

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 21, 2018

1:15 p.m.

**MEMBERS PRESENT**

Representative Andy Josephson, Co-Chair  
Representative Geran Tarr, Co-Chair  
Representative John Lincoln, Vice Chair  
Representative Harriet Drummond  
Representative Justin Parish  
Representative Chris Birch  
Representative DeLena Johnson  
Representative David Talerico

**MEMBERS ABSENT**

Representative George Rauscher  
Representative Mike Chenault (alternate)  
Representative Chris Tuck (alternate)

**COMMITTEE CALENDAR**

PRESENTATION(S): PROPOSED PEBBLE MINE

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

ANDY MACK, Commissioner  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided a PowerPoint presentation entitled, "Permitting Processes for the Pebble Project," dated 2/21/18.

LARRY HARTIG, Commissioner  
Department of Environmental Conservation (DEC)  
Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of the major permits that may be required from DEC for the proposed Pebble Mine.

SAM COTTEN, Commissioner  
Alaska Department of Fish & Game (ADF&G)  
Juneau, Alaska

**POSITION STATEMENT:** Provided a PowerPoint presentation entitled, "House Resources Committee Pebble Project Update," dated 2/21/18.

RON BENKERT, Regional Supervisor  
Anchorage Area Office  
Division of Habitat  
Alaska Department of Fish & Game (ADF&G)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the ADF&G presentation on the proposed Pebble Mine.

#### **ACTION NARRATIVE**

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**CO-CHAIR ANDY JOSEPHSON** called the House Resources Standing Committee meeting to order at 1:15 p.m. Representatives Josephson and Talerico were present at the call to order. Representatives Johnson, Lincoln, Drummond, Parish, Tarr, and Birch arrived as the meeting was in progress.

#### **PRESENTATION(S): PROPOSED PEBBLE MINE**

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CO-CHAIR JOSEPHSON announced the only order of business would be presentations by the commissioners of the Department of Natural Resources (DNR), the Department of Environmental Conservation (DEC), and the Alaska Department of Fish & Game (ADF&G) on the proposed Pebble Mine.

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ANDY MACK, Commissioner, Department of Natural Resources (DNR), provided a PowerPoint presentation entitled, "Permitting Processes for the Pebble Project," dated 2/21/18. He explained the presentation would cover a broad context on mining in Alaska, the present permitting status of the proposed Pebble Mine project, and DNR's expectations going forward. He noted the three photographs on slide 1 are of operations at the Pebble Mine and were taken 9/17/17 during one of two DNR site

inspections. Turning to slide 2 he said the map illustrates mining activities in the state, including producing mines, and pointed out that DNR works on lots of mine prospects, opportunities, and operating mines located throughout Alaska.

COMMISSIONER MACK stated DNR aggressively seeks to ensure the state is in control of its future on issues related to oil and gas resources as well as to the growing mining industry. He acknowledged there is tension between federal and state agencies and expressed his belief Alaska is developing its resources and caring for its environment. For example, the state is engaged in the national discussion on definitions of the [Waters of the United States (WOTUS), pursuant to the Clean Water Act], and in review of the U. S. Environmental Protection Agency's (EPA's) requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 108(b), which is the financial responsibility requirements for mining operations.

COMMISSIONER MACK related that Alaska state government has long been confident in its bonding requirements system for an operational mine in Alaska and is encouraging federal agencies to stand down so that [the state] can take a greater role. He said DNR is advancing the state's interest in the Eastern Interior Resource Management Plan (RMP) issued by the Bureau of Land Management (BLM), which is another example of DNR's efforts to take control of the state's future.

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COMMISSIONER MACK displayed slide 3 and reviewed the proposed project's status. He said the Pebble Project is a large deposit in the advanced exploration stage of development; it is located in the Bristol Bay region 17 miles northwest of Iliamna; and consists of two contiguous deposits - Pebble West on which the application is now and Pebble East [with combined estimated mineral resources of 80.6 billion pounds of copper, 5.6 billion pounds of molybdenum, and 107.4 million ounces of gold].

COMMISSIONER MACK moved to slide 4 and explained DNR has issued a miscellaneous land use permit (MLUP), number 6118, for Pebble which - with two small exceptions - is the interface between the state, as landowner, and the project. On December 31, 2017, the multiyear MLUP permit [issued to Pebble Limited Partnership (PLP)] was due to expire. The application on the multiyear application was for the continued care, maintenance, and reclamation of existing boreholes and facilities. The last

borehole at the site was drilled in 2013, and since then Pebble has been responsible for care and maintenance. An extension was granted so DNR could take public comment from 11/1/17-11/30/17, during which time 1,500 comments were received. He characterized many of the comments as substantive, detailed, and sometimes critical, in contrast to the thousands of MLUPs issued by DNR for which there are typically zero comments.

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COMMISSIONER MACK stressed that an MLUP is issued by DNR if there are impacts to less than five acres on a continuous basis. Because Pebble is using helicopter support for most of its activities, the project's impact footprint is less than five acres, thus the MLUP is a legitimate permit. He referred to the [Nunamta Aulukestai, et al., vs. State of Alaska and Pebble Limited Partnership] litigation which DNR interpreted to mean that DNR must follow a thorough public comment and public notice process. He expressed his belief DNR is also responsible for evaluating comments and considering them prior to issuing a future MLUP. He described DNR's thorough review of the comments and its decision to incorporate some of the comments into the current MLUP; for example, the length of the permit was limited to one year because new activities at the mine site were anticipated. Commissioner Mack opined that limiting the MLUP to one year was a wise decision, given that the previous permit was a care and maintenance permit; there were no wells planned. Now, there are applications to the U.S. Army Corps of Engineers (USACE) and plans are being developed, and there is time to review plans to consider them in developing terms for the next permit. Therefore, in 2018, Pebble has submitted a new application and terms can be reconsidered by DNR.

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COMMISSIONER MACK said another effect of the litigation is that DNR strives to ensure all information about the project that can be released is published online in a timely manner. Also addressed by comments on the project was that within the MLUP there should be financial assurance provided to the state thus the permit requires a \$2 million performance guarantee to allow the state to perform cleanup if necessary. Other elements of the MLUP include a requirement for coordination between the Alaska Department of Fish & Game (ADF&G) and DNR on wildlife issues, and a well closure plan for existing boreholes. During the exploration phase of a mine, boreholes may be left open to monitor water; however, in the permit DNR clarified that of 612

open boreholes, 600 would be inspected, 300 in each of two years, and 138 boreholes would be closed as part of the reclamation project in 2017. He stressed DNR's intent to ensure the integrity of this unique area and to make sure the burden and obligation are on the operator.

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COMMISSIONER MACK addressed slide 5 and noted DNR conducted aerial and field inspections in 2017 which covered 278 sites in detail. Since 2003 there have been 58 state agency inspections, he said, and DNR's intent is to continue active inspections in the future. He moved to slide 6 and said Pebble's MLUP renewal application is different from last year and proposes various activities for 2018, including 61 geotechnical boreholes, 19 diamond drill core boreholes, minor repairs to Borehole 3127, and routine inspections. He pointed out DNR held a public comment period from 1/19/18-2/20/18, and 1,800 comments were received; he restated the value of public comments.

COMMISSIONER MACK displayed slide 7 and provided a history of the project. He said Northern Dynasty acquired a purchase option in 2001 and consolidated its ownership interest in 2007, which was the year the Pebble Limited Partnership was formed. Exploration since then has been mostly helicopter-supported exploration. The first borehole was drilled in 1988 and the last in 2013, with a total of 1,355 boreholes, of which approximately 600 remain active. The 2017 MLUP document stated that field inspections revealed Pebble complied with DNR, and closed the boreholes as requested, albeit some have "lingering issues." The site has 2,402 claims over 416 square miles. He acknowledged this is a significant area of land but said many of the 1,355 boreholes are consolidated in a more central location.

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COMMISSIONER MACK moved to slide 8 and continued to outline the history of the Pebble Project. He stated that baseline studies were conducted from 2004 to 2008, and aquatic biomonitoring was conducted by ADF&G in 2010, all of which are available to the public. He explained slide 9 depicts a general description of a timeline for mining projects in Alaska and is not specific to the Pebble Project. Although the timeline for the Pebble Project is unknown, DNR estimates the project has entered the advanced exploration, environmental studies, and prefeasibility study phases.

COMMISSIONER MACK turned to slide 10 to discuss the federal review process. He pointed out that the Pebble Project's Section 404 Clean Water Act application is a major federal action that triggered the National Environmental Policy Act (NEPA), and the U.S. Army Corps of Engineers (USACE) is the lead agency for the project. He explained that USACE, the U.S. Fish and Wildlife Service (USFWS), the Department of the Interior (DOI), and EPA have understandings based on the Clean Water Act (CWA) and work together to an extent but are also competing agencies in some cases as they develop CWA permits, under which the Pebble Project falls. He noted that Pebble requires a CWA permit, and that typically this process goes smoothly, although there are some exceptions. He recalled a failed permit by ConocoPhillips around a decade ago. He stressed that every permit is unique. Regarding federal review, he noted public scoping will start in March 2018, and the next step will be the environmental impact statement (EIS) process, a process with which DNR is familiar.

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COMMISSIONER MACK displayed slide 11 and advised that the anticipated state permits include various permits [from DNR, Department of Environmental Conservation (DEC), Alaska Department of Fish & Game (ADF&G), and the Department of Transportation & Public Facilities (DOT&PF)]. Currently, he said, DNR has [issued] a temporary water use authorization for water used for exploration at the mine site, and an MLUP. At the time of the plan of operations, public comment is taken, and decisions will be made. He briefly described the purposes and circumstances of several other permits.

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COMMISSIONER MACK moved to slide 12 and discussed the role of state permit coordination facilitated by DNR through the Office of Project Management and Permitting (OPMP). He said OPMP coordinates permits - but has no permitting authority - and ensures questions are answered, particularly on a "critical path item," such as major projects on the North Slope or mining expansions. The expenses of OPMP are paid by industry. Displaying slide 13 he said DNR expects applications for state authorizations will be submitted during the NEPA process. He characterized the USACE preliminary schedule of a scoping phase in March 2018 and possibly a Record of Decision (ROD) by September 2020 [a correction to slide 13] as a "very quick schedule." He stressed the state will participate fully in the

federal process, regulate exploration activities, coordinate with DEC and ADF&G, and engage with USACE and other federal agencies, tribes, industry, and stakeholders.

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REPRESENTATIVE JOHNSON inquired about the status of the casings that have been left above ground.

COMMISSIONER MACK replied that last year DNR was notified of serious physical hazards on public land. He advised that, in the MLUP last year, DNR asked Pebble to cut the metal casings down to grade level so the metal casings would no longer stick up above ground. He offered his belief that Pebble had complied to a great extent.

REPRESENTATIVE JOHNSON directed attention to slide 9, General Project Timeline, and asked how long the entire process might take from beginning to end.

COMMISSIONER MACK clarified that slide 9 is for a typical large mine process without an actual number of years involved. He noted Pebble's first well was drilled in 1988 and one of the concerns from stakeholders is that the state wasn't provided a project plan until after 10 years of activity. However, he continued, the process is underway, and the state now has an application for review.

REPRESENTATIVE JOHNSON asked for a timeline for state and federal permitting.

COMMISSIONER MACK directed attention to the list of permits on slide 11 and said there is not a typical timeline involved in developing a plan of operation or for the leases that are necessary. Speaking from his experience, he said he really doesn't know.

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CO-CHAIR JOSEPHSON drew attention to slide 4 and inquired whether the \$2 million performance guarantee is a cash bond.

COMMISSIONER MACK said yes, Pebble provided a \$2 million performance guarantee from the bonding market.

CO-CHAIR JOSEPHSON inquired as to DNR's total bonding requirements for the entire project.

COMMISSIONER MACK responded that the performance guarantee is to do the work in the exploration phase. He explained that after the plan of operation proposal, DNR uses a computerized formula to determine the amount of the bond for the next phase, which can be very significant. For example, the bond required for the Red Dog Mine is approximately \$500 million.

CO-CHAIR JOSEPHSON surmised the [newly proposed transportation] corridor to the west of Cook Inlet has not been approved by the state. He asked whether USACE could evaluate the application prior to the state's decision.

COMMISSIONER MACK confirmed a [transportation] corridor has not been approved and opined that USACE does not have the ability to evaluate this issue without the state's participation.

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REPRESENTATIVE PARISH, regarding the 1,500 comments for the MLUP application and the 1,800 comments for the renewal application, inquired as to the number of individuals submitting comments as opposed to one person sending multiple comments. He further inquired as to the percentages of favorable and opposed comments that were received from individual senders for the renewal.

COMMISSIONER MACK answered that 1,500 was the number of individuals, and that a significant majority expressed concerns or opposed the renewal.

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REPRESENTATIVE DRUMMOND questioned how an MLUP, limited to an area less than five-acre impact area, could apply to a project that is exploring 2,402 claims spread over 416 square miles.

COMMISSIONER MACK replied:

I've been given a phrase, which is the very technical phrase, which is "five acres of un-reclaimed disturbance," okay? I view it as a more practical matter, as the five acres, or less than five-acre standard or threshold, is really represent[ing] what you would place on the tundra on a day-to-day basis and what has been out in the field for a number of years.

COMMISSIONER MACK directed attention to the photos on slide 1 and pointed out that a camp would count as part of the five acres. However, he continued, disturbance from a helicopter-supported operation can be distinctly less, as seen by the photo of a wellbore which is the extent of the disturbance.

REPRESENTATIVE DRUMMOND asked whether a camp is established at every borehole.

COMMISSIONER MACK responded no, there is only one central main supply camp within the area of the deposit.

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CO-CHAIR TARR offered her understanding that information provided to DNR in the MLUP application differs from that of the USACE Clean Water Act application, and that of the new smaller mine plan. She asked whether the state will request additional information.

COMMISSIONER MACK confirmed the state would request more information from the federal agency.

CO-CHAIR TARR asked whether the MLUP would be [renewed or a new MLUP issued] prior to receipt of any additional information; for example, additional information on the economics of the project.

COMMISSIONER MACK anticipated that in the federal permitting process, information would be provided in various stages of the process. He stressed DNR seeks to ensure that, regarding care and maintenance, an MLUP is in place. He said DNR cannot delay with the approach of a field season; however, in some cases DNR has become a cooperating agency with a federal agency, with the big picture in mind.

CO-CHAIR TARR inquired whether an MLUP related to care and maintenance would be issued for one year. She further inquired whether, as a cooperating agency, DNR would have influence over the approval of the [Section 404, Clean Water Act] permit.

COMMISSIONER MACK answered that the term would be evaluated during the processing of the MLUP application. Although DNR can cooperate with federal agencies in many ways, he said, it does not have authority over USACE or vice versa.

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CO-CHAIR JOSEPHSON recalled testimony and photographic evidence were provided about a year ago by Dr. Chambers and members of United Tribes [of Bristol Bay] regarding petroleum and acid pollution at some of the [1,355] borehole sites, and that they were not handled properly. Co-Chair Josephson noted that none of the drill sites have been tested since 2013. He further recalled that [in testimony on 2/19/18] Dr. Chambers said in essence that the state was largely satisfied with the abandonment of those sites, and General Hamilton said DNR's requirement of a \$2 million cash bond was a typical course of events. He asked Commissioner Mack to comment on the United Tribes' perspective that the wellbore sites were not handled properly and whether that was the event that caused DNR to require a cash bond. He further asked the commissioner to address whether the department is relatively satisfied at this point.

COMMISSIONER MACK responded that once mine operation is reached there is a significant bond in play, but the Pebble Project is currently in the exploration phase. The performance guarantee and the bond that is part of that is dedicated to the proposition that it will cover the cost of going into the field and removing the equipment that is out there and ensuring that the worksites are in reasonably good shape when they are left, should the operator fail to do so. He said DNR received recommendations in letter form from consultants and groups in the region about what a performance guarantee would look like. Two numbers were presented - \$1.7 million and \$2 million - and DNR chose the higher of the two. To its credit, [PLP] agreed to place a performance guarantee with the state. Regarding the difference of opinion between Dr. Chambers and General Hamilton, Commissioner Mack stated DNR will continue to look at this area to ensure that whatever is going on is done very well. From the two inspections of sites conducted last year, he continued, the department feels comfortable, otherwise there would have been notices of violation. The same standards are being applied here as would be applied to an oil project on state lands. Nothing is swept under the rug, everything is public. The inspection reports, which are online, are solid and thorough documents.

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CO-CHAIR JOSEPHSON referred to slide 7 and offered his understanding that unless there is a mining closure or land designation such as a refuge, mining is presumptively open on all state land for a claim. Regarding the 2,402 claims on slide 7, he said he wonders whether the state, industry, and people of

the state could spend a thousand years looking at whether there will be mining in an area. He asked whether Commissioner Mack thinks there should be a policy in place that talks more globally about places where mining is less contentious and places where it is inarguably very contentious. He asked whether the Pebble mine, which has been an issue since at least 2006, could span the century.

COMMISSIONER MACK replied he does not know the answer, but that as an agency DNR is paying close attention and working hard and following the law, and part of that is listening to people who live in Alaska.

CO-CHAIR JOSEPHSON, relative to the timeline of the USACE application, recalled testimony from the prior week that things are moving on a typical timeline but that there is program called the "fast program." He offered his understanding that while two other mines did not ask for that expedited approach, Pebble has.

COMMISSIONER MACK answered he has been told that is the case but has not actually read that request himself.

CO-CHAIR JOSEPHSON asked whether DNR has an opinion about that.

COMMISSIONER MACK replied it is up to the applicant given one of their options is to decide when to apply and how fast to push. He opined that DNR has done a very thorough job on the permit that it has now and will continue to do so. What it will do on its application is a question for Pebble.

CO-CHAIR JOSEPHSON, regarding the 61 additional boreholes that are being requested, inquired whether such a request is usual after having made a Section 404 permit application to the USACE.

COMMISSIONER MACK responded it is not unusual and added that understanding what is in the different applications is a focal point of DNR.

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LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), provided an overview of the major permits the Pebble Project may require from his department. He said DEC has not received any permit applications from Pebble at this point and therefore his overview is speculative and based on similar projects in Alaska. He stated the three major permits

would include: The Clean Water Act (CWA) Section 402 wastewater discharge permit for processed and storm water collected at the mine site; a group of authorizations requested by DEC's Division of Oil Spill Prevention and Response (SPAR) relating to oil spill prevention and response, such as for liquid fuels used by the project; and air quality permits for emissions from a power plant at the mine site, for fugitive dust, and for an unknown power plant at the port site. He advised that many other permits would also be necessary, and DEC would have a major role in the NEPA process along with DNR and ADF&G. He further noted that DEC serves as the responsible state agency that would ultimately certify or not certify the Section 404 permit under Section 401 of the CWA.

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COMMISSIONER HARTIG, regarding the permits from DEC, pointed out that air quality permits require the longest lead time on any major project because it involves collecting lots of information to evaluate the impact of the location and concentrations of emissions. Air quality information includes weather, physical obstructions, topography, the location of monitoring sites, seasonal variations, and other meteorological information which can take years to collect for a project to apply for permits. He noted that Pebble began collecting information in 2006 for its larger project, but while the quality of the data is good the collection locations may not be relevant to the new project.

COMMISSIONER HARTIG advised that DEC's Division of Air Quality hasn't had discussions with Pebble since 2013 and thus has no recent information on the project except what was provided to USACE, which proposes a power plant at the mine site fueled by natural gas. Due to the power plant's proposed large size of 230 megawatts, it may be subject to Prevention of Significant Deterioration (PSD) requirements, which are requirements under the federal Clean Air Act (CAA). This means higher standards must be met for the priority air pollutants that are discharged and these cannot exceed what is called an "increment." He explained that the reason emissions are measured in increments is because if one big facility moved into an area and discharged right up to the limit of ambient air quality standards, then no room would be left for another facility to move in as the air quality standards would then be exceeded.

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COMMISSIONER HARTIG noted that a key consideration when DEC looks at this facility is whether it will or will not be a PSD facility and whether it will be triggering federal [CAA] requirements or will be strictly under state standards. He stated that given the size of the plant, DEC thinks it will likely be under the federal standards. Because DEC has been delegated the CAA permitting program in Alaska, it would be following those federal rules and would issue the permit with EPA oversight. Permitting a PSD facility includes review of the emissions sources and that equipment would have to meet what is called "best available control technology." At the mine site, DEC would also be looking at fugitive dust caused by the large surface mine with disturbance, pit laydown areas, low-grade ore stockpiles, wind, erosion, and dust in the air, as well as exhaust and dust from the trucks. Furthermore, DEC presumes that both the mine and the port will need a backup power system which would likely be diesel-run generators that would also require review of the emissions. Further, DEC will need to look at where the public will be accessing areas at the active mine site and the port and examine whether the air emissions in those areas will meet ambient air quality standards. These standards are set by the state but follow national EPA requirements to protect human and environmental health within the facility boundary. Facility boundaries are further complicated by access to subsistence lands and public use, and this would be another aspect of DEC's permitting activity. Although DEC is unsure of the source of power generation at the port, power generation requires state air permits.

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COMMISSIONER HARTIG discussed what the Division of Oil Spill Prevention and Response (SPAR) may be called upon to do. He said [PLP] has talked about a natural gas line across [Cook] Inlet. He pointed out that a year ago a gas line that delivers commercial gas for energy to the platforms in Cook Inlet was leaking. The leak was complicated by ice cover, so boats and divers couldn't safely be brought to the area to repair the subsea line. Additionally, the icecap prevented dispersal of the methane gas that was coming up, causing concern that the methane would displace the oxygen in the water column and make it hypoxic to fish and marine mammals. Therefore, DEC would need to look at where the proposed gas line would be located and whether there could be ice conditions.

COMMISSIONER HARTIG related that over the past year DEC has been having discussions with the Pipeline Hazardous Materials Safety

Administration (PHMSA), a federal agency that is part of the federal Department of Transportation that has the primary oversight of gas lines. He advised that PHMSA would be the agency primarily responsible for looking at how this subsea line would be built, maintained, and tested, but that SPAR would get interested if a release occurred from this subsea line. He said DEC and PHMSA are presently discussing entering a memorandum of understanding (MOU) that would help define what DEC's roles would be on Cook Inlet lines.

COMMISSIONER HARTIG noted that natural gas would presumably not be the project's only fuel, and that diesel fuel would also be coming into port by tank vessel or barge. That vessel, he continued, would likely require a contingency plan (c-plan). A c-plan is a pollution prevention and counter measures plan that talks in broad terms about how spills would be prevented. The department then has guidelines and [the project] must show how it could respond within a defined period of time if a spill were to occur of the magnitude that might be anticipated from an operation like this. [The project] would also have to show DEC that it has the resources to do that.

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COMMISSIONER HARTIG said he assumes Pebble would have storage tanks at the delivery port. How storage tanks are regulated depends on the volume, so DEC could require a c-plan or something less for the tanks. He offered his understanding that the project's proposal is to move the fuel up the road in trucks. This would fall under PHMSA's jurisdiction, he continued, and DEC would coordinate with PHMSA if there was a spill. At the lake the trucks would be rolled onto the ferry and be taken north across the lake about 16 miles. He said he recently talked with the U.S. Coast Guard (USCG) about whether it would oversee this because, as he understands it, there would be ice breaking part of the year on the lake, which isn't something DEC is familiar with. If the USCG determines it's a navigable water, he continued, then the USCG would be involved and would be looking at the capability and design of the vessel and the competency of the crew. In this case, USCG and DEC would work together on what plans should be in place in the case of a spill. He further noted that there would also be a tank farm up at the [mine] site which, depending on its size, may need a c-plan. Or, if it is smaller, there would be other requirements that come into play from SPAR.

COMMISSIONER HARTIG added that he thinks the concentrate and reagents that would be moved up to the [mine] site would be under federal jurisdiction. But, he said, DEC would be coordinating with the federal agencies so that DEC would be prepared in the event of a spill.

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REPRESENTATIVE PARISH offered his understanding that Commissioner Hartig said it is unclear whether Lake Iliamna is a navigable waterway.

COMMISSIONER HARTIG replied it isn't to him but that the USCG thinks it might be and it needs to be assessed by the USCG's legal team.

REPRESENTATIVE PARISH asked what the biological importance is of Lake Iliamna.

COMMISSIONER HARTIG responded he understands it is the biggest producer of red salmon in the world.

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COMMISSIONER HARTIG resumed his overview and related that no permit applications have been received by DEC's Division of Water, although baseline work has been done looking at water quality and mapping streams and background conditions in the area. He said DEC is assuming the project is going to need a Clean Water Act 402 permit, which is a wastewater discharge permit, at the mine because it is going to be generating processed water and putting tailings into an impoundment that could be potentially acid generating. The tailings would be covered with water to try to minimize oxidation. There will be other water needing treatment at the site, he stated, and to be discharged it will have to meet water quality standards. Under the Clean Water Act a permit will be needed from DEC to do that.

COMMISSIONER HARTIG explained DEC, as well as EPA, would also be looking at stormwater because in a big site like this there are EPA requirements to minimize the contact of the natural water with the disturbed areas where it might pick up metals and other contaminants, thereby minimizing the amount of water needing treatment. A wastewater treatment plant will be needed to collect and treat this water, and a permit will be needed so the discharge meets water quality standards. In issuing the permit, DEC would be looking at protecting the receiving water. He

offered his understanding that the discharge would be into the northern part of the Kuktuli River drainage, so the water quality in that stream would have to meet state water quality standards. He noted there is nothing in the project's application to the USACE that indicates it is going to be asking for any kind of variations from the state water quality standard, such as a mixing zone which would be an initial area of dilution that would allow some mixing in the Kuktuli River before it would have to meet water quality standards. Therefore, he continued, his presumption at this point is that there wouldn't be a mixing zone. He further noted there is nothing to indicate that the project would be looking at trying to find some variance to state water quality standards, such as site-specific criterium. So, under that scenario the water quality standards would have to be met.

COMMISSIONER HARTIG said water quality standards start getting into Tier 3 and these standards include the state's anti-degradation policy. Initially all waters of the state were designated for all uses, with these uses including protection of the growth and propagation of freshwater aquatic life, drinking water, contact recreation including eating the fish that a person would catch, non-contact recreation, and agriculture use. He explained that DEC sets criteria for different types of pollutants, such as copper, zinc, lead, so that the amounts of those pollutants in the water would not exceed a threshold that would impair that designated use. When looking at a project like this that would introduce into the stream a new pollutant or more of a pollutant that may already be there, DEC must figure out how much of that pollutant is going to end up in that water, what the designated uses are, and whether it would exceed the criteria that provide that threshold for how much could be in that water to protect that use.

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CO-CHAIR JOSEPHSON noted that an application has been made by members of the Bristol Bay community to classify the Kuktuli River as a Tier 3.

COMMISSIONER HARTIG confirmed such an application has been made.

CO-CHAIR JOSEPHSON asked whether Alaska has a Tier 3 criteria that has been codified and adopted, and if not, how it would be known whether the Pebble Project can meet the standards.

COMMISSIONER HARTIG answered that under the federal Clean Water Act (CWA), each state is required to have water quality standards for antidegradation. It describes the [framework and methodology] that will be used before a decision is made to allow any pollution to go into a water, he explained. This is done by first classifying the water into Tier 1, 2, or 3, the three that are generally presumed to be required under the CWA. A Tier 1 stream doesn't currently meet all water quality standards; a Tier 2 stream meets all the water quality standards for the designated uses, so it would be protective of aquatic life, drinking water, and so forth; a Tier 3 stream is the highest level of protection and is described as outstanding natural resource waters. The state has the option of choosing whether to designate any of them; for example, Washington state and Alaska have not designated any Tier 3 waters. If a state does designate a Tier 3 water, then CWA and EPA regulations provide that the water quality existing at the time of the designation must be maintained. It has been interpreted to mean that, other than very temporary things such as siltation from nearby construction activity, no additional pollution can be allowed in that water, regardless of whether that additional pollution would exceed a criterium protective of designated uses. For example, he explained further, if a facility is already discharging into a Tier 3 water, it could continue to discharge as it has been, but would be prohibited from undertaking any activities that would discharge additional amounts of an existing pollutant or a new pollutant. A Tier 3 water isn't necessarily a pristine water, it can also be a water that is very important for recreational use or ecological significance, so a Tier 3 water could be something like a hot spring that people want to bathe in.

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COMMISSIONER HARTIG continued his answer and reiterated that there are no Tier 3 waters in Alaska and said most of the waters in the state are Tier 2 waters. It would take a legislative act to get a Tier 3 water designation in the state, he advised. If the legislature did that, then federal law and DEC's regulations would kick in and the water would be protected. The Tier 3 protection process is there, it's just there is not a process outside of the legislative process for designating a Tier 3. For the past 10 years, he noted, DEC has been working to put together implementation guidance that talks about how to implement the state's antidegradation policy, which has been around since about 1996. He said he will probably be signing another set of regulations on that in the next day or two that

further clarify how [DEC] treats a Tier 3 water in a permitting scenario. [The department] has tried for some time to establish a public process where members of the public could nominate a water for Tier 3 - there is no requirement in the CWA to have such a process - but the governor feels strongly that there should be one in Alaska. The main sticking point, he related, has been the question of who would make this decision on a nomination. There is division in the public comment - some people believe it should be a legislative decision because of the long-term implications of a Tier 3 designation and what impact it might have on future development, and some people believe it should be an administrative action that should be based on objective criteria and leave the politics out of it. Therefore, if a process is wanted for the public to nominate then these things need to be filled in.

CO-CHAIR JOSEPHSON recalled that the administration did have legislation on that and said more discussion is needed on it.

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SAM COTTEN, Commissioner, Alaska Department of Fish & Game (ADF&G), said he will discuss ADF&G's role in habitat permitting generally as well as specifically for the Pebble Mine. He introduced the department's staff who are doing this work: Ron Benkert, Kate Harper, and John Brenkin.

COMMISSIONER COTTEN related that in addition to its permitting responsibilities, ADF&G is involved with at least five habitat partnerships around the state, as well as partnerships with communities, tribal groups, local governments, U.S. government, oil companies, and sport and commercial fishing groups, to contribute to healthy salmon habitat projects. The department has lots of hands-on experience with standards that are used to design structures, such as culverts and bridges that help fish passage and help improve salmon habitat. He noted that these are the same kind of standards that ADF&G applies to the people coming in for permits.

COMMISSIONER COTTEN began his PowerPoint presentation entitled, "House Resources Committee Pebble Project Update," dated 2/21/18. He displayed slide 2 and reviewed ADF&G's four statutory authorities: the Fishway Act, Alaska Statute (AS) 16.05.841 regarding fish passage; the Anadromous Fish Act (AS 16.05.871), which is the department's primary permitting authority for anadromous fish streams and bodies of water; [Special Area Permitting (5 AAC 95.700)], the general provisions

in the department's regulations that deal with how permits are applied for and handled; and a fish resource permit [from the Divisions of Sport Fish and the Division of Commercial Fisheries], which is in Title 16 for the purposes of handling and transporting live fish.

COMMISSIONER COTTEN turned to slide 3 and explained that ADF&G's general role in mining project evaluation is to work with the applicant through the department's various divisions as well as other state agencies. The department is part of the Large Mine Permitting Team (LMPT), so in addition to receiving a permit ADF&G works with the people who are applying the permit and help them understand what is going to be required in terms of study, design, data collection, and so forth.

COMMISSIONER COTTEN moved to slide 4 and noted ADF&G evaluates mine projects. In addition to the site development, he said, ADF&G is also involved in the infrastructure that supports site development, such as roads and pipelines. No large development is the same as another one, so ADF&G must evaluate the unique characteristics of each large project and internally and otherwise determine which specific permits are going to be required for which projects.

COMMISSIONER COTTEN displayed slide 5 which listed activities that would typically require fish habitat permits. [The listed activities were: construction of fish barriers; flow reduction; bridges, culverts, buried pipelines; water withdrawal and intake structures; stream re-alignment and diversion channels; and instream mitigation projects.]

COMMISSIONER COTTEN turned to slide 6 and explained that once a permit is issued ADF&G remains involved with site inspections, ongoing monitoring to ensure compliance with the permits, and amending habitat permits if necessary.

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COMMISSIONER COTTEN moved to slide 7 and pointed out that ADF&G is currently reviewing the Pebble Project's Section 404 permit application with the U.S. Army Corps of Engineers (USACE), and that ADF&G will be participating in the USACE Notice of Intent (NOI) and the scoping opportunities. He noted that a change in the project is a transportation corridor and said ADF&G will be involved in evaluating what permits are going to be needed in that area. The transportation corridor and gas line would get

close to the McNeil River bear viewing area, he continued, and people have expressed interest in considering that.

COMMISSIONER COTTEN reviewed slide 8 and noted the project activities for which fish habitat permits will likely be required from ADF&G. He said ADF&G will likely receive permit applications for such things as culverts, pipelines, and barge landings. He displayed an aerial view (slide 9) of the overall project area, which extends from the mine site to where a new port would have to be developed. He also displayed a map depicting the sites where ADF&G has already done work regarding subsistence uses in the project area (slide 10).

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REPRESENTATIVE LINCOLN, regarding the permit requirement for crossings over fish bearing water, recalled that a presentation last week talked about how the area is covered with gravel and there is a lot of exchange of water across the area. He asked whether a stream that has no fish, but which is connected to streams that do, would have any relevance to whether it needs to be permitted.

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RON BENKERT, Regional Supervisor, Anchorage Area Office, Division of Habitat, Alaska Department of Fish & Game (ADF&G), replied that some previous hydrology studies have revealed ground connections. Specifically, there appears to be a strong groundwater connection between upper Talarik Creek and the south fork of the Kaktuli River, and there are probably other instances of that. He said ADF&G has not yet evaluated the areas along the new corridor. Some previous studies by Pebble Project consultants looked at instream flows and exchange of water near the mine site, but ADF&G has not had an opportunity to initiate any studies or recommend studies for looking at that specific kind of information on the new corridor. He advised ADF&G anticipates that additional studies will be conducted to clarify whether the old studies are still valid or what additional information needs to be obtained to inform the department's permitting decision. A lot of work still needs to be done, he continued, as to what type of physical information is going to be needed to evaluate the project.

COMMISSIONER COTTEN said the Section 404 permit application that has been submitted suggests a certain number of culverts and bridges. He stated that ADF&G will evaluate and determine

whether additional requirements are needed for culverts, bridges, or any other crossings. So, even if something might not be in the permit application, ADF&G would have potentially an additional evaluation as to what else might be needed.

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CO-CHAIR JOSEPHSON inquired whether ADF&G can make those sorts of requests of the applicant before it rules on permits.

COMMISSIONER COTTEN replied, "Absolutely yes."

COMMISSIONER COTTEN returned to his presentation and reiterated that slide 10 displays the work ADF&G has done to identify subsistence use. He explained that slides 11 and 12 provide a general description of some of the studies that have previously been conducted. He said copies of these studies can be provided to the committee upon request. He noted ADF&G has identified areas where additional studies are needed, such as evaluating what permits will be required for the new transportation corridor. Additionally, the new mine footprint will probably need some reevaluation as to which permits ADF&G will have to be involved with.

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REPRESENTATIVE BIRCH asked where things are at as far as federal intervention on state land. He further asked whether [the state] has taken a position in opposition to federal preempting of state authority on state lands.

COMMISSIONER COTTEN responded there is a lot of case law on that subject. He said he thinks it's clear that the United States has an ability to require a Section 404 permit, for example, and he doesn't think the state can tell the federal government that it cannot do that. The state is not limited by federal regulations or standards, he added, the state can be more stringent than the federal government.

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CO-CHAIR JOSEPHSON noted the Pebble permit application to the USACE proposes an 83-mile [transportation] corridor. He asked how ADF&G would analyze the potential impacts to fish habitat and mitigation for those impacts to those streams on the transportation corridor.

COMMISSIONER COTTEN answered that ADF&G would do an evaluation of each of the potential stream crossings that the department identifies. He deferred to Mr. Benkert to answer further.

MR. BENKERT explained that once the state process is initiated, teams called technical working groups are put together to evaluate any kind of study plan proposals by the project proponents and to provide suggestions to get a study plan together that is going to get at the correct information for ADF&G. One of those study plans would be to evaluate the stream crossings along the road corridor, he continued. The department would also physically visit each one of the sites and do a site characterization to provide recommendations as to what the design standards should be on each specific crossing. A lot of work still needs to be done; ADF&G will get out on the ground as well as initiate studies to look at fish, hydrology, and geomorphology of those crossings so that the crossings can be designed appropriately.

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CO-CHAIR JOSEPHSON inquired whether the department can charge the applicant for those costs under the law.

MR. BENKERT replied that a project of this size goes through the Office of Project Management & Permitting (OPMP). Typically, the applicant enters into a Reimbursable Services Agreement with the State of Alaska. Those funds provided by the applicant can be utilized by ADF&G for its work specifically on this project.

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REPRESENTATIVE BIRCH asked whether the Stand for Salmon Initiative is an impediment to project construction in Alaska. He further asked for ADF&G's opinion on the initiative. He opined that the state has a rigorous mechanism already in place to protect the state's fisheries and expressed his concern that the initiative will curtail development statewide.

COMMISSIONER COTTEN responded that litigation is ongoing on the initiative and meanwhile ADF&G will continue to do its job and follow the law and permitting requirements. At this point, he said, the department cannot give an opinion on the initiative.

REPRESENTATIVE BIRCH inquired whether Commissioner Cotten could provide an assessment to the committee as to what the initiative would do to the state's permitting environment if passed.

COMMISSIONER COTTEN said the department is currently cooperating with the legislature on legislation that is similar, although he doesn't know whether it would replace the initiative. He said ADF&G is happy to work with the legislature to evaluate impacts of different proposals that would include changes to Title 16.

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**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:18 p.m.