

HB

14

# COMMITTEE REPORT

## HOUSE

FINANCE

FURTHER:

3/10/85

Date: 11/10/85

Mr. Speaker:

The Committee on JUDICIARY has had HS 14

"An Act relating to processing of permits by state agencies; and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HS 14 (CS)  same title
- new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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[Signature]

CHAIRMAN

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

(7)

5/27/83

Date: 6-10-83

Mr. Speaker:

The Committee on JUDICIARY has had H.R. 14

"An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

- do pass [ ] do not pass
- do pass with attached amendments(s)
- replace with CS for H.R. 14 (CS) [ ] same title [ ] new title
- and recommends \_\_\_\_\_
- [ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
- [ ] reports it back without recommendation [ ] Zero Fiscal Note Attached
- [ ] referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING DO PASS

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MEMBERS HAVING OTHER RECOMMENDATIONS:

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CHAIRMAN

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 14 Date on Bill: 1/18/83  
 Title: Permit Processing/Alaska Coastal Management Program  
 Sponsor: Representative Martin  
 Requestor: \_\_\_\_\_

1. Estimated fiscal impacts on: Department of Community & Regional Affairs

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital				-0-	-0-	-0-		
Operating				-0-	-0-	-0-		
Total				-0-	-0-	-0-		

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

The reshuffling of permit authority would have no impact upon the Department. No fiscal impact.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Richard Rainery *RR* Phone: 465-4703  
 Division: Commissioner's Office Date: 2/15/83  
 Approved by Commissioner: *[Signature]* Date: 2/18/83  
 Department: Community & Regional Affairs

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83

STATE OF ALASKA  
FISCAL NOTE

Revision Date 1983

REQUEST

Bill/Resolution No.: HB 14 No 2  
 Title: Re: Permitting  
 Sponsor: Marrin  
 Requestor: House Labor and Commerce

II. FISCAL DETAIL

Agency Affected: Natural Resources  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected: several

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	see analysis					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	see analysis					

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS:

Actual final impacts of this legislation will depend upon the specifics of resulting regulations, inter-agency memoranda of understanding detailing responsibilities and procedures, and RSA funding arrangements and personnel transfers. In any event, DNR will require additional personnel in order to act as lead agency.

Prepared By: Mark Wittow *Mark Wittow*  
 Division: Commissioner's Office  
 Approved *for* Commissioner: *Mary Halloran*  
 Department: Natural Resources

Phone: 465-2400  
 Date: 4/15/83  
 Date: 4/18/83

Distribution:

Original to Legislative Finance  
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STATE OF ALASKA  
FISCAL NOTE

Revision Date                     , 1983

*Page 1 of 2*

I. REQUEST

Bill/Resolution No.: HB 14 701  
 Title: "...processing of permits..."  
 Sponsor: Repr. Martin  
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: General Govt.  
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director Phone: 465-3672  
 Division: Administrative Services Division / Date: April 13, 1983  
 Approved by Commissioner: Richard I. Pegues / 1-012 Date: April 13, 1983  
 Department: Department of Law

Distribution:

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- Copy to Department (for Governor introduced bills)
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- Copy to Requestor (if different from Sponsor)



COMMITTEE REPORT

510

HOUSE

JUDICIARY

FINANCE

FURTHER:

(9)

4/26/83

Date: 5/9/83

Mr. Speaker:

The Committee on RESOURCES has had HB 14

"An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 14 (Resources)  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

Dick Smith  
Allen F. Asha  
John P. ...  
John ...

Robert J. ...  
John ...  
John ... Do Not Pass  
John ... It's a travesty

John ...  
 CO-CHAIRMAN  
John ...

COMMITTEE REPORT

4/26

HOUSE

(7)

FURTHER: RESOURCES  
JUDICIARY

1/17/83

FINANCE

Date: 4/21/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 14

Relating to processing of permits by state agencies, and to administration of the Alaska Coastal Management program. //

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 14CL+C  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

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\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

Nick Koponen Do not pass

\_\_\_\_\_

\_\_\_\_\_

Rich (2/2/83) (1/0 RES)

J. Malone - DO NOT PASS  
UNLESS AMENDED

\_\_\_\_\_

CHAIRMAN

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

*Page 1 of 2*  
*701*

I. REQUEST

Bill/Resolution No.: HB 14  
Title: "...processing of permits..."  
Sponsor: Repr. Martin  
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law  
Program Category Affected: General Govt. BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Peques Director  
Division: Administrative Services Division Phone: 465-3672  
Date: April 13, 1983  
Approved by Commissioner: Richard C. Peques / FOR  
Norman C. Gorsuch, Attorney General Date: April 13, 1983  
Department: Department of Law

Distribution:

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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HR 14 *no 1 - page 272*  
Fiscal Note  
Analysis

This bill greatly shortens the permitting process time of state agencies. Although this will cause us to assist with some new regulations necessary for a shortened permit process for the permitting agencies, this additional work will not be time consuming or burdening. Therefore, the bill will have a fiscal impact on the Department of Law's operations. Considerable fiscal impact will occur on the part of agencies responsible for permits, such as Fish & Game, DEC and Natural Resources, as they gear up to review and issue permits in shortened times provided by the bill.

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

(7)

5/10/83

Date: May 25, 1983

Mr. Speaker:



The Committee on JUDICIARY has had HB 14

"An Act relating to processing of permits by state agencies; and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 14 (RES) [X] same title [ ] new title

and recommends \_\_\_\_\_

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation [ ] Zero Fiscal Note Attached

[ ] referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING DO PASS

Donna Buxner  
John D. Fisher  
Greg J. Hayes  
Alfred D. Bursell

MEMBERS HAVING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Alfred D. Bursell  
CHAIRMAN

# League of Women Voters of Alaska

COMMENT ON HB 14 REGARDING PROCESSING OF PERMITS  
FOR HOUSE JUDICIARY COMMITTEE  
May 25, 1983

The League of Women Voters of Alaska has followed the issue of processing of permits for several legislative sessions. We do not have a particular interest in the outcome of most permits, but we do have a great interest in the process of granting permits. We believe that the public interest in our air, water, and land resources must be protected. This should be the primary purpose of any permitting system. Further, the public must have appropriate opportunities to participate in the process. All factors in a permit decision must be balanced so that the greatest weight is given to the public interest.

The League of Women Voters of Alaska is composed of the five local Leagues in Ketchikan, Juneau, Central Kenai Peninsula, Anchorage, and Fairbanks, a provisional League in the Matanuska-Susitna area, a small unit in Kodiak, and a few scattered at-large members. We speak on selected governmental issues based on our principles and positions. The positions and principles are adopted following in-depth study and consensus among the whole membership.

The League of Women Voters of Alaska opposes HB 14. There has been no outpouring of public demand for this type of legislation. Rigid schedules should not be established by statute. We believe that any perceived problems with the permitting process have been and will continue to be corrected administratively. Administrative changes can provide the necessary flexibility to accommodate a variety of permits while providing for efficient processing of them.

We have some specific comments on the bill. The time limits for processing permits delineated in the bill do address some of the concerns we have had with some versions of bills dealing with this issue. There has been some provision made for public input in the allowable time limits. We still believe that the time limits are unnecessarily rigid for three reasons. First, there is no public demand for specific time limits. Second, we can envision cases where a field season would be desirable, or the issues surrounding a particular development would be so complex, that it might not be possible to reach a sound decision within the time limits. The bill does not permit much flexibility in these few cases. Thirdly, we are concerned that staffing levels at some future time may not be adequate to give full consideration to all permits applied for. Then many permit applications may face the provision for automatic approval. We do not believe that automatic approval upon failure to meet the time requirements is in the public interest. We can see a number of potential problems with this provision. For example, many permits may receive pro forma approval or denial without proper scrutiny in order to meet the requirement. In either case we suspect the result will be costly litigation which could add years of delay to any project.

Comment on HB 14, LWVAK  
House Judiciary Committee  
May 25, 1983  
page 2

The bill provides for designation of a lead agency. In principle this is reasonable. A "one-stop" process could be a great benefit to an applicant. In practice, an agency with an interest in a particular outcome may have difficulty fairly balancing conflicting information submitted by other agencies. The lead agency must be a neutral party in the process if the public is to have faith in its ability to balance competing factors.

The League of Women Voters of Alaska believes this bill is both unnecessary and unwise. There is no compelling need at this time to make statutory changes in the permitting process. This bill will not serve the public interest.

Prepared by Mary Beth Juday  
4837 Palo Verde Dr.  
Fairbanks, AK 99701  
479-3765

(2)

A M E N D M E N T

OFFERED IN THE HOUSE:

By: Representative Bussell

To: \_\_\_\_\_ CS \_\_\_\_\_ HOUSE BILL No. 14 (Resources)

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_ 5 \_\_\_\_\_

LINE: 14 \_\_\_\_\_

insert:

the Office of the Governor, Division of Policy Development and Planning.

delete:

[Department of Natural Resources.]

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

130 SEWARD STREET, SUITE 411

JUNEAU, ALASKA 99801

TELEPHONE (907) 586-2800

TELECOPIER (907) 586-9814

April 14, 1983

1127 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-1550  
TELEX 25-356

711 GAFFNEY ROAD  
FAIRBANKS, ALASKA 99701  
(907) 452-1668

1140 CONNECTICUT AVE., N. W.  
SUITE 1100  
WASHINGTON, D. C. 20036  
(202) 659-5800

\* NOT ADMITTED IN ALASKA

LLOYD V. ANDERSON  
LUANN E. BAILEY  
SUSAN P. BEHLKE  
RONALD G. BIRCH  
WILLIAM H. BITTNER  
WILLIAM P. BRYSON  
RODNEY B. CARMAN  
JOSEPH M. CHOMSKI  
JACK D. CLARK  
LARRY S. COHN  
PAUL L. DILLON  
ERIC A. EISEL  
JOSEPH W. EVANS  
JOSEPH W. GELDHOFF  
PAUL H. GRANT  
TIMOTHY M. HAAKE \*  
HAL R. HORTON  
CAROL A. JOHNSON  
MARC W. JUNE  
STANLEY T. LEWIS  
JEFFREY B. LOWENFELS  
CATHARINE C. MACKAY-SMITH \*  
PATRICK H. OWEN  
MICHAEL J. PARISE  
SUZANNE C. PESTINGER  
MICHAEL V. REUSING  
ELISABETH H. ROSS  
WILLIAM R. SATTERBERG  
E. BUDD SIMPSON  
DANIEL W. WESTERBURG

The Honorable Walt Furnace, Chairman  
House Labor and Commerce Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SSHB 14: Sealaska Amendments

Dear Chairman Furnace:

Following yesterday's hearing, I reviewed Sealaska's proposed changes to SSHB 14 with Bill Berrier. I believe the following accurately represents the results of our discussions:

1. Sealaska has proposed the insertion of a new subsection "e" to proposed AS 44.62.635. At yesterday's hearing, concerns were expressed that our amendments' reference to the "Division of Policy Development and Planning" was improper, since DPDP was being reorganized within the Office of Budget & Management. However, because the Governor's executive order creating that office was rejected by the legislature, and because legislation creating the office (SB 152) has not yet been enacted, it is proper drafting to continue to refer to the Division of Policy Development & Planning by its historical name;

2. Sealaska had proposed to add, as a new Section 4 to HB 14, the "Authority not Enlarged" section of its proposed legislation. See Sealaska bill, p. 3, lines 6-14. This section is particularly vital if the legislature is to solve the "foot in the door" problem described in my testimony of April 12th. Mr. Berrier sees no objection to the inclusion of this subject matter in the bill; however, he would prefer to see the issue addressed in the existing lead agency section of HB 14. In response to Mr. Berrier's suggestion, Sealaska would recommend that new subsections (f) and (g) be added to proposed AS 44.62.635 to read:

- (f) "Nothing in this section, or AS 46.40, may be construed as authorizing a lead agency, or any resource agency, to deny or condition a consistency determination because of impacts which may be caused by activities not themselves requiring a state permit or disposal of interest in state land."
- (g) "In making a consistency determination under this section for an activity occurring outside the boundaries of a coastal resource district with an approved district plan, the lead agency, or any resource agency, may consider only those statewide standards and guidelines adopted by the Alaska Coastal Policy Council under AS 46.40.040(1)."

3. Sealaska, finally, had proposed the insertion, as a new Section 4 to HB 14, of proposed AS 46.40.065 (Sealaska bill, pg. 2, lines 4-13). This provision would have required landowner consent before "areas which merit special attention" could be designated outside the boundaries of coastal resource districts. Without this provision, the Alaska coastal policy council will retain almost unbridled authority to impair or prohibit major resource development activities in the unorganized borough.

Mr. Berrier believes that the insertion of this provision would violate the "one subject rule" (Alaska Const., Art. II, Sec. 13) because HB 14 deals only with Coastal Management procedures, while Sealaska's proposed 46.40.065 deals with the substantive authority of the Alaska Coastal Policy Council.

Sealaska respectfully disagrees with Mr. Berrier's conclusion. The Alaska Supreme Court has, repeatedly, very broadly construed the state's "one-subject" rule, and has required only that the subjects included bear some rational relationship to each other, or fall within the same "general idea." Gellert v. State, 522 P.2d. 1120, 1123 (Alaska 1974); see also North Slope Borough v. Sohio Petroleum Corporation, 585 P.2d. 534 (Alaska 1978). The driving force behind permit reform legislation over the past four years has been to ease the burden which the Alaska coastal management program has placed upon private industry in the state. Major industry in the state will be benefited little by the designation of a lead agency, if that agency may still prohibit major resource development in the unorganized borough without the landowners meaningful participation in the process. Both HB 14, and proposed AS 46.40.065, very much deal with the procedures governing the application of the Alaska Coastal Management Act to private industry. As a result, they both

The Honorable Walt Furnace, Chairman  
April 14, 1983  
Page 3

"embrace some one general subject... [and] fall under some one general idea..." Gellert v. State, 522 P.2d. at 1123. Thus, there hardly appears the "substantial and plain" violation of the one-subject rule which would raise a serious constitutional question. North Slope Borough v. Sohio Petroleum Corporation, 585 P.2d. at 545.

Nonetheless, should the committee conclude that a significant "one-subject rule" problem exists with respect to the inclusion of proposed AS 46.40.065, Sealaska would urge the committee to include that provision as a companion bill. The unilateral designation of AMSA's in the unorganized borough is a very serious problem, and one which deserves consideration in conjunction with any permit reform legislation.

Sealaska appreciates the consideration given its amendments by this committee. We, in turn, have made every effort to accommodate our amendments to the needs of other industries in the state, and as well to the common goal of insuring the prompt consideration and passage of HB 14. Since the enactment of HB 14 this session will in all likelihood end the "permit reform" debate before the legislature, I'm sure the committee can appreciate Sealaska's concern that the needs of the Southeast Alaska timber industry, and of Native regional corporations throughout the state, are recognized in any permit reform legislation.

Sincerely,

BIRCH, HORTON, BITTNER,  
PESTINGER AND ANDERSON

*Jon K. Tillinghast* 6/5/83

Jon K. Tillinghast

JKT:rdg

# Alaska MUNICIPAL League

TELEPHONES  
(907) 586-1325  
586-6526

204 N. FRANKLIN ST.  
JUNEAU, ALASKA 99801

May 23, 1983

To: House Judiciary Committee  
From: Ginny Chitwood *Ginny*  
Re: HP 14 - Processing of Permits

Over the past several years during the debate on permit reform bills, there have been a lot of questions raised by municipalities about where local governments and coastal resource districts fit in the whole process of consistency decisions and the approval of permit applications. In one version, local recommendations were to be given "great weight", but what that phrase meant was unclear. This year, the local recommendations need to be "considered", according to HB 14, and are not mentioned at all in SB 219. Does this mean that local planning and zoning ordinances are no longer valid? that approved coastal management programs can be overridden? that the wishes of the residents of an area have no more weight than a letter from John Doe in Podunk? We're sure that's not the legislature's intent, but that is not clear from the legislation.

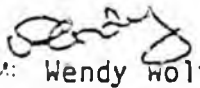
AML has consistently endorsed permit reform, either administratively or legislatively, but opposes streamlining strictly for the sake of streamlining, especially if the wishes of local people are going to be overridden in the process. We hope that you will schedule a teleconference hearing to ensure the widest possible participation in the discussions of this bill.

James M. Souby  
Director  
Division of Policy Development  
and Planning

DATE: January 3, 1983

FILE NO:

TELEPHONE NO:

  
FROM: Wendy Wolf  
State-Federal Coordinator  
Division of Policy Development  
and Planning

SUBJECT: Oil & Gas Permits  
in 1982

In 1982, 22 federal Oil and Gas Permit reviews were completed by this office. All these projects were declared consistent. By each oil company, the number of days needed for each review is indicated:

ARCO	30(2) 38(3) 41 42 44 45 52 112	This averages out to 46 days each, or 40 days exclusive of the 112 day review. The latter is Put 7 - a previously inconsistent project. 3 other projects were withdrawn by the applicant prior to review close out.
EXXON	51	
MOBIL	33	
PHILLIPS	39 41	
SHELL	43 48	
SOHIO	42 30	
TENNECO	55	
UNION	142 146	These Union permits were held up by negotiations between Union and DEC over the necessity for discharge permits for relief pits.

The overall average review time is 53.9 days for these permits. Exclusive of the 3 lengthy reviews, the review time averages 41 days.

Our new expediting procedures appear to be working well.



1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 CITY OF ANGOON and SIERRA )  
4 CLUB, )  
5 )  
6 Petitioners, )  
7 )  
8 vs. )  
9 )  
10 ALASKA DEPARTMENT OF )  
11 ENVIRONMENTAL CONSERVATION )  
12 and SHEE ATIKA, INC., )  
13 )  
14 Respondents. )  
15 )  
16 (C) )

FILED  
STATE OF ALASKA - 1ST DISTRICT  
AT JUNEAU

FEB 10 1983

By SAW

No. 1JU-82-1919 Civil

17 MEMORANDUM OF DECISION AND ORDER

18 Upon hearing oral arguments of counsel and testimony of  
19 three witnesses, and upon consideration of the pleadings and  
20 memoranda, the court has arrived at the following conclusions.

21 1. Petition for Review

22 The Petition for Review is granted, pursuant to App. R.  
23 610(b)(1). Postponement of review of the November 8, 1982  
24 decision of the Commissioner of the Department of Environmental  
25 Conservation (DEC) on petitioners' emergency motion for stay  
26 would result in injustice. The injustice consists of petitioners  
27 inability to obtain a ruling from the Commissioner of DEC on  
28 their request for a stay before clearcutting takes place.

29 The Petition for Review raises the question of whether the  
30 Commissioner of DEC erred in concluding he had no jurisdiction to  
31 enjoin the clearcutting at issue. The court finds in favor of  
32 the petitioners on this question. The Commissioner himself  
33 recognized that he should consider standards for protection of  
34 the coastal zone under the Alaska Coastal Management Act when  
35 reviewing respondent's plans to construct a log transfer facility  
36 However, the Commissioner did not feel that the proposed clear-  
37 cutting was a proper subject of his permitting authority.  
38 Therefore, he held he had no power to enjoin the clearcut.

39 The Coastal Management Act should be given a broader reading.

1 The Commissioner's authority is not delineated by the activity  
2 on the face of the application for a Certificate of Reasonable  
3 Assurance. The Act envisions a comprehensive review by agencies  
4 of impacts to coastal land and water. Consequently, activities  
5 closely associated with uses specifically mentioned in permit  
6 applications must also be considered.

7 The court finds no compelling reason to treat the clearcut  
8 separately from the log transfer facility. The cutting, by  
9 respondents' own testimony, will serve a variety of functions,  
10 all related to the sorting, storage, and transfer facilities of  
11 this project. The fact that some of the cut acreage is in-  
12 tended for a log sort yard does not alter the court's reasoning.  
13 No persuasive evidence was presented to require that a sort yard  
14 must receive separate consideration. Since the Commissioner has  
15 the authority, and is in fact mandated, to determine consistency  
16 with the ACMP for the entire project at Cube Cove, he has the  
17 jurisdiction to issue a stay if warranted.

18 The case is remanded to the Commissioner of DEC to determine  
19 whether the clearcutting should be enjoined pending the  
20 adjudicatory hearing. The interests of judicial and adminis-  
21 trative economy dictate that DEC make this decision, not the  
22 court, given the extensive record before the department in this  
23 case already. In remanding, this court is not making any  
24 judgment on the merits of petitioners' emergency motion for stay.  
25 The court is only confirming the Commissioner's authority, and  
26 directing that he exercise that authority as soon as possible.

27 2. Preliminary Injunction

28 Ordinarily, the function of a preliminary injunction is to  
29 preserve the status quo -- or establish a new status -- while an  
30 underlying action is pending. The showing for an injunction  
31 involves three factors: irreparable harm to petitioners, little  
32 or no harm to respondents, and the existence of a substantial

1 question presented on the merits.

2 In this case, the underlying action before the court is a  
3 Petition for Review. The question presented by the Petition has  
4 been decided, in favor of the petitioners, so the traditional  
5 purpose of an injunction does not exist. However, since a TRO  
6 has been in effect for almost three months, and the Commissioner  
7 will shortly be deciding the propriety of a stay, this court  
8 finds further temporary injunctive relief appropriate. The  
9 current injunctive order will be extended only until such time  
10 as the Commissioner issues a ruling on petitioner's emergency  
11 motion for stay. The court urges that this action take place  
12 in the very near future, so that the duration of its injunctive  
13 order is extremely short-lived.

14 For the reasons stated above, the Petition for Review is  
15 granted and decided in favor of petitioners. The Motion for  
16 Preliminary Injunction is granted only insofar as it extends  
17 the court's current injunctive order until the Commissioner of  
18 DEC rules on the merits of petitioners' emergency motion for stay.  
19 The Commissioner is directed to handle this matter expeditiously.

20 IT IS SO ORDERED.

21 DONE at Juneau, Alaska, this 10<sup>th</sup> day of February, 1983.

22 *Walter L. Carpeneti*

23 \_\_\_\_\_  
24 Walter L. Carpeneti  
25 Superior Court Judge

26 CERTIFICATION

27 This is to certify that on the above date I provided a copy  
28 of the above Memorandum of Decision and Order to:

29 Barbara Malchick, Esq.  
30 Douglas Mertz, Esq.  
31 Jacquelyn R. Luke, Esq.

32 *Sharon H. Walker*  
Secretary to the Judge



# OVERKILL

OR

HAVE WE ARRIVED AT THE POINT WHERE IT IS NO LONGER  
POSSIBLE TO GET THERE FROM HERE?



Part of the life blood of any logging operation in Southeast Alaska is the ability to establish logging camps and the facilities to put logs into the water and boom and raft them preparatory to towing them to a mill site or shipping point. Because these facilities involve uplands, tidelands and navigable waters, an applicant must clear the activity necessary for construction with an upland owner (if other than his own private property), the Alaska Department of Natural Resources (DNR) because they are custodians of the State's tidelands and the Corps of Engineers, Department of the Army (Corps) as the agency responsible for issuing permits for facilities in navigable waters.

To illustrate the total "overkill" of procedures and duplication one must struggle through in obtaining the necessary permits and approvals, it is necessary to track the procedure. Neets Bay 10 and 12 are a good example of such facilities and their record.

Neets Bay is within the Ketchikan Pulp Company (KPC) (KPC is a wholly-owned subsidiary of Louisiana-Pacific Corporation) long term timber sale and the original need for camp, log transfer and boom and rafting facilities was recognized and reviewed by the Forest Service (FS) multi-discipline team when designating areas for the 1974-79 five-year operating area for which an environmental impact statement (EIS) was written. Therefore, as the upland owners, the Forest Service reviewed and approved the site for these facilities and included them in the EIS prior to commencing logging operations on the five-year period beginning July 1, 1974.

On April 26, 1977 (Exhibit A) a letter was sent to the Corps together with application for a permit described as "proposed standing log boom retained in position by 5 ton anchors, log transfer facility using approximately 1,000 cubic yards of upland shot rock and employing an A-frame lift-off device, an offloading ramp consisting of a lashed log crib filled with shot rock from an upland source, a small boat dock and ramp to aid in construction of roads and facilities".

On June 15, 1977 we were sent a letter by the Corps notifying us of their receipt of our application, the assignation of Reference No. OY1-OYD-2-770123 and the notification of assessment of a \$100.00 processing fee should approval be granted. (Exhibit B)



On July 19, 1977 we received from the Corps (Exhibit C) a copy of a letter from the U. S. Environmental Protection Agency (EPA) requesting the permit, if issued, contain the following special conditions:

1. The permittee shall implement, once per year for a period of three years, a bottom sampling program to determine whether lost solids have accumulated in the project waters associated with the log transfer site. Each such sampling shall be completed not later than September 1 of each sampling year.
2. The permittee shall submit a brief report of the findings of each sampling effort and a sketch showing location of sampling sites, to the Corps of Engineers, the Alaska Department of Environmental Conservation and the U.S. Environmental Protection Agency not later than October 15, of each sampling year.
3. The permittee shall remove all significant accumulations of lost wood solids, if any, and dispose of them in an upland fill approved by the U.S. Forest Service and/or the Alaska Department of Environmental Conservation and concurred in by the Environmental Protection Agency. The permittee shall modify log transfer procedures, including possibly the relocation of the transfer site if significant accumulations of lost wood solids are found as a consequence of any sampling program conducted by the permittee or the Environmental Protection Agency.

Although EPA saw fit to copy the Alaska Department of Environmental Conservation (DEC), the U.S. National Marine Fisheries Service (NMFS), the U.S. Fish & Wildlife Service (USF&WS) and the Forest Service with their letter, they did not see fit to send it to the applicant thus requiring a copy of the letter to come from the Corps with their notice to us and our return agreement July 29, 1977 to the Corps (Exhibit D) with copy to EPA.

On August 29, 1977 and after advertisement of request for public comment, the Corps sent a letter (Exhibit E) informing us to submit our processing fee and we would receive our permit. On September 15, 1977 having submitted the required fee we received a cover letter and our permit from the Corps (Exhibit F). This permit contained standard Corps conditions a-x (24 in number) plus the three additional conditions of EPA. Included in the 24 Corps conditions are the conditions for applicant

to "at all times be consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to Sections 301, 302, 306 and 307 of the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), or pursuant to applicable State and local law".

Another subsequent section also adds, "...if applicable water quality standards are revised or modified during the term of this permit the permit will be modified if necessary to conform with such revised standards within 6 months of the revision..."

On September 30, 1977 we applied to the Department of Natural Resources for a tideland permit for this same area. However, due to market changes affecting our need for logs, scheduling our logging operations, together with the need to recover blown down timber in other areas, it became apparent we would not be moving into this area as planned.

It is difficult to be precise in these schedules when we must get our Corps permits started a minimum of six months prior to construction and construction must precede logging by at least one year. This means we are estimating our logging needs one and one-half to as much as three years in advance in relation to needing permits, and we are working with the Forest Service preparatory to writing environmental impact statements as far as eight years in advance of construction for some of these facilities.

In any event, we did not start the work applied for in either the DNR tidelands permit or the Corps permit as expected. On April 16, 1979 we received notice from DNR (Exhibit G) to notify them of our intentions on the tidelands permit or they would close the file. We advised DNR by letter of April 20, 1979 (Exhibit H) of our new estimated dates of construction schedule starting on March 1, 1980 and completion on August 1, 1980.

It was now apparent our logging activities in this area would not be completed during the 1974-79 five-year period but would now fall within the 1979-84 period. This necessitated the FS multi-discipline team review and the inclusion of this area and its facilities in yet another EIS.

We also wrote the Corps on August 8, 1979 (Exhibit I) requesting extension of our permit to cover our new schedule. On October 4, 1979 (after a period of almost two months) we received word from the Corps (Exhibit J) stating they could not extend our permit because we had not commenced work by April 26, 1978 or a year after our original application and must reapply.



On October 16, 1979 we sent a cover letter and application to the Corps (Exhibit K). The letter, application and drawing were basically the identical ones used for our original application of April 26, 1977. On or about October 23, 1979 we received from the Corps a letter (undated) (Exhibit L) designating our application NPACO-RF-P Neets Bay 12 with the reference number 071-OYD-2-790398. We were further informed by the Corps that further action on our permit was suspended because the permit area was within the Alaska coastal zone and we must provide a certification that our activity would comply with the Alaska Coastal Management Program. Also, they advised us that a permit cannot be issued until we have obtained a Certificate of Reasonable Assurance or Waiver of Certification as required by Section 401(a)(1) of the Clean Water Act. This certification or waiver is to be issued by the DEC.

We next received a letter dated November 30, 1979 from DNR (Exhibit M) informing us that our tideland permit ADL 100073 for Neets Bay was to be advertised as shown on the attached notice. We then received a copy of the Corps public notice dated December 7, 1979 (Exhibit N) and attached was a copy of the public notice from the Office of the Governor, Division of Policy Development & Planning (DPDP) for Application for Certification of Consistency with the Alaska Coastal Management Program and also attached was the DEC public notice of Application for Water Quality Certification. This latter certification is assurance that any discharge to waters of the United States resulting from the project described in the Corps permit will comply with the Clean Water Act and applicable state laws, even though the applicant must agree to abide by these laws as a condition of obtaining the permit from the Corps and the permit itself so stipulates (see Corps permit General Conditions part b).

A letter dated December 12, 1979 was sent to the Corps from DPDP (Exhibit O) advising them they had received the application, were reviewing it for Alaska Coastal Management Program Consistency Determination and had distributed the material to the appropriate governmental agencies for a review which they were scheduled to close on January 10, 1980, soon after which they would send the review decision to the Corps. Also, the State Clearinghouse has now assigned State ID No. FD280-79121111FP.

On December 28, 1979 we had a telephone call from the NMFS questioning whether there was enough water under the transfer site to float the log bundles at all tides. We directed him to the plat submitted with our application indicating 50 to 60 feet and pointed out that the site would be of no use for our purposes if the bundles did not float. We agreed to make ourselves available to travel to the site with them. However, we later found they had visited the site without contact with us.



On January 4, 1980 we were copied on a letter sent from the Alaska Department of Fish & Game (ADF&G) (Exhibit P) requesting a one month extension to permit a more thorough evaluation and assessment of the impacts of this development. ADF&G sent copies of this letter to USF&WS, NMFS, EPA, two recipients (Juneau and Anchorage) at DNR, two recipients (both Juneau) at DEC, one other recipient at ADF&G and the State Clearinghouse.

Also, on January 4, 1980 the DPDP wrote the Corps (Exhibit Q) notifying them the Alaska State Clearinghouse was extending the closing date for review from their original January 10, 1980 by fifteen days which they calculated would be a closing date of February 2, 1980. (Actually, 15 days from January 10, 1980 is January 25, 1980).

On January 17, 1980 we received a copy of a letter from EPA to the Corps (Exhibit R) advising them the proposal may have adverse impacts on water quality and/or the aquatic resources and accordingly, coordination with appropriate State and Federal resource agencies was needed and they would expect to provide additional comments within 30 days. The EPA copied USF&WS, ADF&G, DEC and NMFS.

On January 18, 1980 we received a copy of a letter from the Corps to NMFS (Exhibit S) agreeing to extend the review period to February 7, 1980.

On January 29 we received notice and billing from DNR (Exhibit T) for the advertisement for our State Tideland Permit.

On February 8, 1980 we received a copy of a letter from EPA to the Corps (Exhibit U) informing them of no objection to issuance of this permit "provided the applicant complies with all State & Federal resource agency conditions that may be needed to protect the aquatic resources". A copy of this letter went to USF&WS, NMFS, ADF&G, and DEC. Had EPA read the requirements written into a Standard Corps Permit they would have noted the applicant must not only agree to comply with all State and Federal conditions but must also agree to currently comply if rules or regulations are added or modified and we would not now at this late date have to agree with what we must agree with to obtain the valid permit.

On February 15, 1980 we received a letter from the Corps (Exhibit V) enclosing a copy of a letter they received from the ADF&G saying they had reviewed the application and "find this project consistent with those Coastal Zone Management standards we have responsibility for reviewing and have no objections to issuance of a permit, provided the following special stipulations are included:

1. A non violent log transfer facility is employed.



2. The permit is limited to a five year period".

Copies of this letter dated February 1, 1980 were sent to NMFS, USF&WS, EPA, 2 recipients at DNR, 2 recipients at DEC, ADF&G, Clearinghouse and to the Applicant.

It is interesting to note that at this late date there is a requirement for a non violent dump when both the original and subsequent applications for permit detailed in the drawings of the facilities as well as in the verbal description a lift-off, non violent type of equipment to be used. Also, the insistence of a five year limitation with no explanation whatsoever of why they think this is necessary or investigation as to whether this limitation is consistent with the applicant's requirements.

We next heard directly from DPDP on February 19, 1980 (Exhibit W). They informed us that, "As currently planned, we have found the proposal to be inconsistent with ACMP. It will be consistent with the ACMP provided the attached stipulations are met.

#### INCONSISTENT DETERMINATION ATTACHMENT

Conditions related to South Neets Bay Timber Project  
(State I.D. # FD 280-79121111 FP):

1. The Department of Environmental Conservation must first issue a Certificate of Reasonable Assurance stating that the proposed activity will comply with the requirements of Section 401 of the Federal Water Pollution Control Act Amendments of 1972 as modified by the Clean Water Act of 1977.
2. A non-violent log transfer facility must be employed.

Copies of this letter were sent to Office of Coastal Management (OCM), Department of Law, COE(Corps) and DEC. Again, we have the requirement for a non violent log transfer in the permit application.

At this point we seem to be in the position of not being able to get approval from DPDP until DEC goes to public notice and issues a Certificate of Reasonable Assurance that the project will be in compliance with Section 401 of the Federal Water Pollution Control Act even though this is stipulated by the Corps as a general condition of the permit.

We next received a letter from the Corps dated February 21, 1980 (Exhibit X) and relaying to us a letter they received from NMFS and indicating they had made two on-site inspections of the area to be covered by this application. They state, "As a result of these investigations, we believe that the proposed action will not significantly harm marine, estuarine, or anadromous fisheries resources if the following stipulations are incorporated into the permit:

1. Log transfer methods should be non violent. This will reduce the amount of bark debris knocked off in the transfer process.
2. This permit shall expire in five years.
3. A sufficient amount of clean shot rock shall be placed over all fill material so that erosion and leaching of fill material will not occur".

We were not copied on this letter, necessitating the Corps send us a copy and request our comments to NMFS who must then contact the Corps of our agreement. Also, had this agency read either the original or second application for this facility they, too, would have noted it was specifically for a lift-off (non violent) type and was to be filled entirely by shot rock. They also deemed a five year limitation on the permit without any explanation of the necessity or inquiry of the applicant.

Also on February 21, 1980 we wrote DPDP (Exhibit Y) agreeing to a non violent dump, even though this was the intention from the original application for this permit on April 26, 1977.

On March 3, 1980 we received from the DEC by Certified Mail, Return Receipt Requested (Exhibit Z) a cover letter transmitting to us a State of Alaska Department of Environmental Conservation Certificate of Reasonable Assurance. This document states the log transfer facility consisting of 1,000 cubic yards of shot rock fill and an A-frame lift-off device will be constructed along with other facilities. It then stipulates the following provisions:

1. A spill prevention control and counter measures plan in accordance with 40 CFR 112.4(c) has been prepared by the applicant and submitted to ADEC.



2. A non-violent log transfer facility is employed.
3. A clean shot rock cap is placed over all fill material to prevent surface erosion.
4. ADEC 401 certification expires in five (5) years.

Copies of this letter were sent to Corps, EPA, ADL(DNR), ADF&G, NMFS, USF&WS, SERO(?), OCM and State Clearinghouse.

Although we do not understand why a spill prevention control and counter-measure plan is needed for approval of this permit we will submit one to DEC because to argue it would be time consuming and it will be required by the Coast Guard, FS and EPA prior to fuel being stored in the area. We will agree to a non violent log transfer as stipulated on both plans and description of our permits since April 26, 1977 and we will agree to a clean shot rock cap because all of the fill material will be clean shot rock as stated in application. We are still curious as to why so many agencies (or is it really one agency with a lot of shadows?) insist on a five-year limit without inquiring of us how long we will need the facility. In this case, we will most likely agree to the five year stipulation, only so we can commence the project and hope for an extension if we need the facility longer.

On March 3, 1980 we also received a copy of a letter from DPDP to the Corps (Exhibit AA) informing them they had received a Certificate of Reasonable Assurance from DEC stating that the subject project will comply with the requirements of Section 401 of the Federal Water Pollution Control Act. They further state they have now completed their ACMP review of the subject proposal and find it consistent with ACMP. Copies of this letter were sent to OCM, two recipients at ADF&G, DEC and Commissioner McAnerney of Regional Affairs (CRA).

As of this writing, on March 10, 1980, we do not have our permit and we do not have a DNR tideland permit. Our construction season has started and our construction people are on the ground constructing the road and developing quarry sites and are badly in need of this permit to properly schedule their work.

Neets Bay 12, NPACO-RF-P, No. 071-OYD-2-790398, State I. D. No. FD280-7912111IFP and ADL No. 100073 has been reviewed by two FS multi-discipline team reviews including participants from other State and Federal agencies, been included within two Environmental Impact Reports in which all agencies could (and most did) make comments, as well as any private citizen and has now been reviewed by, or copied with, some correspondence by the following agencies in relation to this application:

FS

U.S. Forest Service



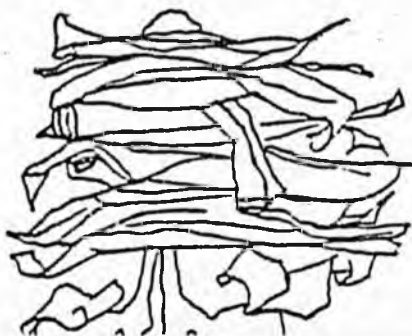
Corps	Corps of Engineers, Dept. of Army
EPA	U.S. Environmental Protection Agency
DNR	Alaska Department of Natural Resources
DPDP	Office of the Governor, Division of Policy Development and Planning
ADF&G	Alaska Department of Fish & Game
DEC	Alaska Department of Environmental Conservation
ADL	Alaska Department of Law
CRA	Commissioner of Regional Affairs State Clearinghouse
OCM	Alaska Department of Coastal Management
SERO	Unable to identify
NMFS	National Marine Fisheries Service
USF&WS	U.S. Fish & Wildlife Service

The question needing an answer is, why so much duplication, delay and totally unnecessary paperwork is required for a routine non-controversial permit such as this? Is it really necessary for nine State Departments or Agencies and probably twice that number of State employees along with five Federal Agencies and their employees to review, make comments and shuffle the paper? This chronology illustrates how rapidly the bureaucracy has come upon us when one reviews the rather direct route to the permit received in 1977 as compared to the frightening growth and duplication that has sprung up by 1979, even when applied to an area for which there had been a previous permit issued.

We do not fault the Corps, as their practice is to be helpful in notifying the applicants of agency input, but their regulations force them to respond to each and every comment, no matter how duplicative, until all participants are satisfied. We also think that if all agencies would read and analyze the General Conditions an applicant must consent to in order to get a permit they would realize many of their concerns are already well protected and much of their review and comments unnecessary. Attached is a current copy of the Corps General Conditions for a permit, for your information.

We sincerely feel this process is non productive, wasteful, inflationary and in need of review, particularly in respect to the State's duplicative reviews. It is only for this purpose this review has been written and circulated. If it accomplishes some reduction in what we consider a decided OVERKILL the effort will have been worthwhile.

3/80



## I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500, 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implemental plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto:

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

the year from the date of issuance of this permit unless otherwise specified and is not completed on or before the day of \_\_\_\_\_, 19\_\_\_\_\_. (Three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition (hereof), he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

**II. Special Conditions:** (Here list conditions relating specifically to the proposed structure or work authorized by this permit):

The following Special Conditions will be applicable when appropriate:

**STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:**

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

**MAINTENANCE DREDGING:**

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for \_\_\_\_\_ years from the date of issuance of this permit (ten years unless otherwise indicated);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging;

**DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:**

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

**DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS:**

a. That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228;

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

By \_\_\_\_\_, District Engineer, in witness whereof, the terms and conditions of this permit

EXHIBITS INCLUDED \*

Exhibit A	Application to Corps	4/26/77
Exhibit B	Corps letter	6/15/77
Exhibit C	Corps letter w/EPA letter	7/19/77
Exhibit D	KPC to Corps & EPA	7/29/77
Exhibit E	Corps to KPC	8/29/77
Exhibit F	Corps permit	9/15/77
Exhibit G	DNR letter	4/16/79
Exhibit H	LP to DNR	4/20/79
Exhibit I	LP to Corps	8/8/79
Exhibit J	Corps denying extension	10/4/79
Exhibit K	Letter & application to Corps	10/16/79
Exhibit L	Letter from Corps recognizing application	Undated
Exhibit M	Notice of DNR tideland ad.	11/30/79
Exhibit N	Corps Public Notice + DPDP and DEC	12/7/79
Exhibit O	DPDP to Corps	12/12/79
Exhibit P	ADF&G to Corps	1/2/80
Exhibit Q	DPDP to Corps	1/4/80
Exhibit R	EPA to Corps	1/14/80
Exhibit S	Corps to NMFS	1/18/80
Exhibit T	DNR to LP	1/25/80
Exhibit U	EPA to Corps	2/5/80
Exhibit V	Corps to KPC(ADF&G)	2/15/80
Exhibit W	DPDP to KPC	2/19/80
Exhibit X	Corps to KPC(on NMFS)	2/21/80
Exhibit Y	KPC to DPDP	2/21/80
Exhibit Z	DEC to KPC	3/3/80
Exhibit AA	DPDP to Corps	3/3/80

3/80

\*Available upon request



**Louisiana-Pacific Corporation**

Regulatory Division

Post Office Box 6600  
Ketchikan, Alaska 99901 U.S.A.  
Telephone 907-225-2151  
Telex 099-55-251  
Answer back: KAYPULPCO KET

April 1, 1980

Mr. James E. Caruth, Chief  
Regulatory Functions Branch  
Department of the Army  
Alaska District, Corps of Engineers  
P.O. Box 7002  
Anchorage, Alaska 99510

Re: NPACO-RF-P, Ward Cove 23  
071-OYD-2-790391

Dear Mr. Caruth:

Enclosed is a self-explanatory letter we have sent to the Division of Parks of the Alaska Department of Natural Resources. We hope we are able to convince the ADP there is a better way and trust our letter will permit continued processing of our application.

Sincerely,

D. L. Finney, Manager  
Forestry & Government Affairs

hr  
Enclosure



*Louisiana-Pacific Corporation*

Route 100, D. 100

Post Office Box 6600  
Ketchikan, Alaska 99901 U.S.A.  
Telephone 907-225-2151  
Tele. 033-55-351  
Answer Back KAYPULFCO KET.

April 3, 1980

Mr. Chip Dennerlein, Director  
Division of Parks, State of Alaska  
Department of Natural Resources  
619 Warehouse Drive, Suite 210  
Anchorage, Alaska 99501

Re: Ward Cove 23

Dear Chip:

Our first reaction to your comment on our Corps permit is that you have read the "Overkill" paper and felt left out by not having your agency mentioned. If this is the case, please accept our apologies as we had no intention of slighting you or your department. Just in case you haven't seen the "Overkill" paper, one is enclosed, so you can see how we have come to develop a prejudice toward any agency feeling it necessary to comment on Corps permits.

There are several things about your request for assurance on which we would like to comment. First, by writing the Corps without copying us, you necessitate the Corps writing to us (copy enclosed), us writing you and giving you assurance, then you writing the Corps and telling them it's all right, then the Corps writing us and telling us it's all right, before the processing of our permit can continue. If you really feel you must continue to be involved, please have the courtesy of sending us a copy of your request. Or, if you really intend to join the ranks of the "overkillers", you could let us know you intend to so respond to all permits and we can head off a lot of nonsense by notifying the Corps we will abide by your every wish at the time we apply. This would save you, us and the Corps a lot of letter writing, postage and, most importantly to us, valuable time.

*Louisiana-Pacific Corporation*

Mr. Chip Dennerlein

-2-

April 1, 1980

Another observation we have is that the cultural resources you wish to protect are already covered by the American Antiquities Act of 1906 (16 USC 431-433), National Historic Preservation Act of 1966 (16 USC 470) and Executive Order 11593(1971). Provisions of a Corps permit require an applicant to be in compliance with all Federal, State and Municipal laws. Also, our long term timber sale with the Forest Service has been recently modified to include an obligation for us to report any historic cultural resources immediately. Your added request for assurance does seem to be an "overkill".

One last observation is, if you have read the permit application we submitted, you will have noted it is for placing fill material and setting piling. It strikes us that there is not even the remotest possibility of discovering cultural resources with these activities.

Chip, as you can probably tell, you rattled our chain. We have decided to take head-on all unnecessary State Agency involvement in Corps permits because it really is coming to the point where we can no longer get there from here. Your agency just happens to be the first new customer since we wrote our exposé. Hopefully, our efforts will be rewarded by getting some logic in to the system and if such is the case, it will be well worth the time spent.

Now, so our application for NPACO-RF-P Ward Cove 23 Reference No. 071-OYD-2-790391 to Construct Berm and Place Piling in Ward Cove, Ketchikan, Alaska may proceed, we hereby notify you we agree, if any cultural resources are uncovered during the period of construction, our project engineer will halt all work that may disturb such resources and contact the Division of Parks (and probably the Guinness Book of Records) at once.

We shall, by copy of this letter, notify the Corps of our agreement but respectively request that you also contact the Corps at the soonest possible time, informing them you have our assurance and have no objection to the further processing of our permit.



Louisiana-Pacific Corporation

Mr. Chip Dennerlein

-3-

April 1, 1980

We would be most interested in any comments you might have concerning your continued involvement in Corps permits.

Sincerely,



D. L. Finney, Manager  
Forestry & Government Affairs

hr  
Enclosure

cc: J. Hammond - w/cc of Corps & Parks letters  
T. Miller                   "  
J. Reinwand               "  
R. LeResche               "  
W. McConkey               "  
& a host of others



DEPARTMENT OF THE ARMY

ALASKA DISTRICT, CORPS OF ENGINEERS

P.O. BOX 7002

ANCHORAGE, ALASKA 99510

REPLY TO  
ATTENTION OF:

NPACO-RF-P  
Ward Cove 23

FROM LAK

MAR 21 1980

MAR 21 1980

Ketchikan Pulp Company  
P.O. Box 6600  
Ketchikan, Alaska 99901

Reference: 071-OYD-2-790391  
Construct Bern & Piling  
Ward Cove  
Ketchikan, Alaska

Gentlemen:

Inclosed is a copy of a letter dated 12 March 1980 concerning your application for a Department of the Army permit for the referenced work.

It is the policy of the Department of the Army to provide an applicant the opportunity for a resolution or rebuttal to all objections and/or recommendations received on a proposed project. In this regard, the Alaska Division of Parks (ADP) has reviewed your proposal and requested that if any cultural resources are uncovered during the period of construction, your project engineer halt all work that may disturb such resources and contact them at once.

I would appreciate receiving any comments that you may have on the request by ADP. If you intend to comment, please give your immediate attention to this matter so processing of your permit application can be expedited.

Sincerely,

1 Incl  
As stated

*Larry L. Reeder*  
for JAMES E. CARUTH  
Chief, Regulatory Functions Branch

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

JAY S. HAMMOND, GOVERNOR

619 Warehouse Dr., Suite 210  
Anchorage, Alaska 99501

March 12, 1980

File No.: 1130-2-1

Subject: Ward Cove 23

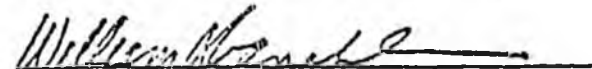
Mr. D. L. Robbins, Chief  
Construction/Operations Division  
Corps of Engineers  
Box 700Z  
Anchorage, AK 99510

Dear Mr. Robbins:

We have reviewed the subject proposal and would like to offer the following comments:

STATE HISTORIC PRESERVATION OFFICER

No probable impacts. Should cultural resources be found during the construction, we request that the project engineer halt all work which may disturb such resources and contact us immediately.



William S. Hanable  
State Historic Preservation Office

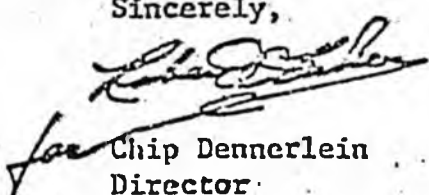
STATE PARK PLANNING

Consistent with ACMP.

LWCF.

No comment.

Sincerely,



Chip Dennerlein  
Director

CD/cw

April 8, 1983

The Honorable Bettye Fahrenkamp  
Chairman of the Senate Resources  
Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: Enclosed Coastal Management Legislation

Dear Senator Fahrenkamp:

The purpose of this letter is to transmit and recommend for your consideration legislation which would make certain changes to the Alaska Coastal Management Act (AS 46.40).

The changes are sought because of several problems with the Alaska coastal management program which are shared by Sealaska and Alaskan industry as a whole. These problems are, to a degree, the same which have been raised over the past four years in the course of "permit reform" debate. As you quite are aware, permit reform legislation has become quite controversial, with little likelihood that comprehensive legislation will be enacted in the near future. There are, however, certain problems in existing state regulation over which there is little disagreement. Rather than await the uncertain resolution of the larger "permit reform" controversy, Sealaska believes that real and substantial progress in regulatory reform can be made by addressing a few specific problems at this point in time.

The first problem addressed by the enclosed legislation is perhaps the most notorious--the duplicative and potentially conflicting "consistency determinations" which are authorized by existing law. As you know, any number of state agencies are

Senator Fahrenkamp  
April 8, 1983  
Page 2

required to make a "consistency determination" on the same project. The administration long ago acknowledged that there was absolutely no justification for this state of affairs. Yet while everyone recognizes a need for having but one "consistency determination" for each project, the pitfall has been agreeing on the agency to make that decision. While many industry groups advocate that the decision be made by the Department of Natural Resources, environmental organizations have not surprisingly recommended the Department of Environmental Conservation.

The proposed legislation strikes a middle ground by providing that one consistency determination will be made for each project by the Division of Policy Development and Planning. The division is already the agency primarily responsible for coastal management matters, and, as a result, this bill does not make revolutionary changes from the existing law. It would, however, solve the problem of overlapping consistency determinations immediately, leaving for later, more comprehensive legislation, the issue of where that authority should ultimately reside.

There is an equally important issue addressed by the bill, one of which some legislators may be unaware. When the Coastal Management Act was enacted in 1977, it was the intent of the legislature that the program be implemented through existing agency authorities. The last thing the legislature wanted was to expand the jurisdiction of any state bureaucracy.

However, earlier this year, Judge Walter Carpeneti of the State Superior Court in Juneau ruled that the coastal management program had the effect of expanding agency jurisdiction. The problem is essentially this: if the Department of Environmental Conservation has permit jurisdiction over a particular dock, Judge Carpeneti believes that DEC may deny the permit for that dock if it concludes that the activities which that dock will facilitate will violate the coastal management program--even if those activities themselves do not require a DEC permit. To carry Judge Carpeneti's ruling to its logical extreme, when DEC reviews the first transfer dock for a new major oil development--such as the Beaufort Sea--it may acquire jurisdiction over all field operations by virtue of the coastal management act.

A copy of Judge Carpeneti's decision is enclosed. While we believe that the court was mistaken, clarifying legislation is necessary. Under the enclosed bill, for example, if a coastal management consistency determination is needed for a dock, a determination will be made on that dock, and not on every single activity which will in any manner be aided by the construction of the dock.

Senator Fahrenkamp  
April 8, 1983  
Page 3

Third, there is a developing problem of extraterritorial regulation by Alaska cities under the guise of the coastal management program. Some small cities have prepared coastal management plans which include standards and guidelines for lands outside the city limits. While the Office of Coastal Management is technically calling these extraterritorial zoning laws "advisory," it is apparent that as a practical matter, state agencies may begin to adopt and apply them. It is Sealaska's view that if a particular city wishes to control land use outside its existing borders, it should seek to expand those borders, rather than using the coastal management act as a means of indirect annexation.

Finally, under the Alaska coastal management program, the Coastal Policy Council may designate "areas which merit special attention" outside existing district limits--zones in which development is severely restricted or perhaps precluded. Some have proposed to designate large tracts of privately-owned land as "AMSA's." Sealaska believes that private land owner consent should be required before an AMSA is designated over privately owned land outside existing district boundaries. Under this proposal, the Council will be required to accomodate the private land owner before the AMSA may be designated.

I realize that it is late in the session, and that your committee has many matters before it. On the other hand, most of the issues addressed by the enclosed legislation have been aired and debated in committee after committee for some four years. At the present time, absolutely nothing has come from the time consuming and acrimonious debate over permit reform. This bill would at least resolve some of the most obvious problems with the existing coastal management program without endless and repetitive debate.

I would appreciate it, if at your earliest convenience, you could discuss this legislation with Jon Tillinghast. I have also requested Sam Kito and Robert Loescher to work with Mr. Tillinghast on this legislation.

Sincerely,

*Byron I. Mallott*  
Byron I. Mallott

cc: Representative Terry Martin  
Robert Loescher  
Sam Kito

1  
2 IN THE SENATE

3 SENATE BILL NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA  
5 THIRTEENTH LEGISLATURE - FIRST SESSION  
6

7 A BILL

8  
9 For an Act entitled: "An Act amending the Alaska Coastal  
10 Management Act."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* Sec. 1. AS 46.40.100(a) is amended to read:

13 Sec. 46.40.100. COMPLIANCE AND ENFORCEMENT. (a)  
14 Municipalities, and subject to AS 46.40.205, state agencies shall  
15 administer land and water use regulations or controls in  
16 conformity with district coastal management programs approved by  
17 the council and the legislature and in effect.

18 \* Sec. 2. AS 46.40.200 is amended to read:

19 Sec. 46.40.200. STATE AGENCIES. Upon the adoption of  
20 the Alaska coastal management program, state departments, boards  
21 and commissions shall review their statutory authority,  
22 administrative regulations, and applicable procedures pertaining  
23 to land and water uses within the coastal area for the purpose of  
24 determining whether there are any deficiencies or inconsistencies  
25 which prohibit compliance with the program adopted. State  
26 agencies shall, within six months of the effective date of the  
27 Alaska coastal management program, and subject to AS 46.40.205,  
28 take whatever action is necessary to facilitate full compliance  
29 with and implementation of the program, including preparation and  
30 submission of recommendations to the council for additional or  
31 amended legislation.  
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\* Sec. 3. AS 46.40 is amended by adding new sections to read:

Sec. 46.40.065. AREAS WHICH MERIT SPECIAL ATTENTION. If a person proposes to the council that an area which merits special attention should be designated outside the boundaries of a district with an approved coastal management plan, and that area includes lands which are in private ownership, the council shall, before approving the designation, notify each affected private land owner. The designation may only be approved by the council if each private land owner within the proposed designation has given his consent.

Sec. 46.40.205. COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS. (a) Whenever an activity within or affecting the coastal area of the state requires either a federal permit or license for which a consistency determination is required by 16 U.S.C. §1456, or two or more state permits, a single consistency determination will be made for the activity by the division. The determination made by the division under this subsection is conclusive on all state agencies, and no state agency may comment to the federal permitting agency on the consistency of the activity with the Alaska coastal management program.

(b) Whenever an activity within or affecting the coastal area of the state requires only one state permit, any required consistency determination shall be made by the permitting agency.

(c) In making a consistency determination under (a) of this section, the division shall solicit recommendations from other state agencies. Each state agency shall confine its comments to matters within its primary area of expertise.

(d) For the purposes of this section, "state permit" includes any state action sought or required for the construction

PLSTIGER AND ANDERSON  
ATTORNEYS AT LAW  
130 BOWARD STREET - SUITE 411  
MURKIN, ALASKA 99501  
(907) 886-8880

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or operation of an activity, including any disposal of an interest in state land or water, land classification or certification under Sec. 401 of the Clean Water Act, 33 U.S.C. §1341.

Sec. 46.40.208. AUTHORITY NOT ENLARGED.

(a) Nothing in this chapter may be construed as authorizing a state agency or the division to deny or condition a permit or disposal of interest in state land or water because of impacts which may be caused by activities not themselves requiring that permit or disposal from the permitting agency.

(b) Nothing in this chapter may be construed as authorizing a coastal resource district to engage in extraterritorial planning or regulation.

\* Sec. 4. AS 46.40.210 is amended by adding a new subsection to read:

(7) "division" means the Office of the Governor, Division of Policy Development and Planning.

PESTERLIN AND ANDERSON  
ATTORNEYS AT LAW  
130 HALVADY STREET - SUITE 411  
JUNEAU, ALASKA 99801  
(907) 886-2890

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

OFFICE OF THE COMMISSIONER

POUCH B  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-4700

February 7, 1983

POSITION PAPER

RE: HB 14

SPONSOR: Representative Martin

Program Effects of Bill

The bill deals with permit reform and provides for a "fast tracking" of all permit applications requiring agency decisions within certain timeframes. The measure also provides for a "Lead Agency" concept for the issuance of coastal management consistency determinations.

Comments

The proposed revisions to regulatory procedures are considerable; some of the changes are probably desirable and others have no direct bearing upon this Department or its concerns. Section 44.62.635 "Lead Agency" is of particular interest, as it deals with Alaska Coastal Management Program (ACMP) consistency determinations. One of the foremost selling points of the National Coastal Management Program is the requirement that federal coastal actions must be consistent with approved State programs. In Alaska that concept has been expanded upon to require that proposed State and Federal coastal activities be consistent with ACMP approved local programs. HB 14 and Executive Order 53 are in opposition in that the latter would continue to vest consistency review authority in the Governor's Office, while the former would disperse this responsibility to individual line agencies. Moreover, subsection (b) would weaken the consideration afforded to approved local programs to an extent rendering them little more than advisory. Communities and regions that have Coastal Management Programs in place or in the works have proceeded under the expectation that local programs would have more than advisory powers.



# THE ALLIANCE

P.O. Box 100 / Anchorage, Alaska 99510 / (907) 277-0010

*Disciplinary  
Referral*

April 21, 1983



Representative Charlie Bussell  
Pouch V - MS 3100  
Juneau, Alaska 99811

Dear Representative Bussell:

As one of our objectives, The Alaska Support Industry Alliance supports regulatory reform.

To enhance an improvement in the manner and the time in which permits are issued, the Board of Directors of The Alliance are in support of H.B. 14 as introduced and amended by Representative Terry Martin. The passing of H.B. 14 will improve the permitting procedure, thus allowing industry to schedule their activities in a more orderly and efficient manner, resulting in a better cost effective climate for all Alaskans.

We urge you to support H.B. 14.

Sincerely,  
For The Alaska Support  
Industry Alliance

*VJ Molyneux*

Val J. Molyneux  
Committee Chairman,  
Regulatory Reform

VJM:lh

## Alaska Support Industry Alliance . . . for responsible economic development

Joe Mathis, President  
Universal Services, Inc.-Int'l.  
Milton Byrd, Vice President  
Frontier Companies of Alaska  
Paul Harding, Secretary/Treasurer  
Universal Services, Inc.-Int'l.

Len Kelley  
Greyhound Support Services, Inc.  
Bill Woodland  
Quality Cleaners  
Roger Spencer  
Alaska Bussell Electric

Steve Simmons  
Drilling Supply and Rental  
Val Molyneux  
VECO  
Ron Jordan  
Northern Drilling Services

Ann Curtis  
Crowley Maritime  
Richard Danley  
Arctic Alaska Drilling  
Chuck Becker, Executive Director



# Resource Development Council for Alaska, Inc.

444 West 7th Avenue, Anchorage, Alaska 99501  
Box 100516, Anchorage, Alaska 99510 — 907.278-6615

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William Ogle  
Dale Tubbs

April 8, 1983

William Sheffield, Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

RE: REGULATORY REFORM

Dear Governor Sheffield:

The Resource Development Council has had serious concerns about regulatory reform for the past four years and each year has encouraged the administration to do something about permitting problems. We have recently learned your administration intends to do something about it, and for this we commend you.

However, we understand administration "working groups" are nearing a final conceptual decision to have one lead agency, OMB, act for all state permits. We also understand your staff has been informed that industry has no problem with OMB's having this authority. Our industry contacts indicate exactly the opposite to be true. For this reason, we urge you to not finalize any position until there has been representative input from the various industries affected.

Attached is a copy of the new RDC policy statement on regulatory reform which was passed unanimously by the Executive Committee. As you can see, we are advocating changes in permit handling and attitudes. We think the direction your staff is heading will not only result in longer permit times, but will require more regulations, statutory and contractual changes. Also it perpetuates an unnecessary layer of bureaucracy which used to be in DPDP and has been given new life under a different name in OMB.

Comments indicate one of the selling points in having OMB issue the permits is that it is "neutral" and "capable of conflict resolution." Governor, industry doesn't really need someone who is "neutral." It needs to deal with people who are knowledgeable and can understand business problems and the free enterprise system.

Government employees need to understand that each stipulation costs money and many stipulations discourage development. Alaska is rapidly pricing itself out of the market because of the gold-plated stipulations being imposed by multilayers of government. The cost to the state in jobs and money due to "lost opportunity" runs into the hundreds of millions of dollars each year. It's too bad business can't take advantage of these opportunities and create new jobs, as bad as our state needs them.

Most of industry's problems in permitting do not come from the permitting agency charged by law to issue the permits. These agencies generally have enough expertise to understand industry's problems; permits and changes can be negotiated.

By far, most of the problems come from other agencies who have no statutory authority to act on the permit but who have gained authority under MOU's between agencies. These latter agencies insist that industry construct the project their way. They try to design many parts of the project, but having little or no expertise, they cannot conceive of the problems they cause and the costs that result. In most cases they don't care. Their lack of experience can result in permit provisions which are near fatal to a project. Unfortunately, these requirements seem to be in the majority of permits. Most of the problems could be eliminated by the agency setting standards and letting industry determine how to meet those standards.

State agencies that issue permits are required to show that the proposed operation is consistent with the state or locally approved CCM plan before they issue a permit. Who is better qualified than that permitting agency to make such a determination and why must the determination be made twice? In other words, why does the added layer of OMB have to be in the picture at all?

We need a system which significantly speeds up the permitting process. The new proposal sounds much like the earlier proposal for Uniform Procedures Regulations which would have been a disaster if they had been implemented. We urge you and your staff to abandon any thoughts along that line. We don't need new regulations to implement regulatory reform.

No amount of change in law or regulations can accomplish regulatory reform without complete backing by you. On the other hand, we are not sure that any change is required in law or regulations. We believe the main change needed is one of employee attitude and that only you can bring that about.

To accomplish regulatory reform, the main thing needed is for you, the Governor, to issue a command to all of your troops that you want the permit time and stipulations reduced by 50% within a year, and that after one year you will personally challenge any supervisor who has not accomplished this objective. With strict enforcement, this approach would be very effective.

Gov. Sheffield

4/8/83

Page 3

The prior administration never gave state employees the feeling that it was serious and intended to accomplish reform; we are confident you can.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

A handwritten signature in cursive script that reads "Mano Frey". The signature is written in dark ink and is positioned above the typed name and title.

Mano Frey  
President

encl.



# Resource Development Council

for Alaska, Inc.

444 West 7th Avenue, Anchorage, Alaska 99501  
Box 516, Anchorage, Alaska 99510 - 907/278-9615

## POLICY STATEMENT NO. 11

### REGULATORY REFORM

EXECUTIVE DIRECTOR  
Paula P. Easley

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Nate Olemaun  
Tom Owen  
Lloyd Pamela  
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The Resource Development Council recognizes the need for certain regulations to implement statutes to protect the public health, safety and welfare. However, the proliferation of applications, stipulations, regulations and permits is overwhelming to Alaskans and has resulted in, and continues to have an increasingly negative effect on the economy. Everyone including labor and business suffers and the helpless consumer ends up paying the bill. Many promises of reform have been made with few tangible results.

Regulations should facilitate and maintain orderly administration of policy where the broad public interest is at issue. However, when the power of the government to regulate becomes such a burden to the private sector that it creates economic hardship, suffering or negation of individual liberties and rights of property, then the Council concludes that regulatory powers have been over-extended. When regulations multiply and overlap, the power may be abused and it becomes counter-productive and in need of reform.

The Resource Development Council recommends the following:

### I

That governments draw up a test of standards by which any regulation will be measured, such as:

- 1) Is it duplicative?
- 2) is it truly calculated to protect only the broad public interest?
- 3) does it violate individual personal or property rights?
- 4) does it create undue financial burden which will translate to negative shift in the overall economy?
- 5) when individual and personal rights are subjected to threat, then full burden of proof of need, as well as financial responsibility, will be borne by the agency or agencies responsible for promulgation of the regulation,
- 6) that a clear distinction be made between established laws of the land and government regulation as created at will within government agencies and bureaus.

continued...

II

That local, state and federal governments make a positive commitment to an effective regulatory reform program that eliminates duplication of permits, multiple handling of permits, duplication of statutory authorities, "networking," and prohibits employees from writing law through "stipulations." These various governments should require their employees to adhere to this commitment of regulatory reform and should stringently enforce that commitment.

III

That government allow its employees to add stipulations only when there is a proven need and then only if required by statute.

IV

That, as public policy, the resource agency responsible for issuing a permit should be the lead agency and be responsible for all provisions of the permit. The lead agency should be able to override the recommendations of any agency furnishing advice and should not include stipulations of other agencies not provided for under the law authorizing the permit and should establish and enforce reasonable time limits for input by other agencies.

V

That the state and local governments eliminate the subtle "networking" process which functions without statutory authority and results in delays, re-work and non-issuance of permits.

VI

That the burden of proof be placed on the government to show why a permit does not comply with law.

VII

That the federal, state and local governments require agencies to review their regulations and work toward elimination of those that are archaic and not asolutely required by law; and that legislature and Congress annually review administrative progress in achieving regulatory reform.

VIII

That legislation be enacted to require disclosure of the costs, both public and private, related to permit processing and administration of regulations and that testimony at public hearings on cost/benefits be required prior to agency adoption of any regulation.

continued...

IX

That legislation be enacted to require fiscal notes on the external economic effect as well as environmental impact of each proposed statute and a cost/benefit review be included in the fiscal note.

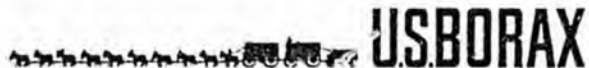
X

That to minimize frivolous lawsuits, many of which are based on ill-founded regulations and stipulations, legislation should be enacted to require the loser in each lawsuit to pay the court costs, all attorney fees, the cost of delays, plus interest on all of these funds.

XI

That prior to adoption of regulations, public hearings be held as required by the Alaska Administrative Procedure Act (AS 44.62.190-210.)

Adopted -----



April 27, 1983

The Honorable Terry Martin  
Alaska House of Representative  
Pouch V  
State Capitol  
Juneau, AK 99811

Dear Representative Martin:

U.S. Borax supports your efforts to introduce legislation (SSHB 14) to reform the permitting process in order to avoid unnecessary delays in the orderly development of Alaska's resources.

U.S. Borax is in the process of developing the Quartz Hill molybdenum deposit located 45 miles east of Ketchikan, Alaska. This is a world-class mineral deposit of significant long-term importance to the State of Alaska and anything that can be done to minimize costs and delays in the permitting process of this project while retaining the controls necessary for proper development would, in our opinion, benefit both the State of Alaska and U.S. Borax.

We have read your bill and believe it would minimize costs and delays as well as improve the permitting process by establishing a lead state agency depending on the resource involved.

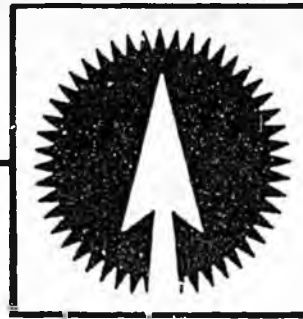
Sincerely,

Eugene D. Smith  
Vice President  
Government and Public Affairs

EDS:gw

cc: Mr. R. E. Kendall  
Mr. D. L. Finney  
Mr. J. C. Paulsen  
Mr. Bill Miles

# Alaska Loggers Association, Inc.



111 STEDMAN, SUITE 200  
KETCHIKAN, ALASKA 99901  
Phone 907-225-6114

April 22, 1983

Honorable Terry Martin  
Alaska State Representative  
Pouch V State Capitol Building  
Juneau, Alaska 99811

Dear Representative Martin:

Please excuse the lack of response to your letter of April 13 concerning ALA support of H.B. 14. All the loggers are either working or are in the process of getting started and I haven't been able to get enough Directors together to consider a resolution supporting the bill.

It is hoped by the time I get it approved it will not be too late to support this legislation.

Sincerely,

Donald A. Bell  
General Manager  
ALASKA LOGGERS ASSOCIATION

DAB/mjh  
cc: Jim Clark