

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

January 31, 2017

1:31 p.m.

MEMBERS PRESENT

Senator Bert Stedman, Chair
Senator Anna MacKinnon
Senator Click Bishop
Senator David Wilson
Senator Dennis Egan

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION: NEPA PERMITTING PROCESS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

LANCE MEARIG, Chief Engineer
Design & Engineering Services
Department of Transportation and Public Facilities (DOTPF)
Juneau, Alaska

POSITION STATEMENT: Presented information on the NEPA permitting process.

TAYLOR HORNE, Environmental Program Manager
Department of Transportation and Public Facilities (DOTPF)
Anchorage, Alaska

POSITION STATEMENT: Presented information on the NEPA permitting process.

JEFF BRUNO, Acting Executive Director
Office of Project Management and Permitting (OPMP)
Department of Natural Resources

Anchorage, Alaska

POSITION STATEMENT: Presented information on permitting large projects in Alaska.

ACTION NARRATIVE

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CHAIR BERT STEDMAN called the Senate Transportation Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Wilson, MacKinnon, Egan, and Chair Stedman. Senator Bishop arrived shortly thereafter.

PRESENTATION: NEPA PERMITTING PROCESS

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CHAIR STEDMAN announced that the only order of business would be a presentation on the National Environmental Policy Act (NEPA) permitting process and its effects on development by the Department of Transportation and Public Facilities and the Department of Natural Resources. He requested that the departments provide ideas for shortening and reforming the NEPA permitting process. He announced the arrival of Senator Bishop.

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LANCE MEARIG, Chief Engineer, Design & Engineering Services, Department of Transportation and Public Facilities (DOTPF), presented information on the NEPA permitting process. He began by highlighting Brett Nelson, an employee of DOTPF. Mr. Nelson works as a Northern Region Environmental Manager and handles some of the NEPA process work.

MR. MEARIG said his presentation will review DOT's mission to "Keep Alaska moving through service and infrastructure." He said he will address DOT's statutory responsibilities and explain its relationship with the federal government and its core services. He pointed out that most of the capital funding comes from the Federal Highway Administration (FHA) and the Federal Aviation Administration (FAA) with some from the Transit Administration. The total dollar amount coming to Alaska each year is \$750 million. He said he would describe Alaska's transportation program.

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He related that he will discuss the NEPA process and flow chart and some of the causes for permitting delays. He will address ideas for streamlining the permitting process and an overview of the project development process.

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MR. MEARIG showed a slide of federal laws and executive orders affecting DOT projects over a long period of time. He emphasized the complexity involved in project development.

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SENATOR BISHOP asked whether asphalt knows how many permits are needed for one lane mile.

MR. MEARIG said it does not.

SENATOR BISHOP asked which of these federal law or agencies does not add value to a project. He provided an example of how much a paving project cost in 1973-4 in Healey - \$1.7 million for 23 lane miles. He stated, "You can barely get one lane mile of asphalt for that price today, and herein lies the problem." He supported getting rid of any laws that are not applicable and contacting the Alaska delegation for some relief.

CHAIR STEDMAN thought that would be addressed later in the meeting.

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MR. MEARIG explained the NEPA process from proposed federal action through the steps needed to start a project. He discussed the process for highway projects and aviation projects, as well as the paths of environmental assessments and environmental impact statements.

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MR. MEARIG turned to potential causes of delay. He said they can happen prior to NEPA approval, concurrently with it, or after NEPA approval. He showed a typical list of approval levels required for large projects.

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TAYLOR HORNE, Environmental Program Manager, Department of Transportation and Public Facilities (DOTPF), presented information on the NEPA permitting process. He presented ideas for streamlining environmental permitting: NEPA assignment program, Section 404 wetlands permitting, and Endangered Species Act and Marine Mammal Preservation Act (ESA/MMPA) authorizations.

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MR. HORNE described more ideas for streamlining environmental permitting: Section 4 (f)/Section 106: relax the requirement to offer historic bridges for sale before demolition.

SENATOR EGAN requested an example. He recalled getting rid of the old Douglas Bridge and asked if it complied with Section 4 (f)/Section 196.

MR. HORNE offered to get back to Senator Egan. He said he knew of one recent example.

SENATOR EGAN said there was one in Gustavus.

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MR. HORNE spoke of the example for streamlining environmental permitting regarding bald eagle permits.

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MR. HORNE discussed the 2015 FAST Act, the most recent national transportation bill. It includes many project delivery reforms.

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SENATOR BISHOP said he was told that with 100 percent federal funds, projects typically took six years to go through the permitting process. He asked if that is accurate.

MR. HORNE said it depends on location and the NEPA categories of exclusion. The vast majority of DOT projects take a year.

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MR. HORNE explained the categorical exclusions. On average there are 190 highway project starts and 97 percent are categorical exclusions (CE) and need environmental permits. Of those, 91 percent are programmatically approved in the region. The average CE approval time is 112 days. Environmental Assessments (EAs) and Environmental Impact Statements (EISs) are rare, but more complicated.

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MR. MEARIG explained the bridge permitting process. Bridge projects require permitting if they are constructed across navigable waters and are rare. There was only one such permit in the last 5 years. The Federal Highway Administration is able to grant 144(c) exemptions, so the state does not have to go through the permitting process. He said there have been some delays due to normal project delays, such as scope changes.

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MR. MEARIG discussed airport permitting. He said the FAA leads all the agency coordination and approves all environmental documents, although DOT prepares some documents. Airport permitting is similar to highway permitting. The FAA cannot delegate NEPA responsibilities to a state because most airports in the Lower 48 have individual owners. Alaska is the only state that operates over 200 airports.

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SENATOR EGAN asked noted Juneau has a municipal-owned airport and asked how it fits into the process.

MR. MEARIG said the environmental process for airports is similar to the highway permitting process.

SENATOR EGAN said Juneau does their own environmental processing through the FAA.

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SENATOR MACKINNON asked whether the department has requested an exclusion because of all of Alaska's state-supported airports.

MR. MEARIG did not think so.

SENATOR MACKINNON suggested the Transportation Committee and DOT ask Alaska's delegation if DOT could divert and handle smaller projects for permitting for cost savings, considering Alaska has unique numbers and geography. She requested Chair Stedman make the request.

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CHAIR STEDMAN asked why DOT has not considered this already.

MR. MEARIG agreed to provide that information.

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MR. HORNE explained wetlands permitting and mitigation. The United States Army Corps of Engineers (USACE) regulations requires DOT to avoid, minimize, and mitigate project impacts. Sometimes no mitigation is required. He listed the options when mitigation is required: mitigation banks, in-lieu fee providers, or permittee responsible mitigation. He explained the process of each option. He provided an example of the mitigation process regarding failing culverts. He noted the cost of mitigation varies based on the number of acres impacted, the quality and function of wetlands, the price per mitigation credit, and the

location. He said it is \$2,000 to \$10,000 per credit in rural areas and \$20,000 to over \$100,000 per credit in urban areas.

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CHAIR STEDMAN stated that it seems problematic from many angles, and he called it virtual extortion.

SENATOR EGAN agreed. He asked if the mitigation parameters are different for a state constructing an airport in Angoon versus in Juneau.

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MR. HORNE asked if Senator Egan is referring to mitigation banks.

SENATOR EGAN said yes.

MR. HORNE explained that in the ASACE regulations there are preferences for wetlands permitting. First, the builder must look to see if there is a mitigation bank in the area that can sell credits.

SENATOR EGAN asked who does it.

MR. HORNE said the applicant does.

SENATOR EGAN asked whether the FAA determines the dollar amount.

MR. HORNE explained that the price per credit is determined by the mitigation provider - a third party entity - and is based on the market. In the Anchorage area there are multiple providers; in large portions of Alaska there is only one provider in the market.

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SENATOR MACKINNON asked if it is fair to say that the mitigation dollars are different, but the parameters for applying for the permitting are somewhat the same. For example, if mitigations are required in different areas, they would be applying similar criteria, but depending on the sensitivity of the land, the dollars could be higher.

MR. HORNE clarified that the regulations are the same, but the cost can change depending on location.

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CHAIR STEDMAN suggested the committee revisit the topic of mitigation because of concern by the public over unfair market price. It has been termed "legal extortion." He said the committee will hear this topic as a separate subject.

SENATOR MACKINNON appreciated that the mitigation bank and in-lieu fee provider are easy to manage, however, she said the qualified fees charged are federally reimburse making it uneconomical because the federal government is driving costs up. It is especially onerous for private citizens.

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SENATOR BISHOP gave an example of an acre in Prudhoe Bay (Deadhorse) where people have been charged \$40,000. He appreciated Chair Stedman's willingness to return to the topic for a deeper discussion.

CHAIR STEDMAN added that it is a real point of agitation for small developers. There is concern over who controls the mitigation banks and what will happen in the future.

SENATOR MACKINNON wondered if the courts are involved in some of the awards and may be driving costs up.

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MR. MEARIG thanked the committee and offered to answer questions.

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SENATOR BISHOP brought up a pet peeve: the Stormwater Pollution Prevention Plan (SWPPP) permitting under the Clean Water Act. He maintained that it should not be a blanket approach on every project and is a waste of dollars.

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SENATOR MACKINNON asked if all agriculture in the Lower 48 is exempt from SWPPP.

MR. HORNE offered to find out.

CHAIR STEDMAN thanked the presenters. He said the topic of mitigation will be addressed further.

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JEFF BRUNO, Acting Executive Director, Office of Project Management and Permitting (OPMP), Department of Natural

Resources, presented information on permitting large projects in Alaska.

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CHAIR STEDMAN noted technical difficulties.

MR. BRUNO reported that his office is responsible for coordinating large-scale projects through all phases of development. It coordinates state permits and also represents the state within the cooperating agency status of the National Environmental Policy Act (NEPA). He said he will discuss the permitting process, as well as some of the potential hurdles and pitfalls that exist along the way. He noted that DNR projects are very different than DOT projects.

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He showed a graph of the potential timeline for a mining project where nine years are spent collecting data or in the permitting process. He stressed that collecting environmental baseline data is the foundation of a good project and often mistakes are made, sometimes because there are not clear expectations or too many changes are made. He suggested efficiencies can be created by first communicating with the Office of Project Management and Permitting (OPMP).

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MR. BRUNO explained how OPMP works during every phase of the project to integrate the federal, state, and local permitting processes so they run concurrently. His slide showed a parallel process when everyone works together on permitting. He emphasized that later in the process if the design is changed, problems occur and it can be more expensive. He pointed out that the state and federal governments can issue permits at the same time. He said it is important for the public's understanding if the permits are coordinated first and then communicated.

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MR. BRUNO showed a collection of the main permitting authorities of state and federal agencies. The NEPA process is triggered when the project requires federal agency involvement.

He noted a complication because each federal agency has a different set of values and perspective. How NEPA is interpreted is left up to the lead federal agency, which is key in making

decisions and preventing delays. The agencies are getting better in cooperating with each other.

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MR. BRUNO turned to a graph on the NEPA process for the development of an EIS.

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He showed a map of a proposal track for an EIS. The EIS process can take several years and be very expensive. It can cost hundreds of millions of dollars for baseline data collection and NEPA, federal, and state permitting. There are no guarantees that the permitting process will be legally defensible. He pointed out that OPMP works with the federal agencies in order to gather information and facilitate a smooth process.

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MR. BRUNO turned to the state permitting process for a large mine permit. He noted the complexity of the process. He said OPMP can assist in coordinating the permits.

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SENATOR MACKINNON asked about the Health and Social Service aspect and the Health Impact Assessment (HIA). She inquired what measurable criteria is being used.

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MR. BRUNO said OPMP developed HIA out of the NEPA process. The Department of Health and Social Services (DHSS) developed a team to analyze health impacts of a project and how they can be mitigated. He noted DHSS has a tool kit on their website regarding health impacts on projects.

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MR. BRUNO explained that the NEPA process and permits have the longest lead time. There must be a development of an EIS, which can take up to ten years. Defined steps are required for an EIS, but the processes are not defined and are inconsistent. Federal agencies have different methodologies. He gave an example of federal agency inconsistencies related to ConocoPhillips.

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MR. BRUNO said OPMP recommends early consultation with regulating agencies to help assure correct baseline information is collected. He encouraged applicants to talk to OPMP to meet with regulators for clarification.

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He addressed litigation, which can cause severe time delays in many ways. He used Kensington Mine as an example. Sometimes litigation can make future decisions or processes more efficient or transparent, depending on the situation and outcome. The fear of litigation can also add to timelines.

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MR. BRUNO stressed the importance of early coordination. Project proponents should start a dialog with state, federal, and local entities early in the process to set clear expectations. He listed some of the suggestions for avoiding the pitfalls of permitting. He said general permits can streamline the process. Presidential, executive, and administrative orders can provide efficiencies and "fast track" can also reduce timelines.

He noted that the Council for Environmental Quality is the federal regulator that is in charge of NEPA and is responsible for providing guidance. Right now, there is a lot of room for interpretation. He brought up the cost of mitigation for wetland permitting. He said that DNR is in the process of developing a litigation bank that allows state resources to be available for purposes of mitigation.

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CHAIR STEDMAN said the committee would address mitigation again at a future date.

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There being no further business to come before the committee, Chair Stedman adjourned the Senate Transportation Standing Committee at 2:51 p.m.