be taken to prevent water and air pollution

- circulation system, showing streets, vehicular and pedestrian movement patterns, access, egress, and relationships to off-site circulation patterns

- existing grades, proposed cut/fill, proposed grades and relationships of all buildings and site facilities to the grades

- existing and proposed surface drainage

- existing natural features on the site and proposals affecting each of them

- detail plans for all mechanical equipment, signs, site lighting, landscaping, walls, fences, and methods of screening trash areas

- dedications and security for dedications

Site Plan Review Procedures

A two-stage site plan review procedure is desirable. The first, a "pre-application stage," should involve informal discussion, and provide the developer with guidance in formulating an acceptable proposal at an early stage. The project sponsor and community staff should review public policies and regulations which will affect the project, and pinpoint factors which, if not revised, might hinder the community's approval of the project. The pre-application stage need not involve any formal action by the community.

The second stage is the actual site plan submission and review. A fee should be imposed upon the developer to cover the costs of reviewing and processing his proposal. The time period during which review will take place should be announced and conscientiously observed.

NOTE: While site plan review regulations and procedures are crucial, they cannot stand alone as a regulatory tool. They are largely procedural and do not detail standards by which projects must be designed, e.g., for access, grading, building spacing, lot dimensions, and lot areas. Design standards

should be included elsewhere, preferably within a Zoning Ordinance, but not in the site plan regulations.

Regulations for Specific Area Plans

A Specific Area Plan enables a community to define its planning, development, and conservation objectives for any area(s) where more detail is required than provided in the community's comprehensive plan. A Specific Area Plan may be used when a comprehensive plan does not exist. Regulations for Specific Area Plans may concern all the Specific Area Plans which a community has prepared, or they may apply only to a single OCS-related development area.

Preparation of a Specific Area Plan and its implementing regulations for OCS-related development sites is advisable if a community wants to get its own plan established before industry does the job by default. However, Specific Area Plans might be redundant for communities whose General Plans are current and include detailed policies concerning OCS support facilities and activities.

Contents of the regulations might be very similar to regulations discussed in detail in the following paragraphs for planned unit development. The major difference is that regulations for Specific Area Plans tend to focus on definite areas for which the community has prepared a plan, whereas planned unit development (PUD) regulations apply more broadly throughout the community to any location where a developer, who might want to pursue a PUD-concept rather than a conventional development concept, will propose a plan.

The pros and cons of regulations for Specific Area Plans, as related to zoning, are very much the same as those discussed later in this chapter under "Regulations for OCS-Related Activities and Facilities."

Planned Unit Development Regulations and Procedures

Planned unit developments involve a planning approach and type of regulatory and administrative control which may be very useful for communities about to be affected by OCS-related development. The PUD concept is usually an alternative to developing land in accordance with a community's lot-specific zoning regulations. But, if a community does not now have zoning to which a PUD approach would be addressed, a "Specific Area Plan" type of approach, as described above, might be more appropriate, especially if a community wishes to implement its own plan for a particular area.

Many special conditions, criteria for development, and procedures can be prepared in advance with either a Specific Area Plan approach or a PUD approach (unlike a conditional use permit procedure). A PUD, like a Specific

Area Plan, typically involves a relatively large project, e.g., 5, 10, or more acres in size. Most planned unit developments are for residential, commercial, and institutional land uses, but application to an onshore OCS-related facility such as a service base or an industrial park for OCS-related land uses also would be appropriate.

Planned unit development regulations and procedures normally are part of a community's development regulations or zoning ordinance, but they could constitute a separate ordinance. The general purposes of such regulations are to guide the development of tracts of land sufficiently large to allow area-wide or comprehensive planning, and to provide flexibility in the application of certain of the community's other development regulations. A PUD can and should promote a harmonious variety of land uses (if consistent with the intent of the project), economy of shared services and facilities, compatibility with surrounding areas, and creation of efficient, stable, healthful and attractive environments. These objectives are incorporated in the following general review criteria.

General Review Criteria for Planned Unit Developments

PUD regulations should specify the general criteria by which a PUD proposal will be reviewed and be approvable by the community. For example--

> A planned unit development may be approved only when the following review criteria are met:
>
> (a) The proposal shall produce a functional, enduring and desirable (industrial) environment, with no adverse impacts to adjacent properties, particularly as concern noise, glare from lights, and odors;
>
> (b) The proposal shall be consistent with the community's comprehensive plan and other adopted policy plans and statements;
>
> (c) The location, design, and size of the proposal are such that the traffic generated by the development can be accommodated safely, without causing congestion on major streets;
>
> (d) The design and site planning shall ensure compatibility with existing and planned uses on adjacent properties. Design elements to be considered include, but are not limited to, placement of buildings, building height and bulk, water-related facilities, off-street parking and loading, architectural style, and landscaping;
>
> (e) The proposal shall ensure compatibility and harmony

with natural features of the site and adjoining properties. Natural features to be considered include, but are not limited to, topography, native vegetation, wildlife habitats, and watercourses;

(f) The location, design, and size of the proposal are such that the project occupants will be adequately served by existing or proposed facilities and services;

(g) On-site storage, parking and loading facilities shall be sufficient to ensure that all present and future needs for on-site storage, parking and loading can be functionally accommodated on the site and will not cause adverse impacts on adjacent properties or waterways;

(h) Perpetual maintenance of all common land and facilities within the development shall be ensured through means acceptable to the community; and

(i) The environmental assessment survey prepared for the proposal clearly demonstrates that no significant adverse impacts will result from the project, and that the project sponsor has taken or will undertake actions to mitigate the effects of all potential adverse impacts.

Other Typical Regulations

Many other types of regulations should be included with a PUD ordinance. For example--

- types of developments for which a planned unit development approach is required, or permitted
- requirements for dedication of public facilities, e.g., roads, utilities, common open space
- requirements for preparation of an environmental assessment survey concerning the project
- development standards generally applicable to the development
- requirements for maintenance of facilities jointly to be used by project occupants, but not dedicated to the community
- requirements for performance bonds, if any
- requirements for participation in the design of the project of specif-

ically designated design professionals, e.g., architects, planners, landscape architects

- conditions under which bonuses, if any, will be granted over the otherwise applicable development standards

PUD Procedures

Procedures for the design, review, and approval of a PUD generally are more complex and lengthy than those for routine site development plans for small properties. Because of their complexity, it is advisable to establish at least a three-part process, during which certain submissions are required of the project applicant and certain actions are required of the community. There should be an informational review stage, a development plan stage, and a final plan stage. With such a procedure, both the project applicant and community become involved, and project design proceeds in stages so that detailed site design is not begun until conceptual work has been completed and approved.

PUD procedural regulations should clearly specify the required submissions, reviews, presentations, community actions, community decisions, and timing considerations for each stage of the process.

The community might impose a special fee for its processing of a planned unit development request.

Rezoning Regulations

Rezoning is a powerful regulatory control by which a community determines whether a proposed change to the community's existing zoning map or regulations is acceptable or not. Very decisive choice is available to the community, such as might involve the proposed change of an area's land use classification from "conservation" or "residential" to "industrial" land use.

Even if a proposed change is acceptable, the community might approve the proposed land use or other regulation change subject to a conditional use permit. This would keep open the community's options to assure achieving its local planning objectives for the development area.

Rezoning regulations should be included within a community's zoning ordinance.

Some communities place the following four regulatory tools (OCS-related, growth phasing, pollution prevention, and coastal management regulations) in

their zoning ordinance, while others adopt one or more of them as a separate ordinance or regulation. All these regulatory tools have either "extensive" or "major" potential influence over the location, timing or basic character of OCS activities and facilities. (See Table II-1.)

Regulations for OCS-Related Activities and Facilities

A community may prepare an OCS Policy Plan to state its general OCS policies and to guide the development of areas potentially suited for onshore OCS-related activities and facilities. Such a plan ideally will supplement a community's Comprehensive Plan, but it can stand alone as a separate document provided it is based on overall planning concepts for the whole community. A plan which focuses primarily on one particular area may be considered as essentially equivalent to a Specific Area Plan, as previously discussed.

Regulations would be designed to implement the OCS Policy Plan. They might supplement or be part of the community's zoning ordinance, and hence be quite brief. If they were to stand alone without zoning, however, these regulations would have to be very detailed to assure complete regulation and administration of the Plan. An advantage of preparing a zoning ordinance first is that the ordinance's numerous "general" zoning regulations and "general" zoning procedures can be applied to all types of development, including onshore OCS-related development. On the other hand, preparing regulations limited to OCS support operations would take less time than preparing both a zoning ordinance and supplementary OCS-related development regulations, especially because the regulations could be area-specific rather than applicable to the community as a whole.

Regulations for OCS-related development should indicate the specific kinds of industrial and other development to which the regulations must be applied, may be applied, or are not applicable. Similar to site plan review regulations, they should specify the criteria which must be satisfied before a proposal may be approved, the additional conditions which may be imposed on a project, and the procedural actions required of the project applicant and local government.

Growth Phasing Regulations and Procedures

Growth phasing is the only means for regulating the timing of development in specific community locations.[1] It would indicate, for example, that area #1 should be developed before area #2, and that area #2 should be developed be-

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[1]It would be advisable to consult with legal counsel in the preparation of a comprehensive growth phasing plan.

fore area #3, even though the overall plan indicates that all three areas ultimately will be developed.

The community's policies for incrementally extending major road and utilities should be firmly tied into its policies for phasing development. The purpose of a growth phasing plan is to provide for an orderly, efficient pattern of growth within the community's ability to accommodate that growth. The purpose is not either to restrict or slow down the rate of growth.

A growth phasing plan and its related regulatory procedures may be especially important for communities where unwanted dispersion of onshore OCS-related development might occur. Unless a community were able to specify which area(s) it wanted to have developed first, proposals might be received for portions of supply and service base activities dispersed throughout several functionally and geographically separated areas of the community--rather than being aggregated in one area as the community might want.

Air and Water Pollution Prevention and Control Regulations

The State Department of Environmental Conservation carries the primary responsibility in the State for preventing and controlling air and water pollution.[1] The Department is required to establish a statewide environmental plan for managing and protecting the quality of the environment and natural resources of the State, a water pollution control plan, pollution standards, water quality and purity standards, and an air pollution control program. It also has the authority to require corrective actions in local air pollution control programs, after public hearings on the subject, and to administer the Department's own air pollution control program superseding a locality's program if the latter does not exist or is deficient.[2]

Federal regulations also exert major influence over air and water pollution control.

In addition, localities may develop their own programs and regulations, provided such programs and regulations are no less restrictive than those of the state or federal governments. For example, local jurisdictions may wish to adopt regulations which supplement the rather weak state and federal regulations dealing with the prevention of oil spills. (The latter tend to concentrate on required actions after a spill has occurred.) Communities might require flotation containment devices to be set up around ships whenever oil transfer operations take place in the harbor area. Thus, if it did occur, a spill would be contained within a very restricted area, and the pollution potential

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[1] A.S. 46.03.

[2] Id.

would be greatly reduced. Otherwise, pollution would continue until containment devices could be set up and cleanup action was begun. (Refer to "Environmental Management," Part III, Chapter 4, for other possible community actions.)

Coastal Management Plan Regulations

By federal statute, the State must establish a coastal zone management plan. A community might prepare its own coastal management plan and regulations for implementing that plan during this period when the state plan is still in preparation. Both state and local plans should emphasize responsible use of the entire coastline area and the conservation and preservation of environmentally sensitive or unique cultural-historic areas.

A community's coastal management plan could influence both the locations where onshore OCS-related development should be concentrated and the type of facilities which might be developed at those sites.

Other ordinances, codes, or regulations may be important for managing OCS-related development. They are described below.

Subdivision Regulations

Subdivision regulations enable a local jurisdiction to control the planning and development of projects which involve the division of a tract or parcel of land into two or more lots or other divisions for the purpose of sale, lease, or building development. Such regulations, typically codified in a Subdivision Ordinance, are most commonly used for residential subdivision projects. But, they also may be important for industrial areas (especially those involving many parcels for small industries which support primary OCS-related facilities) if other regulatory tools such as Specific Area Plan regulations for OCS development areas, conditional use permits, site plan review regulations, or planned unit development regulations have not been adopted in a community.

If a community does not adopt a Subdivision Ordinance, a Specific Area Plan for OCS development areas would be an appropriate alternative, provided the plan includes the type of regulations typically included in a Subdivision Ordinance. If a Subdivision Ordinance and Specific Area Plan were adopted, the latter could be briefer than if it stood alone. Note, however, that a Subdivision Ordinance will only apply to onshore OCS development if a land subdivision is involved.

Subdivision regulations should contain development standards, requirements

for the provision of improvements within the project, all the procedures required of the project applicant and local jurisdiction, and various requirements concerning dedications, guarantees of required improvements, maintenance agreements, and the payment of fees.

For more detail, refer to the Model Subdivision Ordinance for Small Municipalities as prepared in June 1973, by the Division of Community Planning of the Alaska Department of Community and Regional Affairs.

Building Permits and Procedures

The granting or withholding of a building permit can be another regulatory leverage for influencing the location or basic characteristics of OCS-related development. Local regulations should include requirements that must be satisfied before the city engineer or building department may issue a building permit. They also should require the assurance that there has been coordination among the several community departments which may have been involved in the project review and approval process.

In addition to confirming that building plans conform to all pertinent building and construction codes, the community engineer should assure that all procedures affecting the site's development have been completed as required by all local regulations for conditional use permits, site plan review, or planned unit development. Dedications, maintenance agreements, fees, and posting of necessary bonds will warrant special attention.

Building and Related Construction Codes

Communities may adopt building, electrical, and plumbing codes which have been prepared and adopted by nationally reputed agencies. (Alaskan communities for the most part tend to use the Uniform Building Code.) These regulations extensively influence the construction details of buildings and facilities.

Communities may be assured that buildings and facilities will be structurally safe, provided the national codes are correctly interpreted and fully observed. Such codes should not be modified, even for what are considered local conditions warranting such change, unless firm recommendations for modifications are made after thorough and competent technical analysis by appropriate professional agencies.

Every proposed site for OCS-related buildings and facilities should be safe, and free from all potential hazards related to seismic, subsidence, soils, and flood conditions. Communities should ensure that these conditions are met. If a specific "problem" site is uniquely located for a particular facility, however, it may be possible through competent engineering to compen-

sate for the geophysical problems which otherwise should restrict the site from being developed.

Once the safety of a construction site is assured, communities should confirm that all proposed construction complies with locally adopted codes.

Administration and Monitoring Implications of Regulations

The administration and monitoring of regulations take time, people, and money. Specific activities include--

- review of development requests with respect to their compliance with regulations--including reviews, modifications, conditions, approvals
- administration of regulations with respect to required permit processes, e.g., for conditional use permits, building permits, administrative use permits
- administration of regulations with respect to any changes in the form of appeals, variances, or rezonings
- monitoring of project construction to assure compliance with regulations and approved plans
- monitoring of project operations to assure compliance with regulations and approved plans, e.g., for prevention of air and water pollution or excess noise

Obviously, communities should attempt to keep their regulations and administrative procedures as simple as possible. Even so, communities may need outside help, such as from federal and state agencies or consultants. (Refer to discussion in Part I, Chapter 7 concerning the management of manpower problems associated with project review and evaluation.) Local Communities should primarily use outside assistance for only two steps of the regulatory process--preparation of regulations, and review of development requests--and for those two steps, assistance will tend to be more consistently available for the preparation of regulations.

Local staffs will have to carry out most of the administrative and monitoring work. Some monitoring may be done by state personnel when it involves state regulations, such as exist with respect to air and water pollution prevention and control. Because of the limited number of enforcement personnel, however, even state monitoring activities may be inadequate. Thus, the regulations a community adopts should reflect its existing and anticipated manpower

capabilities and expertise available for administration and monitoring activities.

A few general approaches to regulation are suggested, as follows. Communities should--

- Adopt regulations (with technical standards and procedures) which can be administered and monitored by local staff or by persons who will be available to supplement the skills of the staff.

For example, the use of "performance" standards is becoming more common both in construction codes and zoning regulations. The ability of a building to comply with the performance standards of a building code can be certified on project drawings by a project sponsor's architect or engineer. If a community's employees are not technically qualified to judge conformity, a competent review should be made by other persons. Once a building is built, local skills are not required to "monitor" the performance of the building, because the structural characteristics will not change over time.

A different problem is posed with performance or operating standards sometimes included in zoning regulations. The specific activities involved in the use of sites and buildings do affect operational characteristics such as noise and odors, which a community may attempt to regulate by performance standards. Even if compliance with noise and odor standards would be attested to by a project sponsor's architect and engineers, actual compliance over time also should be monitored. A complicating factor is that the actual use of sites and buildings may change, often because of a change in tenancy. Recognizing the probable monitoring difficulties, small Alaskan communities therefore should adopt more traditional standards concerning factors such as noise and odors. For example, noise might be regulated by required distance separations between an industrial site and the nearest residence, placement of noisy operations within a structure, and construction of walls, earth berms, or fences.

- Require project sponsors to provide extensive background data, evaluation of the proposed project and its direct and indirect impacts, and other items which might simplify the community's workload during project review.[1]

For example, a project applicant might be required to "red flag" (by specified notation or report) all aspects of his proposal which do not strictly comply with federal, state, or local policies; which do not strictly comply with federal, state, or local regulations; or which involve any concept, site or construction detail which is unique to local practices concerning site development, building construction or onshore OCS activities and facilities. This

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[1]See previous discussion about site plan review.

procedure will help community project reviewers to note project details which should receive special attention and which otherwise might go unnoticed.

- Allow sufficient time to process, review, and act on a development proposal.

This is especially important if outside technical assistance is required.

2. LEASES

Municipalities in Alaska can manage OCS-related industrial development on land they own through the use of a lease. The use of leases by local government throughout the U.S. is quite common, particularly for tidal and submerged lands which are restricted by law to continuous public ownership. Native corporations and other private entities may also utilize lease agreements for lands they own.

The lease enables a landowner to maintain a high degree of control over the use of his land. A lease provides greater control than either deed restrictions or public regulatory powers.

Two types of leases are used throughout the U.S.--the ground lease and the building lease. A ground lease refers to the leasing of unimproved land with on- and/or offsite improvements provided by the lessor. In a building lease, the lessor provides both improved land and buildings for a lessee. Here, lessors build to suit a known tenant's requirements, or build on speculation of finding an appropriate tenant. Under either type of lease, the normal objective of the lessor is to gain a fair rate of return on the value of the leased property.

The two main types of lease rental provisions are flat rent leases and percentage rental leases. A flat rent lease requires the lessee to pay a specified fixed amount based on the value of the leased property. This type of lease applies to property to be used for certain service base facilities and industrial development where it may be impractical to apply percentages and/or specified charges to business volume and units being moved over the leased property. Flat rent leases are most typical for industrial development on government-owned land in the U.S.

A percentage rental lease is volume- or business-oriented. This type of lease applies well to commercial activities having a measurable volume of business activity conducted on the leased property. Normally, percentage leases also contain a minimum guaranteed annual rent. The lessee therefore pays the higher of either the calculated percentage rentals or the minimum annual guaranteed rental. The percentages which are applied to various business activities on the leased property usually vary in accordance with local market conditions.

In addition to commercial activities on leased land (such as retail stores, offices, restaurants, hotels-motels, etc.) certain industrial activities are subject to volume-related payments. For example, oil terminals may generate revenue from a combination of a flat rent lease and wharfage/dockage charges. Such charges are typical where a port or harbor authority has provided improvements to the harbor or built a marine terminal. Alaska Railroad levies such charges for port activities at the Port of Anchorage.

Different rental provisions might be applied to service bases, marine terminals, and Liquefied Natural Gas (LNG) plants. Flat rent leases are customary for service base facilities throughout the country. They are easily administered and, if appropriate rental readjustment provisions are included, they achieve a fair rate of return for the lessor. Volume-related leases entail higher costs for administration, auditing, and legal services, but stipulations could require some of these costs to be met by the lessee. The City of Seward has utilized this type of lease for their service base facility.

Marine terminals in west coast ports are usually constructed by port or harbor authorities. The investment in such terminals is then recaptured by lease rental and wharfage/dockage charges levied on the shippers and receivers using the terminal. In most of the smaller Alaskan communities where the oil company or its representative will construct an oil terminal on leased land, the government lessor will provide only raw land. The lessor's primary concern, therefore, should be to receive a fair return on the value of such land, which may be obtained from a flat rent lease. Where the government lessor constructs a marine terminal, it seems logical that charges be similar to those imposed by Alaska Railroad for like facilities in the State.

Leases for LNG plants could most easily be treated in the same manner as typical industrial leases, the rental being based on a flat charge. Conceivably, however, the rental could be based on the volume of the plant's throughput. Again, the costs of administering a volume-related lease could be significant, and the lessor would have to weigh the financial benefits of this type of lease arrangement against its administrative costs.

A lessee may, with reason, be reluctant to commit himself to a high rental fee while the outcome of oil and gas exploration is still uncertain. This problem can be overcome by synchronizing the first rental adjustment to coincide with the end of exploration operations. (See "Rental Adjustment Provisions" later in this chapter.)

The above suggestions can be modified if situations so dictate. However, one should recognize that increasing the number of unusual lease rental provisions is likely to increase administrative costs and to evoke resistance from the potential lessee.

The lease provides a unique tool for a landowner to control the development which occurs both on his property and elsewhere within the community. The lessor may obtain rental fees and a variety of performance provisions limited only by the importance the lessee places upon obtaining the leased property, and the legal restrictions controlling the actions of the lessor.

Statutory Provisions

Municipalities are given the authority to lease their lands by the Alaska Statutes, which allow a municipality to acquire and hold real and personal property or an interest in property, and to sell, lease, or otherwise dispose of property no longer required for municipal purposes. These powers apply to all municipalities, and therefore include home rule cities and boroughs; first, second, and third class boroughs; and first and second class cities.[1]

Key provisions of the relevant statute are as follows:

> The assembly or city council must pass an ordinance which establishes procedures for the sale, lease or disposition of real property or an interest in real property. The ordinance must require the following items for each disposal:
>
> (1) That an estimate of the property's value be provided by a qualified appraisor or by the assessor.
>
> (2) That a notice of sale appear in a local newspaper or be posted in three or more public places at least 30 days before it occurs.
>
> (3) That there be a public auction or public opening of sealed bids for the property.

Other conditions may also apply:

> In addition to these provisions, if a property is valued at $25,000 or more, and involves property held for public use, its sale or lease must be approved by a public vote.
>
> A municipality, in order to make sites available for beneficial new industries, may acquire and hold real property, either inside or outside the corporate limits, and may sell, lease or dispose of it to an operator upon the terms and conditions the assembly or council considers advantageous to the municipality (from A.S. 29.48.260[e]). Under this situation, voter ratification would not be required even if the property is valued at $25,000 or more since it would not have been held for public use.

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[1] A.S. 29.48.260.

General Considerations

Lessor Requirements

Prior to drafting specific provisions of a lease, the municipality should determine the objectives it seeks to accomplish in the agreement. Increasing revenues, decreasing costs associated with the development, and exercising the opportunities represented by industrial growth should be considered. (For a detailed discussion of policy formulation, refer to Part I, Chapter 3.)

Examples of clauses which accomplish selected community objectives are illustrated in the following section. Clearly, a substantial portion of the control a municipality can maintain over industrial activity involves refusing even to consider leasing public lands when doing so would conflict with local objectives. Among its early actions a municipality should identify (preferable with the help of industry specialists) portions of its land that are appropriate sites for OCS-related industrial development.

Lessee Requirements

The major oil industry requirements in developing onshore support facilities for its OCS operations have been detailed in the documents referenced in Part I, Chapter 1. The concerns which will probably be foremost in the industry's lease negotiations include--

- Minimizing costs. This includes the ability to terminate the lease without delay should the exploration phase prove unfruitful or as the project is concluded. It also concerns the extremely significant factor of costs which would occur from any delay in developing support facilities for OCS operations.

- Maintaining maximum freedom from municipal control. This would suggest opposition to many provisions in the interest of the lessor.

- Ensuring continuous use of the property over the life of OCS activity.

Preparing for the Lease

A lessor may take two basic approaches to acquiring lessees--an active approach or a reactive approach. The active approach is characterized by bid advertising or a lease auction. The reactive approach consists of receiving a leasing proposal from the potential lessee, followed by negotiation of lease terms. Below, the tasks involved in each approach are outlined.

Soliciting Proposals--the Active Approach

Once a municipality has selected an area for industrial development, it should then prepare a bid package describing its general requirements and a minimum rental bid. At that point, representatives of the oil industry are invited to submit proposals for development of the selected site. For example, as a minimum requirement the municipality may wish to demand that the successful bidder include a substantial payment to provide funds for study and review of the development proposal.

An invitation to submit lease proposals should include the following information and requirements as parts of the bid package:

- project description including identification of the site, acreage available, and permitted uses

- proposal analysis and procedure describing the approach and timing of review (including deadline date for submission of proposals) and reserving the right to reject all proposals

- minimum terms and conditions of the proposed lease or lease option setting forth the basic structure of a lease agreement the municipality would consider, covering, for example: minimum rental bid, duration of lease and conditions of renewal, including rental adjustment procedures, environmental review procedures and financing of review, on-site quality controls, relief or reduction of adverse impacts off-site, local labor requirements, responsibilities for financing required services and utilities, conversion and/or restoration of site and facilities, and standard lease components covering insurance, indemnity, payment of taxes, etc.

Generally, the successful proposer will be required to meet a series of conditions during an option period or the pre-construction portion of the lease term. These conditions would include submission of a precise plan for development and a construction schedule, and showing evidence of ability to finance the development and obtain all necessary governmental permits.

The primary advantage of holding a lease auction is that it provides the municipality with greater control over industrial development. Rather than review piecemeal requests from individual subcontractors or developers hoping to lease specific parcels, the municipality can refer them to master lessees (i.e., the oil companies) who will be submitting comprehensive proposals on the selected industrial sites. Alternatively, the municipality can invite the master lessee to submit his own proposal.

By taking the lead, municipalities will circumvent many potential problems.

Reacting to Lessee Proposals

The reactive approach to leasing entails merely waiting for a prospective lessee to request a lease. The terms of the lease are then decided through negotiation. Negotiation of lease terms is quite common throughout the U.S.; in fact, most public and private land leasing is conducted in this manner.

Leasing Guidelines

The leasing guidelines cited here apply to both the active and the reactive approaches to leasing. Equity should be the primary guide. The following discussion suggests approaches as to how equity may be achieved under a lease. The discussion focuses on fundamental aspects of lease agreements. Enumerating the myriad issues potentially applicable to leases for OCS support development is simply not feasible. However, the various approaches and uses of lease stipulations as control tools for the more important issues are specified in the chapters in Part III on quality control and development guarantees, providing services and utilities, local hire, and environmental management.

The clauses below contain some of the most important elements to be included in leases for OCS-related development, and should be given the utmost attention by local officials. These clauses have been used successfully in leases of government-owned land and/or buildings throughout the U.S. Even with a full understanding of these lease clauses, however, local government in Alaska should seek assistance of leasing specialists to aid in their leasing programs. Our review indicated that such expertise does exist in Alaska at the state government level.

The lease provisions included in the following paragraphs are intended to serve as illustrations only. A municipality should consult with legal counsel in designing a lease suitable for its own circumstances.

Term of Lease

The term of the lease should reflect the specific nature of the land use, the type and cost of planned improvements, and the time required to amortize the proposed investment. For example, a developer or supply and service base operator may require the option of maintaining the leasehold interest for up to 35 years to cover the exploration and development phases (8--12 years) and the production phase (18--23 years) if the site is well-suited to serve all functions required during these phases. Typically, leases of municipal lands in Alaska are written for five year increments with options to renew the lease in similar increments at the discretion of the lessee. This would be an appropriate method of establishing the term of OCS-related leases (except, perhaps, for timing the end of the first lease period to

coincide with the end of exploration).

In the case of marine terminals and LNG plants where the lessee provides the improvements, the high capital investment involved will require a long lease term. Even if a municipality were involved in building the facilities, a long-term commitment would be in order.

The lessor would reserve the right to terminate the lease where the lessee is in default of one of its provisions. This option is detailed in a subsequent section, "Performance and Termination Provisions."

Rental Provisions

Leasing public land for industrial uses typically involves a flat rent provision based upon a percentage (usually 8 or 9 percent) of the appraised value of the land. This would be subject to periodic review, as outlined below.

In situations where municipalities lease property for a retail operation or where commodities are flowing over a publicly owned dock onto leased ground, it is appropriate to base the rent on a percentage of gross volume. All three primary examples of onshore industrial activities which will support OCS operations--service bases, oil terminals, and Liquefied Natural Gas plants--might lend themselves to municipal dockage and wharfage charges if the municipality owns the dock and owns and operates the wharf. However, it is assumed that this will not ordinarily be the case in Alaska. Where the lessee develops his own facilities it is usually not appropriate to levee rentals on the basis of their use. In situations where a municipality can muster substantial negotiating strength it might be possible to establish a rental based upon a percentage (say 20 to 25 percent) of lessee's gross revenue developed on the site. This would be much more straightforward than measuring commodity or business flows, but would necessitate audits of the lessee's operation.

In certain situations a municipality might find it appropriate to levee additional charges upon the lessee to cover costs resulting from his presence. For example, where the development would require public expansion of local utility or road systems, the municipality might want to include repayment of these capital costs as a provision of the lease agreement.

Often industrial leases specify an option period (usually one year or less) before the lessee actually enters into the lease. Payment for this option typically is based upon a percentage of the annual rent, but, as indicated above, the payment could include front-end charges to cover special public costs. In addition, provisions can require that any studies prepared by the optionee become the property of the landowner. If at the end of the option period, the optionee has fulfilled all specified obligations, he has the right to lease the property under the specified terms without further negotiation.

The lease document should clearly indicate the amount of rent due each period (usually on a monthly basis), the exact time it is due, and the penalty for delinquency. (Most jurisdictions limit the rental penalty allowable.) A typical delinquency clause would read--

> In the event LESSEE fails to pay the applicable rents when due as previously provided herein then LESSEE shall pay CITY the rent due, together with an additional X percent of the rent due for any delinquency existing for the first fifteen day period thereafter, or any part of any fifteen day period that any such delinquency exists. Provided however, that the CITY shall have the right to waive for good cause any delinquency payment upon written application of LESSEE for any such delinquency period.

Rental Adjustment Provisions

The rental amount is normally reviewed every five years. Typical leases in Alaska base this review upon a reappraisal of the value of the land in a state of improvement similar to that at the time the lease was entered into. The lessee is not required to pay a higher rent because of his own improvements, but may be required to do so if the value of the land itself has increased. Because it is extremely difficult for an appraisor to divorce the improvements from the raw land in determining its value, an adjustment procedure based upon a price index can be used to simplify this provision. This could be handled in the following manner:

> At the end of the fifth year of the lease, and at the end of every five year period thereafter, the ground rental shall be adjusted for the succeeding five-year period, commencing with the anniversary date in direct proportion to any increase or decrease in the cost of living index from the base date to the last date prior to the anniversary date for which the index is published. The cost of living index shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index (all items; October 1967 = 100), Anchorage Alaska. If the aforesaid index is no longer published, the CITY shall use such index as is substantially similar in nature to the present publication, and appropriate adjustment shall be made, if necessary. The date on which the base shall be determined shall be the quarter ending in the month of July, 1976, and the parties agree that this index was 164.9 for that month.

Although this approach avoids the cost of an appraisal and the deliberation over its validity, it may not be the most desirable approach. If a municipality fears its local price index will rise at a faster rate than the Anchorage

index, it may want to establish a local index. But, since the development and maintenance of an index is a specialized and costly task, this would probably be more complicated than reappraisals and too costly to be used at the small city level in Alaska. In the long run, reappraisals may be the most practical means of capturing the increased land values associated with oil and/or gas discovery.

Quality Control and Performance Provisions[1]

Quality control aspects which can be dealt with in leases include minimizing nuisances (noise, air pollution, traffic, etc.), providing visual improvements, and ensuring adequate maintenance. A clause giving the lessor the right to approve all construction prior to its initiation helps to ensure overall quality of the development. Provisions may also ensure that the lessee maintains the premises, at his own expense, to the standards of the municipality. Landscaping, fencing requirements, and the minimum pitch of roofs may also be specified in the lease.

The detail of such clauses depends upon the value the municipality places on ensuring that industrial development does not impair community amenities. Where the industrial area is remotely located, this may be of minor importance. But, where the leased site imposes visually (or in other ways) upon the existing community, the city may wish to require a landscaped buffer zone or other protective measures on the leased land.

Performance provisions should relate to community policies and objectives. If unemployment is a local problem the city may wish to include a lease condition which requires the lessee to employ a certain amount of local labor. Where growth control is an issue the municipality may wish to limit the number of workers which can be employed on the premises. A provision might be appropriate which requires that the lessee provide on-site employee housing for a certain portion of the anticipated staff. If traffic control is an important issue, the city may want to limit the number of vehicles which can be based on the premises or limit their hours of operation to and from the site. These would be unusual lease provisions, generally requiring a strong negotiating position on the part of the municipality. However, if the issues are sufficiently important, they could be addressed in the lease.

Municipalities will almost certainly need to make long-range plans based on future industrial activity. An appropriate lease stipulation would require

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[1]Normally, local building codes coupled with a provision giving the city the right to review all construction plans will provide most architectural and engineering criteria. If a community has no building code, however, standards should be stated in the lease. Alternatively, a community could adopt a building code and simply reference it in the lease.

the lessee to provide a document outlining the nature of his intended operation, assuming various outcomes of the OCS exploration activity. Forecasts by the industry, however, should not constitute the basis of land reappraisals, for this would encourage the industry to bias their projections downward for their own self-interest. The lease clause should reflect the specific information required by the municipality. The first contingency plan would probably be required by the city prior to negotiating a lease or during a lease option period.

Financial Reporting and Auditing

This aspect of the lease is crucial if rent is to be based upon a percentage of lessee's gross business or materials flows. If rent is based upon the lessee's gross revenue, the municipality should maintain the right to audit the lessee's operation. The type of records the lessee will provide should be specified as follows:

> LESSEE shall keep true, accurate and complete records in a manner and form satisfactory to CITY. Such records shall show all transactions relative to the conduct of operation of the leased premises, and such transactions shall be supported by documents of original entry such as sales slips, shipping receipts, purchase invoices and tickets issued or other means satisfactory to CITY. Said records shall be maintained separate from all other accounts not relating to operation of the leased premises. Not later than the thirtieth day of each month, LESSEE shall render to CITY, a detailed statement as to the source of the receipts showing all gross income and all operations rental of the preceding calendar month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. LESSEE shall also maintain accurate records of actual and projected operating expenses and revenue, and such other operating information as CITY, from time to time, deems necessary and LESSEE shall submit such information to CITY upon request. Said books of account and records shall be made available at one location within the limits of the CITY. CITY shall have, through its duly authorized agents or representatives, the right to examine and audit said books and records at any and all reasonable times. Within thirty (30) days after the end of each lease year or such other regular annual periods mutually agreed to between the parties hereof, LESSEE shall cause an audit of the business of LESSEE, its agents, sublessees, concessionaires or licensees operating on said premises to be commenced by a licensed public accountant or certified public accountant, and shall forthwith upon completion of such audit and not later than 120

days following the end of each such year furnish a copy of such audit to CITY without cost to CITY. In the event such audit discloses that the percentage rental required for the preceding year exceeds the amounts of monthly percentage rental paid to CITY by LESSEE during that year, LESSEE shall immediately remit the amount of such deficiency to CITY. Also, in the event such audit discloses that the total rental paid to CITY for the preceding year is less than the amount of Minimum Annual Rent required therefor, LESSEE shall immediately remit the amount of such deficiency to CITY.

Insurance

The lessee should maintain both public liability and fire insurance. The lease document should state the minimum coverage for property damage and for bodily injury per each person at each occurrence. For fire insurance, the lease should specify the minimum percentage (usually 80 or 90 percent) of the replacement value of improvements to be covered. In addition to detailing the insurance coverage specifics, the following clauses would serve further to protect the lessor:

> Certificates evidencing the existence of the necessary insurance policies shall be kept on file with LESSOR during the entire term of this lease.
>
> LESSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of LESSOR, the insurance provisions in this lease do not provide adequate protection for LESSOR and/or for members of the public using the leased premises, LESSOR may require LESSEE to obtain an insurance sufficient in coverage, form and amount to provide adequate protection. LESSOR's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exists at the time a change in insurance is required.
>
> LESSOR shall notify LESSEE in writing of changes in the insurance requirements, and if LESSEE does not deposit certificates evidencing acceptable insurance policies with LESSOR incorporating such changes within sixty (60) days of receipt of such notice, this lease shall be in default without further notice to LESSEE, and LESSOR shall be entitled to all legal remedies.
>
> The procuring of such required policies of insurance shall not be construed to limit LESSEE's liability hereunder, nor to fulfill the indemnification provisions and requirements of this

lease. Notwithstanding said policies of insurance, LESSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this lease or with the use or occupancy of the leased premises.

Indemnification

This is a clause which protects the municipality from responsibility for activities on the site. A typical example follows:

> CITY, its agents, officers and employees, shall not be liable nor held liable, for any claims, liabilities, penalties, fines, or for any damage to the goods, properties or effects of LESSEE or any of the LESSEE's representatives, agents, employees, guests, licensees, invitees, patrons,or of any other persons whatsoever, nor for personal injuries to, or deaths of them, whether caused by or resulting from any acts or omission of LESSEE in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE further agrees to indemnify and save free and harmless CITY and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor. Provided, however, that this paragraph shall not apply to any injury, death or property damage caused by CITY, its officers, employees or authorized agents.

Ownership of Leasehold Improvements

All improvements on the premises or placed on the premises by the lessee (other than trade fixtures and machinery) usually become the lessor's property upon termination of the lease. However, a typical lease would give the lessor the option of requiring the lessee to remove these improvements at his own expense. A clause accomplishing this is illustrated below under "Disposition of Improvements Upon Termination."

Multiple Use Provisions

Multiple use provisions would be important if on-site employee housing was required. The municipality might wish to specify how the industrial and residential land uses would relate to one another. Multiple use provisions would also be necessary if facilities were to be made available for public use at various times (see Part III, Chapter 5).

The lease should have a section which outlines prescribed and optional uses. For example, a lease may be negotiated for a service base with the option of adding an oil terminal, but might specifically exclude development of an LNG plant. The lease's provisions may change for each type of development. They can be specied in the initial lease, or the lessor can reserve the right to review them upon a request for a land use change from the lessee.

Disposition of Improvements Upon Termination

If it desires, the municipality may retain the option to require that the site be restored to its original state at lessee's expense. This is not atypical in the leasing of public lands and could be accomplished with the following clause:

> Structures, installations or improvements of any kind now existing or hereafter placed on the leased premises by LESSEE shall at the option of LESSOR be removed by LESSEE within sixty (60) days after the expiration of the term of this lease or sooner termination thereof. LESSOR may exercise said options as to any or all of the structures, installations and/or improvements either before or after the expiration or sooner termination of this lease. If LESSOR exercises such option and the LESSEE fails to remove such structures, installations or improvements within said sixty (60) days, the LESSOR shall have the right to have such structures, installations or improvements removed at the expense of LESSEE. As to any or all structures, installations or improvements that LESSOR does not exercise said option for removal, title thereto shall vest in the LESSOR.
>
> Machines, appliances, equipment and/or trade fixtures of any kind now existing or hereafter placed on the leased premises by LESSEE shall be removed by LESSEE within sixty (60) days after the expiration of the term of this lease or sooner termination thereof; provided, however, LESSEE agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment and/or trade fixtures are not removed within sixty (60) days after the termination of this lease, the same may be considered abandoned and shall thereupon become the property of LESSOR; except that LESSOR may have same removed at the expense of LESSEE.

A community should adjust termination requirements to fit its own particular objectives. Provisions stipulating that facilities be converted to accommodate other uses are less common, but may be employed.

Performance and Termination Provisions

This aspect of the lease is critical. It ensures that the other lease provisions will be enforceable by the municipality. Performance and termination provisions specify that failure of the lessee to perform according to the lease terms will constitute grounds for its termination. An example of a good default clause follows:

> It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein, or should LESSEE fail to fulfill in any manner the uses and purposes for which said premises are leased as above stated, and such default shall not be cured within ten (10) days after written notice thereof if default is in the performance of the failure to use provisions of this lease, or thirty (30) days after written notice thereof if default is in the payment of rent, or sixty (60) days after written notice thereof if default is in the performance of any other covenant, condition and agreements, LESSOR shall have the right to immediately terminate this lease; and that in the event of such termination, LESSEE shall have no further rights hereunder and LESSEE shall thereupon forthwith remove from said premises and shall have no further right to claim thereto, and said LESSOR shall immediately thereupon, without recourse to the courts, have the right to re-enter and take possession of the leased premises.
>
> It is further agreed that LESSOR shall afford the beneficiary in any deed of trust, mortgage, or other security instrument of record with LESSOR and consented to by resolution of LESSOR the right to cure any default by LESSEE within said time periods stated above after written notice to said beneficiary. The time periods to cure shall be computed from the date of receipt by said beneficiary by certified mail of such notices from LESSOR.
>
> In the event of the termination of this lease pursuant to the provisions of this paragraph, LESSEE shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this lease under the provisions for disposition of improvements upon termination of the lease.

Sub-Leasing Considerations

Normally the lessee is not permitted to assign, sub-lease, or transfer the leasehold interest without prior approval of the lessor. This is an important

provision, particularly when the industrial site is leased to a developer/ master lessee for a specified variety of uses which will involve sub-leases.

Payment of Taxes

This clause merely ensures that, in addition to paying rent, the lessee will pay all other taxes and assessments before delinquency. For example--

> In addition to the rent herein reserved to the CITY, the LESSEE agrees to pay before delinquency all charges levied against the property, including utility bills and special assessments for public improvements; all license and excise fees, and occupation taxes covering the business conducted on the premises; all taxes on property of the LESSEE on the leased premises, and any taxes on the leasehold interest created by this lease agreement; and LESSEE will suffer no lien or other encumbrance to attach to the property which might adversely affect the interest of the LESSOR.

Arbitration

One of a lease's primary purposes is to avoid cause for dispute between the lessor and the lessee. This is accomplished by clearly written provisions covering the full spectrum of events which could occur throughout the lease term. Nevertheless, disputes could arise even under an ideal lease agreement. The only item which should be left open to the possibility of arbitration is the adjustment of rentals. This can be accomplished with the following clause:

> In the event the parties cannot agree to the rent for a rental period, the controversy as to rent for said period shall be determined by three arbitrators. After notice by either party to the other requesting arbitration, one arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the other when made. The two arbitrators shall immediately choose a third arbitrator to act with them. Each party shall bear the expense of its own appointed arbitrator and shall share equally the expense of the third arbitrator. The award shall be the decision of not less than two of the arbitrators.

In the event legal proceedings are required, the following clause protects the interests of both parties:

> Should it become necessary for LESSOR to commence legal proceedings to collect rent, recover possession or enforce

any other provision of this lease, the prevailing parties will be entitled to legal costs in connection therewith, including a reasonable sum as attorneys' fees as determined by the court. The parties agree that the law of the State of Alaska shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights thereunder.

3. "INDIRECT" MANAGEMENT TOOLS

If a community is unable to achieve its objectives through lease agreements or its public powers, indirect methods can be tried. The oil industry will require onshore support facilities quickly, and construction delays will be very costly. Conversely, actions which expedite construction will save considerable sums. Therefore, a community's ability to facilitate or delay OCS activities can constitute an effective means for achieving local objectives.

The oil industry and its subcontractors must comply with many federal and state requirements before they can proceed with both onshore and offshore operations. Although local approval of the various reports and applications is not always necessary, the community can utilize them as "indirect" management tools. For example, requests for public hearings or clarification, or a community's outright opposition to the reports or permit applications could impose delays intolerably expensive to the industry. Or, enthusiastic local government support could hasten the process.

Local officials should realize that community-imposed delays foster antagonism between the community and the developer. Yet, such action can be extremely effective in furthering community objectives for OCS-related development. The City of Yakutat, for example, found that it could achieve a zoning objective (the location of the OCS service base) by withholding a tideland permit from the developers. Indeed, delay may sometimes represent the only viable alternative for a small community.

A given OCS operation or facility might require several permits. Table II-2 outlines the major ones. Other permits might be required, too, depending upon the particular activity, facility, and location in question.[1] Most of the permits listed in the table are administered by the State of Alaska.

The State owns virtually all of Alaska's tidelands (except limited frontages claimed by cities). This provides an obvious tool for coastal management of OCS-related industrial activity. In the past, the State Division of Lands has granted leases and permits on state property as a matter of course. However, this agency is now involved in the coastal management program which includes a review of state lands susceptible to OCS impacts and an analysis of the practicality of using permits and leases as coastal management tools. Revisions and new procedures may result.

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[1] For example, surface oiling permits and pesticide use permits (Department of Environmental Conservation), game refuge or critical habitat area land use permits (Department of Fish and Game), encroachment and utility permits (Department of Highways), and special land use permits (Department of Natural Resources).

TABLE II-2

PERMITS FOR OCS-RELATED ACTIVITIES

PERMIT	AGENCY	DESCRIPTION
Dredging, Filling or Offshore Construction	U.S. Army Corps of Engineers	Procedures include public notice of application, submission of written comments, public hearing (Section 10, River and Harbor Act; Section 404, Federal Water Pollution Control Act Amendments of 1972)
National Pollution Discharge Elimination System	U.S. Environmental Protection Agency	Required before any discharge into U.S. navigable waters (Section 402, Federal Water Pollution Control Act)
Tideland	Alaska Department of Natural Resources	Required for use or improvement of tidelands (11 A.A.C. 62.710)
Well Drilling	Alaska Department of Natural Resources	Permit and fee required for oil or gas wells (11 A.A.C. 22.005)
Prospecting	Alaska Department of Natural Resources	Permits required for offshore prospecting, mineral prospecting, and tide and submerged lands prospecting (11 A.A.C. 86.510-.540)
Solid Waste Disposal	Alaska Department of Environmental Conservation	Required to establish, modify, or operate a solid waste facility (18 A.A.C. 60.020)
Waste Water Disposal	Alaska Department of Environmental Conservation	Required for disposal into state waters--includes publicly operated sewage systems (A.S. 46.03.100-.110)
Air Emissions	Alaska Department of Environmental Conservation	Required for facilities capable of emitting injurious quantities of pollutants (18 A.A.C. 50.120)
Operations on State Lands Requiring Permits	Alaska Department of Natural Resources	Required for use of explosives, use of hydraulic prospecting equipment, or harmful activities (determined by Department of Lands Director) on state lands (11 A.A.C. 96.010)

TABLE II-2

PERMITS FOR OCS-RELATED ACTIVITIES

(Continued)

PERMIT	AGENCY	DESCRIPTION
Right of Way	Alaska Department of Natural Resources	Required for pipelines, roads, transmission lines, etc. on state lands (A.S. 38.35.020 - .050; A.S. 38.05.330)
Right to Appropriate Water	Alaska Department of Natural Resources	Permit procedures prescribed by commissioner (11 A.A.C. 72.050)
Anadromous Fish Protection	Alaska Department of Fish and Game	Required for alterations of streams, lakes, or rivers (5 A.A.C. 95.100)

Even though this program is not yet complete, the State Division of Lands has already demonstrated a willingness to work with coastal municipalities in support of local land management policy. For example, the State facilitated land trades with the native corporation at Yakutat to allow local control of a prime coastal industrial site.[1] At the City's request, it also withheld for study various permits which threatened to undermine local zoning objectives.

Reporting procedures, especially those which provide for public input, may also be used as indirect management tools. Reporting procedures enable communities to insist that information of concern to them (e.g., potential impacts) be obtained and made public. Filing a report requires that data be gathered and compiled, and a final document written. Sometimes a community may press for report revisions or expansions, which in effect extend the reporting process. The information, as well as the time, provided by reporting procedures can be valuable to small communities.

Many permits have application processes which entail information submittal. But, the reporting procedure which constitutes the most important indirect tool is the environmental impact statement process. This process is well known to most local officials, and the reasons for their participation in it are presented in Part III, Chapter 4.

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[1] See Part III, Chapter 7 for a description of the Yakutat land trade.

III. APPLICATION OF MANAGEMENT TOOLS TO SPECIAL OBJECTIVES

1. FINANCIAL SOURCES

A major problem for any small community facing rapid growth is its limited ability to finance new facilities and services. For Alaskan coastal communities, this problem is compounded by uncertainty. OCS exploration may or may not prove successful; thus, communities cannot depend upon revenues associated with oil or gas production.

Timing

Historically, there have been significant and troublesome time lags between the provision of community services to new property and the receipt of revenue from that property. Governmental officials have observed that--

> the lag between when money could be translated into such services has been, and continues to be, the major problem for affected communities ... (S)ince it (the money) is an essential ingredient in orderly change, its absence, or the slowness of arrival, creates any number of repercussions. Repercussions range from inadequate water, electrical and sewage facilities to overcrowding in the schools.[1]

For small communities having very limited revenues and few, if any, reserves, financing exclusively from existing sources is probably not feasible.[2] Thus, new sources must be developed to meet the expenditures as they occur; timing of costs and revenues must be anticipated and coordinated.

Selecting Appropriate Sources

Local officials' fiscal decisions may have significant non-monetary consequences. The choice of revenue sources, for example, will affect how the

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[1] Mathematical Science, Inc. and Human Resources Planning Institute, Inc., A Social and Economic Impact Study of Off-Shore Petroleum and Natural Gas Development in Alaska--Addendum: Community Interviews (1976), p. 1.

[2] Based on a study of current revenue sources, it was concluded that public revenues are likely to be insufficient in the Colorado oil shale region during the first 5 to 8 years after development is initiated. See William Lamont, et al., Tax Lead Time Study, available through Colorado Geological Survey, Department of Natural Resources, State of Colorado (Denver, 1974). For a discussion of financial programming, refer to Part I, Chapter 6 of the present report.

public financial burden is distributed among sub-groups of citizens.[1] Certain measures are inherently regressive, while others are progressive.

The efficiency of a fiscal measure can be enhanced if it is coordinated with other management decisions. For instance, the revenues needed to provide public services to sprawling development can be up to twice those needed for concentrated development.[2] Zoning, location of public utilities, and other development controls should therefore be reviewed before revenue and funding sources are decided upon. In fact, by placing fiscal decisions within the larger context of total community development, the chances of achieving local objectives are greatly improved.

Overview of Financial Sources

Sources of revenue can be divided into the following four categories:

- Existing municipal funds

- Taxes

  These include: property tax (real and personal), possessory interest tax; sales and use tax; general and specific occupation tax; real estate transfer tax; and port tax.

- User fees and charges

  Examples are: hook-up fees, inspection fees and remits, service charges, parking meters, dockage, wharfage, lease of public lands and facilities; and bridge tolls.

- Grants

  Three types of grants available are federal (e.g., outright grants of "forgiveness" under loan or bond guarantees), state (project specific and general transfer payments), and private grants (oil industry assistance and assistance to native corporations under joint agreement with the municipality).

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[1]Other implications of revenue alternatives, including market side effects and acceptability to citizens, are discussed in detail in Tax Lead Time Study, cited on the previous page, Section III.

[2]See, e.g., Livingston & Blayney, Santa Rosa Optimum Growth Study (San Francisco, Calif., 1973); and Toby Clark, Costs of Sprawl (Washington, DC: Council on Environmental Quality, 1974), among others.

Both funds and revenue will derive from one or more of the above sources, either to fund capital improvements directly, or to repay debts. Consequently, the capital budgeting process must consider these revenue sources' potential to repay the cost of projects within their anticipated life span (with interest if debt is incurred). This "life span" is a critical issue in view of the fact that OCS activity would terminate in the event of an unsuccessful exploration phase.

The following sections highlight key revenue sources available to typical Alaskan coastal communities.

Taxes

Property Taxes

In Alaska, the organized borough is the taxing authority. The city within the borough exercises influence on the yield and other aspects of the tax through its annual application for revenues from the borough. Cities located outside organized boroughs, or within the unorganized borough, levy and collect their own taxes.

For many small coastal communities the revenue potential from property taxes is severely limited. Assessed values are low relative to the magnitude of potential capital improvements. For example, bond payments on a $5 million improvement in Cordova would require nearly a 2 percent tax rate increase on the basis of 1975 assessments.[1] The present tax rate is 1.7 percent, and there is a 3 percent limit[2] on the property tax rate.[3]

Although many OCS industrial facilities, such as oil rigs, platforms, and pipelaying barges, are beyond the jurisdiction of the city, and therefore beyond its taxing authority, the city may be able to generate property tax revenues from valuable onshore structures. LNG plants and other major facilities will be especially lucrative sources of property tax revenues.

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[1] Assumes 20 year bonds at 8 percent on $509,261 annual payments relative to an assesses value of $25.8 million.

[2] Second class cities are limited to .5 percent.

[3] Although this limitation does not apply to taxes levied or pledged to pay or secure the payment of principal and interest on bonds, there is a practical limitation to the amount taxpayers will tolerate. Furthermore, in the bond market there are informal limits on per capita debt and on the allowable percentage of debt to assessed valuation.

As noted earlier, time lags are typical between expenditures for public services and collection of revenues. Depending upon local tax levy procedures and the timing of assessments, this delay might exceed two years. To mitigate this problem, assessment of improvements need not be deferred until completion of the project. Anything in place on the site on the assessment date, such as partially completed buildings, machinery and other improvements, can be assessed.

Oil- and gas-related activities are subject to a 20 mill State property tax. However, the industry receives credit for the payment of property taxes to boroughs and cities up to the 20 mill limit. Beyond 20 mills, no credit is received from the State. Therefore, the industry should not be reticent to pay local property taxes up to this limit.

The principal problems associated with property taxes lie in obtaining a full and accurate assessment of industry properties, and distributing the property tax burden equitably throughout the community. Property taxes paid by the oil industry will likely be passed on to their consumers. But taxes levied on residential properties will be borne primarily by local residents. Exemptions can help ameliorate this problem. The North Slope Borough, for example, exempts from taxation the first $10,000 assessed valuation of residential properties.

Although property taxes from service bases may not be sufficient to support all public facilities they require, a property tax on an oil terminal or a LNG plant will certainly provide revenues to cover these costs. Forthcoming at a later date, such taxation would probably entail a millage rate lower than the community's present rate.

Possessory Interest Tax

This type of tax is levied against a lessee for the value of a leasehold or other private interest on publicly owned land. Thus, it taxes public land in private use. Analogous to a property tax, the remarks above (including State taxation) hold for possessory interest tax.

Sales Tax

While communities may levy sales taxes of up to 3¢ on the dollar,[1] sales taxes themselves may not provide a substantial source of revenue. Industrial activity probably will not affect sales nearly so much as public capital and service requirements. Therefore, the revenues generated by a sales tax would not sufficiently finance such requirements.

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[1]Home rule cities have no ceiling.

Use Tax

A use tax is a tax on the privilege of storing, using, or consuming articles of tangible personal property on which no sales tax has been paid.[1] It taxes non-residents, commuters, and visitors as well as residents.

This tax will be the principal source of revenue for most communities providing a service function for the offshore oil and gas industry. Large tonnages of expensive supplies and equipment will be stored on supply and service bases prior to being shipped offshore, and they will be subject to a use tax. The off-base storage, use, or consumption of articles subject to a use tax should be relatively small by comparison.

If a sales tax is used, it should be complemented with a use tax, since non-residents can avoid the sales tax by patronizing businesses outside municipal boundaries.

Use taxes have the advantage that, apart from their planning and administrative set up, they entail no significant time lag between collection and economic development. In addition, exemptions and/or progressive tax rates can be used to reduce their effect on small business and local residents.

General and Specific Occupation Taxes

These taxes are imposed for the privilege of performing certain occupations or types of occupations within the taxing jurisdiction. Therefore, they can be aimed at very specific sectors of the economy. Although primarily used as revenue sources, they may also inhibit general growth (in the case of a general occupation tax) or discourage certain occupations from locating in the jurisdiction. The rates may be set to support only a licensing program, or they may be constructed to form a general source of net revenue. The most commonly used specific occupation taxes are the franchise tax and the liquor and beer occupation tax.

As in the case of a sales or use tax, businesses tend to pass the tax on to the consumer, or to try to avoid it by locating outside the municipality. The administrative costs of occupation taxes approximate those of sales tax programs.

Citizens are likely to oppose occupation taxes because they represent additional taxation. Likewise, opposition from the business community is virtually certain.

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[1] William Lamont, et al., op. cit., Section III.

Real Estate Transfer Tax

This tax is levied on the conveyance of real property and is analogous to a sales tax. In sellers' real estate markets (such as can be expected in many coastal communities in Alaska) the buyer will bear the major part of the tax burden. This form of tax, or corresponding possessory tax, may therefore constitute a prime vehicle for placing the financial burden of development on new industry.

The tax also creates an incentive to avoid property sales, and so could be used to further a local policy of preserving local land in local ownership.

The yield of the real estate transfer tax is difficult to predict because of avoidances. Thus, local governments should not rely on this tax as a major source of revenue.

Port Tax

This type of tax, charged against boats entering the local harbor, constitutes another method of placing the burden of the cost of industrial growth upon the oil industry. However, this tax could also impact the fishing industry unless charges are varied according to boat size, or were eliminated for smaller boats.

User Fees and Charges

A community can construct user taxes or fees to cover all or a part of the capital and operating costs of a public facility. An initial fee, collected prior to the actual outlay, could provide revenues for the capital expenditures. Operational costs of the facilities are more appropriately covered through a flat, periodical service charge and a user fee which is directly proportional to current use.[1] This allows a community to implement a policy of "development-pays-its-way."

The potential for full local control of these fees and charges is excellent. Local control is further enhanced by the fact that increased costs due to increased demand (at least within the physical capacity of the system) are self-financing.

Since payment is proportional to use, user charges create incentives for efficient use of facilities and minimize random fluctuations in demand. The demand for OCS-related services will vary with the industry's operations, but, once the rates have been fixed, revenues from user charges will be

[1]Occasionally the flat service charge is omitted.

directly linked to the level of OCS activities. (Rate variations, however, must be expected to affect the level of consumption in accordance with the price elasticity of the demand.)

Administering user fee systems may be expensive due to costs of determining initial rate structures, monitoring use, and implementing individual billing and expanded accounting systems. A community can expect that citizen acceptability of user fees will be generally good, as the inherent fairness of the system is evident (unless the rate structures are manipulated to disproportionately favor certain user groups).

The following are among the common user charges that are applicable:

hook-up fees (which could bear a major portion of the cost of such facilities or sewer or water system expansions)

inspection fees and remits

service charges (to cover operation, maintenance costs and debt service costs)

parking charges and bridge tolls

dockage and wharfage fees (negotiated under a general tariff similar to that established by the Port of Seward owned by the Alaskan Railroad)

lease of public lands and facilities (as discussed in detail elsewhere in this report)

In summary, user charges and fees are likely to be among the most important revenue sources for the small coastal community in Alaska.

Grants

Additional funds may be derived from certain federal and state program elements. The following section describes the most important grant sources.

- Economic Development Administration (EDA), Department of Commerce

EDA provides grants and loans for public works and development facilities. Its purpose is to assist in the construction of public facilities needed to initiate and encourage long-term economic growth in designated geographic areas. Such facilities include water and sewer systems, port facilities, and site improvements and access roads for industrial parks. Applicants must demonstrate that projects will have a positive impact on the economic development process in the community. The basic grant covers up to 50 percent of project costs.

The EDA also provides funding under the Economic Adjustment Program (Title 9) where federal action has induced a change in a community's economic conditions. Communities that will be impacted by development resulting from the OCS lease sales will be eligible under the program, and can obtain up to 100% funding for planning and implementation of public works development programs.

Applications should be made through the EDA Anchorage office.

When funds are available, EDA also makes grants for public works projects which can be demonstrated to provide immediate work to unemployed and underemployed persons in a designated area. This program can provide up to 80 percent of project funding. Under EDA rules, the federal contribution can be higher than the percentages designated above where Indians are involved. However, corporations or associations organized for profit (native corporations) are not eligible.

- Environmental Protection Agency (EPA), Office of Air and Waste

Two grant programs offered by EPA can apply to planning and development of solid waste disposal systems. The first assists in development of plans and programs leading to the solution of solid waste management problems. The second promotes demonstration and application of solid waste management and resource recovery systems which preserve and enhance the quality of air, water, and land resources. Both programs must have a state agency as the applicant but are available to municipalities as the end recipient. They can provide grants of up to 75 percent of project costs. The regional EPA office service Alaska is located at : 1200 6th Avenue, Seattle, Washington 98109.

- Bureau of Indian Affairs, Department of the Interior

Programs provide grants, loans, and guarantee loans for economic development to Indians on or near a Federal Indian Reservation. Grants are limited to 40 percent of project costs or $50,000; loan guarantees are limited to 90 percent of the total loan. Applications should be made to the local commissioner of Indian Affairs located at: Box 3-8000, Juneau, Alaska 99801.

- Federal Aviation Administration (FAA), Department of Transportation

Where airport development is a critical factor, two grant programs from FAA are applicable. The Airport Planning Grant Program will fund up to two-thirds of the cost of preparing airport master plans. The Airport Development Program can provide up to 75 percent of the cost of land acquisition, site preparation, and construction for small airports.[1] Application

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[1]Note that airport requirements should be coordinated with the State Department of Public Works.

should be made through the area office of FAA located at: Hill Building, 632 W. 6th Avenue, Anchorage, Alaska 99501.

- State Grant Programs

The State Department of Commerce and Economic Development has programs which provide capital for water resource projects[1] and grants (up to 50 percent) for feasibility studies, construction, land acquisition, and planning of civic, convention, and community recreation centers.[2] The State Department of Highways can help provide for the construction of local service roads and trails,[3] and state revenue sharing funds are available to municipalities for maintenance of public services according to distribution of population. Finally, the Alaska State Department of Community and Regional Affairs can provide surveys, land use studies, and planning assistance to municipalities.

Private Sources of Capital

Revenues from the oil industry should be maximized if that industry is to pay for the costs of the impacts it creates. These revenues might be direct grants tied to specific capital improvements or to proposal submission and/or acceptance, or they might be obtained from user fees and other taxes. Some guarantee of future revenue from the industry is essential, particularly where there is a chance that its operations will end before public support facilities are fully paid for.

Native corporations may find it in their interest to provide front-end capital for improvements where their adjacent land holdings receive long-range benefits. Where native corporations are major land holders, municipalities should work closely with them to coordinate mutual interests.

Coastal Zone Management Act

The Coastal Zone Management Act of 1972 created a program that provides grants to coastal states for developing and implementing management programs for coastal land and water resources. In addition, under a "Coastal Energy Impact Program" incorporated in amendments passed during 1976, the act provides for "financial assistance to meet the needs of coastal states and local governments in such (coastal) states resulting from specified

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[1] A.S. 45.86.010.

[2] A.S. 43.18.300.

[3] A.S. 19.30.111.251.

activities involving energy development." These "specified activities" are defined as--

> ...facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary (of Commerce) finds will support increased population.[2]

At this time (January, 1977) no funds have been appropriated for the Coastal Energy Impact Program, and therefore it has not been implemented. Assuming that the program eventually receives funds, it will provide local governments with three forms of financing:

- Loans for Public Facilities or Services

According to the act, local governments may receive loans for public facilities and services required as a result of coastal energy activities. State or local units receiving loans under this title shall not be required to pledge their "full faith or credit" to its repayment. In other words, these are essentially unsecured loans.

- Bond Guarantees

The act also provides guarantees of bonds or other evidences of indebtedness issued to provide public facilities or services required as a result of coastal energy activity. According to the provisions of the act, this indebtedness must be amortized over a period not exceeding 30 years. Moreover, the Secretary of Commerce sets standards such that investors must meet his requirements, that the interest rate must not be excessive, and that bonds will not be tax exempt. Where the debt retirement of all or a portion of the facilities and services is deemed infeasible by the Secretary, the most recent version of the regulations indicates that the debt repayment will be assumed from its inception by the Secretary. If the Secretary has to pay bondholders as a result of the coastal state or unit's default, it has the right to demand repayment with interest at the prevailing rate.

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[1]Coastal Zone Management Act Amendments of 1976, P. L. 94-370, sec. 7 (amending 16 U.S.C. sec. 308 (1972)).

[2]Id., sec. 3 (amending 16 U.S.C. sec. 304 (1972)).

- Grants or Other Assistance

Assistance is provided to coastal states and units of general purpose local government to meet obligations under the loans and guarantees described above which they are otherwise unable to meet "because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues ... to meet such obligations in accordance with the appropriate repayment schedule."[1] If these conditions occur, the Secretary shall take one of the following actions:

> modify appropriately the terms and conditions of the loan or guarantee
>
> refinance the loan
>
> make a supplemental loan to cover interest and principal due
>
> make a grant to cover interest and principal due

If, however, the Secretary has taken one of the first three actions and finds that additional assistance will not allow the governmental unit to meet its obligations within a reasonable time, then he must make a grant sufficient to meet these outstanding obligations. Note that this "forgiveness" provision may demand substantial time and effort by the municipalities before they are relieved of financial obligations.

Even if facilities are developed with general obligation bonds, municipalities should take advantage of this legislation so that the bonds are underwritten by the Secretary of Commerce. This act should not be viewed as a source of revenue. Although it may facilitate local funding, it provides for debt forgiveness only when the community is in severe financial difficulty--a situation which should be avoided. Also, because the act has not yet been implemented, it is not clear how effectively it will be administered.

Access to the programs described above is provided through the Alaska Coastal Management Program office, under the Division of Policy Development and Planning in the Office of the Governor.

Municipal Debt

Assuming that revenues from industry and related sources are insufficient to cover public capital costs, but that forthcoming revenue sources can be identified, the project would most logically be funded through some form of

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[1] Id., sec. 7 (amending 16 U.S.C. sec. 308 (1972)).

municipal debt. This includes the following alternatives:

- General Obligation (G. O.) Bonds

This is the standard format for financing municipal improvements. The full faith and credit of a municipality is pledged for payment of the principal and interest on them and there is no legal limit to the property tax rate which can be levied to provide for this payment. However, as discussed above, there is a practical limit to local taxation. Since G. O. bonds must be approved by a majority of the local voters, the public's willingness to increase taxes will be a critical factor. When the community has excess bonding capacity, it can obtain extremely favorable rates by pledging the revenues of a facility to retiring the debt of a G. O. bond.

- Bond Anticipation Notes

To expedite the funding of projects, a municipality can issue notes in anticipation of the sale of bonds. The bonds, however, must first have been approved by the voters. Proceeds from the sale of notes must be used for the same purpose as designated for the bonds. The notes are repaid from the proceeds from the bonds' sale.

- Revenue Bonds

Revenue bonds are appropriate for the construction of public facilities which will generate revenue, and their repayment is derived from these revenues. Because the full faith and credit does not stand behind these bonds, no local election is required. On the other hand, they are generally more difficult to sell and more expensive than general obligation bonds because of this reduced security. Revenue bonds would be an appropriate method to finance construction of public docks--particularly where the revenue stream could be guaranteed by a prime user (the oil industry).

- Revenue Anticipation Notes

Similar to bond anticipation notes, these notes provide a mechanism for short-term borrowing (up to one year) in anticipation of a revenue source. They cannot exceed 50 percent of estimated revenues forthcoming during the fiscal year in which they are issued. Anticipated revenues can include federal or state grants. The notes are secured by the full faith, credit and unlimited taxing power of the issuing municipality.

- Special Assessment Bonds

These bonds finance improvements which enhance the values of private properties in a special assessment district. Such improvements typically include street paving, curbs, storm drainage, and sometimes water and sewer services. Special assessment districts are formed by the assembly or

council of a municipality. After public hearings and the possibility of petitioning against the district's formation, property owners are assessed according to the value of their property.

- Federal Loans

As previously described, the U.S. Secretary of Commerce may make loans to local governments under the provisions of the Coastal Zone Management Act, but the act has not yet been implemented and the date at which funds may become available is uncertain.

- State Loans

The Alaska Municipal Bond Bank Authority provides loans for capital improvements at the municipal level.[1]

Regardless of the Specific type of debt incurred to finance municipal improvements and services, the municipality should seek underwriting by either the oil industry itself or by the federal government. This will not only facilitate the sale of bonds, but will eliminate much of the risk to the municipalities in developing public improvements.

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[1] A.S. 44.58. See Part I, Chapter 5 for a description of this source.

2. PROVIDING SERVICES AND UTILITIES

Because a small community's resources are limited, the provision of one service affects the community's ability to supply another one. Consequently, providing OCS-related services and utilities should be managed according to a long-range fiscal management program, as described in the chapter on financial planning (Part I, Chapter 6).

Note that although the discussion presented in the following pages specifically refers to certain major utilities (e.g., power, water supply, sewerage), it applies equally to other utilities and services such as snow removal and fire protection.

Growth Implications

Local officials should recognize the critical interrelationship between capital projects and community growth. Roads, power, sewer and other community facilities are often followed by commercial, industrial, and residential growth. Therefore, the existence and location of these facilities should constitute an integral part of any growth management program.

The consequences of inadequate planning are illustrated by the experiences of the City of Kenai. The City apparently overbuilt during the oil boom of the 1960's, and it failed to annex the industrially developed territory and thereby increase its tax base. This resulted in costly, poorly developed water and sewer systems. Currently, the population is only 50 to 70 percent of what it was during the peak years of development,[1] and demand is insufficient to support the utilities and services. Further, "in the rush to provide services during the peak years, legal procedures were not followed, and the taxes collected were inappropriately low. Assessment districts were not legally established. Water was supplied over miles of land to areas with no development, nor much prospect for development, in between."[2] To avoid such overbuilding, a key official in the City of Kenai advises to build for the anticipated residual demand of OCS-related development, and not for the peak period.[3]

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[1] Mathematical Sciences Northwest, Inc. and Human Resources Planning Institute, Inc., A Social and Economic Impact Study of Off-Shore Petroleum and Natural Gas Development in Alaska--Addendum: Community Interviews (n.p., 1976), p. 9.

[2] Ibid.

[3] Ibid., p. 12.

The controlled development of infrastructure is a policy tool which, particularly if integrated into a land development plan, can assist communities in directing land into desired use patterns. Land can, of course, be brought into use without prior or adequate provision of power, water, sewerage, roads, telephone and other services, and developers frequently are motivated to provide infrastructure as part of a development scheme. However, there can be no doubt that public participation in the financing and/or provision of infrastructure can be a significant factor attracting development to desired patterns. By the same token, the withholding or denial of infrastructure can effectively discourage development where it is not desired.

The following steps are required for developing a management program, whether that program concerns water, sewer, solid waste, power, or telephone service:

- STEP 1 Determine demand and service areas.
- STEP 2 Determine cost allocation among those who will pay for the development.
- STEP 3 Establish development standards and criteria.
- STEP 4 Determine costs of operation, including servicing, maintenance and repair, as well as capital expenditures.
- STEP 5 Determine who is responsible for providing services under various circumstances.
- STEP 6 Establish operational regulations and policies to control the development.

The Demand for Public Utilities and Services

Following a lease sale, a supply and service base is the first onshore facility to be constructed, and the last one to be abandoned (or converted to other use). If only one lease sale is held in an area, its anticipated life span would probably be less than 30 years. At first, a relatively small base is required, but this would be greatly expanded one to three years after the lease sale if the development phase is entered. During the production phase, the demand for support services levels off to a relatively steady state until the base's ultimate closure or conversion.[1]

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[1]Alaska Consultants, Inc., Marine Service Bases for Offshore Oil Development, prepared for the State of Alaska, Department of Community and Regional Affairs, Division of Community Planning (Anchorage, 1976).

In addition to the service base, other OCS-related activities will require community services and utilities. These primarily relate to local population growth induced by OCS employment.

No major increase in demand is expected from this source during the exploratory phase. During the development and production phases, however, many of the additional personnel may choose to establish homes in the community and will require a variety of public services and utilities. A steady state of demand can be expected at about the ninth or tenth year from the beginning of exploratory activities.

If terminal and production treatment facilities are constructed in remote areas, both construction workers and permanent personnel would live in camp-type facilities on the site, and their requirements for public facilities would have to be negotiated with the industry.

For each person directly employed through OCS activity, there will be a secondary effect via the additional income generated. This so-called "multiplier" effect will, however, be much smaller in small communities than in large ones due to "leakage" to the outside areas. Nevertheless, communities should anticipate some indirect growth to be supplied with public services and utilities.

Ownership

Various ownership schemes are possible. For example--

- The community might build, own, and operate the facilities.
- The main user (probably an independent service base operator or a major oil company) could build and own the facility but lease it, on a non-profit basis, to the city to operate.
- Either the city or the main user could contract a third party to provide the utilities and services.
- The company provides and operates by itself the required facility for its own exclusive use.

A municipality might select the second or third alternative if local citizens oppose further public investment in utilities and services. In such cases the city should negotiate with the main user to protect its interests. The last alternative is likely to occur during the exploration phase when the demand for services is relatively low. The third and fourth alternatives could also result from a breakdown in negotiations between the city and the main user.

Public Financing

There are four basic sources for financing services and utilities:

- current city revenues and funds
- new taxes or bonds
- user fees and charges
- federal and/or state aid

These options have been dealt with at length in the previous chapter.

Industry Assistance[1]

Basic utilities may be constructed by the companies themselves. They usually retain ownership, but rent or lease the facilities on a non-profit basis to the local community. Although tax incentives may be provided to the industry, this approach is probably unnecessary in Alaska.

A company may choose to contract a leasing corporation or a specially created non-profit corporation to supply the needed facility. For example, during the exploration phase the company may elect to contract an independent third party to supply water. Instead of constructing a permanent pipe network, water could be delivered daily by motorized tankers.

An industry might also aid local government by--

- Providing a market (and as a corollary, a lower interest rate) for a local bond issue which might otherwise not be readily marketable.[2]
- Purchasing or guaranteeing short-term papers when the community is unable to issue long-term bonds but needs money immediately.
- Securing a bond issue, especially when the community's position on the money markets is very unfavorable in terms of limited market and high interest rate. A large corporation with vast resources can ease both conditions considerably.

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[1]For a detailed and excellent discussion, see William Lamont, et al., Tax Lead Time Study--The Colorado Oil Shale Region, available through Colorado Geological Survey, Department of Natural Resources, State of Colorado, Denver, Colorado (Denver, 1974), pp. 4-45 - 4-48.

[2]This technique was used in Nevada in the mid 1950's when Anaconda opened a mine in a rural area of the state; the company bought most of the bond issue.

- Giving an outright grant for the provision of utilities and services.
- Prepaying taxes[1] (to reduce the time lag inherent in tax structures).
- Paying user charges higher than those necessary (to cover operating costs to recover development and other fixed costs over a relatively short period of time).
- Leasing facilities and service areas from the community.

Location

The community can directly determine the location of the facilities that it provides, or it can influence location of facilities built by others. In either case, location should be in accordance with the community's growth policy and an established capital improvement program, as already noted.

Pollution control legislation at both the state and federal levels has significant implications for locating onshore facilities. Under Title 46 of the Alaska Statutes, "Water, Air and Environmental Conservation," the disposal of solid or liquid waste materials into the waters of the State from a commercial or industrial operation requires a permit from the State Department of Environmental Conservation. Similarly, Section 402 of the Federal Water Pollution Control Act of 1972 requires permits for all discharges within navigable waters of the United States.

The quantity of local water supplies may be a significant limiting factor to new development. A municipality must not permit development to exceed a limit corresponding to an established safe rate of withdrawal from the local watershed or groundwater basin. This will require first determining the safe yield of supplies, and then periodically monitoring their rate of use, and the quantity and quality of remaining supplies.

If impoundments and groundwater withdrawals are restricted to the property where the water is used, development is effectively confined to areas which have an adequate water supply or are serviced through a public water supply system. While this policy inhibits some areas from development, it induces developers to follow established community service lines, thereby increasing the chances that the development is compatible with local and regional development policies. Certain exceptions should be allowable in order to avoid undue restriction of development which would otherwise benefit the community.

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[1]The legality of this scheme needs to be verified. Enabling legislation has been planned in North Dakota, and the procedure has been applied in Canada to the Sheritt Gordon Mines company of Manitoba.

Extent or Capacity

The extent or capacity of the facilities to be provided must again adhere to overall growth policies and capital improvement programs. The available options include: providing very limited facilities which would effectively discourage growth, enlarging facilities in accordance with each stage of development, or dimensioning at the outset for future anticipated growth. A major problem here is that, while the peak demand for utilities and services may reach several times the demand exhibited during the initial exploration phase, the steady-state, "residual" demand is much smaller. Unless there appears to be a reasonable chance for complementary demand after the OCS-related peak demand has declined, the only realistic option may be to use the anticipated "residual" (i. e., production phase) demand level as the design standard.[1]

The problem of sewage treatment may serve to exemplify typical capacity considerations. Large-scale, efficient sewage treatment plants require significant initial investment, and are designed to operate much longer than most small Alaskan communities will likely require. Therefore, septic tanks, filter fields, and effluent spraying techniques are preferable alternatives when designed, sited, and maintained according to rigorous standards. In some instances, however, natural conditions might preclude land disposal systems. Under these circumstances, small package sewage systems tailored to immediate demand must be permitted, provided the treated effluent meets EPA and other quality standards.

Timing

Communities should develop timing strategies for scheduling the initial provision of services and utilities and for their subsequent expansion. Local leaders might wish to schedule construction so that it is concurrent with demand, or they might wish to provide for ultimate demand at the outset. The relative merits of these strategies depend on the probabilities of increasing service demands, cost differences, and on available finances.

Capital improvement programming is the primary tool for implementing timing strategies. Given the initial uncertainties, i. e., whether there are sufficient quantities of oil or gas to warrant production, and the variation in demand for services or utilities, an economically sound timing strategy would be as follows:

- STEP 1 Install temporary facilities to handle the exploration phase lasting 1 to 3 years. It is essential here to avoid high outlays, even at the expense of higher operating costs.

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[1]See also the next section, "Timing," for a discussion of related issues.

- STEP 2 If the oil companies are to proceed with the development and production phases, adequate services and utilities must be provided utilizing facilities which are more capital intensive, but more economical in the long run. Because of the relatively high peak nature of the demand, it will be advantageous to utilize a modular approach, especially in the case of power, telephone, and water services. Service systems should be built in accordance with expected steady-state demands (use 35 to 40 years as the time frame for the investment calculations), and compatible add-on units can be added to handle peak demand as needed. These add-on modules should be resalable in order to avoid unnecessarily high capital outlays.[1]

- STEP 3 As the peak demand period begins to pass, reduce the system outputs to appropriate levels by disposing of the add-on units in an economically sensible manner, or use the excess capacity as incentives and directional guides for desired growth.

General Utilities and Services Requirements

The major characteristics of utility and other service systems are addressed in the following paragraphs from a management point of view. Standard federal and state regulations governing much of the production and distribution of power and telecommunications are not dealt with here as they are numerous and technically detailed, and well known to those who might be interested in such development.

Reasonably large quantities of potable water and electric power are required by the service bases and other OCS-related support activities. Sewerage at the base and solid waste from both the base and offshore operations need proper handling. Moreover, a telephone system with adequate capacity is essential to ensure excellent communications with headquarters, suppliers, and others outside the local area.[2]

The Alaska Department of Health and Social Services sets minimum standards for water supply, sewage and refuse disposal.[3] These standards apply to both location and capacity of such facilities.

Numerous federal regulations govern the disposal of waste materials. These are "summarized" in the OCS Order No. 7, by the U.S. Department of the

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[1]This generally does not apply to sewer and solid waste systems.

[2]Alaska Consultants, Inc., op. cit., p. 30.

[3]A.S. 44.29.

Interior, Geological Survey. The Order stipulates that "the disposal of waste materials into the ocean shall not create conditions which will adversely affect the public health, life or property, aquatic life or wildlife, recreation, navigation, or other uses of the ocean."[1] Moreover, "the disposal of produced waste water other than into the ocean shall have the method and location approved by the Supervisor (of the U.S. Geological Survey)" and "All solid waste generated during OCS operations shall be incinerated or transported to shore for disposal in accordance with federal, state, or local requirements."[2]

The Federal Water Pollution Control Act of 1972, administered by the Environmental Protection Agency, requires that new pollution sources be designed and built to minimize the discharge of pollutants using the best available technology. This law has significant implications for the locational choices and design of onshore facilities.

Information about Services and Utilities

Federal regulations require the OCS lessee to provide states and others with information about the proposed development.[3] Such information shall include a description of all offshore and onshore facilities and operations proposed by the lessee or directly related to proposed development, presumably including services and utilities.

Although these requirements ought to provide a comprehensive source of information for managing the OCS-related impact, the information is to be given to the state 30 days before submission of the development plan, and so it may arrive too late for planning purposes. It is therefore paramount that community leaders meet with industry representatives as soon as possible to obtain advance indication of demand for public utilities and services. Communities should request professional assistance from the Department of Community and Regional Affairs, Division of Community Planning, in evaluating the information and assessing the probably magnitude of the impacts.

This Department has also prepared a Model Subdivision Ordinance for Small Communities. Its stipulations apply particularly to small communities in Alaska, and provide good examples of aspects which a community should consider in its management of public utilities. Actual application of the Model might require its adaptation to special local conditions, and so some analysis is therefore needed before possible promulgation.

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[1] U.S. Department of the Interior, Geological Survey, OCS Order No. 7, paragraph 1.

[2] Ibid., paragraphs 1.A(5) and 1.13(2).

[3] 30 C.F.R. 250.34.

A checklist developed by a HUD-financed research project may prove useful to community leaders in reviewing the utility and service aspects of development projects.[1] The list, presented in Appendix A, also suggests stipulations which the community may wish to include in its agreements and leases with service base developers and operators.

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[1]East Central Florida Regional Planning Council, "A Checklist for Reviewing New Town Proposals," HUD Project No. Fla. p-96 (Springfield, Virginia: Clearinghouse for Federal Scientific and Technical Information, 1970). (Mimeo)

APPENDIX A

A Checklist for Reviewing New Town Proposals[1]

WATER SUPPLY

Existing Ground and Surface Waters

Is there reasonable proof that the residents (users) of the area will have sufficient water supply for future as well as present use?

If located in a ground water recharge area, will the developer:

a. Insure that recharge capability is not diminished by development through use of artificial recharge measures?

b. Insure that salt water intrusion is kept to a minimum by maintaining a proper hydraulic gradient?

c. Insure that the quality of the water in the aquifer is not degraded by intrusion of effluent from the new town?

If natural lakes are used to supply water, will this source be capable of supplying water to the new town without requiring draw-downs which would have adverse effects on: (e. g.)

a. Water volume downstream?

b. Water quality?

c. Recharge capacity of surrounding agricultural land?

d. Fish and wildlife, through the loss of lateral area as spawning grounds?

e. Recreational and aesthetic value?

Does the developer intend to provide both potable and non-potable water systems?

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[1]Ibid., pp. 6-8.

Reservoirs

If the construction of a reservoir is necessary, will the proposed reservoir be capable of providing an adequate water supply augmentation for existing and future downstream users? This determination should include consideration of:

a. The seasonal volume and variability of the surface flow, accounting for major droughts and floods in the design of the reservoir.

b. Proposed uses of the reservoir including:

   (1) Municipal water demand (fire control, residential and commercial)

   (2) Industrial water demand

   (3) Recreational demand for the body of water

   (4) Flood control

   (5) Agricultural demand

What measures is the developer willing to undertake to minimize any adverse effects the reservoir may have on the total environment, specifically with regard to such factors as:

a. Silt loads

b. Nutrient loads

c. Weed control

d. Mosquito abatement

e. Fish and wildlife protection

f. Protection against eutrophication

Water Distribution System

Will the system provide a sufficient quantity of water for projected growth plus a reserve for dry periods?

Will the water quality provided meet required standards?

Will the distribution system insure complete coverage of the service area at required pressures for:

a. Normal peak use and,

b. Fire protection requirements

SANITARY SEWERS

Will the design of the sewage system insure that all areas of the development have adequate facilities at all stages of the development?

How does the new town's sewage system relate to the county's sewer and water treatment facilities objectives?

Will the collection system plan maintain appropriate gradients?

Will the collection system proposals include installation and operation of sewage lift stations where required?

Can the collection system serve speculative growth at the periphery of the new town?

Will the system include "tertiary" treatment at all stages of development?

Will participation in an areawide tertiary treatment be sought?

Will the treatment facilities location be sufficiently removed from residential and commercial districts to avoid future complaints of governmental officials?

Will the plant staging assure ease of expansion?

What assurances will the developer provide that such a system will indeed be completed? Construction? Performance bonds?

STORM WATER DISPOSAL

Are separate storm and sanitary sewers assured?

Do pollution hazards warrant a surface runoff treatment system?

How does the proposed system relate to the county and regional waste water treatment facilities plans and to flood plain zoning requirements of the site

and other portions of the watershed?

Can the developer demonstrate that the storm drainage system will be adequate to handle the runoff from a five-year storm? Within the site? Within the drainage area(s) involved?

Are drainage swales involved and, if so, are the channel rights of way and cross sections well designed for prompt and recurring maintenance?

Will the system prohibit storm drainage conflict with active irrigation or land drainage systems?

Will the system provide storm sewers where necessary with sizes capable of serving densely developed areas?

Will county standards for the installation of curbs and gutters be respected?

Will the developer insure that land sales staging and development will be consistent with the coverage and capacity of all utilities?

Have the effected private utility companies reviewed the proposal in depth?

Is there a pattern of difficulty involved in their meeting service demands?

Is the installation of underground common utility trenches being actively considered?

Are architectural and landscaping controls to be employed for public service facilities such as water pumping stations, telephone exchange equipment, electricity relay stations to reduce future complaints and resultant demands for local government action?

SOLID WASTE DISPOSAL

Is a solid waste disposal system considered?

How does it relate to the county and regional solid waste disposal plans?

If an independent system is proposed, what will be its effect on ground water and/or air pollution?

What comments have been sought and received from the affected Federal, state, regional agencies regarding the solid waste disposal system?

3. LOCAL HIRE

During the exploration and development phases of OCS operations, a limited number of jobs will become available to Alaskans. Workers will be needed to fill jobs on supply bases and construction sites. The production phase of operations will require few workers.

A community can actively encourage--or discourage--the hiring and training of local residents. Its actions will depend upon local policies regarding in-migration, community stability, and economic growth. Communities wanting to avoid "boom town" development will try to minimize fluctuations in OCS hiring. Other communities may wish to allow a temporary economic boom to occur, yet retain their present size in the long run. Still others may envision OCS-related development as a way to induce further, prolonged growth.

OCS labor requirements are somewhat flexible; to a certain extent they can be met by temporary, nonlocal workers <u>or</u> by permanent, local employees. Year-round employment encourages a more varied and stable population and helps to counteract problems typical of one-resource towns dominated by young males. If a community seeks to prevent "boom town" development, it should promote more <u>permanent</u> jobs for <u>local</u> residents.

To illustrate, a local hire policy has been implemented in Yakutat. There, the native village corporation, Yak-Tat Kwaan, Inc., obtained land to be leased to the oil companies for development as a service base. The lease stipulated that the base would initially be operated by the firms themselves, but after two years responsibility would be transferred to the Kwaan. The lease also provided that the service base jobs were to be filled by local residents whenever possible.

Long-term social changes are perhaps best averted through encouraging temporary, nonlocal labor. When OCS operations decline, the town should return to approximately its pre-OCS size. The short-term consequences of such a policy, however, are unavoidable. Increased business opportunities may be accompanied by considerable social disruption.

Largely because of required experience, the initial personnel for the offshore drilling and support activities will come from Cook Inlet or be brought into Alaska from other areas, such as the North Sea or the Gulf of Mexico. Likewise, unless the community intervenes, initial onshore supply and service crews are likely to come from these same sources. The turnover of such personnel is high (about 20 percent per year)[1] and replacements will probably be recruited from the local labor market.

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[1] M. B. Beazley, Gulf of Alaska Operators Committee memorandum, (February 14, 1975), p. 4.

There have been some indications that the industry is willing to recruit and train local employees even prior to the lease sales.[1]

If a community owns the land needed for a supply and service base, or if it can influence the landowner, stipulations for local hire and apprenticeship can be written into the land lease. This is the community's strongest means of ensuring adherence to labor-related objectives.

Tripartite discussion is a useful means for negotiating labor-related issues. State and federal regulations, and Affirmative Action requirements may add support to local objectives.

Tripartite Negotiations

A community should initiate three-way discussions involving representatives from industry, labor, and local government. At these meetings the community's desires regarding local hire should be aired. The companies' specific labor requirements can be compared with local labor force characteristics. This exchange of information enables the three parties to arrive at realistic management policies, programs, and practices.

A tripartite group can work toward establishing small supporting industries and commercial facilities to diversify employment opportunities. It can evaluate training programs and on-the-job opportunities for skill development. Preferential hiring practices for local residents can be discussed with regard to both community and industry objectives.

In the discussions, it is likely that the industry representatives will strive to maintain the community's goodwill. It is advantageous for the oil companies to avoid alienating community leaders. At the same time, local leaders can come to better understand the companies' technical or economic constraints. Consequently, they can better assess the practical limitations to their requests.

Federal and State Regulations

Labor legislation in Alaska is patterned after federal labor laws.[2] The minimum hourly wage rate is pegged at 50 cents above the federal mini-

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[1] Ibid., p. 4.

[2] State of Alaska, Department of Commerce and Economic Development, Division of Economic Enterprise, Establishing a Business in Alaska (Juneau, 1974), presents a summary of these labor laws.

mum hourly wage; manpower training programs and laws pertaining to discrimination in employment closely resemble corresponding federal regulations.

For small communities, the following provisions of state and federal laws are of special importance:

> Preference shall be given to residents of Alaska on public contracts: 95 percent residents shall be employed where they are available and qualified.[1]
>
> No employer, employee, labor organization, employment agency, or other person or institution may discriminate because of race, religion, national origin, color, age, or sex.[2]
>
> Employers may be assisted in developing a local labor source through federally and state-funded management training programs.[3]
>
> All leaseholders, contractors, subcontractors and suppliers who perform any work or service on any oil or gas lease or right-of-way permit to which the State was a party after July 7, 1972, are required to hire available qualified Alaska residents for the performance of the work or service.[4]
>
> In the execution of contracts for public works projects let by the State, boroughs, cities, and school districts, preference shall be given to residents.[5]
>
> Foreigners, including Canadians, are prohibited from securing employment in Alaska without prior approval.[6] The Alaska Department of Labor must certify that the importation of workers to the State by an employer will not displace a qualified Alaska resident worker.

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[1]Title 36, Alaska Statutes.

[2]Title 7 of the 1964 Federal Civil Rights Act; Equal Employment Opportunities Act of 1972.

[3]For further information, contact the Division of Manpower Training, Alaska Department of Labor, P. O. Box 3-7000, Juneau, Alaska 99801.

[4]State of Alaska, Department of Commerce and Economic Development, Division of Economic Enterprise, op. cit., p. 36.

[5]Ibid., p. 35.

[6]U.S. Immigration and Nationality Act.

The State of Alaska has adopted a policy to utilize its domestic labor force as fully as possible. Toward this end, the Alaska Department of Labor will assist residents in obtaining employment preference in industries within the State.[1] Many Alaskans, trained through a joint federal and state program in connection with the construction of the trans-Alaska pipeline, are members of labor organizations and should be well qualified to work at OCS-related jobs.

Affirmative Action

The U.S. Department of Labor prohibits discrimination and requires employers with federal contracts (or subcontracts) to ensure equal opportunity in all areas of employment.[2] Supply and service contractors and subcontractors with 50 or more employees and a contract of $50,000 or more must develop a written affirmative action program for each of their establishments.[3] This document is to set forth a program to hire, train, and promote minorities and women in all job groups where they are currently underutilized.

Special Considerations

OCS-related employment opportunities can be maximized by attending to certain special considerations. Residency requirements and training programs are likely to be important issues for negotiation. Communities should also consider ways to soften the impacts of seasonality and fluctuating labor demand.

Residency

Preferential hiring practices for residents can derive from lease agreements or tripartite negotiations, supported by state and federal legislation. In establishing such practices, the definition of residency is important. In order to reduce in-migration, a community can define a local resident as someone who has lived in the community for a given period of time--perhaps six months or longer.

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[1]State of Alaska, Department of Commerce and Economic Development, Division of Economic Enterprise, op. cit., p. 36.

[2]Exec. Order No. 11246, as amended, 41 C.F.R. 60 (1967).

[3]Revised Order No. 4, 41 C.F.R. 60-2 (1967).

State residency requirements are set forth in the Alaska Statutes.[1] They define an Alaska resident as a person who--

- except for brief intervals of military service, has been physically present in the state for a period of one year immediately prior to the time he enters into a contract of employment; and
- maintains a place of residence within the state; and
- has established a residency for voting purposes within the state; and
- has not, within the period of required residency, claimed residency in another state; and
- shows by all attending circumstances that his intent is to make Alaska his permanent residence.[2]

Training Programs

Supply and service base operators can be urged to adopt pre-selection and training, or apprenticeship programs. Where a native corporation or the community itself acts as the operator, such programs should be mandatory.

As an example of a pre-selection and training program, persons with little experience can initially perform unskilled, group labor. Those who are conscientious are then given special training for more responsible, skilled positions.

Many of the new OCS-related jobs are apprenticeable,[3] and community leaders can initiate discussions with industry and the State to establish apprenticeship programs. An apprenticeship advisory committee, composed of industry and employee representatives and an apprenticeship consultant, could oversee the program. This committee could ensure that apprenticeships were not used to keep employees at lower than appropriate wages.

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[1]Title 38, Alaska Statutes.

[2]M. Dixon, "Alaska Hire and Minority Hire," What Happened to Fairbanks? An Interpretive Study of the Effects of Construction of the Trans-Alaska Pipeline on the Community of Fairbanks, Alaska (Juneau: Alaska Department of Community and Regional Affairs, September 1976).

[3]An occupation is apprenticeable if it: can be learned through on-the-job training combined with classroom instruction, requires an established minimum amount of time of such instruction, is clearly defined and commonly recognized throughout the industry, and provides regular pay increases for the apprentice.

Seasonality

The marked seasonality of OCS jobs is difficult to alter. It can be compensated for--to a certain extent--by extending the work schedules of permanent employees during the summer and restricting their vacations to the winter months. Another approach uses small permanent crews. During the summer months this work force is supplemented by temporary workers, such as students. Both methods have been used at North Sea bases.[1] Stability of service base employment depends not only upon the operator's policies, but also on labor unions and the workers' willingness to accept prescribed hours.[2]

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[1]Alaska Consultants, Inc., Marine Service Bases for Offshore Oil Development, prepared for the State of Alaska, Department of Community and Regional Affairs, Division of Community Planning (Juneau, 1976), p. 94.

[2]Ibid., p. 95.

4. ENVIRONMENTAL MANAGEMENT

Some environmental damage from OCS-related activities is inevitable. The activities may lead to increased pollution of fishing grounds, some destruction of prime natural resource areas, visual disruption, additional noise, and development in areas that are geophysically unsuitable.

A community's environmental management program should include provisions for pollution prevention, for spill containment and cleanup, and for restitution for damages that cannot be prevented. This section of the report focuses on actions that local governments can take--

- to preserve the favorable aspects of their environment (e.g., by designating which lands and coastal areas are not suited for development because of their values as forest, coastal, cultural, or visual resource areas)

- to assure safety (e.g., by designating which lands and coastal areas are not suited for development because of geophysical hazards due to floods, avalanches, fire, seismic conditions, or unstable soil conditions)

- to reserve land and coastal areas which are more suited to non-OCS uses (e.g., commercial, civic, or residential land uses) or to the expansion of existing development

- to assure that environmental planning concepts are incorporated into the project's design

- to prevent air and water pollution resulting from accidents or discharges of pollutants; to contain and clean up oil spills if they occur; to assure payment for cleanup operations and for restoration of polluted areas

- to prevent excessive noise or unwanted increases in existing noise levels

- to be aware of, coordinate with, and participate in environmental management activities of federal, state and private agencies.

The intelligent use of land and coastal areas will be an important issue during all stages of onshore OCS-related development. Particular environmental concerns will appear at various phases of OCS activity. For example, oil pollution does not pose as great a threat during the exploration and development stages as it does during the production phase. In the first two stages, oil pollution might result from accidents in fueling operations or from accidents caused by bad weather or poor navigation. But, the greatest

oil pollution dangers will occur during the production stage, both at the offshore platforms and in harbors and marine terminals. During production large quantities of oil will be transferred by operations where collisions or other accidents post a serious threat.

Participants in the Environmental Management Process

Considerable assistance is available to communities for environmental preservation, conservation, and pollution control activities.

State and federal legislation regulate many aspects of environmental management. Title 18 of the Alaska Administrative Code states the State Department of Environmental Conservation's regulations concerning air quality control, solid waste management, water quality standards, waste-water disposal, and oil and hazardous substance pollution control. These regulations establish standards, procedures for permits, and penalties for violations. AS 46.03.760 gives the specific penalties for persons who pollute or add to the pollution of the air, land, subsurface land or water of the State.[1]

Federal legislation also regulates environmental matters, but with major emphasis on air and water pollution. Penalties for violations are specified. Environmental impact statements (EIS's) are required for federal actions such as the lease sale of offshore OCS areas, or granting a dredging permit in navigable waters.

Without repeating the environmental regulations that were discussed in Part II, Chapter 1, suffice it to say that these controls are significant factors in local environmental management. Local authorities should become familiar with these regulations and should coordinate their own efforts with those of the state and federal governments.

Private groups and organizations also are involved with different aspects

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[1]For example, in addition to the maximum $25,000 fine generally applicable to pollution violations: (1) a person who violates oil pollution or ballast water discharge regulations "is liable, in a civil action, to the state for liquidated damages to be assessed by the court for an amount not less than $5,000 nor more than $100,000, depending on the severity of the violation"; and (2) in addition to the previously stated $5,000--$100,000 fine, a person who violates ballast water discharge regulations "is liable to the state, in a civil action, in the case of a vessel, for damages in an amount not to exceed $100 per gross ton of the violating vessel or $14 million, whichever is less, and in the case of an onshore or offshore facility, $100 for every $500 evaluation of the violating facility or $14 million, whichever is less."

of environmental management in Alaska. The League of Women Voters, for example, has been actively concerned with a wide range of environmental matters. Groups like the Prince William Sound Aquaculture Corporation are more specialized in salmon propagation and stocking of fishing areas. The Gulf of Alaska Operators Committee is now evaluating options for organizing industry's response effort in the event of oil spills.

The involvement of so many parties may bewilder local jurisdictions, but such involvement can be advantageous. The challenge facing communities is to augment and direct activities of federal, state and private agencies, particularly if those activities do not currently focus on issues that are of immediate concern to a community, if their prevention measures are inadequate, or if their remedies for damages are considered insufficient.

Timing and Priority of Actions

The timing of environmental planning and controls largely depends on a community's state of readiness concerning its policies and regulations, the availability of funds and people to do the job, and the imminence of onshore OCS development.

Communities should establish their own environmental management priorities. Local actions should focus on controlling activities which may have the most significant environmental impacts.

Recommendations for local environmental management action are grouped below in four categories: early local actions focused outside the community; community-oriented actions before the receipt of development requests; actions during review of development requests; and follow-up actions during and after project development. Actions taken at the proposal application and review stage are perhaps the most critical. Little power is wielded by localities before that time, and afterward it is likely to be too late to act effectively.

The tools for implementing environmental management actions include all of the measures discussed in Part II.

The recommendations given below must be adjusted to each situation in order to conform to constraints of time, funds, and people, and to the management tools which are available. It should be recognized that emphasis is most appropriately placed on prevention, i.e., on avoiding pollution problems or environmental degradation before they occur. The next priorities should be for effective cleanup equipment and procedures, and for compensation of losses.

Local Actions Focused Outside the Community

A community's earliest actions should include a review of the activities of other local jurisdictions and federal and state governments concerning prospective OCS-related development. An increased awareness of these nonlocal actions will enable community leaders to coordinate their activities with those of other jurisdictions, and to support and gain support from other government entities. Problems of inaccessible or untimely information can be alleviated by the information exchange systems recommended by this report.

Active local participation in the preparation of an environmental impact statement is important. The community's top elected and administrative officials should write letters of interest and submit constructive proposals early in the EIS process, and later review and comment on preliminary draft EIS's. Although involvement in the EIS process may be difficult and time-consuming, such participation could help to redirect aspects of a project having potentially adverse environmental impacts and to ensure that mitigation measures are provided for those impacts which cannot be avoided.

Although environmental impact statements have been required for proposed OCS oil and gas lease sales, it is unclear whether additional impact statements must be written before the wells can be further developed. The decision will center upon whether the industry's operations necessitate a major federal action significantly affecting the quality of the human environment. According to the Council on Environmental Quality, "The chief advantage claimed for separating leasing and exploration decisions from development decisions is that the government could more effectively deal with all impacts of OCS development, including onshore impacts. The separation would provide a second decision point, at which all parties could consider how best to develop discovered oil and gas in the light of more complete information about both environmental and other consequences."[1] Thus, there appears to be a possibility that impact statements would be required. The final determination, however, has not yet been made.

Participation in the EIS process must occur early, if only to ensure that federal agencies uphold their end of the process in insisting that direct and indirect impacts are investigated, that mitigations for adverse impacts are identified, and that assurances are given that certain mitigations (usually negotiated during the EIS process) will be carried out. If active participation is delayed until the public hearing stage, it may be too late to influence these activities.

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[1]Council on Environmental Quality, The Sixth Annual Report of the Council on Environmental Quality (Washington, DC: U.S. Government Printing Office, 1975), p. 145.

Private groups and organizations may be able to furnish suggestions for environmental management--conditions to attach to conditional use permits, criteria for site plan approvals, or lease stipulations. Collaborative action with private groups can diversify options for local consideration. This, in turn, may increase a community's ability to prevent, contain, and clean up environmental degradation.

The Gulf of Alaska Operators Committee is an example of an industry organization which has been involved in environmental matters. The Committee hired consultants to determine whether the oil industry should establish a team to monitor areas of potential oil spills and to clean up spills when they occur. (Federal and state regulations require that oil spills be cleaned up and/or paid for by the responsible party.) The Committee could continue to perform important functions by undertaking the following tasks:

- assuring communities that the oil industry in their region will be organized for immediate cleanup,
- guarding against delays which would occur if the particular company responsible for a spill individually undertakes cleanup, <u>and</u>
- mobilizing the combined resources of all companies operating in a region.

An example of such a private organizational effort is an organization called "Clean Bay" which operates in the San Francisco Bay Region of California. Clean Bay, Inc. deals exclusively with oil spill containment and cleanup. By pooling collective experience, technology and available financial resources, its 14 member companies can (theoretically, at least) provide the talents of over 400 trained professionals in 27 different job classifications. The member companies have more than $2 million worth of helicopters, seabooms, specialized oil and trash skimmer vessels, and other strategically located cleanup materials and equipment.

Whether or not comparable industry-sponsored organizations are feasible in Alaska remains to be determined. The ongoing study by the Gulf of Alaska Operators Committee will be a step in making that assessment.

Another example of a nonlocal organization which may be useful in the event of an oil spill is the Prince William Sound Aquaculture Corporation. This organization is conducting a salmon fisheries research program, part of which is devoted to studying methods for fisheries rehabilitation. The research might provide useful remedies for the damages inflicted by oil spills and OCS activities.

Community-Oriented Actions Before Receipt of Development Requests

Ideally, a community's policies and implementing regulations concerning environmental management should be prepared before development requests are received. These policies and regulations should do the following:

- Identify areas of the community where onshore OCS support development should not occur because of their values as forest, coastal, cultural, visual, or other resources. Adopt implementing regulations which either totally restrict development from those areas or which define the types of development allowable and the specific conditions under which it may take place. (Some of these area designations may already have been made by federal or state programs.)

- Identify areas of the community where development should not occur because of geophysical hazards due to floods, avalanches, fires, seismic conditions, or unstable soil conditions. Adopt implementing regulations which either totally restrict development from those areas or which define the types of development and specific conditions under which that development is allowable.

  In particular, restrict or limit site development, and any necessary facilities such as roads or utilities, in areas of potential hazard where ruptured utility lines or broken roads would prevent the access of emergency vehicles or disrupt fire fighting capability.

- Identify areas of the community which might be sites for onshore OCS-related development, but which should be reserved for other types of land use or expansion of existing development. Adopt implementing regulations.

- Adopt policies and implementing regulations[1] which promote sound environmental design and management, that is--

  require proper terracing of sloped terrain, and construction of retaining walls, to prevent soil erosion

  require all exposed cut areas to be landscaped with native vegetation

  require that significant natural elements on the site such as stands of trees or watercourses be retained and incorporated into the site design

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[1] Lease stipulations may also be appropriate. See the appendix to this chapter, "Lease Stipulations Regarding Environmental Protection."

require that noise potentially created by proposed activities be reduced to acceptable levels

require that project proposals clearly include quality control measures relating to environmental design and development of the site, buildings, and related facilities (See Part III, Chapter 6 for a more detailed discussion of this issue.)

require that building demolition sites and sites where paved areas have been removed, be restored to their natural condition and landscaped with native vegetation, unless the site is to be reused within a specified time period for industrial or other development purposes

require that electrical wires be undergrounded, both to eliminate potential safety hazards resulting from fallen wires and to improve the visual quality of the area.

- Adopt a policy and implementing regulations that would require all truck loads such as sand, gravel and dirt to be covered when the loads are being transported. The objectives here are to eliminate safety hazards to drivers following behind the trucks, to reduce air pollution caused by flying dust, and to reduce the community's road maintenance costs for cleaning up fallen debris.

- Adopt policies endorsing federal and state legislation for preventing air and water pollution, for preventing, containing and cleaning up oil spills, and for preventing thermal pollution to waters. (Thermal pollution to waters and its related hazards to fish and water organisms could be generated by effluent from industrial operations such as pipe coating yards.) Supplement the federal and state regulations with local regulations which will require that appropriate oil containment devices be placed around ships (at dockside or in the harbor) when oil transfer operations take place. This preventive measure seeks to contain oil if a spill occurs.

- Adopt regulations which will require a project applicant to submit an environmental assessment survey with other documents submitted for site plan review. The purpose would be to supply sufficient information about the environmental impacts of a proposed project to enable the community to make informed decisions. Requirements for the environmental assessment survey might be modeled after those for federal environmental impact statements.

Any of the above policies can be implemented through lease stipulations, indirect means, or through a community's use of its public regulatory powers.

Actions During Review of Development Requests

Proposals should be carefully reviewed for their conformity with local policies and regulations concerning environmental management.

Additional "special" studies may be needed depending upon the specific circumstances of a project, e.g., a detailed soils analysis is necessary when soils instability is a problem on the site. The project applicant can be required to supply such information. He may also be asked to participate in studies seeking ways to minimize oil spills and their related environmental impacts, and to organize contingency plans, programs, and response teams for cleaning up spills and restoring polluted areas to their previous (or improved) character.

The applicant can be required to contribute funds to cleanup and research groups whose programs are especially important in controlling and removing spills or alleviating the effects of pollution in fishing areas. The applicant can also be required to participate in the pollution response team(s) within the applicant's zone of operations.

A community may require the applicant, possibly in association with others, to establish and provide for the administration of a fund which will compensate parties for losses due to both onshore OCS support activity and the various ships, boats, barges, etc. which service that activity. Compensation for damages undoubtedly would be easier and faster to obtain from an established fund with agreed-upon rules for distributions, than through the law courts.

Follow-Up Actions During and After Project Development

A community may wish to monitor construction activities to assure that they fully conform to all approved plans and specifications.

After construction, monitoring may continue to assure that site operations comply with local policies, regulations, and lease stipulations concerning environmental management. The community can also monitor operations that are regulated by federal and state law. Activities such as the visual spotting and reporting of major oil spills may be relatively easy for small communities. The monitoring of minor spills and other industrial discharges, however, will be beyond the technical expertise of most localities, and state monitoring will be required.

APPENDIX B

Lease Stipulations Regarding Environmental Protection[1]

The following stipulations may be utilized by communities trying to protect their environments:

- Structures for all support activities, including pipelines, shall be kept to the minimum necessary for proper functioning and to the greatest extent consistent therewith, shall be placed so as not to interfere with other significant land and marine activities and so as not to denigrate the environment, including the marine environment. To this end, no structure, including pipelines, may be placed on the premises until the lessor has found that the structure is necessary for the proper functioning of the leased area and that no reasonable alternative placement would cause interference with other significant land and marine activities and with the environment, including the marine environment. The lessee's exploratory and development plans, filed under 30 CFR 250.34, shall identify the anticipated placement and grouping of necessary structures, including pipelines, showing how such placement and grouping will have the minimum practicable effect on nearby land and marine environment and their uses, including commercial fishing, recreation, and human settlement.

- The lessee shall have the pollution containment and removal equipment available as required by OCS Order No. 7, including any amendment of that Order whenever it may be made. After notification by the Operator to the Supervisor and to the lessor of a significant oil spill as defined by OCS Order No. 7, or an oil spill of any size or quantity which cannot be immediately controlled, the operator shall immediately and not later than 12 hours deploy adequate containment and cleanup equipment to the spill area, unless, because of weather and attendant safety of personnel the lessor shall modify this requirement.

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[1]Adapted from original stipulations in U.S. Department of the Interior, Bureau of Land Management, Alaska Outer Continental Shelf Office, Lower Cook Inlet Draft Environmental Impact Statement (1976), 2:1033-1037.

5. FACILITY REUSE AND CONVERSION

There are two potential applications of reuse or conversion policies--the reuse of present facilities for OCS-related purposes, and the reuse, at some future date, of OCS-related facilities for non-OCS purposes. A community's foremost objectives should be to assure efficient and productive use of industrial sites, and to restore such sites to an acceptable condition.

Some existing sites and facilities which are now under-used or vacant might be rehabilitated or converted to accommodate OCS-related development, particularly during the exploration phase. These sites must be carefully evaluated for potential adverse impacts to the community, and if land use compatibility problems are evident (poor location, congestion, noise, lack of expansion area, etc.), alternative sites should be sought.

After any period of OCS operations, certain facilities may no longer be needed by the industry. Reuse potential is excellent for facilities which have been used up to eight or ten years. For example, construction, assembly and/or storage yard facilities no longer needed after the offshore platforms and pipelines have been built could be converted to other uses. When the final production stage ends (possibly in 30 - 40 years), more facilities will exceed the industry's, and very possibly the community's needs. Options for these facilities are demolition, reuse without modification, and conversion.

Local Policies

Local policies for conversion, phase down, and conclusion of operations should include the following:

- Based on an evaluation of existing facilities which are vacant or underutilized, reuse, rehabilitate or convert those facilities which are suited for OCS support activities.
- Assure that all OCS phase downs and the conclusion of all operations are known about in advance
- Work with industry during phase down, and especially during conclusion of operations to plan for prospective reuse of the site and facilities.
- Reuse what is reusable in its existing condition.
- Convert to other feasible uses buildings and site facilities which, if unused, will deteriorate over time and cause public nuisances or hazards.

In leases and agreements with industry, include, where possible, stipulations to the effect that all improvements on a site shall at termination revert to the community (or other local landowner) or be completely removed, at the expressed option of the community.

Demolish nonreusable facilities and restore to a natural state all land which is not to be reused for industrial or other development purposes.

Reuse for Similar Functions

If a facility's operations are replaced by similar activities, only minor rehabilitation and structural alterations might be necessary. Many facilities, including docks, warehouses, outside storage yards, office buildings, small fabrication shops, repair shops, and snack shops, could be reused in this manner. But, onshore facilities which are oil-specific or gas-specific, such as storage tanks, refineries or liquefaction plants, are not so directly reusable.

When existing facilities are well-suited for onshore OCS-related uses, industry will probably not need to be coaxed into acquiring them. Small ancillary industries (repair shops, industrial services) may be especially eager to acquire inexpensive rental space in existing facilities. Therefore, a community should prepare a set of policies in anticipation of requests for such reuse.

After support activities cease on publicly owned sites, the community could re-lease the facilities to other private parties. Alternatively, the facilities could be retained for public purposes such as warehousing, offices, outdoor storage areas, municipal parking, parking and servicing of public vehicles, or public docks. Depending upon local interests, a combination of re-leasing to the private market and retention for public uses might be most appropriate.

Conversions

Industries are likely to be reluctant to undertake major conversions of existing structures because of the time and expense they entail. For small ancillary industrial activities, the extra costs may be prohibitive.

Conversion is a better possibility for OCS-related facilities abandoned at the conclusion of production activities.[1] Although this will not occur for

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[1] The industry might also make space available for public use on a temporary basis during a facility's down time.

many years, options for prospective conversions should be anticipated early, preferably during lease negotiations and project design periods.

Communities should try to anticipate their future needs. For example, large industrial buildings or spaces might be subdivided to serve many "incubator" type industries (those which are small, perhaps just starting out in business, and reliant on low rentals). Warehouses could be converted for civic or public service uses. For instance, an abandoned warehouse might serve as a public meeting hall, a community theater, or a gymnasium. Miscellaneous shop areas could provide future indoor facilities where people could work on their cars, trucks, or snow machines.

General Procedures

If a community is pressing for conversion or improvement of existing facilities, then these objectives should be translated into requirements for industry through lease stipulations or other negotiated conditions. Requirements for phase down and conclusion of operations can be incorporated into lease stipulations or local regulations.

Good working relationships and close coordination with industry are essential during periods of phase down or conclusion of operations. The community should keep aware of phase down activities and work with industry to anticipate transitions. These actions are important whether the local government has limited control through regulations, or substantial control through leases.

Options Under Leases

A lessor is in a very good position to impose stipulations on the use of his land. In fact, most of the topics discussed below are applicable primarily through leases, and not through regulations other than "conditions" which may be negotiated with a project applicant contingent on local regulatory actions (such as the granting of a zoning change or conditional use permit).

If reuse or conversion of existing sites and facilities to serve OCS support purposes is an objective, then that reuse or conversion can be made a stipulation of a lease. A specific reuse plan for the site, the character of building conversion (design or other details), and elapsed time during which such actions must be completed all might be included in the lease.

For the duration of the lease term, a lessor might require the lessee to keep him informed of certain operations or conditions on the site as--

- phase down activities which reasonably could be expected to impact the economic or physical welfare of the community

- anticipated abandonment, during the lease term, of onsite facilities built by the lessor and no longer needed by the industry, thus potentially available for other uses in conflict with the industry's operations

- anticipated demolition during the lease term of any onsite facilities built by the lessee.

The lease might further require that any demolition on the site receive the prior written permission of the lessor. Conditions for such permission should require removal of all foundations, underground storage tanks and debris, and restoration of the demolition site to a specified natural condition if the site is not to be developed for other industrial purposes within a specified time. The lease could also give the lessor the option to deny demolition, provided the industry's operations would not be seriously constrained.

All leasehold improvements usually revert to the lessor when the lease terminates and the lessee vacates the site. If the lessor neither wants certain improvements made by the lessee nor wishes to pay for their demolition, other options might be retained. For example, the lease might provide that unwanted facilities will be demolished by, and at the expense of, the lessee, provided the lessor writes his desires to the lessee within a certain time, e.g., four months, before termination of the lease.

Or, the lease could permit the lessor a certain period, e.g., one year after termination of the lease, during which time the lessor could better confirm his possible reuses of certain facilities and then advise the lessee of facilities he must demolish. An escrow account with a fixed maximum amount could be established to assure the availability of necessary demolition funds at the end of the year.

The lessor should carefully consider his future needs for all on-site improvements, including permanent buildings and facilities, temporary buildings and facilities, aboveground utilities, underground utilities, and hard-surfaced areas. Underground storage tanks and aboveground utilities will warrant special attention.

Agreements might be made requiring industry to convert a facility to its prospective reuse after the facility is vacated. Or instead, industry might agree to pay for the whole or a portion of the conversion cost--which may be a better procedure if the future reuse is indeterminate at the time of the agreement.

A community might require that an onshore OCS-related facility be designed so that future conversion would be easily accommodated, rather than hindered. For example, if a warehouse or similar structure were to be converted into a gymnasium or community theater, the design of the original structure could anticipate that conversion. Spans could be increased so that

the floor space would not contain supporting columns which later would be in the middle of a playing court or would excessively block sight lines to a stage. If heat were not to be provided in the building initially, the original design could anticipate the future heating equipment space needs.

If additional costs would be incurred in the original structure to accommodate future conversions, such costs might be part of the negotiation package between a community and industry.

Options Under Regulations

Options for phase down and conclusion of operations under regulatory authority are much less extensive. Demolition regulations are best addressed specifically to OCS-related activities and facilities. They could be included in Regulations for Onshore OCS-Related Activities and Facilities, Specific Area Plan Regulations for a particular OCS development area, or, possibly, the conditions for approval of a conditional use permit. (See Part II, Chapter 1 for discussion about regulatory tools.) These special regulations may be more easily enforced than regulations applicable to the entire community.

Local regulations should require that OCS-related buildings, facilities, and sites be kept in good maintenance and repair, whether or not they are in active use. Regulations ordinarily focus on preventing conditions which are hazardous to the public health and welfare. More restrictive conditions, similar to those contained in leases, can be applied to properties or projects when an owner seeks a special action from the public, such as a conditional use permit or approval of a zoning change.

Communities should adopt demolition regulations requiring that all foundations, underground storage tanks, and debris be completely removed from the demolition site, and, if not to be redeveloped within a specified time for other uses, that the site be restored to a landscaped, natural condition. Note that demolition regulations generally designate procedures for all demolition activities, but require the demolition <u>only</u> of hazardous properties. Although not usual, the regulations could address the sensitive "in-between" stage when properties are left vacant, and, as ensuing deterioration and dilapidation occur, demolition would be "desirable" from the viewpoints of neighborhood environment and visual quality.

A community should adopt regulations requiring that special and unique facilities such as storage tanks for oil and gas (underground or aboveground), antenna towers, and high tension electrical lines and support towers be removed from the premises if unused for a specified period. The removal of potential hazards thus would be assured.

6. QUALITY CONTROL AND DEVELOPMENT GUARANTEES

Development quality refers to--

- the types of site improvements (roads, utilities, landscaping), buildings, and related facilities (docks, storage areas, parking areas) which should be provided within a project
- the ability of those improvemements to meet on-site needs and prevent disturbance to off-site areas
- the compatibility of the project's operations with other community functions
- the project's design
- the quality of materials used in construction, and the quality of the construction itself
- the extent of repairs and maintenance to be provided over and above a necessary minimum.

Opportunities to Promote and Control the Quality of Development

Public policies, standards, and regulations and lease agreements are the means whereby the quality of OCS-related development can be controlled. A community has many opportunities over the life of a project to promote and control its quality. These opportunities occur at the following times:

- during preparation of the community's objectives and policies
- when preparing standards and regulations for (1) locating, phasing, and designing OCS-related development, (2) processing requests, and (3) constructing, inspecting, operating, maintaining, and demolishing projects
- when advising the industry of the community's objectives for onshore development
- during preliminary discussions when prospective developers inquire about development possibilities in the community
- during review of development proposals
- when establishing conditions upon which project approval will be contingent (e.g., for a conditional use permit)

- during negotiation of leases

- during inspections of the construction of project site improvements and buildings, to ensure conformity with approved site and building plans and with local regulations

- during site inspections after completion of project construction, to ensure conformity of project operations with local regulations

- during site inspections after demolition of any buildings or site facilities, to ensure compliance with all local demolition and site restoration regulations.

As suggested by the many opportunities for quality control, and by the variety of aspects which may be controlled, numerous options are open to a community. Local governments wishing to exert as much influence as possible over development quality may choose to utilize each opportunity described above and follow a procedure like the following one. Other jurisdictions may be content to take a passive approach and forgo their powers to promote development quality. It is recommended that some degree of quality control be exercised.

An approach utilizing maximum control might be as follows: The community anticipates onshore OCS-related development and prepares a detailed program, including physical and functional objectives, site and design plans, development standards, and quality objectives for such development. It knows the types of facilities which it will require project sponsors to build, as well as the land dedications it will require. The community makes its objectives and regulations well known to industry. Industry responds with a proposal concept which the community reviews and then jointly modifies, as appropriate, with the industry. The process continues through to final plans, reviews, and approvals. Performance bonds are posted by the developer. The project is built and the community conducts appropriate inspections to confirm that the project is built as approved, and operated and maintained in accordance with local regulations.

Aspects of Development Subject to Quality Control

A wide range of topics are subject to quality controls. They may be categorized as a project's physical characteristics, its functional and operational characteristics, maintenance, and demolition.

Quality control details concerning the physical character of a project may involve:

site design and overall layout

right-of-way design and construction details, including roads, sidewalks, curbs and gutters, and landscape strips

utility layout and construction details for water, sanitary sewers, storm sewers, electricity, gas and telephone, including requirements for undergrounding all utilities

building layout and design, including building relationships, height, bulk, setbacks, and structural characteristics

lot dimensions and lot areas

the existence, design, and layout of yards and open spaces, accessory structures and facilities, onsite loading, backup materials handling, and storage areas, solid waste trash facilities, and fences and walls

landscaping, trees, grading, and terracing

treatment of natural site features (slopes, watercourses, etc.)

lights standards, general lighting and traffic control devices

signs

materials (type, quality)

color

The functional and operational characteristics of a project should be examined for impacts both on and off the site. Quality control features of relevance are:

access and egress by land, water, or air

vehicular and pedestrian circulation

parking, loading, storage

air and water pollution prevention and control

surface drainage

noise

odors

lighting (as a nuisance)

Quality control concerning maintenance of a project area may focus on:

site and building maintenance and repair

street cleaning

solid waste removal

snow removal

And finally, quality control concerning demolition activity (see also Part III, Chapter 5) may involve:

facilities which must be demolished

time of demolition

restoration of a site after demolition

Dedications, Easements and Facilities to be Built by a Project Developer

In addition to its design and construction characteristics, the existence of site improvements affects the overall quality of a development.

Public regulations for dedications, easements and facilities to be built and paid for by a project developer usually are codified in a community's subdivision ordinance.[1] Even if an onshore OCS-related project will not involve a subdivision or the dedication of facilities, the local government maintains the authority to regulate the design and construction of project sites and facilities through other local regulations.

A community can require a developer to build and dedicate the following types of facilities in a subdivision:

streets (including travel lanes, parking lanes and breakdown lanes)

curbs, gutters, and other drainage structures for streets

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[1]Alaska's model subdivision ordinance states that in a subdivision "all streets, facilities, and improvements shall be expressly dedicated to public use and maintenance at the time of approval of the final plat." It also states that "all the required improvements shall be installed to the boundaries of the subdivision and shall be designed to provide for future extension to and service of contiguous areas." State of Alaska, Department of Community and Regional Affairs, Division of Community Planning, Model Subdivision Ordinance for Small Municipalities (Juneau, 1973), p. 21.

sidewalks, median strips, landscape strips

water supply facilities (including main lines and fire hydrants, or wells as appropriate)

sanitary sewer facilities (including collectors, laterals and connections to the community system, or other facilities as required)

storm sewer facilities (including culverts or other facilities needed for an approved surface water drainage plan)

light standards and traffic control devices

boundary monuments

Communities also might require a project developer--

- to build oversize utility lines, such as water or sewer lines, to accommodate probable and desirable growth in the immediate area. However, when such construction is required, the subdivider (developer) normally is reimbursed for the excess cost in providing oversize, as opposed to standard, utility lines.

- to provide special project improvements, which may or may not be dedicated to the community, such as water treatment facilities, bridges, bus shelters, pedestrian plazas, or recreation areas and facilities. The need for such special facilities would depend upon the size, location, and type of project proposed.

- to dedicate land or easements for other public uses, such as open space, pedestrian walkways, or accessways. For example, if a large portion of the community's waterfront is to be consumed by a project, the community might require dedication of land or an easement to preserve public access to the waterfront. A local resolution or policy plan indicating the community's objectives for such public uses or easements would provide a sound basis for the community's action.

  Certain land dedications cannot be required. For instance, the community would have to negotiate with a private landowner or developer for the dedication of sites for a public dock or dockmaster's facilities. The sites could, of course, be acquired by land purchase or by eminent domain as an alternative to dedication.

Assurance of Construction and Maintenance--Development Guarantees and Maintenance Agreements

Although a community may require that the project developer build certain

facilities, regulations or lease stipulations do not assure that the facilities will be built in accordance with approved plans or time schedules. Partially built facilities or postponed construction deadlines are potential problems. If a developer has financial difficulties, the community may find itself with incomplete facilities and no money to complete them.

Development Guarantees

To protect itself against such possibilities, a community should require development guarantees for the timely completion of the project facilities of interest. Posting a performance bond, also called a completion bond, is a typical procedure on which a community's final approval of a project should be contingent.

Development guarantees are easy to administer. They cost the community nothing. The developer or contractor is required to post a bond which guarantees his completion of certain specified actions. Generally, it is advisable for the bond to be for 100 percent of the estimated cost of the work involved, and to be conditioned upon the faithful and complete performance of the specified work within a specified time. In case of default, the community collects the amount necessary to complete construction. If time of completion is critical, a community has the option to impose financial penalties for any extra time needed by a developer or contractor beyond a specified construction completion date.

As an alternative approach, a community might make the public approvals needed during the course of project development contingent upon the completion of certain facilities. The State's Model Subdivision Ordinance illustrates an example of this approach:

> Guarantee of Required Improvements: Before considering the final plat of a subdivision, the Planning Commission must be satisfied that all improvements required by this ordinance have been constructed. If the required improvements have not been completed, the subdivider may be required by the Commission to include with the final plat a surety bond or certified check in an amount equal to the cost of construction of those improvements as estimated by the City (Borough) of _____. The guarantee will be subject to the condition that the improvements will be completed within twenty-four months after approval of the final plat. If completed, the City will return the full amount of the guarantee to the subdivider; if not completed, the City shall complete construction of the improvements with the guarantee. Any amount of the guarantee in excess of the costs of completing the required improvements will be returned to the subdivider, but the subdivider cannot be

charged with any amount in excess of the original guarantee.[1]

A community should require development guarantees for facilities whose completion is a public concern. In particular, guarantees should be provided for publicly owned structures (such as docks), or roads and utilities which will be dedicated as public facilities, and, if not completed, would deter the subsequent improvement of abutting properties. The community normally would not require development guarantees for private buildings, facilities, and related site improvements. Private developers usually will establish appropriate penalty clauses in contracts with their own contractors and subcontractors.

Maintenance Guarantees

The quality of an OCS-related project will depend on how well facilities hold up. Communities should require developers to guarantee that dedicated facilities will remain in good condition for a specified time, and, if repairs are needed, that the developer will make such repairs.

A good example of such a maintenance guarantee requirement is included in the State's Model Subdivision Ordinance:

> Maintenance Agreement: The subdivider shall guarantee that the required improvements provided will remain in good condition for a period of one (1) year after the date of conditional acceptance by the City (Borough) of _____ _____ and agrees to make all repairs to and maintain said improvements in good condition during the one (1) year period at no cost to the City (Borough) of _____ _____. The subdivider may be required by the Planning Commission to include with the final plat a surety bond or certified check in an amount equal to 5 percent of the cost of improvements for payment of costs for any correction, reconstruction, repair, or maintenance of the improvements during the one (1) year warranty period. Any amount of the maintenance guarantee in excess of the costs of correction, reconstruction, repair, or maintenance will be returned to the subdivider.[2]

Maintenance guarantees, like development guarantees, are easy to administer and cost the community nothing.

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[1] Ibid.

[2] Ibid.

7. MANAGING LAND IN VARIED OWNERSHIP

Substantial amounts of land may be needed to accommodate the onshore activities supporting OCS oil and gas development. Ownership of such land may take various forms--individual private landowners, native corporations, the state and local governments, and industry. In order to prevent inefficient land use and to minimize harmful economic, social and environmental impacts, it is desirable to bring such land under coordinated management and to encourage joint use of basic facilities.

Thus, for example, the City of Yakutat assisted the Yak-Tat Kwaan, Inc., the village native corporation, in negotiating a land exchange with the State of Alaska. The exchange provided the Kwaan with lands and tideland rights adjoining the existing Monti Bay service base facility, owned by three major oil corporations. The oil companies and the Yak-Tat Kwaan are negotiating for the extension of the service base onto the Kwaan lands. Negotiations are being pursued to accommodate certain zoning ordinances recently passed by the City,[1] and the City itself is bargaining for eventual inclusion in the port operations of the base.[2] These activities have resulted in an excellent land assemblage for OCS support purposes.

On the Shetland Islands in Scotland, coordination has proceeded even further under policies adopted by the Shetland County Council. The Council has--

- zoned land for the oil terminal and set aside a reserve for possible future expansions
- acquired the designated land, employing compulsory purchase powers when necessary
- established the principle of joint use by different companies of the basic facilities in the oil terminal
- established the Shetland Harbour Advisory Committee whose functions are to advise and assist the Council in the management, conservation, control, operation and development of the coastal area, and in the maintenance, operation and improvement of port and harbor services and facilities (The Committee is comprised of representatives from the fishing industry, the hydrocarbon industry and other

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[1] Shell Oil Company, et al., "Notice of Support Activity for the Exploration Program of Shell Oil Company, et al.," submitted in compliance with Stipulation No. 5 to Gulf of Alaska Oil and Gas Lease Sale #39 (June, 1976).

[2] "Yakutat Land Traded," The Alaska Native Management Report, vol. 5, no. 5 (May, 1976), p. 2.

users and providers of port services or facilities, the Council, as well as persons representing amenity interests.)

- created the Sullom Voe Association, Ltd. (a nonprofit body incorporating equal representation from the Council and the hydrocarbon industry) to be responsible for the detailed design, construction and operation of the terminal facilities and their future management

- established, on the joint initiative of the Council and the oil industry, the Sullom Voe Environmental Advisory Group to provide a focal point for discussion between the industry, the local community, and the various conservation interests[1]

The examples above represent two widely different approaches to land management coordination. Intermediate degrees of coordination can be achieved through other institutional forms. "Looser" forms consist of various types of voluntary advisory committees. Members would be encouraged to bring land management and improvement plans to the committee for inspection and discussion before any final decisions are made regarding implementation. A much stronger form would require the submission of development plans to a council for review before building and other permits are issued to the developer/lessee/landowner.

Community-Industry Interaction

Proposals for industrial development have often generated conflict among developers, conservationists and community interests. Dialogue among these groups is frequently hampered by failures of communication and a lack of understanding of the problems and views of the opposing sides. To mitigate these problems, a community can ensure that advisory groups or regulatory bodies representing multiple interests provide the needed forum for discussion. While unanimous agreement cannot always be expected, at least decisions are not made, nor is advice given, in ignorance of the issues.

Membership and voting rights in voluntary or compulsory committees can vary. Members should probably be chosen to represent--

the landowners and/or the current land lessees

the community

the petroleum industry

amenity interests

the state and federal governments

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[1]Sullom Voe Environmental Advisory Group, Oil Terminal at Sullom Voe Environmental Impact Assessment (Shetland: Thuleprint Ltd., 1976), p. 25.

the fishing industry

other users and providers of harbor and port facilities

native cultural/social interests

Public authorities are not the only ones who benefit from this type of interaction. Private companies realize certain advantages and avoid various problems (delays, unacceptable designs, etc.) by participating with the communities in planning and managing onshore facilities, especially in remote areas.

Landowner Consortiums

When development is about to occur on land in varied ownership, problems arise related to cooperation, joint management, socially desirable land use, and compensation for losses. Many small landowners may find themselves in intense competition for the development. Such competition would bring down the price of land for the developer, and promote private efficiency, but the individual landowners could almost certainly extract a higher rent for their land if they were to act jointly in dealings with the oil industry and/or other developers of onshore facilities.

Unrestrained competition would probably not serve community-wide objectives. The development might occur in an "undesirable" area, or it might scatter geographically, making it more costly to serve and more difficult to manage.

A further argument for consolidation is that larger parcels of land enhance an area's developability in terms of both accessibility and availability of land. One can work with larger parcels of land and fewer landholders. A company can more easily assemble the land it needs and the community, dealing with only a few prime parties, may find land management much simpler.

There are other factors promoting landowner consortiums. A public land use plan (especially one which proposes to leave substantial portions of land in open space or in very low density uses) alters the distribution of land values so that the development value of areas planned for open space shifts to areas intended for growth. To gain wide public and landowner acceptance of such a plan, all landowners in an area, including the community, could join together and share the profits from the development wherever it occurs.

The assumption underlying such a consortium is that, prior to the plan, all land had an expected increase in land value due to the pending development. Where the public plan shifts these expectations, sharing the profits from the development is a desirable way to achieve equity, and even appears to be mandated by the courts. The U.S. Constitution provides that property shall

not be taken for public use without just compensation. This has been interpreted by the courts to mean the government cannot so restrict the uses to which a person's property can be put that the property cannot be used for any reasonably profitable purpose.[1] If a land management consortium were created, with shares determined by "pre-plan" land value expectations, then the landowners would benefit equitably from the development. This type of arrangement has been upheld in the utilization of oil resources.[2]

The consortium may take the form of a semi-public corporation with the community as one of the major shareholders.[3] The joint company undertakes the development of the land according to plans approved by the community. The landowners collectively retain some ownership rights in the form of leasing privileges and development rights.

The consortium could be structured to include all residents of the local community as members, with either elected representatives, or management representatives appointed by a local government body. Thus, the consortium offers a range of structures for control and internal governance. So long as the consortium does not occupy a legitimate status as a public agency, however, any attempts to favor it through public acts such as zoning concessions will draw legal challenges from potential competitors.[4]

A community's policies can be furthered through the management of land via agreement and lease stipulations. The cases cited below illustrate the practicability of land management concepts to the Alaskan situation.

The English Bay Village Corporation (a native corporation) has stated a desire to avoid development impacts on its culture and village way of life. To achieve this, the Corporation intends to isolate facilities from the Village by

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[1]See, for example, Morris County Land Improvement Co. v. Township of Parsippany--Troy Hills, 40 N.J. 539, 193 A.2d 232 (1963), in U.S. Environmental Protection Agency, Office of Research and Monitoring, Environmental Protection through Public and Private Development Controls, EPA-R5-73-018 (Washington, DC, 1973), p. 93.

[2]Ibid., pp. 95, 96. Note, however, that it has not been tested in Alaska, and so may face new legal challenges.

[3]The technique is widely used. See IBRD, Urbanization: Sector Working Paper (Washington, DC, 1972).

[4]For detailed legal and financial aspects of land development corporations, see U.S. Environmental Protection Agency, Office of Research and Monitoring, op. cit., p. 93.

selectively leasing lands owned by the village.[1] Likewise, in an attempt to avoid cultural impacts, the Port Graham Corporation proposes to limit access to outsiders through its control of 92,160 acres of land. It is willing to lease land for OCS-related development provided its "Land-Lease Rules" are observed.[2]

When the Yak-Tat Kwaan, Inc., the Yakutat village corporation, began its land use planning, onshore facilities for OCS-related use were the immediate concern. Several oil companies had requested the purchase or lease of land parcels ranging in size from 5 to 50 acres. The corporation wished primarily to protect its stockholders' use of their land (that is, preserve subsistence values) and to develop its timber resources. To these ends, after the initial requests for land were submitted, the Board of Directors determined that no lands would be sold. It was also decided that the Monti Bay facility should serve not only the needs of the oil industry, but the needs of the community as well. Thus, the exchange of lands with the State referred to earlier in this section was proposed in cooperation with the City of Yakutat.[3]

Sources for Management Information

Information critical to effective land management can be obtained directly from the offshore operators. The lessees are required to submit certain information for the express purpose of assisting coastal communities in planning and preparing for the impact from federal oil and gas leases.[4] A "Notice of Support Activity for the Exploration Program" must be submitted for review and comment to the Governor of Alaska and to local jurisdictions which will be directly affected by these activities. The Notice shall include a description of the facilities (including their site and size) which may be constructed, leased, rented, or otherwise procured onshore. It shall also

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[1]Personal correspondence between Robert Kvasnikoff and Marvin G. Weber, Alaska OCS Office (May 1, 1976), as reported in U.S. Department of the Interior, Bureau of Land Management, Alaska Outer Continental Shelf Office, Lower Cook Inlet Draft Environmental Impact Statement (1976, 2:1059).

[2]Personal correspondence, James W. Labelle and Marvin G. Weber, Alaska Outer Continental Shelf Office (May 10, 1976), as reported in Lower Cook Inlet, cited above, 2:1060.

[3]The Alaska Native Management Report, vol. 4, no. 21 (November 1, 1975), p. 3.

[4]Stipulation No. 5 to Gulf of Alaska Oil and Gas Lease Sale #39, 30 C.F.R. 250.34.

include estimates of other quantifiable aspects of onshore support activities such as the approximate number of persons to be engaged in the activities and the approximate addition to the local population.[1] However, onshore sites required by the industry are often leased or purchased prior to the offshore lease sale,[2] so this information may not be timely.

A community might, as an indication of its determination to influence its own development, include similar information stipulations in any lease or agreement it enters with the oil companies and/or onshore operators. It may even try to press for notice with more lead time than the 30 days (minimum) which the federal stipulation provides.

Although not ideal sources of management information, environmental impact statements on specific lease sales and industry publications prior to the lease sales do provide more timely information. The draft environmental impact statement for the Northern Gulf of Alaska, for example, was published in July 1975, and the final EIS in September, 1976.[3] The industry-sponsored Gulf of Alaska Operators Committee (Liaison Task Group) prepared a report which provided the basis for a later study of social and economic impacts in the Northern Gulf of Alaska,[4] and the Department of Community and Regional Affairs has provided analyses of the onshore impacts.[5]

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[1] A complete enumeration of the requirements is contained in the Notice itself.

[2] The Shell-Arco-Mobile purchase of the Ocean Cape cannery site in Yakutat, and Dresser Industries' lease of city lands in the Cordova industrial area prior to lease sales are good examples.

[3] U.S. Department of the Interior, Bureau of Land Management, Final Environmental Impact Statement, Proposed Outer Continental Shelf Oil and Gas Lease Sale, Northern Gulf of Alaska, Sale No. 39 (1976).

[4] The two documents are: Gulf of Alaska Operators Committee, Liaison Task Force, Northern Gulf of Alaska Development Scenario (Anchorage, 1975); and Mathematical Sciences Northwest, Inc., An Economic and Social Impact Study of Oil-Related Activities in the Gulf of Alaska. Submitted to the Gulf of Alaska Operators Committee (Belleview, Washington, 1975).

[5] See, for example, State of Alaska, Department of Community and Regional Affairs, Division of Community Planning, "Supply Boat and Port Facility Scenario: OCS Sale No. 39--Northern Gulf of Alaska" (Juneau, 1975).

8. TRANSPORTATION

All discussions, public reviews, and public approvals of OCS-related development should consider potential adverse impacts related to transportation activities. Public officials should examine anticipated impacts to shipping lanes, the harbor, the waterfront, the airport, to rail facilities, and roads. Transportation-related impacts on the downtown, on residential neighborhoods, and on industrial areas of a community should all be assessed.

Community Objectives

A community's objectives related to transportation activities are likely to include the following:

- Prevent congestion

For example, where roadway access to the waterfront or to a proposed service base is now narrow or heavily trafficked--provide new road access to the base, widen the existing road, and/or transport materials and personnel by another mode (i.e., by helicopter).

- Limit undesirable noise

For example, limit the trucking of materials through residential neighborhoods, especially at night, and prohibit noisy loading/unloading activities near residences.

- Minimize congestion and inefficiencies of operation

For example, withhold approval of a project which cannot accommodate all the ship, helicopter, truck, and car activity it will generate.

- Avoid safety hazards or potentially polluting conditions

For example, require that covers be placed over all truck loads of sand, dirt or other materials which might blind a following driver, create excessive dust, or drop onto roadways.

- Avert tensions among the city's present inhabitants and the OCS service community

For example, do not permit service base shipping activity to block or impede fishing boat operations, or assure that equally acceptable alternative areas are made available for fishing boat operations.

Importance of Intermodal Transfer

Transportation activities for onshore OCS service operations will entail several transfer points. The special coordination required where cargoes are shifted from one mode of transportation to another will be provided by the industry. However, it is the local government's responsibility to ensure that transfer operations disrupt neither the physical nor the social environment of the community.

Transfer operations can be expected to occur:

> at the airport. Here, transfer of relatively light industrial materials, emergency supplies and personnel will occur among airplanes, trucks, cars, and possibly helicopters. If used, helicopters would run between the airport and offshore platforms, or possibly between the airport and a supply and service base, or among all three.
>
> at dockside. Here, transfer of people and all types of industrial materials will occur among cargo ships, OCS supply ships, barges, helicopters, trucks and cars, and possibly trains.
>
> at other OCS-related industrial areas not at waterside. Transfers of people and all types of industrial materials will occur among trucks, cars, and possibly helicopters and trains.

Some Options for Local Action

Communities have several options which will help to increase the compatibility of OCS-related transportation activities with other community activities, and to avoid situations which might create adverse impacts. The options described below may be implemented through policies, regulations, leases, and negotiations as described elsewhere in this report.

Options Directed at Facilities

A community might require that OCS-related harbor operations be distinctly separated from activities and facilities for fishing. For example, harbor maneuvering areas, mooring locations and dock space could be separated to avoid conflict. The success of this option would entail cooperation from both fishermen and the oil industry. If implemented it would increase safety, increase the efficiency of operations, reduce congestion, reduce tensions, and reduce pollution potential.

A community may also require that ample space is available at every location where vehicles will be used or stored for onshore OCS support purposes.

This will help guard against spillovers of parked or waiting vehicles onto adjacent properties and public roads. Although this option might require that more land be utilized, it would serve to increase safety, increase efficiency of operations, reduce congestion, and reduce tensions between the community and the industry.

Communities could press for helicopter pads to be located at both the service base and the airport to encourage a reduction in the transfer of materials and people over local roads. Conversely, if factors such as safety or helicopter noise are of concern, one pad located at or near the airport might be the best solution.

Options Directed at Operations

Local authorities can work jointly with the Coast Guard, fishermen, and industry to establish acceptable operating areas at harbor approaches, and to discourage situations which might generate conflict between fishermen and industry. For example, if crab pots routinely have been set in areas which are being considered for major shipping lane use, a joint resolution could call for shifting the locations of one of the two activities.

Depending upon a community's relative concern for aircraft noise and safety versus street congestion and its related problems, it could require that the maximum or minimum feasible transfer of materials and people be done by helicopter.

Restricting the routes and/or time of certain vehicle movements could be very helpful in increasing safety and reducing congestion, noise, and community-industry tensions. Large trucks and heavy construction equipment might be restricted from certain streets or neighborhoods at all times, or they may be restricted only at specific times (e.g., between 9 P.M.--7 A.M.) in residential neighborhoods.

Roadway travel by vehicles serving onshore OCS development could be restricted to streets where snow is already cleared. This would help to eliminate stalls and accidents, and thus increase safety, reduce congestion and the tensions associated with traffic snarls, and reduce local costs for snow removal, especially if the restriction encourages industry to assist the locality in snow removal operations. However, traffic movement might be slowed somewhat if this option is adopted.

Finally, a community might require the industry to maintain roads which primarily serve onshore OCS service areas, or to pay the community for their maintenance.

9. STABILIZING LAND VALUES

In most communities, there is a limited supply of land available for supply and service bases. If no effort is made to control the market, the anticipation of development is likely to cause a rapid increase in the price of property.

Speculation causes land to be purchased prematurely, often at very high prices and without regard to its suitability for development. Consequently, prices of adjacent properties are forced up and many landowners may find themselves unable to meet the increased taxes on their undeveloped property. Moreover, if land values escalate throughout the community, suitable types of development may be unable to compete for sites.

It is difficult to control the local land market. Nevertheless, certain actions on the part of local jurisdictions can help to curb rampant increases in land value. Growth-phasing policies and complementary regulations for sequencing and spatially directing land development would reduce much of this problem. By exercising its powers of land use regulation, a community can effectively define certain areas as planned for growth. While land values within these "growth areas" are certain to increase, escalation will at least be confined there.

Stabilization of land values may also be furthered through plans and policies which clearly indicate a community's growth objectives. They should help to establish a common understanding (though not necessarily an acceptance) of locations planned for onshore OCS-related development. Furthermore, they should focus attention on locations where such development is discouraged because of resource values, safety hazards, preferences for other land uses, or other social, economic or environmental objectives. With such identification, pressures which escalate land values in the wrong places or at the wrong times might subside. Clearly, this approach will be successful only if landowners and potential land purchasers feel reasonably assured that political and administrative decisions will comply with the adopted plans and policies. In other words, speculation can be contained and reduced only if the plans and policies are consistently enforced.

The desired types and locations of OCS-related development, and the locations which should be protected from development, may be identified in many public documents:

- state policy recommendations or plans for OCS development
- state coastal management plan--as it may affect onshore OCS development
- local jurisdiction's comprehensive plan for the community, plan for

industrial land uses, plan for onshore OCS development, or area plans for specific onshore OCS development areas

- state or local jurisdiction plans stipulating where development shall not or should not be located (or the conditions under which it might be permitted), as concern (1) land, water, coastline, natural resources, and cultural resources, and (2) potential flood, seismic, subsidence, avalanche or other geophysical hazards

- federal, state or local regulations of air and water pollution as they affect land uses

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