

The Public Interest & Resource Development

Issues

1. Alaska's constitution requires protection of the public interest in the development of our land and resources.
 - Public interests include natural resource interests held in common for the benefit of all – land, air, and water – and community social structures, values, and economic interests.
2. Since 2003, statutory requirements for consideration of public interests in resource development decisions have steadily diminished.
3. In the absence of statutory direction, project reviews are fragmented and the state lacks a clear, consistent and efficient way to ensure a resource development project achieves the maximum benefit for the people of Alaska and is consistent with the public interest.

Suggested Actions

The following are actions the legislature and administration could take to protect the public interest as required by the state constitution:

- Develop comprehensive legislation that provides for meaningful and consistent consideration of public interests in resource development decisions, including
 - (1) providing for coordinated project reviews that give the public and local governments an opportunity to effectively participate in the permitting process and for the public and agencies to review projects as a whole;
 - (2) giving local governments deference on issues of local concern; and
 - (3) establishing a way to identify state and local public interests and the means to balance those interests in the permitting process.
- Pass legislation enforcing a recent Alaska Supreme Court ruling that the state has a constitutional duty to analyze and give public notice on the cumulative impacts of oil and gas projects (*Sullivan v. REDOIL*).
- Repeal legislation passed last year in HB 129 that allows the state to hold a public comment period only once every ten years for oil and gas exploration and development in multi-million acre size areas.

On balance, the state will achieve better resource development if there are opportunities for meaningful public participation, decisions are coordinated among the agencies, and there are clear public interest criteria on which decisions are based.

The Constitution, the Court and the Public Interest

Alaska's Constitution

Article 8, Section 1: "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

Article 8, Section 2: "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the state, including land and waters, for the maximum benefit of the people."

The Alaska Supreme Court

The Alaska Supreme Court has a long history of enforcing the public interest clauses in Article 8 of the constitution.

Most recently, in a 2013 decision, the Court stated, "The legislature is tasked with the duty to determine the procedures necessary for ensuring that the State's resources are used 'for the maximum benefit of its people.'" *Sullivan v. REDOIL*.

While the Court said it is not their place to provide instruction on how the state determines what action would be for the maximum benefit of Alaskans, they found that it is their role to ensure constitutional principles are followed.

The court stated, "A bedrock principle in Article VIII of the Alaska Constitution mandates that the State's natural resources are to be made 'available for maximum use consistent with the public interest.'"

Based on its historical interpretation of this constitutional principle, the Court required cumulative impact analysis of oil and gas projects to ensure that resource development is consistent with the public interest.