

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 14, 2003

1:05 p.m.

**MEMBERS PRESENT**

Representative Hugh Fate, Chair  
Representative Carl Gatto  
Representative Cheryll Heinze  
Representative Bob Lynn  
Representative Carl Morgan  
Representative Kelly Wolf  
Representative David Guttenberg  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative Beverly Masek, Vice Chair

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 19

Relating to the ultra low sulfur diesel fuel requirements of the United States Environmental Protection Agency and their application to Alaska.

- MOVED CSHJR 19(RES) OUT OF COMMITTEE

HOUSE BILL NO. 192

"An Act designating the Department of Natural Resources as lead agency for resource development projects; making conforming amendments; and providing for an effective date."

- MOVED HB 192 OUT OF COMMITTEE

HOUSE BILL NO. 208

"An Act relating to hunting on the same day airborne; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HJR 19

SHORT TITLE:FEDERAL DIESEL FUEL REQUIREMENTS

SPONSOR(S): REPRESENTATIVE(S)SAMUELS

Jrn-Date	Jrn-Page		Action
03/26/03	0640	(H)	READ THE FIRST TIME - REFERRALS
03/26/03	0640	(H)	RES
03/26/03	0640	(H)	REFERRED TO RESOURCES
04/11/03		(H)	RES AT 1:00 PM CAPITOL 124
04/11/03		(H)	Scheduled But Not Heard
04/14/03		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 192

SHORT TITLE: DNR LEAD RESOURCE DEVELOPMENT PROJECTS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/12/03	0515	(H)	READ THE FIRST TIME - REFERRALS
03/12/03	0515	(H)	RES, FIN
03/12/03	0515	(H)	FN1: (DNR)
03/12/03	0515	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/12/03	0515	(H)	REFERRED TO RESOURCES
04/14/03		(H)	RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE RALPH SAMUELS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HJR 19.

ERNESTA BALLARD, Commissioner

Department of Environmental Conservation

Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 19; assisted in presentation of HB 192 and answered questions.

TOM IRWIN, Commissioner

Department of Natural Resources (DNR)

Juneau, Alaska

POSITION STATEMENT: Presented HB 192 and answered questions.

RICHARD LefEBVRE, Deputy Commissioner

Anchorage Office

Office of the Commissioner

Department of Natural Resources

Anchorage, Alaska

POSITION STATEMENT: Answered questions on HB 192.

CHRISTOPHER KENNEDY, Assistant Attorney General  
Environmental Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska  
POSITION STATEMENT: Answered questions on HB 192.

**ACTION NARRATIVE**

**TAPE 03-30, SIDE A**  
Number 0001

**CHAIR HUGH FATE** called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Fate, Gatto, and Wolf were present at the call to order. Representatives Heinze, Lynn, Morgan, Guttenberg, and Kerttula arrived as the meeting was in progress. Representative Masek was excused.

CHAIR FATE informed members that HB 208 was not being heard that day at the request of the sponsor.

The committee took an at-ease from 1:06 p.m. to 1:15 p.m.

HJR 19-FEDERAL DIESEL FUEL REQUIREMENTS

CHAIR FATE announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 19, Relating to the ultra low sulfur diesel fuel requirements of the United States Environmental Protection Agency and their application to Alaska.

Number 0270

REPRESENTATIVE RALPH SAMUELS, Alaska State Legislature, sponsor, characterized HJR 19 as a resolution that would address an unfunded mandate from the federal Environmental Protection Agency (EPA). He explained that low sulfur diesel fuel is going to be mandated regardless of the actions of the state, including the Department of Environmental Conservation (DEC) or other state entities. He indicated low sulfur diesel fuel will be used [more frequently] in mainly rural communities in Alaska, where energy is mostly produced by diesel generators. Whether this fuel will work remains to be seen; also unknown are the kinds of retrofits required. It won't be this year or next year, but there are going to be problems associated with it. Engine manufacturers are going to have to start developing engines that use this low sulfur fuel, if they have not already,

he suggested. He commented that if people did not use this type of fuel, there would not be new engines on the road.

REPRESENTATIVE SAMUELS cited two problems that the resolution addresses. First, the state has authority to receive receipts from the federal government to do a health study to see whether there actually is a health risk involved in mostly rural communities with the diesel generation; however, thus far Congress hasn't funded the health study, and so the first phase of the resolution asks that the federal government provide the money to do the health study. Second, the resolution addresses how this will affect the logistics and the economy of rural Alaska and whether tanks need to be retrofitted or whether someone needs to go to the Denali Commission to build new tanks. Fuels cannot be mixed. Therefore, if a barge only delivered fuel to rural communities once a year and tanks were half full of the old type of fuel, the tanks would have to be emptied and scrubbed before the low sulfur fuel could be added.

Number 0454

REPRESENTATIVE SAMUELS said retrofits might be needed on the generators themselves, but it was not known what exactly would be involved. There's no way to predict what the cost of the [low sulfur] fuel might be; market conditions are going to determine that. Currently, he said, there's only one manufacturer of the arctic-grade fuel, and it is in Canada; assuming that this happens, there will probably be more. Tankers will need to be scrubbed also. "If we go 50/50, you could only take half the load; that's also going to affect the prices of fuel," he said. He added that while the cost of fuel cannot be determined, the logistical costs can be - the cost to retrofit [equipment], the costs to scrub the tanks, and whether new tanks need to be built are all things that can be [determined].

REPRESENTATIVE SAMUELS explained that the resolution asks the delegation to work with the EPA and to coordinate with DEC, the Department of Community & Economic Development (DCED), and potentially the Denali Commission to pool their resources and get the EPA to fund the health study and determine the costs. He expressed concern if the costs and the health risks aren't determined. He said there's absolutely no doubt that this is going to happen, so [the legislature] should know about it and [work] to get the congressional delegation to help [the state with funding].

Number 0628

CHAIR FATE asked Representative Samuels if any timeline that he knew of would compel [the legislature] to set dates.

Number 0665

ERNESTA BALLARD, Commissioner, Department of Environmental Conservation, explained that low sulfur diesel requirements for trucks and buses [become effective] in 2006, so before that date it should be known what needs to be done. She said [DEC] wants to have a good handle on the health issues, but that's not really the subject of Representative Samuels' initiative; his is far more an interest for the communities' sake in planning how they will handle fuel management.

Number 0742

REPRESENTATIVE GATTO asked Commissioner Ballard what health issues would be involved in switching from using high sulfur fuel to low sulfur fuel.

COMMISSIONER BALLARD said that's what [DEC] would like to know.

REPRESENTATIVE GATTO asked if it would reasonable to expect that there would be a [health risk].

COMMISSIONER BALLARD said regarding health information, the [department] had recently come to understand a great deal more than in the past about exposures to diesel fumes. For many years, those exposures were considered to be comparable to the exposures to dust. In the last five or six years, however, national analysis has demonstrated that there's a far greater risk associated with those exposures in chronic respiratory diseases such as emphysema and asthma, and that there is clearly an established link between exposure to diesel fumes and cancer, she explained.

COMMISSIONER BALLARD said it's that work and the exposures associated with trucks and bus diesel-exhaust fumes that led EPA to the national promulgation and the requirement for the low sulfur diesel fuel. [The department] realized that although Alaska doesn't have highway exposures comparable to those which were the basis for that study, the state has very unusual rural exposures to diesel from combustion in diesel generators. There is no other place in the country that would have those comparable kinds of exposures, she added.

COMMISSIONER BALLARD offered her belief that the department should have a good handle on the health effects of high sulfur, low sulfur, or any sulfur diesel fuel. She said this is because [DEC] issues permits for all of those generators; if there is a health issue that the department should be aware of, it needs to build that into the permit conditions. The department's work is independent of the issue that really is at the heart of Representative Samuels' resolution, which is to find some way for communities to better prepare themselves to manage the fuel, she suggested. She said regardless of how communities manage the fuel, [DEC] should know what health issue may pertain to those exposures.

Number 0914

REPRESENTATIVE GATTO asked if would there be a need for support for this kind of resolution if the engine manufacturers determine that they don't need any modification to switch to low sulfur diesel fuel.

REPRESENTATIVE SAMUELS offered his understanding that the engine manufacturers have already made the modifications, and using high sulfur diesel fuel in an engine would result in major engine damage. He said it's a major modification and it's going to happen, because once the engines change over, high sulfur fuel cannot be used.

Number 0970

CHAIR FATE offered that it seems the unintended economic consequences far outweigh the unknown health hazards [of low sulfur fuel]. He mentioned the remanufacture of engines or people going broke because they can't afford the new fuel.

REPRESENTATIVE SAMUELS said he agrees with Commissioner Ballard that it is necessary to know the health risks, which is the point of the resolution. He reiterated that [switching from high to low sulfur diesel fuel] is going to happen in the future whether the state likes it or not. The EPA has come down with a ruling, and the manufacturers have been given the date [by which compliance is required]. Representative Samuels suggested [it is necessary] to find out about the health risks and address them if they exist, and to find out the logistical problems that are going to arise. For example, how much is it going to cost to retrofit or to keep using the high sulfur fuel? If there are no health problems and someone can't afford to retrofit, [using

the high sulfur fuel] would be an option, he said. He noted that there were a lot of options available but didn't know what they were. Representative Samuels told members it shouldn't be too much to determine what would be required or what the choices are going to be.

Number 1152

REPRESENTATIVE WOLF moved to adopt as the proposed committee substitute (CS) an unofficial, unnumbered work draft labeled "Conceptual CS for House Joint Resolution No. 19." There being no objection, the proposed CS was before the committee.

[Tom Chapple, Acting Director, Division of Air and Water Quality, Department of Environmental Conservation, offered to answer questions.]

Number 1245

REPRESENTATIVE WOLF moved to report CSHJR 19 [the work draft labeled "Conceptual CS for House Joint Resolution No. 19"] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 19(RES) was reported from the House Resources Standing Committee.

HB 192-DNR LEAD RESOURCE DEVELOPMENT PROJECTS

[Contains discussion of SB 142, the companion bill]]

Number 1294

CHAIR FATE announced that the final order of business would be HOUSE BILL NO. 192, "An Act designating the Department of Natural Resources as lead agency for resource development projects; making conforming amendments; and providing for an effective date." [HB 192 was sponsored by the House Rules Standing Committee by request of the governor.]

CHAIR FATE invited Commissioner Irwin of the Department of Natural Resources (DNR) and Commissioner Ballard of the Department of Environmental Conservation (DEC) to explain the legislation.

Number 1372

TOM IRWIN, Commissioner, Department of Natural Resources, explained that HB 192 designates DNR as the lead agency for resource development projects. He emphasized how much he supports the governor's priority to develop natural resources, and said this provides the wealth for Alaska and the hope for everyone's future. He told the committee:

The purpose of this bill is to help facilitate and expedite resource development. This bill would specifically provide the commissioner of the Department of Natural Resources with statutory authority under [AS] 38.05.020(b) [to] lead and coordinate all matters relating to the state's review and authorization of resource development projects. ... In no way do we ask for [or are] we wanting authority to make decisions that are appropriate for the other commissioner, such as Commissioner Ballard.

COMMISSIONER IRWIN emphasized that the bill provides needed clarity, noting that although the department has served as the lead for mining projects and will continue to do so, its authority to serve as the lead agency for other resource development projects isn't as explicit. He explained that the primary responsibility within DNR for carrying out lead-agency coordination functions will rest with the Office of Project Management and Permitting; this new office includes both the project-management function and the [Alaska Coastal Management Program (ACMP)], which are being combined for efficiency.

Number 1570

COMMISSIONER IRWIN told members that large resource development projects, because of their scope and complexity, are more efficiently reviewed and authorized using a lead agency for the coordination and integration, to the extent possible, of the various permitting processes of the agencies involved, using the project-team approach. Smaller projects, normally less complex and requiring fewer permits, may benefit from lead-agency coordination for review, but may not require the establishment of a project team; he said they "may want to get into this type of system just to get the information and get out - they will have the right to proceed as a large project or they can be readily funneled into the appropriate area where there's single permits or simple permits, whichever the case."

Number 1656

COMMISSIONER IRWIN highlighted a three-phase approach for resource development projects utilizing the lead-coordinating-agency and project-review-team approach. Phase 1 will focus on evaluating a proposed project to determine if the lead-agency project-team approach would best address review and permitting needs of the project, he noted. Indicating he was addressing questions he'd been asked, he continued:

A company - large or small - individual, or large group will come with their basic information. They will sit down with the appropriate agencies assembled for this review, and they will have the opportunity to hear everyone around the table talk about which permits are needed or not needed. But, equally, the agencies will be able to have interchange: "Well, if you need to get this, you're going to need this from us," or, "Gee, if you get that, we don't need this." We know there's multiple variables in this. But that's where it gets started, and get a good, fair chance up front to see what's happening; the agencies get the communications that's needed, and then you proceed.

COMMISSIONER IRWIN said Phase 2 results in establishment of the project team, development of an integrated agency review schedule, delineation of information requirements, and completion of any necessary agreements among the agencies and applicant. Phase 3 is the actual project review and authorization process, including public participation tailored specifically to the requirements for permitting the project. He told members:

Additionally, this bill will assist in our efforts to streamline project review and authorization. It will facilitate 1) the state's ability to pull together ... agencies to address project-specific concerns, and to facilitate and expedite the review and authorization process; 2) it will provide ... more cohesive working relationships among agency representatives - I could simply call this "teamwork"; and 3) better communication, more efficient permitting, consolidated public process where possible, and to assist in integrating the state's process with that of the federal agencies.

Number 1771

COMMISSIONER IRWIN concluded:

Speaking from personal experience, the laws governing resource development have proliferated. And there are now more agencies than ever with permitting authority over resource development projects. Resource development should not be held up by the sheer complexity of government. The bill is intended to help alleviate that problem, as this bill would authorize DNR to lead and coordinate the permitting activities of all agencies with jurisdiction over that project. Thank you again for the opportunity to present comments in support of this bill.

Number 1810

COMMISSIONER IRWIN, in response to a question from Representative Gatto, said several groups are merging, including the ACMP; although titles are being created for five positions, they're merged with the other groups. He then remarked, "In the large project concept, just as I've worked in ... on the mine projects, the project managers and the support for that whole process are paid for by the company themselves ... in the agreement. It's a pay-as-you-go system."

Number 1851

REPRESENTATIVE GATTO referred to Commissioner Irwin's mention of a proliferation of agencies and groups that deal with DNR. Saying there must be some value to that or some reason the proliferation occurred, he suggested that if the intention is to strike these out of the process, the legislature should know why they were started to begin with and then should ensure that this value is incorporated elsewhere.

COMMISSIONER IRWIN responded:

The intent is not to strike them out. I appreciate you asking that question, because that's why I'm talking about "lead and coordinate." All these functions remain, but the individual doesn't have to go here, here, here, and here. And, as I've experienced, through no fault of anyone, when you're talking back here to Person 2, Person 5 doesn't know you've talked with [Person] 2; you don't know to tell them, "Well, they need this." And Person 5 says, "Yeah, we can ... deal with it this way." But if you

have everybody at the same table in the same room, you find out these two groups can really work together: their timelines can match; their studies, if altered, might take care of both situations.

So it's the getting the people - the functions - in the same room, and then saying, "Here's what we need. Does everybody around the table agree? Is it 20, 30, 40, 50 permits?" And that can be the case. As you go through this, each individual entity that has knowledge, decision-making authority, says, "We need this. [Can] we supply this out of this data? We can meet this timeline." ... As a group, you set up a schedule and you can proceed.

So we're not eliminating. We're coordinating the functions. If you can eliminate, I think that's the job of us, with the legislature, to say, "We found an area we can effectively eliminate." We're not proposing that here.

CHAIR FATE said he would like to get Commissioner Ballard's reaction, since DNR would be the lead agency. He asked whether she sees any conflicts with that kind of an approach to teamwork.

Number 1986

ERNESTA BALLARD, Commissioner, Department of Environmental Conservation, asked instead to read her prepared remarks. She told members that the bill is not about accumulating power or responsibility in DNR, but about "critical path" planning and the organization of responsibility among and between departments of government; it directs DNR to lead and coordinate resource development projects, and it directs all the permitting agencies to sequence their actions and requirements so that timelines are met. She further said:

In no way does it alter the specific statutory requirements or ... regulatory programs in effect among and within the separate departments of government right now. You have heard from Commissioner Irwin about our coordinated permitting on large mine projects. The experience that we ... have had over several years among the agencies in large-mine permitting has made it clear that there are

tremendous efficiencies that can be gained in a coordinated approach to permitting.

We, the permitting agencies, can identify our regulatory requirements in a systematic way and thereby ensure that the most critical needs and timelines for the project are established and met. Also, for their part, industry, through a [coordinated] permitting process, can understand its responsibilities and provide ... needed information on time.

Key to this coordinated process: the key input is also the key output, and it is the foundation of all permitting, and that is data standards that are acceptable to all and are common across permit lines. One of the things that I think drives industry nuts, and appropriately so, is a different data-quality standard for each permit, a different monitoring regime, a different monitoring cycle, a different reporting period.

Number 2095

COMMISSIONER BALLARD continued:

We can work together and assure that the foundation of resource protection is built into the resource development from the get go, and that is, to know what data we need, to what degree we need it, at what quality level, at what level of protection, and how will it be used to assure that the protections are there. And that's really ... the principal benefit of this whole program, is that instead of having ten years of information here, two orders of magnitude over there, three standard deviations over here, we're able to sit together and get a common set of ... input so we have a common set of information output at the end.

The state's citizens benefit from this approach also. In rural communities, where most of the state's resource development occurs, it is more difficult to track separate ... agency processes than it may be in urban Alaska. With a coordinated process, we, the agencies, will ... hold joint public meetings so that

concerned citizens can see the entire regulatory picture.

In any regulatory decision, there is a certain amount of discretion available to the permitting authority. It's important to me that citizens see that where discretion is used in one aspect of a project, it may be offset by another permitting decision made somewhere else. I think, for instance, of the differences in outcome from recycling water versus energy requirements: if we require a mine to do recycling of water, we're expecting that diesel generators will be on-site to drive pumps; that means there may be more air impacts. We need the public to see the whole picture, and not see the water permit separate from the water resource permit, which may be a DNR permit separate from the air permit, which would be back to DEC.

Without this "critical path" planning, public participation might happen based on public notice requirements in our Administrative [Procedure] Act. For individual permits, it could be months or years separating individual permit presentations and public opportunity to comment.

Number 2221

COMMISSIONER BALLARD continued:

I've talked with many members of this committee - and talked before, before the committee - about the efforts underway to review all of our regulations and statutes to ensure that they are meaningful and ... have not become the victims of "mission creep." As part of that process, we at DEC propose deletion of AS 46.35, permit coordination and extension. And I understand there's [an assistant attorney general from the Department of Law] on the phone that can help walk us through the deletion of this Act.

This statute was enacted in 1977. In that same year, the legislature established the coastal management program, which became the permit coordinator. AS 46.35 has become a relic. There is one small section of that that is being relocated, and you'll find those responsibilities in the new bill in

Sections 2 and 3. The net effect ... of that is an improvement in the Department of Environmental Conservation's authority to use our appeals process. The DEC process is easier to use and well laid out in understandable regulations.

It's also important to understand what Senate Bill 142 [or HB 192] does not do. Senate Bill 142 [or HB 192] ... does not change the protective standards that the regulatory agencies have developed and fine-tuned over the last decade. It does not change DEC's permitting requirements, our regulatory discretion, our responsibility for enforcement, or our appeal process. The bill simply ensures "critical path" planning, and I think it's a tremendous benefit to both the permit applicant and to the public.

COMMISSIONER BALLARD said she hoped this addressed some of the issues raised by Representative Gatto.

Number 2326

REPRESENTATIVE KERTTULA asked whether the concept is that DNR would be stepping into the role played by DGC [Division of Governmental Coordination] for a project affecting the coastal zone, for example.

COMMISSIONER IRWIN indicated the goal is consistency and added:

We know how well it worked on the mining project, and if we want to get into it further, ... I'll ask Dick LeFebvre because he was the project manager for the large project teams. But we want to do it the same for all these projects, to be able to have people come together - and I'm talking about, first, the individual or the company, like I said, and then the various agencies. And an individual has a really hard time getting the agencies together. ... To get somebody together on the same date borders on the impossible. But I know [Mr. LeFebvre] was able to get the agencies together for our project, and it saved innumerable meetings and adjustments that wouldn't have been necessary.

COMMISSIONER IRWIN indicated it should be the same gathering [of data] for the coastal zone as for the large mining or oil-related projects. He suggested Mr. LeFebvre could elaborate.

Number 2436

REPRESENTATIVE KERTTULA said she doesn't disagree that having teams and a set schedule is a great way to treat this. She also agreed that [the current process] is confusing to individuals, although perhaps not so much if the coastal zone [program] is the framework or for a large company that is used to doing permits. She expressed concern, however, about what will happen if DEC or the Alaska Department of Fish & Game (ADF&G) is the agency that is impacted, for example. She asked who will make the final decisions and what happens if there is a disagreement within the team. Will a regulatory system be set up to outline this? She also asked whether only DNR staff will take on this function of coordination and leading.

COMMISSIONER BALLARD replied that HB 192 doesn't alter the responsibility that lies with the regulatory agencies to make their own decisions, based on their own standards and following their own regulations. She explained:

This bill does not require me to negotiate with [Commissioner Irwin] about an air permit. It does require my air-permitting staff to coordinate from the outset on the development of a project to understand the choices that the project manager has for deployment of diesel generators.

And on any large project in the state of Alaska, there are many choices for the deployment of power-generating capability. And if we work at the outset, hand in hand, our air staff can say, "Look, here are two things that are going to be very difficult about this project: it's near this site, or it's ... in the shadow of a canyon and ... in the winter you might have an accumulation of contaminated air, or it doesn't vent well," or whatever. We're able to sit down at the beginning and suggest, at the project-design stage, what the major permitting issues and hurdles will be so that the project can be developed in a way that makes it permissible.

The opposite approach would be for [Commissioner Irwin] and his staff to work merrily along on a project that conforms well to the geology or the hydrology or to the presence of the resource, and only later find out from us that they have laid it out in a

way that makes it extremely difficult to permit, and that if we could have been at the outset, we could have suggested a different approach: move the road, move the generation, handle the water differently.

Number 2589

COMMISSIONER BALLARD continued:

So it does not, in any way, require a brokering of the standards of environmental protection or of habitat or other resource protection. But it does put us all at the table at the beginning to design a permissible project. And in the end, on all of these projects, it is ultimately the permitability of them that determines the final project design, right, [Commissioner Irwin]? They can't go forward if they can't be permitted. So let's get that decision moving along on the same track as the capital decisions, the marketing decisions, the project-sizing decisions, the timing decisions - 'cause in the end, if it can't be permitted, it's not going to be built.

Number 2628

REPRESENTATIVE WOLF remarked that what he'd just heard sounds fantastic, but asked "which gorilla you're going to get" to bring all those folks together.

COMMISSIONER IRWIN deferred to Mr. LeFebvre.

Number 2658

RICHARD LeFEBVRE, Deputy Commissioner, Anchorage Office, Office of the Commissioner, Department of Natural Resources, responded:

I'm not exactly a gorilla. But since 1992 I've coordinated these projects, and I've found that most of the agency personnel are very, very willing to participate and actually quite thankful that we have someone that's able to facilitate, coordinate, and synchronize each of the portions of ... the integrated schedule that we develop as a team. What that does is allow them to focus on their actual permitting requirements and review of the project, and ... let the coordinator or project manager be responsible ... to see that they get to ... meet the proper deadlines

and to attend the meetings and have the information that they need to develop their decisions. ...

We do not have any authority-making power; that, as Commissioner Ballard indicated, rests with the permitting agencies themselves. But I've found the process very successful. As far as how ... it's integrated with the ACMP, as we did on other projects in Point Thomson, we do an integrated schedule; ACMP is a part of that schedule, and they carry out ... their functions and responsibility just like the other permitting agencies. ... The exception is that, as project manager, I coordinate, then, in the development of the schedule, but each of the agencies ..., what they do is helped to develop that actual schedule, and then we all carried it out as a team.

Number 2736

COMMISSIONER BALLARD added:

There's another way to look at the gorilla. ... The gorilla is really the resource to begin with. The challenge to all of us in Alaska is to find a way to get the resource to market, and it is a true challenge because of the remoteness and the vastness of our territory. And anything we can do, on the executive side or on the legislative side, to focus our attention on the resource, and to focus early enough.

COMMISSIONER BALLARD cited an example involving mining, the detailed steps, and the ultimate pouring of a brick of gold.

Number 2794

REPRESENTATIVE WOLF said this idea is music to his ears, but questioned the ability to get people from state agencies to work together well. He said he wants to see who this "marshal" is and how much weight that marshal will carry in order to be able to get these folks to the table.

COMMISSIONER IRWIN responded that there can and will be a lot of issues, but said he'd had the privilege of seeing how it worked, because of Mr. LeFebvre and folks in the various agencies such as [the habitat division in ADF&G] and DEC. He emphasized building on that vision, and cited Mr. LeFebvre's work on Point Thomson as an example. Commissioner Irwin said he himself [if

DNR is the lead agency] is ultimately responsible, and will have to face the legislature a year from now; the legislature can hold the department accountable as to how this is progressing then, and the department should be able to bring forth examples. Acknowledging that it won't be perfect, he expressed confidence in taking the next step and holding on to this vision.

Number 2944

REPRESENTATIVE HEINZE remarked that a few years ago state government was pretty lean; because of budgetary constraints, it has become more so. She asked, once this vision is attained and working, that it not be lost over "not having a position." Indicating she foresees this as a finely tuned machine that works well, she said she feels comfortable because of the background of the current commissioner; however, she asked [what may happen under] another commissioner.

**TAPE 03-30, SIDE B**

Number 2982

COMMISSIONER IRWIN replied:

I understand the concern. I'm ... frankly not sure how to answer down the road. But if we get something in place and we know it's worked and it's starting to work again, and we're starting to build on this, I think the agencies themselves ... protect their turf at times; we all probably want to - you all protect your turf. But as they see this becoming more and more efficient, if nothing else - and please don't take this comment wrong - if nothing else, from the lazy side, when people know they don't have to redo work, if they don't have to go to other meetings, I think we have an opportunity to get something rolling where people won't want to let it go.

But what I've seen - and you talk about enough help and cutbacks and all those things - I really think the agencies I've been around are ... like you all: they don't know when morning starts, and they don't know when the end of the workday ends. I see people working 16, 18 hours a day. I see people working on the weekends, because they really do care about their own areas. They want to make this work. They ... see an excitement about the state. And we can't keep doing that to people. And if we can get efficient, I

think that also should help. But I don't know how to answer all the "what ifs," but we need to be aware of them.

Number 2905

REPRESENTATIVE KERTTULA referred to the wording "lead and coordinate all matters relating to the state's review and authorization of resource development projects" [paragraph (9), page 2, line 23], noting that it is a strong statement. Acknowledging that it isn't the intent of the legislation, she suggested that the commissioner's wouldn't want to share each other's appeals, and asked Mr. Kennedy whether there is a need to be clearer.

Number 2874

CHRISTOPHER KENNEDY, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, answered that it doesn't concern him a great deal, in part because this is modeled after a statute that's been on the books for some time, [AS] 27.05.010, which made DNR the lead agency in mining matters; nobody has ever tried to interpret that to "marry all the appeals together." He said it isn't the intent of the legislation and suggested that there will be clear legislative history with regard to that, as well as the prior model.

Number 2828

REPRESENTATIVE GUTTENBERG requested an overview of the effect of Section 4, which repeals several portions of statute.

MR. KENNEDY answered that it's the environmental procedures coordination Act, adopted in 1977 as an effort to bring all kinds of environmental permitting under "one giant procedure," under which, to his belief, some joint appeals have been possible. He said it was quickly, if not instantaneously, supplanted by the coastal zone process in almost every instance, so DGC became the coordinating body to bring permitting under one roof in multipermit projects. He said as far as he has been able to determine, although one or two instances may have been missed, AS 46.35 has never been used in its entire history; it never got off the ground and is a vestige in the statutes. He went on to say that the purpose is simply to repeal it to avoid any confusion over which agency is the coordinating agency when permits span several agencies.

Number 2718

REPRESENTATIVE KERTTULA asked, if there are permits from one agency only, whether DNR will "basically shift to that agency."

MR. KENNEDY deferred to Mr. LeFebvre.

MR. LEFEBVRE answered, "If it's a single permit requirement, normally they would go directly to the agency involved. ... We wouldn't intend to coordinate that."

REPRESENTATIVE KERTTULA pointed out that the language says it's for all matters. She asked whether there should be clarification. She suggested there could be an appeal later down the road for not having provided coordination.

COMMISSIONER BALLARD offered that the enabling language is "may", not "shall", and so the commissioner of DNR retains some discretion. She said it clearly is a statute that enables rather than directs the commissioner, and that organizes rather than mandates the responsibility.

REPRESENTATIVE KERTTULA agreed, but said there is a lot of case law on the fact that when there are specific provisions like this set out, [an agency] might wind up being responsible for doing it, even though the [statutory] language says "may". She suggested it may be worth thinking about.

Number 2606

REPRESENTATIVE GUTTENBERG expressed concern about what will happen if one agency doesn't agree that a project should go forward, for example.

COMMISSIONER BALLARD replied:

One of the reasons we have so many pages of regulations is to make as clear to both the developing community and the interested stakeholders what the terms and conditions for protective development will be. ... Individuals, whether they be employed at DNR or DEC, are charged in their daily duties with implementing the regulations, not with developing their personal views about whether or not a project should or should not proceed. A mixing zone either can or cannot be permitted.

We have clearly stated regulations that we follow to determine whether the impacts and where the point of compliance will be, and so on. ... This bill does not change, at all, the responsibility of DEC to follow its own ... regulations, and those regulations make crystal clear - whether it's air or water or underground injection or whatever it may be - how that will proceed.

COMMISSIONER BALLARD said employees and commissioners come and go. She offered her belief that this is a bipartisan concept developed in the previous administration and successfully followed, and said this administration is proposing to broaden it. She added that she sees it as "an issue that simply rises above the beliefs of the individuals who are involved and commits the employees to following a coordinated process."

Number 2446

CHAIR FATE asked whether anyone else wished to testify. He then closed public testimony.

Number 2427

REPRESENTATIVE HEINZE moved to report HB 192 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GUTTENBERG [objected] to commend Representative Kerttula's legislation relating to one-stop permitting, which he indicated would mesh with this. He then withdrew his objection.

Number 2396

CHAIR FATE asked whether there was any further objection. There being no objection, HB 192 was reported from the House Resources Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:15 p.m.