SB

219

Whom?
date? 9-6-83

MEMORANDUM OF UNDERSTANDING
INTERAGENCY PERMIT REVIEW PROCESS

THIS MEMORANDUM OF UNDERSTANDING (MOU) SETS OUT THE AGREEMENT REACHED BY THE DEPARTMENTS OF ENVIRONMENTAL CONSERVATION, FISH AND GAME, AND NATURAL RESOURCES, AND THE OFFICE OF MANAGEMENT AND BUDGET, REGARDING PROCEDURES FOR A UNIFIED INTERAGENCY REVIEW OF DEVELOPMENT ACTIVITIES REQUIRING PERMITS FROM MORE THAN ONE STATE AGENCY. THE DEPARTMENTS WHICH ARE PARTY TO THIS MOU ARE HEREAFTER REFERRED TO AS RESOURCE AGENCIES. THIS MOU IS IN FURTHERANCE OF AND IMPLEMENTS THE GOVERNOR'S REGULATORY REFORM OBJECTIVES, WHICH FOLLOW, AND IS INTENDED TO STREAMLINE INTERAGENCY COMMUNICATION AND COORDINATION. IT IS NOT INTENDED TO BE BINDING ON OR CREATE ANY RIGHTS, LEGAL OR OTHERWISE, IN ANY PARTY OR TO ALLOW SUCH PARTY TO ENFORCE THIS AGREEMENT IN ANY ADMINISTRATIVE PROCEEDING OR THE COURTS.

OBJECTIVES OF PERMIT REFORM

1. STREAMLINE AND EXPEDITE STATE REVIEWS AND DECISIONS ON DEVELOPMENT ACTIVITIES CONSISTENT WITH VARIOUS PERMIT OBJECTIVES ALREADY ESTABLISHED.

2. ESTABLISH UNIFORMITY IN THE STATE'S COMMENTS AND DECISIONS ON FEDERAL ACTIVITIES OR FEDERALLY PERMITTED ACTIVITIES AFFECTING THE COASTAL ZONE AND/OR ACTIVITIES WHICH REQUIRE MORE THAN ONE COASTAL MANAGEMENT CONSISTENCY DETERMINATION.

3. ASSURE CERTAINTY AND FINALITY IN THE STATE'S RESPONSES TO PERMIT APPLICANTS BY ELIMINATING REPETITIVE REVIEWS AND DECISION MAKING ON THE SAME ACTIVITY BY STATE AGENCIES.

4. PROVIDE ADEQUATE OPPORTUNITIES FOR PUBLIC AND LOCAL (INCLUDING COASTAL RESOURCE DISTRICTS AND MUNICIPALITIES) PARTICIPATION IN STATE DECISIONS.

5. PROVIDE PROJECT INFORMATION TO THE PUBLIC AND CLEARINGHOUSE ASSISTANCE TO APPLICANTS REGARDING PERMITS INCLUDING INFORMATION, APPLICATION AND PROCESSING OF PERMITS AS WELL AS, TO THE EXTENT POSSIBLE, ASSISTANCE WITH NECESSARY FEDERAL PERMITS.

6. ACHIEVE BALANCED, FACTUALLY DOCUMENTED STATE DECISIONS WHICH RECOGNIZE THE FULL RANGE OF STATE INTERESTS INVOLVED WITH A PROPOSED ACTIVITY, INCLUDING BROAD CONSIDERATION OF THE COSTS AND BENEFITS OF REQUIRING PARTICULAR STIPULATIONS.

7. PROVIDE AN INTERAGENCY CONFLICT RESOLUTION MECHANISM WHICH ALL AGENCIES SHALL ABIDE BY AND WHICH RESULTS IN A UNIFIED STATE POSITION BEING TRANSMITTED TO THE APPLICANT AND OTHER INTERESTED PARTIES.

Points of Agreement

1. OMB ON BEHALF OF THE STATE AND IN COOPERATION WITH THE RESOURCE AGENCIES SHALL RENDER ALL FEDERAL CONSISTENCY DETERMINATIONS AND CERTIFICATIONS AS WELL AS CONCLUSIVE STATE CONSISTENCY DETERMINATIONS IF A PROJECT REQUIRES TWO OR MORE STATE OR FEDERAL PERMITS, LEASES, OR AUTHORIZATIONS. INTERAGENCY REVIEW PROCEDURES INVOLVING THE PARTICIPATION OF APPROPRIATE COASTAL DISTRICTS SHALL BE ESTABLISHED WITHIN THE GUIDELINES OF THIS MEMORANDUM.

2. IF AN ACTIVITY IN THE COASTAL ZONE REQUIRES A SINGLE STATE PERMIT, LEASE OR AUTHORIZATION, A PROCEDURE SHALL BE ESTABLISHED TO INVOLVE THE APPROPRIATE COASTAL DISTRICTS IN THE CONSISTENCY REVIEW.

3. DEFINITE REVIEW TIME FRAMES INTENDED TO EXPEDITE PERMIT PROCESSING, SHALL BE ESTABLISHED BY REGULATION AND ADHERED TO BY OMB IN ISSUING THE CONCLUSIVE CONSISTENCY DETERMINATION AND ALL RESOURCE AGENCIES IN THE ISSUANCE OF PERMITS. APPLICANTS WILL BE REQUIRED TO PROVIDE SUFFICIENTLY DETAILED INFORMATION AT THE TIME THE INTERAGENCY REVIEW IS INITIATED TO ENABLE THE STATE TO COMPLETE A SINGLE COMPREHENSIVE REVIEW OF THE ACTIVITY IN AN EXPEDITIOUS MANNER. PROCEDURES WHICH ALLOW REASONABLE EXTENSIONS OF THESE ESTABLISHED TIME FRAMES DURING THE REVIEW OF UNUSUALLY COMPLEX ACTIVITIES WILL BE ESTABLISHED.

4. OMB SHALL MAINTAIN A RECORD AND PROJECT TRACKING SYSTEM WHICH WILL ENABLE REQUIRED COMMENTS TO BE PROVIDED AND FINAL DECISIONS TO BE ISSUED IN A TIMELY MANNER.

5. NO STATUTORY AUTHORITY OF ANY RESOURCE AGENCY, COASTAL RESOURCE DISTRICT OR THE COASTAL POLICY COUNCIL IS DIMINISHED, OR EXPANDED BY OMB'S ROLE IN THE PERMITTING PROCESS OR BY THIS MOU.

6. EACH AGENCY, COASTAL DISTRICT, LOCAL GOVERNMENT, AND ANY OTHER INTERESTED PARTY WILL HAVE AN OPPORTUNITY TO PARTICIPATE IN THE SINGLE REVIEW FOR WHAT EVER LEVEL OF PROJECT REVIEW A CONSISTENCY DETERMINATION IS MADE THROUGH THE INTERAGENCY PROCEDURES.

7. NO SINGLE RESOURCE AGENCY MAY OVERRIDE ANOTHER DURING THE INTERAGENCY REVIEW PROCESS. OMB SHALL SERVE AS A FACILITATOR AND MEDIATOR DURING THIS INTERAGENCY REVIEW PROCESS. TO IMPROVE THE ACCESSIBILITY OF THAT OFFICE TO PERFORM THE FACILITATION AND MEDIATION ROLE, OMB SHALL MAINTAIN A REGIONAL PRESENCE IN ANCHORAGE, FAIRBANKS AND JUNEAU IN ASSOCIATION WITH THE RESOURCE AGENCIES. OMB MAY CALL INTERAGENCY MEETINGS AS APPROPRIATE.

8. IF THE AGENCIES THROUGH THE REVIEW PROCESS ARE UNABLE TO AGREE ON A SINGLE POSITION AT THE REGIONAL STAFF LEVEL, THE UNRESOLVED ISSUES SHALL BE ELEVATED TO THE DIVISION DIRECTORS AND

TO HIGHER LEVELS, IF NECESSARY, FOR RESOLUTION. COASTAL RESOURCE DISTRICTS WITH APPROVED COASTAL MANAGEMENT PLANS ARE ALSO AUTHORIZED TO ELEVATE UNRESOLVED ISSUES TO SUCH HIGHER LEVELS FOR RESOLUTION. IN THE EVENT AN UNRESOLVED ISSUE IS PRESENTED TO THE COMMISSIONERS OF THE RESOURCE AGENCIES, OMB WILL COORDINATE THE PRESENTATION, REVIEW AND RESOLUTION OF THE ISSUE.

9. A JOINT INTERNAL SIGN OFF ON THE SINGLE CONCLUSIVE CONSISTENCY DETERMINATION WILL BE ESTABLISHED TO ENSURE THAT ALL RESOURCE AGENCIES ARE SATISFIED WITH THE CONSISTENCY DETERMINATION BEFORE ISSUANCE.

10. AN ADMINISTRATIVE ORDER ESTABLISHING THE SPECIFIC STEPS OF THE INTERAGENCY REVIEW PROCESS WILL BE DEVELOPED FOR OMB AND THE RESOURCE AGENCIES NOT LATER THAN SEPTEMBER 30, 1983. UNIFORM REGULATIONS IMPLEMENTING THESE PROCEDURES SHALL BE PRESENTED FOR PUBLIC NOTICE AND COMMENT NOT LATER THAN NOVEMBER 15, 1983.

11. THESE PROCEDURES WILL BE REVIEWED ON OR BEFORE SEPTEMBER 30, 1984 TO DETERMINE WHETHER THE OBJECTIVES OF PERMIT REFORM REFERENCED ABOVE ARE FULFILLED. AT THE REQUEST OF ANY RESOURCE AGENCY OR APPLICANT AND WITH THE APPROVAL OF EACH RESOURCE AGENCY THE INTERAGENCY REVIEW PROCEDURES ESTABLISHED THROUGH THIS MOU WILL BE EXPANDED TO REVIEW ACTIVITIES OUTSIDE THE SCOPE OF THIS AGREEMENT.

Richard A. Neve'

RICHARD A. NEVE'
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

9/2/83
DATED

Don Collinsworth

DON COLLINSWORTH
COMMISSIONER
DEPARTMENT OF FISH AND GAME

9-6-83
DATED

Esther C. Wunnicke

ESTHER WUNNICKE
COMMISSIONER
DEPARTMENT OF NATURAL RESOURCES

9-6-83
DATED

PETER B. McDOWELL
DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF THE GOVERNOR

9-6-83
DATED

issues

lead agency concept
review times - rigidity
automatic approval after time elapses

SB 219

PROPOSED COMMITTEE SUBSTITUTE #2

BILL DRAFT

*Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being delayed unnecessarily by the length of time required to obtain a permit from a state agency, by the complexity of the permit process, and by the number of agencies involved in the permit process;

(2) the uncertainties created by the absence of specific time limits, the proliferation of state agency review, the number of state agencies involved in the permit process, and duplicative state agency requirements for the processing of permit applications have resulted in excessive costs to the public in lost employment and higher prices;

(3) unnecessarily delay in the processing of permit applications by state agencies is not in the public interest; and

(4) a reduction in the number of state agency reviews and review time required in the permit process would promote the social, economic and environmental health and well-being of state residents.

*Section 2. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A PERMIT PROCESSING

Section 44.62.632. PERMIT CLASSIFICATION. (a) A state resource agency shall by regulation classify each permit issued by that agency in one of the following categories:

(1) class I, for which the state agency must issue a final decision within 30 days after the date of receipt of a completed application; and

(2) class II, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days; a final decision on a class II permit must be issued

within 65 days after the date of receipt of a complete permit application, unless a public hearing is held on the permit, in which case a final decision must be issued within 65 days of the date of receipt.

Section 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESSING. (a) An applicant and a resource agency may agree to waive the time limit under AS 44.62.632(a).

(b) Upon a finding by the head of a resource agency that a permit being considered by the agency involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632, the head of the agency may prescribe a time period within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of procedure.

(c) Subject to the provisions of (a) and (b) of this section and AS 44.62.632, if the resource agency fails to make a final decision within 30 days after the receipt of an application for a class I permit or within the time specified in AS 44.62.632(a)(2) for class II permit, the permit application is approved.

(d) Consistent with existing statute, a state agency may not condition the issuance of a permit upon the issuance of a permit from another governmental agency.

(e) The time period specified in AS 44.62.632(a) may be extended at the request of the applicant or if necessary to facilitate joint processing of a permit application by state and federal agencies, but only if adherence to the time periods established in AS 44.62.632(a) would cause a conflict with federal statute or regulation.

(f) In performing its functions under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider documented facts, data, opinion, conclusions, or recommendations

submitted by the commenting agency and the coastal resource districts with an approved district coastal management program, within their areas of expertise, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the weight of the evidence received. The lead agency shall then balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise in the balancing of competitors. Except as required by federal law no state agency other than the lead agency may comment to a federal permitting agency.

Section 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agency receives a permit application that does not contain sufficient information concerning compliance with the agency's statutes and regulations, the agency shall notify the applicant within 15 days after receipt of a permit application for a class I permit, and within 30 days after receipt for a class II permit.

(b) The notification must specify those particular facts or issues concerning the proposal upon which the agency requires additional information in order to determine whether the project will conform to the agency's statutes and regulations.

(c) If a timely request under (a) and (b) of this section is made, the time period specified in AS 44.62.632 is suspended from the date of request to the date of full compliance with the request. Subsequent requests for additional information may be made, but must relate only to new issues raised by the response to the initial notification.

Section 44.62.635. LEAD AGENCY. (a) There is established a lead agency that is solely responsible for issuing coastal management consistency determinations under AS 46.40. For resource development activities on state and federal lands, water and submerged lands, the lead agency is the Department of Natural Resources. In all other

cases, the lead agency is that resource agency that has principal administrative responsibility for the type of development for which the consistency determination is required, even though the development may require permits from more than one resource agency. The lead agency is solely responsible for preparing and submitting state comments on federal permit applications. For classes of activities for which no agency with principal responsibility exists the governor shal. designate a resource agency to be a lead agency for each class by administrative order no later than October 1, 1983.

(b) Each state resource agency shall adopt final regulations classifying its permits by October 1, 1983, following appropriate notice and hearing. Permits applied for after October 1, 1983, must be issued in accordance with the time periods specified in (a) of this section, and the provisions of the implementing regulations.

(c) Except as required by federal law no state agency other than the lead agency may comment to a federal permitting agency.

(d) For activities involving approval of a plan of operation and a certificate under 33 U.S.C. 1341 (sec. 401 of the Clean Water Act), the lead agency shall be the Department of Natural Resources.

(e) For activities occurring on privately owned land, and for which one or more state permits or a disposal of interest in state land is required to provide access to the privately owned land, or for purposes otherwise ancillary to the activity, the lead agency shall be the Department of Natural Resources.

(f) Nothing in this section or AS 46.40 authorizes 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 or federal 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).

*Section 3. AS 44.62.640 is amended by adding a new subsection to read:

(c) As used in AS 44.62.632 - 44.62.638,

(1) "date of receipt" means the date on which a state agency physically receives an application filed in accordance with agency regulations and at a place identified as appropriate for filing the agency's regulations;

(2) "permit" means a permit, license, certification, consistency determination, comments on pending permit application before other governmental entities, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction operation of a project; "permit"

(A) does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances on interest in state land or water;

(B) does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a project under a previously conveyed property interest; provided, however, the term permit does apply to disposals or conveyances of interests in lands and waters reasonably necessary to the use or development of land and water previously conveyed by the state, including, but not limited to, rights-of-way, easements, interest in material and water permits.

(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing public health service, or operating a financial institution;

(4) "resource agency" includes the Department of Natural Resources, the Department of Environmental Conservation, and the Department of Fish and Game with respect to permits issued for the protection of fish habitat or the regulation of state sanctuaries, refuges, and critical habitat areas.

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

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.

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 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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

CITY OF ANGOON and SIERRA CLUB,

Petitioners,

vs.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION and SHEE ATIKA, INC.,

Respondents.

(C)

No. 1JU-82-1919 Civil

MEMORANDUM OF DECISION AND ORDER

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

1. Petition for Review

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

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

The Coastal Management Act should be given a broader reading

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

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

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

2. Preliminary Injunction

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

question presented on the merits.

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

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

IT IS SO ORDERED.

DONE at Juneau, Alaska, this 10th day of February, 1983.

Walter L. Carpeneti

Walter L. Carpeneti
Superior Court Judge

CERTIFICATION

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

Barbara Malchick, Esq.
Douglas Mertz, Esq.
Jacquelyn R. Luke, Esq.

Sharon L. Walker

Secretary to the Judge

APR 19 1983

Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

April 13, 1983

Senator Bettye Fahrenkamp
Chairperson, Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I am writing to bring to your attention a concern of the court system about SB 219, "An Act relating to the processing of permits by state agencies."

Proposed Section 44.62.636(c) provides that "an appeal taken under this section has preference on the calendar of civil actions before the court and shall be decided without unnecessary delay."

Expediting the permit process is a worthy goal. The court's role in speeding up the process is outlined in the Alaska Constitution which allocates to the supreme court the authority to make and promulgate rules governing practice and procedure in civil and criminal cases in all courts (Article IV, Section 15). The calendaring of matters before the courts of the state is included within the rules of practice and procedure.

The chief justice of the supreme court has indicated that upon passage of the legislation, the court would consider a request to adopt a rule to give calendaring preference to permit appeals. Approaching this matter through a court rule rather than through a legislative enactment would recognize the supreme court's constitutional responsibility in determining appropriate procedural rules, while continuing to meet the legislative intent.

The court system will be glad to provide additional information or to answer any questions which may arise relating to the concerns expressed in this letter.

Sincerely,

Karla L. Forsythe

Karla L. Forsythe
General Counsel

KLF:smh

cc: Chief Justice Edmond W. Burke
Arthur H. Snowden, II
Presiding Judge Mark Rowland

Cenaliulriit
The Yukon Kuskokwim Coastal Resource Service Area Board
P.O. Box 1169
Bethel, Alaska 99559
(907) 543-2243

May 17, 1983

Public Opinion Message for Senate Resources Committee:

Senator Bettye M. Fahrenkamp, Chairman
Senator Robert H. Ziegler, Sr., Vice-Chairman
Senator Richard I. Eliason
Senator Paul A. Fischer
Senator Vic Fischer
Senator Bob Mulcahy
Senator Arliss Sturgulewski

MAY 18 1983

Dear Senators:

I understand that the Senate Resources Committee has scheduled a hearing on SB 219 for Friday afternoon. I have also heard that before that time a Committee Substitute will be coming out, and that the CS will contain much the same language as the most recent CS for HB 14. That bill closely resembles last year's SB 84.

Cenaliulriit (the Yukon-Kuskokwim Coastal Resource Service Area Board) favors permit reform. The present permitting process is complicated and time-consuming, hindering not only the efficient processing of permits but also the effective involvment of coastal resource districts, local governments, and the public in the permitting process. However, these problems are best solved by the executive branch. Consequently, we support the current efforts of Governor Sheffield to solve these problems administratively.

Generally speaking, we have several objections to the bills currently before the legislature. First, they set up unreasonably short time periods for state decisions on permits, thereby frustrating local involvment in the permitting process. Second, they give too much power to a lead agency. Third, judicial review provisions are biased in favor of the permit applicant, i.e., against coastal resource districts and local governments. Fourth, key phrases in the bills are nebulous and undefined.

Cenaliulriit would very much like to testify in detail about our concerns, but we are unable to come to Juneau for the hearing. Therefore, we request that your committee schedule a statewide teleconference on this subject so those of us in rural Alaska who are interested in this bill can present our testimony. Thank you for your consideration of this request.

Sincerely,
CENALIULRIIT

MEMORANDUM
LEAGUE OF WOMEN VOTERS OF ALASKA

TO: Members of the Senate Resources Committee DATE: May 15, 1983

FROM: Mary Beth Juday, Natural Resources Chair

SUBJECT: Comments on SB 219 for May 16 Hearing

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 and that the public must have adequate and appropriate opportunities to participate in the process.

The League of Women Voters of Alaska opposes SB 219. There has been no outpouring of public demand for this type of legislation. In addition, we do not believe that rigid schedules should 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 rather than statutory changes can provide the necessary flexibility to accommodate a variety of permits while providing for efficient processing.

We do have some specific complaints about this bill. The time limits are likely to limit public participation in state permit decisions. It is likely to limit local government and state agency participation as well. The rigid schedule outlined in the bill allows no flexibility for unusually complex permits that may take longer than the designated time schedules. The lack of flexibility as well as the "automatic" approval section, which provides that approval is granted if the agency fails to make a decision within the specific period of time, are likely to result in costly and time consuming litigation. This will have an effect opposite to that which is intended.

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 would have an effect opposite to the legitimate public interest in the process. We believe that other avenues of reform are more appropriate when necessary.

prepared by Mary Beth Juday
4837 Palo Verde
Fairbanks, AK 99701
479-3765

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

NUNAM KITLUTSISTI

Protectors of the Land, Inc.
P.O. Box 2568 • Bethel, Alaska 99559
907/543-2656

May 18, 1983

Senator Bettye Fahrenkamp
Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99555

Dear Senator Fahrenkamp:

We have just reviewed a copy of the draft for CS SB 219 (Res), and are opposed to several of its provisions. First, the time periods set forth in Section 2 of the bill are too short, and will frustrate the involvment of local governments, coastal resource districts, regional organizations, and the general public in the permitting process. Second, we are opposed to the establishment of DNR as the lead agency for consistency decisions on development projects. The bill contains provisions making it virtually impossible for local governments or coastal resource districts to challenge decisions made by DNR which ignore their comments. Third, we are especially concerned about the provision allowing the applicant and the resource agency to waive the time limits. How can the public's interest possibly be furthered by this provision?

We feel that the Governor should be taking care of this problem administratively, and we support his current efforts to do this. We feel that the legislature should wait to see what the Governor does before it considers legislation in this area.

We have other objections to CS SB 219(Res) in addition to those listed above. We would appreciate the opportunity to present detailed testimony to you on this subject via the state's teleconferencing network. Please schedule a teleconference on this subject so we can present our testimony.

Sincerely,

Kenneth R. Harm

Kenneth R. Harm
OCS Technical Advisor

cc: Senators Robert Ziegler, Richard Eliason, Paul Fischer, Vic Fischer, Bob Mulcahy, and Arliss Sturgulewski

Resource Development Council for Alaska, Inc.

444 West 7th Avenue. Anchorage. Alaska 99501
Box 100516. Anchorage. Alaska 99510 — 907/278-9615

April 8, 1983

APR 14 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 CZM 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.

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.

Mano Frey

Mano Frey
President

encl.

1983

Resource Development Council for Alaska, Inc.

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

DRAFT

POLICY STATEMENT NO. 11

REGULATORY REFORM

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 ----------

Passed.
4/28/8

ALASKA MINER'S ASSOCIATION

RESOLUTION

WHEREAS, the orderly development of state resourses is being unnecessarily delayed by the length of time required to obtain permits from state agencies, by the complexity of the permitting process;

WHEREAS, the uncertainties created by the lack of specific time limits, the proliferation of agency reviews, the number of agencies involved in the permit process, and unjustified agency requirements upon processing, permit applications have cost Alaskans millions of dollars in lost unemployment and higher prices;

WHEREAS, the social, economic and environmental health and well-being of Alaskans will be promoted by reducing the number of agencies and agency reviews involved in the permit process and by requiring state agencies to process permit applications in an expeditious manner;

BE IT RESOLVED:

1. The Alaska Miner's Association supports and advocates the orderly development of state resources.

2. The Alaska Miner's Association supports and advocates the removal of all unnecessary and duplicative regulations impeding the orderly development of the state's resources.

3. The Alaska Miner's Association supports and advocates legislation's streamlining the state's regulatory and permitting processes.

4. The Alaska Miner's Association calls upon the Alaska executive and legislative branches to actively pursue and support regulatory reform.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

Page 1 of 2

I. REQUEST

Bill/Resolution No.: HB 14 401
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 L. Peyton Director Phone: 465-3671
Division: Administrative Services Division Date: April 13, 1983
Approved by Commissioner: Richard L. Peyton for Norman C. Gorsuch, Attorney General Date: April 13, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

HB 14 Vol. 1 Page 232
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.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 14 302
Title: Re: Permitting
Sponsor: Martin
Requestor: House Labor and Commerce

II. FISCAL DETAIL.

Agency Affected: Natural Resources
Program Category Affected:
BRU, Program or 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 Phone: 465-2400
Division: Commissioner's Office Date: 4/15/83
Approved by Commissioner: Mary Sullivan Date: 4/18/83
Department: Natural Resources

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor

Bill Sheffield, Governor

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.

21-P1LH

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 fisca impact.

Prepared By: Richard Rainery RR Phone: 465-4703
Division: Commissioner's Office Date: 2/15/83

Approved by Commissioner: 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

SB 219

PROPOSED COMMITTEE SUBSTITUTE

BILL DRAFT

*Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being delayed unnecessarily by the length of time required to obtain a permit from a state agency, by the complexity of the permit process, and by the number of agencies involved in the permit process;

(2) the uncertainties created by the absence of specific time limits, the proliferation of state agency review, the number of state agencies involved in the permit process, and duplicative state agency requirements for the processing of permit applications have resulted in excessive costs to the public in lost employment and higher prices;

(3) unnecessary delay in the processing of permit applications by state agencies is not in the public interest; and

(4) a reduction in the number of state agency reviews and review time required in the permit process would promote the social, economic and environmental health and well-being of state residents.

*Section 2. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A PERMIT PROCESSING

Section 44.62.632. PERMIT CLASSIFICATION. (a) A state resource agency shall by regulation classify each permit issued by that agency in one of the following categories:

(1) class I, for which the state agency must issue a final decision within 30 days after the date of receipt of a completed application; and

(2) class II, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days; a final decision on a class II permit must be issued within 65 days after the date of receipt of a completed permit application, unless a public hearing is held on the permit, in which case a final decision must be issued with 85 days of the date of receipt.

Section 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agency receives a permit application that does not contain sufficient information concerning compliance with the agency's statutes and regulations, the agency shall notify the applicant with 15 days after receipt of a permit application for a class I permit, and within 30 days after receipt for a class II permit.

(b) The notification must specify those particular facts or issues concerning the proposal upon which the agency requires additional information in order to determine whether the project will conform to the agency's statutes and regulations.

(c) If a timely request under (a) and (b) of this section is made, the time period specified in AS 44.62.632 is suspended from the date of request to the date of full compliance with the request. Subsequent requests for additional information may be made, but must relate only to new issues raised by the response to the initial notification.

Section 44.62.635. LEAD AGENCY. (a) There is established a lead agency that is solely responsible for issuing coastal management consistency determinations under AS 46.40. For resource development activities on state and federal lands, water and submerged lands, the lead agency is the Department of Natural Resources. In all other cases, the lead agency is that resource agency that has principal administrative responsibility for the type of development for

which the consistency determination is required, even though the development may require permits from more that one resource agency. The lead agency is solely responsible for preparing and submitting state comments on federal permit applications. For classes of activities for which no agency with principal responsibility exists the governor shall designate a resource agency to be a lead agency for each class by administrative order no later that October 1, 1983.

(b) Each state resource agency shall adopt final regulations classifying its permits by October 1, 1983, following appropriate notice and hearing. Permits applied for after October 1, 1983, must be issued in accordance with the time periods specified in (a) of this section, and the provisions of the implementing regulations.

Section 44. 62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESSING. (a) An applicant and a resource agency may agree to waive the time limit under AS 44.62.632(a).

(b) Upon a finding by the head of a resource agency that a permit being considered by the agency involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632, the head of the agency may prescribe a time period not to exceed 120 days within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of procedure.

(c) Subject to the provision of (a) and (b) of this section and AS 44.62.632, if the resource agency fails to make a final decision within 30 days after the receipt of an application for a class I permit or within the time specified in AS 44.62.632(a)(2) for class II permit, the permit application is approved.

(d) Consistent with existing statute, a state agency may not condition the issuance of a permit upon the issuance of a permit from another governmental agency.

(e) The time period specified in AS 44.62.632(a) may be extended if necessary to facilitate joint processing of a permit application by state and federal agencies, but only if adherence to the time periods established in AS 44.62.632(a) would cause a conflict with federal statute or regulation.

(f) In performing its functions under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider documented facts, data, opinion, conclusions, or recommendations submitted by the commenting agency and the coastal resource districts with an approved district coastal management programs, within their areas of expertise, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the weight of the evidence received. The lead agency shall then balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise in the balancing of competing factors. Except as required by federal law, no state agency other than the lead agency may comment to a federal permitting agency.

*Section 3. AS 44.62.640 is amended by adding a new subsection to read:

(c) As used in AS 44.62.632 - 44.62.638,

(1) "date of receipt" means the date on which a state agency physically receives an application filed in accordance with agency regulations and at a place identified as appropriate for filing the agency's regulations;

(2) "permit" means a permit, license, certification, consistency determination, or other authorization or approval issued by a resource agency as a written document that is

required to be obtained or is solicited from a state agency before the construction operation of a project; "permit"

(A) does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances on interest in state land or water;

(B) does include all authorizations and approvals whether proprietary or regulatory, necessary to undertake a project under a previously conveyed property interest; provided, however, the term permit does apply to disposals or conveyances of interests in lands and waters reasonably necessary to the use or development of land and water previously conveyed by the state, including, but not limited to, rights-of-way, easements, interest in material and water permits.

(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing public health service, or operating a financial institution;

(4) "resource agency" includes the Department of Natural Resources, the Department of Environmental Conservation, and the Department of Fish and Game with respect to permits issued for the protection of fish habitat or the regulation of state sanctuaries, refuges, and critical habitat areas.

Alaska State Legislature

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MINUTES

June 1, 1983
3:16 p.m.

Senate Finance Room
Fifth Floor, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chair
Senator Ziegler, Vice Chair
Senator P. Fischer
Senator V. Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

Statewide Teleconference

SB 219 An Act relating to the processing of permits by state agencies; and providing for an effective date.

---

010 Bruce Jaffa, president of Boilermakers #498, Seward, supported award of the Tesoro and Chevron royalty oil contracts.

155 Wally Frank, Mayor of Angoon, opposed SB 219. He felt the timeframes were too rigid.

220 Edward Campbell of Angoon felt the permit process was detrimental to the entire community, and opposed the bill.

270 Linda Freed, Kodiak Island Borough, objected to the weakening role of local government in the permit process.

325 Milton Byrd, Frontier Companies, Anchorage, supported the issues involved in the bill. He felt that the recent decline in oil-related activity was partly due to the permit process.

430 Val Nolyneux, VECO, Inc., and the Alaska Sport Industry Alliance, Anchorage, supported the bill.

465 Helga Eakon, coordinator, Bering Straits Coastal Resource Service Area Board, Unalakleet, opposed the bill, and made recommendations for changes to the bill.

530 Karla Kolash, North Slope Borough Planning Department, Barrow, felt that the bill should provide for exceptions to the timeframes, and opposed any automatic approval provisions.

595 Tom Barnes, North Slope Borough Planning Department, Barrow, supported the Office of Management and Budget as the lead agency.

660 Ken Hamm, Nunam Kitlutsisti Native Corporation, Bethel, opposed the bill. He felt the legislature should wait to see how the administration's attempts to resolve permit problems work out before passing legislation.

735 Norman Cohen, Alaska Regional Energy Association Area, Bethel, felt time limits were too short for local review, opposed the lead agency concept and automatic approval, thought OMB should be the lead agency, and felt there should be no exceptions to the public notice and hearing requirements. He opposed passage of any bill this session, and supported waiting to see the outcome of the administration's efforts.

780 Tim Holder, City of Nome, made several recommendations for amendments to the bill.

805 Bob Lohr, executive director of RURALCAP, Anchorage, felt more weight should be given to local concerns under the lead agency concept.

Side B

050 Terrie Gottstein, Anchorage, endorsed the comments from the Bethel participants, and said she basically opposed the bill. She opposed the lead agency concept.

210 Abby Arnold, Aleutians East Coastal Resources Area Board, Anchorage, was concerned that the bill would weaken local input, and supported OMB as lead agency.

280 Tim Hostetler, Bristol Bay Coastal Resource Service Area Board, Dillingham, opposed the bill, noting problems with the lead agency concept and the time limits for local participation.

400 The meeting was adjourned at 4:20 p.m.

Amendments offered to the Senate Resources Committee by Alaska Lumber and Pulp to proposed committee substitute to SB 219.

(1) At page 4, line 5, after the word "necessary", add the following: "or at the request of the applicant"

(2) At page 4, line 32, after the word "determination", add the following:

"comments on pending permit application before other governmental entities, including environmental impact statement comments, plan review"

(3) At page 4, line 33, after the word "agency" add the following:

"(including a draft environmental impact statement)"

(4) At page 5, line 26, add the following:

"(5) 'state agency' means state department, commission, board or other agency of the state including, but not limited to, local or regional air pollution control authorities established under AS 46.03.210 and coastal resource districts and coastal resource service boards established under AS 46.40.010-46.40.210."

Offered: 5/10/83
Referred: Judiciary and Finance

Original sponsors: Martin, Lindauer and Tischer

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 14 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain permits from state agencies, by the complexity of the permitting process, and by the number of agencies involved in the permitting process;

(2) the uncertainties created by the lack of specific time limits, the proliferation of agency reviews, the number of agencies involved in the permit process, and unjustified agency requirements upon the processing of permit applications have cost Alaskans millions of dollars in lost employment and higher prices;

(3) the public interest has not been advanced by protracted delay in the processing of permit applications by state agencies;

(4) by reducing the number of agencies and agency reviews involved in the permit process, and by requiring state agencies to process permit applications in an expeditious manner, the social, economic, and environmental health and well-being of Alaska citizens will be promoted; and

(5) there are many administrative orders and similar documents that have been promulgated by the executive branch relating to interagency review that conflict and overlap, retarding the permit issuing process.

* Sec. 2. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A. PERMIT PROCESSING.

Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource agency shall by regulation classify each of the permits issued by that agency within one of the two following categories:

(1) class I permits, for which the state agency must issue a final decision within 30 days after the date of receipt of a completed permit application; and

(2) class II permits, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days; a final decision on a class II permit must be issued within 65 days after the date of receipt of a completed permit application, unless a public hearing is held on the permit, in which case a final decision must be issued within 75 days of the date of receipt.

(b) Final regulations classifying its permits shall be adopted by each state resource agency by February 1, 1984, following appropriate notice and hearing. Permits applied for after February 1, 1984, must be issued in accordance with the time periods specified in (a) of this section, and the provisions of the implementing regulations.

Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESSING. (a) Upon a finding by the head of a resource agency that a permit being considered involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632(a), the head of the agency may prescribe a time period not to exceed a total of 120 days within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of Procedure.

(b) The time period specified in AS 44.62.632(a) may be extended if necessary to facilitate joint processing of a permit application by state and federal agencies, but only if adherence to the time periods established in AS 44.62.632(a) would cause an irreconcilable conflict with a federal statute or regulation.

(c) Failure of a resource agency to make a final decision within 30 days after the receipt of a completed permit application for a class I permit, within 65 days after the receipt of a completed permit application for a class II permit, or within a time period extended by (a) or (b) of this section or by AS 44.62.634, is approval of the application. In an appeal of a permit issued by operation of this subsection, the record shall be considered in the light most favorable to the applicant, and the permit shall be accorded a presumption of regularity.

(d) A state agency may not condition the issuance of a permit upon the issuance of a permit from another governmental agency.

Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agency receives a permit application that does not contain sufficient information concerning the project's compliance with the agency's statutes and regulations, the agency shall notify the applicant within 15 days after receipt of a permit application for a class I permit, and within 30 days after receipt for a class II permit.

(b) The notification must specify those particular facts or issues concerning the proposal upon which the agency requires additional information in order to determine whether the project will conform to the agency's statutes and regulations.

(c) If a timely request under (a) and (b) of this section is made, the time period specified in AS 44.62.632 is suspended from the

date of request to the date of full compliance with the request. Subsequent requests for additional information may be made, but must relate only to new issues raised by the response to the initial notification. Subsequent requests do not extend the time periods specified in AS 44.62.632.

(d) Nothing in this section grants a resource agency the authority to request information beyond the authority given to it by other statutes.

Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead agency that is solely responsible for issuing coastal management consistency determinations under AS 46.40. For resource development activities on state and federal land, water, and submerged land, the lead agency is the Department of Natural Resources. In all other cases, the lead agency is that resource agency that has principal administrative responsibility for the type of development for which the consistency determination is required, even though the development may require permits from more than one resource agency. The lead agency is solely responsible for preparing and submitting state comments on federal permit applications. For classes of activities for which no agency with principal responsibility exists the governor shall designate a resource agency to be a lead agency for each class by administrative order no later than October 1, 1983.

(b) In performing its functions under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider documented facts, data, opinion, conclusions, or recommendations submitted by the commenting agency and the coastal resource districts with an approved district coastal management program, within their areas of expertise, but may, in its discretion, reach contrary opin-

ions, conclusions or recommendations according to the weight of the evidence received. The lead agency shall balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

(c) Except as required by federal law no state agency other than the lead agency may comment to a federal permitting agency.

(d) For activities involving approval of a plan of operation and a certificate under 33 U.S.C. 1341 (sec. 401 of the Clean Water Act), the lead agency shall be the Department of Natural Resources.

(e) For activities occurring on privately owned land, and for which one or more state permits or a disposal of interest in state land is required to provide access to the privately owned land, or for purposes otherwise ancillary to the activity, the lead agency shall be the Department of Natural Resources.

(f) Nothing in this section or AS 46.40 authorizes 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 or federal 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).

Sec. 44.62.636. COMMENT PERIOD. (a) A coastal resource district or state agency that receives a request for comment in connection with a permit application or plan review being processed by a resource agency shall submit the comments in accordance with the

following schedule:

(1) comments on class I permits shall be submitted within 15 days after receipt of the request by the commenting coastal resource district or state agency;

(2) comments on class II permits and federal permits shall be submitted within 30 days after receipt of the request by the commenting coastal resource district or state agency.

(b) When, under AS 44.62.633, the requesting agency has extended the time periods specified in AS 44.62.632, that agency may extend the time period specified in this section; however, comments submitted under this subsection must be submitted no later than 30 days before the date on which the lead agency must issue a final decision.

Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) An administrative appeal must be filed by the permit applicant within 10 days after the date of issuance of a final decision denying or conditioning a permit application. The appeal is to the head of the resource agency involved. Administrative appeals conducted under this section are not subject to the procedure in AS 44.62.330 - 44.62.630.

(b) An administrative appeal must be resolved within 30 days from the date the appeal on a permit application is filed, or if a hearing is held on the appeal, within 45 days from the date the appeal was filed.

(c) The head of the agency may summarily dismiss an appeal before the time established in (b) of this section, and the dismissal is the decision on the matter for purposes of AS 44.62.638.

(d) In an appeal from the denial or conditioning of a permit the head of the agency may, if the head of the agency determines that the public interest would be served, grant the permit or remove conditions of the permit until the appeal is determined.

Sec. 44.62.636. REVIEW BY THE SUPERIOR COURT. Judicial review by the superior court of a decision issued under AS 44.62.632 - 44.62.637 shall be by filing a notice of appeal in the superior court in accordance with the applicable Rules of Appellate Procedure. The review is governed by the provisions of AS 44.62.560(b) - (e) and AS 44.62.570.

* Sec. 3. AS 44.62.640 is amended by adding a new subsection to read:

(c) As used in AS 44.62.632 - 44.62.638,

(1) "date of receipt" means the date on which a state agency actually receives a completed application filed in accordance with agency regulations and at a place identified as appropriate for filing in the agency's regulations;

(2) "permit" means a permit, license, certification, consistency determination, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit"

(A) does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances of interest in state land or water;

(B) does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a project under a previously conveyed property interest;

(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing public health service, or operating a financial institution;

(4) "resource agency" includes the Department of Natural

Resources, the Department of Environmental Conservation, and the Department of Fish and Game with respect to permits issued for the protection of fish habitat or the regulation of state sanctuaries, refuges, and critical habitat areas.

A REPORT ON THE STATES

INC.'s second annual study rates 50 small business climates.

By Bruce G. Posner

If your company's history is anything like that of most small companies, where it is located—be it Palo Alto, Calif., or Portland, Maine—has nothing to do with any carefully drawn corporate plan. Instead, you put the business where you were raised, attended school, or simply wanted to live. Presumably, the area had much of what you wanted of the myriad things that influence "quality of life." Perhaps there was good skiing, music, or a major university within easy reach. Or you may have wanted to be near people in similar vocations, which may be why so many high technology companies grew or are expanding in California's Silicon Valley and along Boston's Route 128.

Although state officials everywhere wish they could do more to spawn and keep growth-oriented companies, all too often they find that it is hard enough to define the amenities that attract small businesspeople, without trying to influence a decision to set up business. But apart from the intangibles in appraising a business climate, there are factors that are both more concrete and, to some extent, within a state's control.

As companies grow, for example, they may need long-term debt and equity in addition to working capital. They may also need to hire employees who have specialized skills. A company's inability to find such fundamental resources when they are needed can greatly influence its success, and it can also dampen the growth of the economy within the state.

The purpose of INC.'s second report on the states is to compare some of the major, quantifiable aspects of the climate for small business, to help businesspeople and state officials understand better how to make improvements. In selecting the criteria for measuring the 50 states as homes for smaller companies, INC. interviewed economists, state development officials, venture capitalists, and small business executives. INC. also talked with special liaison people appointed by governors to gather information on small business support programs in every state.

The analysis focused on areas of broad concern to all small companies, rather than such factors as transportation and energy, important as these may be to some businesses. Since all small business operators have capital and labor needs and are affected by taxes, we looked at the impact of those three factors on small companies. Growth opportunities in a particular environment are also influenced—sometimes heavily—by external economic and business factors. These factors, therefore, are reflected through a number of criteria under the heading of business activity.

Finally, we examined each state for small business support programs initiated at the executive or legislative level. The mere existence of official support does not

RATING THE STATES BASED ON FIVE MAJOR FACTORS

Rank/state	CAPITAL RESOURCES				LABOR				TAXES
	Bank loans % assets	Comm./Ind loans per [illegible]	SBIC finan. per 1,000 pop.	State programs[1]	Avg. mfg. wage	% union	% H.S. grads.	Value added per worker (thou./yr.)	Per $1,000 personal income
Median	53.5%	$ 927	$0.8	–	$317	23%	68%	$43.6	$112
1 Texas	54.8%	$2,527	$2.9	DL	$328	11%	65%	$55.1	$ 98
2 California	64.7	1,468	3.2	[illegible]	339	27	74	48.0	122
3 Colorado	57.9	1,262	3.1	–	326	18	78	45.7	113
4 Florida	49.5	598	1.2	[illegible]	265	12	65	37.0	97
5 New Hampshire	63.2	588	1.8	LG	256	16	70	31.2	92
6 Kansas	48.4	1,082	1.4	–	305	15	73	44.0	100
7 Arizona	62.6	888	0.6	–	317	16	73	47.7	133
8 Oregon	58.8	1,112	1.8	DL	352	26	76	39.0	114
9 Oklahoma	52.8	1,321	1.2	DL	320	15	66	42.2	102
10 Washington	58.9	1,382	0.9	–	405	34	76	49.5	109
11 New Mexico	52.7	1,043	2.3	–	259	19	66	36.0	122
12 New York	54.4	4,164	2.2	DL,LG,BG	309	39	66	47.2	163
13 Kentucky	49.2	773	1.0	DL,BG	309	24	53	45.6	104
14 North Dakota	50.1	1,245	–	BG	271	17	68	52.6	102
15 Connecticut	59.7	857	5.1	DL,LG,VC	319	23	70	42.8	105
16 Virginia	60.0	718	0.9	–	270	15	64	36.0	102
17 Nevada	59.5	738	0.3	LG	325	24	76	51.0	105
18 Massachusetts	50.0	1,213	2.1	DL,BG,VC	280	25	72	40.0	139
19 Minnesota	54.5	1,430	2.7	DL	331	26	73	45.5	127
20 New Jersey	53.1	765	0.9	DL,LG,BG	322	26	66	47.4	117
21 Utah	56.5	838	0.1	–	308	18	80	40.4	125
22 Arkansas	52.1	946	0.2	BG	247	16	56	30.4	99
23 Georgia	52.8	683	1.0	–	255	15	59	33.3	108
24 Tennessee	51.9	908	0.5	–	268	19	55	33.7	94
25 Wyoming	53.4	1,541	2.6	–	314	19	76	61.4	148
26 Mississippi	50.6	639	0.8	LG	236	16	52	31.6	109
27 Montana	55.1	1,176	1.2	–	370	29	73	47.9	130
28 Maryland	57.1	555	0.3	DL,LG,BG	335	23*	69	43.7	120
29 Missouri	47.4	1,112	0.1	BG	318	28	64	43.6	93
30 Ohio	50.4	757	0.6	DL,LG	390	31	68	46.6	94
31 Rhode Island	55.0	1,426	0.4	DL,LG,BG	240	28	62	28.4	119
32 Idaho	55.8	944	3.5	–	311	18	72	36.0	104
33 Illinois	58.7	2,841	0.7	DL	356	30	66	47.0	112
34 North Carolina	51.4	804	0.5	–	232	10	55	30.6	106
35 Wisconsin	55.8	853	0.6	DL	353	29	70	43.6	125
36 Michigan	54.3	909	0.7	DL	426	37	69	47.6	115
37 Pennsylvania	53.5	1,365	0.5	DL	325	35	65	38.5	116
38 Vermont	66.3	712	1.3	DL,LG	272	18	70	36.6	127
39 Hawaii	60.6	992	0.1	DL	290	28	73	45.1	148
40 Iowa	48.6	854	0.1	DL	379	22	72	51.0	111
41 South Dakota	67.5	1,039	1.5	–	296	15	69	36.6	106
42 Indiana	51.4	726	0.3	DL,LG,VC	376	30	67	43.5	88
43 Nebraska	50.6	965	0.3	–	324	18	74	46.7	111
44 Louisiana	52.2	1,231	1.6	DL,LG	362	16	58	64.9	116
45 Alaska	45.0	978	0.2	DL,BG,VC	457	34	80	54.2	368
46 Alabama	48.7	664	0.7	–	280	22	56	30.8	96
47 South Carolina	48.3	361	0.6	–	250	8	57	27.3	107
48 Maine	54.1	502	0.5	DL,LG	296	24	68	27.8	125
49 Delaware	46.3	551	–	–	333	25	70	49.4	116
50 West Virginia	49.8	499	0.1	DL,LG	347	34	53	43.5	112

1 DL-direct loans, LG-loan guarantees, BG-bond guarantees, VC-venture capital.
2 AO-advisory office, OM-ombudsman, AC-advisory council, LC-legislative committee, SC-statewide conference, PS-procurement set-asides.
* Includes union membership in District of Columbia.

STATE SUPPORT	BUSINESS ACTIVITY				
Small bus. assistance, (1971-80)	Pop. % change (1971-80)	Employmt. % gain (1971-80)	Pers. Inc. % change (1971-80)	Business units per 1,000 pop.	INC.100 companies (1979-82)
–	11.5%	27.7%	45.4%	46	2
AO,OM,AC,LC,SC	27.1	67.8	77.4	47	27
AO,OM,AC,LC,SC	18.5	41.6	48.7	46	49
AO,OM,AC,SC	30.7	61.0	74.2	50	13
AO,OM,LC,SC,PS	43.4	65.9	77.1	55	10
AO,LC,SC,PS	24.6	47.9	56.7	40	2
AO,AC,LC,SC,PS	5.3	63.2	43.5	46	1
AO,OM,AC,SC,PS	53.3	79.7	88.7	49	3
AO,OM,AC,SC	26.5	46.5	64.3	51	4
AO,SC,PS	17.2	46.6	65.6	49	6
AO,LC,SC,PS	21.0	25.1	60.4	47	4
AO,OM,SC,PS	24.7	58.0	67.6	50	2
AO,OM,AC,LC,SC,PS	-3.3	0.6	9.1	46	31
AO,OM,AC,LC,SC,PS	13.7	41.8	44.4	40	1
AO,AC,LC,SC	5.6	50.5	45.5	54	–
AO,OM,PS	2.5	17.0	26.7	43	6
AO,OM,SC	11.8	39.6	50.3	39	5
AO,LC,SC	63.8	96.8	92.0	50	1
AO,OM,LC,SC	0.8	17.1	21.3	40	12
AO,OM,LC,SC	6.9	34.6	37.9	41	18
AO,OM,AC,LC,SC	2.7	17.2	22.2	44	16
AO,OM,AC,SC	37.9	32.6	70.3	48	1
AO,AC,SC,PS	18.5	38.9	60.3	45	0
AO,OM,AC,LC	17.8	27.5	49.7	45	6
AO,OM,AC,SC,PS	13.0	13.3	50.0	42	4
–	41.1	88.6	123.1	57	4
AO,OM,AC,LC,SC	12.9	34.4	50.0	44	1
AO,AC,SC,PS	13.3	42.4	42.3	56	–
AO,AC,LC,SC,PS	7.5	25.6	34.2	35	5
AO,OM,LC,SC,PS	5.1	18.5	31.9	44	1
AO,OM,AC,LC,SC	1.0	13.3	24.9	40	3
AO,AC,LC,SC,PS	-0.4	15.8	25.0	47	–
–	32.3	58.7	61.5	50	–
AO,OM,AC,LC,SC,PS	1.2	14.5	23.9	41	–
AO,AC,LC,SC	15.5	33.8	45.2	41	1
AO,OM,AC,LC,SC	6.5	27.1	36.5	40	3
AO,OM,AC,SC,PS	4.2	15.0	32.6	37	2
AO,OM,AC,SC,PS	0.2	8.6	24.9	42	6
AO,SC	15.0	35.1	29.4	54	–
AC,LC,SC	25.3	37.5	41.0	52	2
OM,AC,LC,PS	3.1	24.7	31.9	47	1
AC	3.8	36.0	30.4	50	–
OM,SC,PS	5.7	17.4	31.0	39	6
AO,OM,SC	5.3	30.7	34.4	49	–
AO	15.3	51.8	65.8	46	1
OM,SC	32.5	84.3	93.3	49	1
OM,SC,PS	12.9	34.4	50.9	41	2
AO,SC,PS	10.8	41.0	53.0	42	3
AO,OM,AC	13.2	26.3	38.9	49	–
AO,OM,AC,LC,PS	8.6	21.3	29.6	44	–
AO,OM,LC,SC,PS	11.8	25.1	49.1	43	–

Sources (by column, left to right): Federal Deposit Insurance Corp. (1,2); U.S. Small Business Administration (3); State development agencies (4); U.S. Department of Labor, Bureau of Labor Statistics (5,6); U.S. Department of Education (7); Bureau of Census, Census of Manufacturers (8); Tax Foundation (9); INC. survey of 50 states (10); Bureau of the Census (11); Bureau of Labor Statistics (12); U.S. Department of Commerce, Bureau of Economic Analysis (13); Bureau of the Census, County Business Patterns (14); INC. (15).

guarantee that significant numbers of small companies are being helped. However, support for innovative programs and a strong commitment to small business at high levels can be enormously useful. Through special programs, a state can leverage its existing capital and labor resources to the benefit of small businesses. State support can also soften the effects of a declining economy.

INC. ranked the 50 states in five categories. Each category—capital, labor, taxes, business activity, and state support—was weighted to reflect its relative importance to small companies. The scoring system was based on a scale of 100 points. Because most of the experts we spoke with considered capital resources and state support the two most critical factors, each was given 25 points. Taxes, while always an area of real concern, received only 10 points, the lowest weighting, since taxes rarely play more than a minor role in the investment decisions of small companies. Labor and business activity were each weighted at 20 points to reflect their broad significance to smaller companies. Calculated by this method, the overall scores range from 82 for Texas to 33 for West Virginia.

Texas achieved the top overall ranking with an unbeatable combination of strong capital resources, an effective labor force, and a low tax burden. But it was further aided by a high level of business activity within the state and official support for small business. California and Colorado, with higher tax rates than Texas, placed second and third, respectively, largely because of their strength in capital and labor. Each also received a very helpful boost from a robust economy.

Fourth-ranking Florida scored very favorably in labor, taxes, business activity, and small business support, but appeared in the bottom 10 for capital resources. For the other states scoring low in capital, such as West Virginia and Delaware, the impact on the overall ranking was often devastating. They did not compensate as well as Florida did with strengths in other areas.

West Virginia, for example, ranked 50th overall and scored weakly on labor and business activity and only average in taxes and small business support. Its ranking of 49th in capital resources—low lending activity compared with bank assets—compounds its weakness in other areas. Delaware, although somewhat stronger than West Virginia in labor and business activity, also suffers from its poor showing in capital. It ranks 1a t in the capital category and 49th overall. In fact, four of the five lowest ranking states on the summary table (West Virginia, Delaware, South Carolina, and Alabama) are the weakest four states for capital resources. The fifth state, Maine, ranks 43th overall and also suffers in terms of capital.

The influence of other categories while important, proved less decisive in a state's ranking. Although 7 of the top 10 states had very favorable climates for labor—only Oregon, Oklahoma, and Washington did not—poor performers in labor reflecting such factors as high levels of wages, low level of education, and the strong presence of organized labor) did not automatically suffer in the overall rankings. In fact, only three states scoring low in labor—Indiana, West Virginia, and Alabama—appeared in the bottom 10 overall. Other high wage and highly unionized states, such as Ohio, Illinois, Michigan, and Pennsylvania, ranked higher because of stronger showings in other areas.

At first glance, Indiana's rank of 42 seems surprisingly weak in relation to such midwestern neighbors as Illinois and Michigan. While none of these states ranks very favorably in terms of labor or business activity—measures by which Illinois ranks at the very bottom—Indiana distinguishes itself by having the lowest taxes (per $1,000 of personal income) in the nation, while Illinois and Michigan rank in the middle.

Nevertheless, Indiana parts company from Illinois and Michigan in small business support activities. Unlike Michigan, for example, Indiana has neither a small business assistance office nor a governor's advisory council on small business. It also lacks a legislative committee devoted to small business matters, as Illinois and 11 other states have had and as 9 states have now added. To Indiana's credit, though, its officials have recently shown an interest in bolstering small business capital resources through the state's new Corporation for Innovation Development (see page 100).

A careful examination of the accompanying table shows that even states that appear quite similar can differ dramatically. But the most useful discovery may be that each of the 50 states has its own set of strengths. The Midwest and the New England states, for instance, are clearly not seeing the same heady growth as Texas and California. But both regions can become vibrant areas for small companies.

Increasingly, states concerned about the future are exploring their support programs as the most obvious way of spreading their climate for small business. Delaware, for example, made notable strides in the past year when it created four support vehicles—an advisory council, a legislative committee, an assistance office, and a program requiring the state to purchase goods and services from small companies.

THE BEST OF SHOW

Capital: Activity at the money centers

1. California
2. Connecticut
3. New York
4. Texas
5. Massachusetts
6. Minnesota
7. Colorado
8. Illinois
9. Oklahoma
10. Wyoming

High interest rates, as the past couple of years have painfully shown, can be catastrophic for small companies, wherever they are. Generally, states can do very little to mitigate borrowing costs for small companies. Apart from the cost of funds, though, capital resources vary widely from state to state. What is more, the types of resources in place in the state and how they are being used can be critical if, like most companies, yours cannot meet all its capital needs. Therefore, capital resources, along with state support programs, receive our heaviest overall consideration in ranking the states' climate for small business.

To see how the states stack up in terms of capital resources for small business, INC. looked first at two sets of banking industry figures—total state commercial bank loans as a percentage of total assets, and commercial and industrial bank loans on a per capita basis. While these measures don't tell what types of businesses are getting the loans—or even whether all the funds are being lent within the state—they usually reflect the degree to which banks are using their asset bases for aggressive lending to meet the working capital needs of business.

INC. also analyzed the states for special capital programs, such as direct loans, loan guarantees, bond guarantees, and state-sponsored venture capital investing, in the belief that these can help bring capital other than working capital to small companies. Because most experts believe that even small issue industrial revenue bonds tend to benefit large companies and their subsidiaries with solid credit histories, we didn't consider IRBs. Finally, INC. looked at small business investment company (SBIC) investments in the states on a per capita basis, as an indicator of the relative availability of venture capital.

California, with its aggressive banks and active SBICs, emerges as the state with the most extensive capital resources for small business, a distinction it certainly would have earned more easily had all sources of private venture capital been included. Next come Connecticut and New York, whose ranks reflect their active banks, SBICs, and the targeted capital programs in place. Oklahoma and Wyoming aren't usually thought of as states with substantial capital resources, but both benefit from high levels of SBIC investments and per capita commercial and industrial bank loans.

South Carolina, West Virginia, and Delaware emerge as the states where a lack of capital resources—or an unwillingness on the part of commercial banks to lend—poses hurdles for growing small businesses. For instance, commercial and industrial lending in these three states is anemic compared to that in the rest of the states. Low levels of banking activity within a state can, of course, stem from depressed loan demand in a slow economy, but conservative bankers seem to be at least as great a factor.

Labor: The Plains states set the pace

1. Wyoming
2. North Dakota
3. Nevada
4. Kansas
5. Nebraska
6. Arizona
7. Colorado
8. New Hampshire
9. Utah
10. South Dakota

When it comes to labor, the needs of different types of small businesses vary substantially. Most companies, of course, are interested in keeping labor costs down as much as possible. But few can afford to ignore requirements involving skill and concerns over productivity.

In examining labor markets within each state, INC. looked at comparative wage levels for manufacturing and at comparative levels of unionization, which can be a factor in high wages. But in addition to factors affecting the price of labor, INC. also compared the states by levels of productivity and by levels of education among workers.

For productivity, the question was how much each worker added to the value of manufactured goods. In education, the percentage of state residents over the age of 18 who have completed high school was considered, although companies needing highly skilled employees might consider the number of engineering graduates.

At the top of the chart for labor are Wyoming, North Dakota, Nevada, Kansas, and Nebraska. Among these high scorers, however, Kansas is the only state with low union activity. None of the 5 states ranks among the top 10 in terms of low wages. In all but North Dakota, however, 73% or more of their residents over the age of 18 hold high school degrees.

Poorest performers in the labor category are West Virginia, Illinois, Indiana, and Pennsylvania. They have work forces in which only 53% to 67% of the workers hold high school de-

A REPORT ON THE STATES

BOOSTING SMALL BUSINESS

Overcoming an antibusiness bias

The idea of states cutting red tape for development permits and business licenses is nothing new, but Oregon has added some creative wrinkles to overcome a nagging antibusiness reputation.

Antigrowth sentiment was so strong in Oregon during the 1970s that then-governor Thomas McCall once quipped, "Come visit us, but for God's sake, don't stay!" That line was apparently

delivered in jest, but Oregon, reeling from the construction industry slump, which has shut down most of its lumber mills, is still working overtime to convince business that the state wants diversified growth and jobs.

Companies interested in doing business in Oregon were concerned about the need to obtain environmental and other permits, so the state decided to copy neighboring Washington and institute a "one-stop" center, where information on all requirements for permits could be obtained. "Oregon became the second state in the country to apply the one-stop concept," says Paul Haugland, manager of Oregon's Office of State Regulation Assistance. Haugland headed Washington's pioneer program and was hired away by Oregon, where he has carried the idea much further.

Last year, legislation was passed that, in effect, gives businesses a regulatory guarantee. "We'll look at your project and tell you every permit and license you're going to need," explains Haugland. "If it turns out that we slipped up and forgot one, it's on us. You don't have to get it."

So far, the office hasn't missed a permit, so the legal question of what would happen if someone sued to block a project because of a forgiven license has never been resolved. But no one questions the merits of allowing a business to find out about all its permits at once.

Any company planning to set up shop in Oregon now fills out just one 4½-page application. In 30 days, according to Haugland, his office will provide the guaranteed list of permits needed for the project. The office then acts as an advocate for the company in resolving any difficulties with state agencies.

Pension fund steps in

Late last year, Grayson Webb, president of G. D. Ritzy's Inc., wanted to expand his fledgling fast-food restaurant business, headquartered in Columbus, Ohio. Webb, a former vice-president for franchise sales at Wendy's International Inc., the highly successful hamburger chain, was eager to grow beyond his two outlets in the Columbus area, but doing it with a lot of debt would not be easy. Fortunately for Webb, he didn't have to. His company received a $2 million equity investment—and from a very unlikely source, the Public Employees Retirement System of Ohio (PERS).

In exchange for 40% of its stock, G. D. Ritzy's became the $6.5 billion PERS's first small company investment since the Ohio legislature liberalized investment guidelines earlier in 1981. PERS, like most of the nation's public employee funds, had previously been governed by statutes limiting investments to larger, publicly traded companies. Thus, most of its investments were in highly rated debt of big companies, some of which were based outside the state.

Under the new guidelines, the Ohio fund is now authorized to put 5% of its assets—or up to $325 million—into any partnership, proprietorship, or corporation that is either based in the state or has half of its assets or employees there. "Pension funds," says Robert McLaughlin, a PERS investment officer, "can step in to fill the financing gap to the benefit of the local economy and the performance of the fund." While it may take a while for PERS to find appropriate investments, in time it could put money into dozens of Ohio businesses and generate jobs there.

Other states seem to be following Ohio's lead in an effort to direct new capital into emerging companies. Neighboring Michigan, for example, badly scarred from the prolonged slump in the auto industry, recently adopted legislation permitting state pension funds to put up to 5% of its $6.7 billion State Employees' Fund in Michigan small companies and venture capital firms.

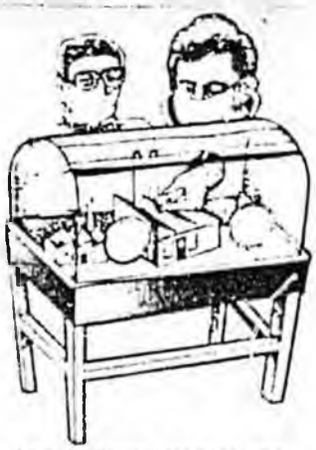
From ivory tower to marketplace

Pennsylvania was a pioneer in acknowledging the importance of technology transfer when it created the Pennsylvania Technical Assistance Program (PennTAP) in 1965. The program linked the state's small business community to existing academic resources. Now the state has begun to carry its role as business problem-solver one step further.

Later this year, a new state-supported program called the Ben Franklin Partnership will get under way with $1 million of state funds, to be matched by an equal amount of private money. Pennsylvania's idea is to further leverage university resources, which are already bringing technical assistance to small businesses, to assist entrepreneurs in product commercialization and applied research.

PennTAP, based at Pennsylvania State University, at University Park, has already earned its spurs with many smaller companies, in which lack of research facilities and personnel can make even a small technical problem loom very large. T. N. Rendall Harper Jr., president of American Micrographics Co. in Pittsburgh, for example, knew he was wasting lots of silver from the film plates he uses in his business but didn't know if it would be economical to recover it. PennTAP introduced him to Penn State researchers, who showed him how to reclaim the silver while complying with federal environmental rules.

Pennsylvania is not the only state with this type of incubator program. Georgia and Tennessee are among the others that



have built small business programs around their universities. The result, says Reuben Harris, director of the Center for Industrial Services at the University of Tennessee, is that "businesses can get the help they need, and ivory tower professors get real-world experience."

Pennsylvania's Ben Franklin Partnership will operate from regional centers around the state. But instead of dealing only with technical problems, as PennTAP does, it will develop ways to move new ideas from the laboratory to the marketplace. The state hopes the new program will help create growth in advanced technologies, such as robotics, biotechnology, and magnetics, as a means of offsetting declines in Pennsylvania's older industrial base.

A fresh approach to capital

No matter where an enterprise is based, finding equity capital for growth is often one of the toughest problems an entrepreneur faces. Private venture capitalists put money in few deals, and few states are willing to expose public funds to high risks. But even in the fiscally conservative Midwest, Indiana seems to have found a way to bring a new source of venture capital to the state's small companies.

Indiana's new Corporation for Innovation Development (CID), authorized last year by the legislature, will be capitalized by private investors, who get a credit—30% of their investment—against their state taxes. While granting tax credits means that Indiana will give up some revenue initially, Lieutenant Gov. John Mutz points out that the approach allows the state to "leverage additional private investment while leaving venture capital investment decisions to the private sector." If the enterprises are successful, they will pay taxes.

Indiana expects CID to draw at least $8 million of private funds, primarily from the state's com-

Such programs can be extremely valuable for bringing awareness and help to small companies. But for states facing difficult economic times and declining industries, the future may require more specialized programs in the areas of capital resources, job training, and technical assistance—all aimed at broadening opportunities for small businesses.

In the past, several states targeted most of their initiatives at existing companies, through efforts such as technical assistance programs in connection with universities. But increasingly, some states—Pennsylvania, Georgia, and New York, for example—appear to be highlighting new companies as the important thrust in their economic development efforts. Each of these states is directing money into supporting technology-based start-ups, with technical universities playing key roles (see page 100). Notes Roger Vaughan, a consultant at the Council of State Planning Agencies in Washington, D.C., and former deputy planning director of New York: "States interested in distinguishing themselves will have to do a lot more in helping new businesses come about."

Just as important to the small business climates of many states, though, may be how well the capital and labor needs of growing companies can be met. A growing number of states are considering such measures as the revamping of investment guidelines on public employee pension funds and increasing the outlays for technical education. Through its new Technology Park Corp., for instance, Massachusetts is putting up $20 million for a center co-funded by industry in order to train engineers and other technical specialists in microelectronics.

Some experts are convinced that every state will need to help reshape its workforce to accommodate businesses. During the next decade companies are going to need a great many technically competent workers for seemingly nontechnical jobs, according to a number of authorities on small business.

It may not be easy for public officials to think about helping small business in such ways, especially in the Midwest and the South, where the emphasis has long been on big companies and large manufacturing plants. "Politicians don't have to learn how to wave 1,000 jobs around," says Alexander Dingee, president of Venture Founders Corp., a Waltham, Mass., company specializing in assistance to start-up companies. "But it's a lot harder for them to make election-year claims about how they've helped small companies."

Bruce G. Posner is an associate editor at INC.

grees, and all are heavily unionized in their major industries. In addition, wages for Illinois and Indiana workers average among the highest for manufacturing in the nation.

State support: Kentucky leads the bandwagon

1. Kentucky
2. New York
3. Illinois
4. California
5. Wisconsin
6. Ohio
7. Delaware
8. New Jersey
9. Mississippi
10. Kansas

Official state recognition for small business won't make or break small companies very often, but it can give them a boost from time to time and help create a positive business climate. Programs that provide reliable information or technical assistance, for example, can save business operators both time and money.

INC. surveyed the 50 states to identify those that address the concerns of small companies through small business assistance offices, ombudsmen, statewide small business conferences, standing legislative committees, and governors' advisory councils. Nine states have created new legislative committees in the past year, bringing the number of legislatures with small business committees to 21. What is more, 13 governors have recently formed new advisory councils, bringing to 29 the number of states with that form of small business support.

The number of states committed to purchasing a specified portion of their goods and services from small businesses—usually 5% to 15%—has also increased substantially. Twenty-five states currently have procurement set-aside programs, 10 of which were established in the past year.

Kentucky, New York, and Illinois emerge at the top of the charts for official state support for small business. They are the only three states in the nation with a full array of the programs measured in INC.'s survey. But even more noteworthy is that, in the past year, 25 states have upgraded their small business support activities.

The most improved state is

Delaware, which installed four new components to its small business support: an assistance office, an advisory council, a legislative committee, and a procurement program. Almost as impressive is New Hampshire, which added three programs but still lacks an advisory council.

Among the other states demonstrating increased support are Mississippi, Kansas, Rhode Island, Maryland, and Missouri.

Taxes: Indiana takes the smallest bite

1. Indiana
2. New Hampshire
3. Missouri
4. Ohio
5. Tennessee
6. Alabama
7. Florida
8. Texas
9. Arkansas
10. Kansas

As unpleasant as taxes are to many small companies, their importance to a state's overall business climate is seldom on a par with such factors as capital and local resources. Nevertheless, the level of state and local taxes that businesses and individuals must pay tells something about whether it is possible to operate and grow in that state.

Since states tax businesses so differently—by income, payroll, or inventory, for example—and vary greatly in terms of tax credits allowed, state officials and tax experts agree that any direct comparisons are nearly impossible. Instead, INC. focused on the overall level of state and local taxes as related to each $1,000 of personal income—a measure that can be examined on a state-by-state basis. By this measure, Indiana's tax rate of $88 per $1,000 was the nation's lowest, followed by New Hampshire ($92), Missouri ($93), and Ohio and Tennessee (both with rates of $94).

The state with the highest tax was Alaska at $368, although in reality nearly all of the state's revenue is drawn from big energy companies. (In fact, most

Alaskans pay no state or local taxes.) New York, where individuals pay $163 per $1,000, was No. 2, although it has just enacted new rules for start-ups (see page 101). Following New York are Hawaii and Wyoming (both $148) and Massachusetts ($139).

Such tax burdens are comparatively stiff. But tax specialists and economists point out that high state taxes rarely influence a business decision about whether to start up or expand in a particular location—except in the unlikely event that other variables are equal. For one thing, higher taxes can mean better services and schools. "If you can sell 10 times as many widgets in New York as you can in Mississippi or Alabama, you don't mind paying those high taxes," says a national tax partner for a Big Eight accounting firm. "Taxes are usually just the tail," he says, "not the dog."

Bradford W. Ketchum Jr., a senior editor at INC., assisted in the preparation of this section. Anita Harris, a freelance writer, and [illegible], both based in Boston, assisted in research and data analysis.

mercial banks, insurance companies, utilities, and manufacturers. The corporation, which will eventually pay investors Indiana state tax-exempt dividends, could make its first investments by the end of the year. And while it is too soon to say where the money will actually go, Marion C. Dietrich, CID's president and chief executive officer of Cummins Engine Co. in Columbus, Ind., says CID is particularly interested in funding enterprises that are devising productivity improvement technologies to assist manufacturing industries, such as auto and steel.

By law, CID must put its money into Indiana start-ups and new federally licensed small business investment companies. Dietrich reports that the corporation also plans to participate in leveraged buy outs.

In creating CID, Indiana joins Connecticut and Massachusetts, among a few other states, in developing programs to make more venture capital available. Since its establishment in 1972, the Connecticut Product Development Corp. (CPDC) has committed about $5.3 million to finance product development by 39 companies within the state. When these businesses bring products to market, CPDC claims a royalty, which in 1981 amounted to $219,000. Since 1979, meanwhile, the Massachusetts Technology Development Corp. (MTDC) has invested about $3.7 million in 16 businesses, helping, it says, to make available an additional $14 million in capital for the companies from private sources.

"Private venture capitalists aren't geared to high-risk investments," says Fred Schmid, president of Crystal Systems Inc., a Salem, Mass., company that recently struck out in its efforts to attract private equity investors. Crystal Systems produces industrial synthetic sapphire crystals, but it needed new capital to develop a silicon product for commercial photovoltaic applications. Although private venture capitalists kept saying no, MTDC agreed to lend Crystal Systems $750,000 for seven years, in the belief that a market will eventually develop for the product.

What is more, MTDC's loan enabled Crystal Systems to get a larger credit line from its bank and another $500,000 in long-term debt from another lender. "MTDC's investment showed confidence in the business at a critical time," Schmid says.

The enterprising states

While the Reagan Administration's controversial proposal to create urban enterprise zones in depressed areas is still being considered by Congress, a few states are taking matters into their own hands. Regardless of what finally happens in Washington, Connecticut has passed enabling legislation for its own brand of enterprise zones. This fall it will decide which of the state's economically depressed communities will be the new enterprise zones.

Other states, including Virginia and Kentucky, have their own enabling legislation, and still more are looking at enterprise zones to stimulate business and employment. Connecticut's programs, for example, will offer companies state and local property tax relief, as well as $1,000 grants for each job created. What seems to distinguish Connecticut's plan from those being developed elsewhere is its focus on small businesses.

Such an orientation wasn't accidental. "We're interested in overall development of the zones," says John J. Carson, Connecticut's commissioner of economic development, "so we're targeting small and medium-sized businesses."

Many have criticized the federal enterprise zone plan because it would primarily benefit large corporations that can use tax write-offs. Instead of stimulating new business, this might merely lead to shifts of corporate assets from one side of town to another. Such concern has led small business advocates to suggest that any tax credits be made refundable, to ensure that they are useful to new and small businesses needing cash flow more than tax benefits.

While Connecticut didn't opt for refundable credits, it did establish a new $1 million loan fund for small companies operating within the zones. The fund will lend a company up to 25% of its fixed or working capital, up to a maximum of $100,000 for manufacturing concerns and $50,000 for retailers. It will lend the money for seven years at one percentage point higher than the rate of the state's most recent general obligation bond offering.

Connecticut's enterprise zone legislation will also assist small companies with a unique job-voucher system designed to reduce the cost of finding qualified workers. The state labor department will determine which workers qualify for job credits either as zone residents or under the guidelines of the federal Comprehensive Employment Training Act (CETA). Those who do qualify turn vouchers over to the zone employer who hires them, says Carson, thus saving small companies the sometimes hefty cost of screening employees.

Going for growth in job training

Job-training programs may be coming of age with a new program in Arizona that targets funds for employment in such high-growth industries as electronics and aerospace. Arizona is taking an approach that is different from such states as North and South Carolina, Georgia, and Alabama, where job-training programs have been offered to almost any company willing to set up shop in the state—even when the jobs are in such declining domestic industries as textiles and furniture making. To minimize unemployment problems down the road, Arizona's Office of Economic Planning and Development tries to help only those employers that are apt to generate growth.

The state conducted a major study titled "Opportunities in Arizona for Suppliers of High Technology Manufacturers," which amounted to a series of market studies for a number of industries. Now Arizona can offer job-training subsidies of up to 50% of wages for six months to industries in the state showing the greatest growth potential.

"We're trying to avoid training people for dead-end jobs," says Allon Washington, the state's manpower program manager. He reports that in the program's first year of operation, 8,000 people have been or are being trained by new programs.

Early indications point to satisfaction on the part of the employers. Comtec Economation Inc., for instance, a maker of electronic quartz crystals, is using the program to train 200 employees in Flagstaff. "It took the state only eight weeks to accept our application for training assistance," says Dave Convery, general manager.

A shift in tax incentives

While most state legislatures seek ways to stimulate business through an array of tax incentives, New York has a sharper focus. Eager to spur development of new—particularly high-technology—companies, New York this year began exempting investors in new businesses from capital gains tax payments as long as their money is held in a company for at least six years.

The state has also granted its 6% investment tax credit and its new 10% research and development investment tax credit to new concerns. These measures are meant to provide willing investors and greater cash flow in the early years of a business.

Whether the policy will have its intended impact won't be apparent for some time. The first investment tax credit refunds won't come until next year, and the capital gains exemption won't come into play for four years, when a portion of it becomes available. But an intense lobbying effort by the National Federation of Independent Business to have both measures apply to all small companies suggests that at least some people believe these measures could be significant spurs to investment.

In September 1981, California dropped the capital gains tax on long-term investments in all small independent businesses—except those dealing in tangible assets, such as gems and collectibles. No concrete results are yet evident, but Michael Kieschnick,

director of California's Office of Economic Policy, says, "I've gotten hundreds of calls from lawyers and accountants." Kieschnick plans to conduct a survey this fall to see how the California exemption of capital gains for new small businesses has affected investment decisions.

David Lindorff, a New York City–based freelance writer, assisted in the preparation of this section. Counsel for Community Development Inc., a Cambridge, Mass., consulting firm, contributed material.

Rob Walker
Juneau,

EXXON COMPANY, U.S.A.
POUCH 6601 • ANCHORAGE, ALASKA 99502

PRODUCTION DEPARTMENT
ALASKA OPERATIONS

June 9, 1983

Re: Proposed Interagency Permit
Review Process

Mr. D. S. East

This letter is in response to a letter from Mr. M. D. Nalley of June 8, 1983, requesting comments on a proposed MOU for a state interagency permit review process.

First, I believe we should express a position that only legislative permit reform will have guaranteed, long lasting results. Some of the objectives stated in the MOU are good, and points of agreement appear to address many of the problems with existing permitting processes, however, we have seen such statements in the past. In our view, this MOU could resurrect the Uniform Procedures Regulations of 1981, which we strenuously fought because of, among other things, no lead agency provisions and open ended permit processing times. It appears that each time the legislature gets serious about permit reform, the administration proposes some vague administrative remedy to defer or obviate the need for a permit reform law.

Some of our concerns with this MOU are:

1. The process is optional, and may never be used. Further, the MOU is not binding and apparently can be changed at will.

2. There is not only no lead agency, this MOU would further reduce the ability of an agency to make a final decision on a permit required by that agency. "No single agency may override another during the interagency review process."

3. It would establish OMB as a super-agency to mediate interagency conflicts. The applicant will be caught in the middle, forced to accept onerous stipulations to permits as is now the case.

4. There are no time frames for permit processing included in the MOU; it states ". . . shall be established by regulation and be adhered to by resource agencies. . ."

We support true permit reform through legislation.

R. G. Dragnich

EES3:njg:147
xc: M. D. Nalley
R. H. Weaver

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

June 7, 1983

The Honorable Bettye Fahrenkamp
Senator, Alaska State Legislature
Pouch V, State Capitol
Juneau, AK 99811

Re: Permit Reform

Dear Senator Fahrenkamp:

Enclosed is a copy of a draft Memorandum Of Understanding (MOU) pertaining to a process for interagency permit review.

This relatively short document creates a structure which affords an applicant a single comprehensive review by all state agencies for a particular activity. While we have eliminated the so-called "lead agency" concept, a mechanism exists to insure that applicants will have single place to receive permit assistance as well as assistance in obtaining timely issuance of permits.

The draft document before you represents a substantial amount of work on the part of agency personnel, particularly the Deputy Commissioners of the respective resource agencies. The Administration will release the memorandum in another week or ten days to a variety of industry groups and other interested parties. We expect to incorporate any useful comments from this informal public process in a final MOU. The Commissioners will formally execute the final Memorandum Of Understanding on July 17, 1983. After mid July, the Administration will commence work on implementation of the Memorandum.

As always, I would be delighted to answer any questions

you may have concerning this document. We look forward to your comments.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Joseph W. Geldhof
Assistant Attorney General

JWG:ml

cc: Commissioner Esther Wunnicke
Department of Natural Resources

Commissioner Don Collinsworth
Department of Fish and Game

Commissioner Richard A. Nevé
Department of Environmental Conservation

Dennis D. Kelso, Deputy Commissioner
Department of Fish and Game

Jay Hogan , Associate Director
Office of Management and Budget

Doug Redburn
Department of Environmental Conservation

Diane Mayer, Senior Analyst
Office of Coastal Management

Bill Beardsley, Director
Division of Finance and Economics
Department of Commerce and Economic Development

James Barnett, Deputy Commissioner
Department of Natural Resources

Kay Brown, Director
Division of Minerals and Energy Management
Department of Natural Resources

Norman C. Gorsuch
Attorney General

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MEMORANDUM OF UNDERSTANDING

INTERAGENCY PERMIT REVIEW PROCESS

This Memorandum of Understanding (MOU) sets out the agreement reached by the Departments of Environmental Conservation, Fish and Game, and Natural Resources, and the Office of Management and Budget, regarding procedures for a unified interagency review of development activities requiring permits from more than one state agency. The departments which are party to this MOU are hereafter referred to as resource agencies. This MOU is in furtherance of and implements the Governor's regulatory reform objectives, which follow, and is intended to streamline interagency communication and coordination. It is not intended to be binding on or create any rights, legal or otherwise, in any party or to allow such party to enforce this agreement in any administrative proceeding or the courts.

Objectives of Permit Reform

1. Streamline and expedite state reviews and decisions on development activities consistent with various permit objectives already established.

2. Establish uniformity in the state's comments and decisions on federal agency activities and in State decisions on development projects requiring more than one consistency determination under the Alaska Coastal Management Plan (ACMP).

3. Assure certainty and finality in the state's responses to permit applicants by eliminating repetitive reviews and decision making by state agencies.

4. Provide adequate opportunities for public and local (including coastal resource districts and municipalities) participation in state decisions.

5. Provide clearinghouse assistance to applicants regarding permits including information, application and processing of permits as well as, to the extent possible, assistance with necessary federal permits.

6. Achieve balanced, factually documented state decisions which recognize the full range of state interests involved with a proposed activity, including broad consideration of the costs and benefits of requiring particular stipulations.

7. Provide an interagency conflict resolution mechanism which all agencies shall abide by and which results in a unified state position being transmitted to the applicant.

Points of Agreement

1. At the option of the applicant, the state will provide a single, conclusive, determination on any activity which is reviewed under interagency review procedures.

2. Interagency review procedures will be available whenever the resource agencies are required to review: a) federal activities; or, b) federally permitted activities; or, c) activities which require more than one state agency coastal management consistency determination.

3. If an applicant elects to procure individual permits and not undertake a single comprehensive review or if an activity in the coastal zone requires a single permit, minimum procedures for consistency reviews of individual permits by coastal districts with approved coastal management plans will be established.

4. Each agency will have one opportunity to review an activity at a given level.

5. Definite review time frames, intended to expedite permit processing, shall be established by regulation and adhered to by all resource agencies in the issuance of their permits. Applicants will be required to provide sufficiently detailed information at the time the interagency review is initiated to enable

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the state to complete a single comprehensive review of the activity in an expeditious manner. Procedures which allow reasonable extensions of these established time frames during the review of unusually complex activities proposals will be established.

6. OMB shall maintain a record and project tracking system which will ensure that required comments are provided and final decisions are issued by all agencies in a timely manner.

7. No statutory authority of any resource agency, coastal resource district with an approved district coastal management plan, or the Coastal Policy Council is reduced or diminished by OMB's coordination role in the permitting process or by this MOU.

8. No single resource agency may override another during the interagency review process. If the agencies through the review process are unable to agree on a single position at the regional staff level, the unresolved issues shall be elevated to the division directors and to higher levels if necessary for resolution. Coastal resource districts with approved coastal management plans are also authorized to elevate unresolved issues to such higher levels for resolution. The commissioners of the resource agencies, will jointly make the Administration's final decision in such cases where prior resolution has not occurred.

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9. OMB shall serve as a facilitator and mediator throughout the interagency review process. To improve the accessibility of that office to perform the mediation role, OMB shall maintain a regional presence in Anchorage, Fairbanks and Juneau in association with the resources agencies. OMB will not have the authority to override the position of any resource agency on a consistency determination, but will call interagency meetings as appropriate. In the event an unresolved issue is presented to the commissioners of the resource agencies, OMB will coordinate the presentation, review and resolution of the issue.

10. A joint internal sign off on the single conclusive determination will be established to ensure that all resource agencies are satisfied with the determination before issuance.

11. Uniform regulations or an administrative order establishing the specific steps of the interagency review process will be developed and presented for public comment by all the resource agencies not later than September 30, 1983.

DATED:

_____

Commissioner
Department of Environmental
Conservation

DRAFT

DATED:

_____

Commissioner
Department of Fish and Game

_____

Commissioner
Department of Natural Resources

_____

Director
Office of Management and Budget
Office of the Governor

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MINUTES

May 20, 1983
3:13 p.m.

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chair
Senator Ziegler, Vice Chair
Senator Eliason
Senator P. Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

SB 219 An Act relating to the processing of permits by state agencies; and providing for an effective date.

Senator Sturgulewski moved to adopt the committee substitute. The motion passed without objection.

Joe Geldhof of the Department of Law, testified that the Administration opposed CSSB 219, as they are already working toward a realistic, meaningful solution to the problems identified. He said a "memorandum of understanding" would be sent to the committee within two-three weeks describing how this would be accomplished. There was discussion of how long it would actually take the Administration to get a revised program in place, and how the Administration would approach appeal procedures. Mr. Geldhof thought it might be appropriate to shorten review times, as that would make agencies complete their reviews more quickly. The committee discussed this point of view at some length.

Senator Fahrenkamp asked that the committee be sent a draft of the Administration's permit reform plan as soon as a draft was available. Mr. Geldhof listed all those who had participated in working on reform.

James Barnett, Deputy Commissioner of the Department of Natural Resources, said that as a former oil company attorney, he

understands the industry concerns. He said that, although the lead agency concept was intended to streamline the permit process, many agencies do not trust the Department of Natural Resources. Commissioner Dick Neve supported this approach, saying he was pleased at the interagency effort to develop permit reform.

William W. Hopkins, executive director of Alaska Oil and Gas Association (AOGA), said the elimination of permitting delays should be a legislative priority. He supported the committee substitute and the DNR lead agency concept. Mr. Hopkins offered amendments to the bill. (Mr. Hopkins submitted prepared testimony to the committee, which is available for review.)

Steve Silver, attorney for Alaska Lumber & Pulp Company, supported passage of SB 219. He said the statutory scheme is vitally important. Mr. Silver also offered amendments (which had been previously submitted to committee staff).

Phil Holdsworth, testifying on his own behalf, said he had obtained good results in acquiring permits from the new administration. He suggested putting in a provision where an applicant and the lead agency agree upon how long the state would have to process the permits, depending on the complexity of the permit required.

Ginny Chitwood, executive director of Alaska Municipal League, was concerned that local government requirements not be overridden in streamlining the permit process. (Ms. Chitwood submitted written testimony, which is available for review.)

Jay Nelson, Alaska Environmental Lobby, supported the Administration's approach because he felt the bill would not protect the permitting process.

Jerry McCutcheon, on his own behalf, offered an amendment (which is available from the committee).

Richard Harris, environmental manager for Sealaska, supported the Office of Management and Budget as the lead agency, rather than DNR.

Robert Minch, League of Women Voters, read into the record a letter from Mary Beth Juday, opposing SB 219. This position was discussed.

Wally Kubley, representing Louisiana Pacific, endorsed the legislation as written.

The meeting was adjourned at 4:28 p.m.

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

May 20, 1983

To: Senate Resources Committee

From: Ginny Chitwood

Re: SB 219 - Processing of Permits

Over the past several years during the debate on permit reform bills, there have been alot 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 enough hearings to ensure that all of the ramifications of this bill can be explored.

REVIEW BY THE OMBUDSMAN An applicant may request an ombudsman review of a denied permit for factual sufficiency and compliance with the Administrative Procedures Act. If the ombudsman finds that insufficient basis for dening the permit the permit will be deemed to be approved. The commissioner is given 10 days to respond to the ombudsmans findings. If the commissioner fails to act within 10 days or if the response is inadequate to charge the decision of the ombudsman the applicant may act on the approved permit.

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. 071-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 13, 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 these 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 280-79I21111 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.

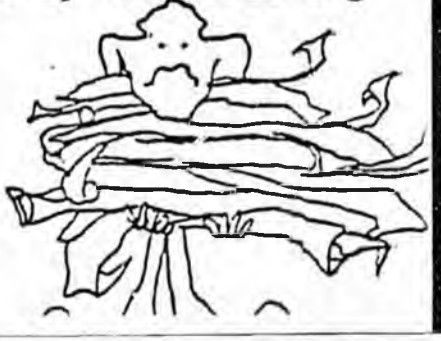
Although we do not understand why a spill prevention control and countermeasure plan is needed for approval of this permit we will submit one to DEC because to argue it would be time consuming and it will be required by the Coast Guard, FS and EPA prior to fuel being stored in the area. We will agree 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. FD280-79121111FP 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



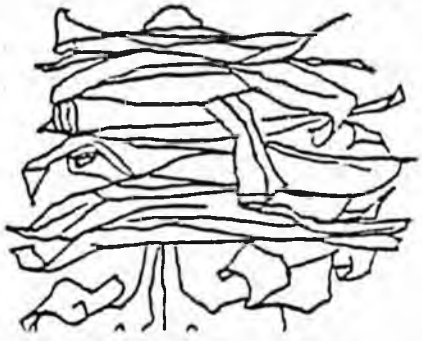
Corps	Corps of Engineers, Dept. of Army
EPA	U.S. Environmental Protection Agency
DNR	Alaska Department of Natural Resources
DPDP	Office of the Governor, Division of Policy Development and Planning
ADF&G	Alaska Department of Fish & Game
DEC	Alaska Department of Environmental Conservation
ADL	Alaska Department 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 rapdily 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 implementation 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.

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 t 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 interest 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.

Permittee hereby accepts and agrees to comply with 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

TO
"OVERKILL" - 3/80

Louisiana-Pacific Corporation

Ketchikan Division

Post Office Box 6600
Ketchikan, Alaska 99901 U.S.A.
Telephone 907-225-2151
Telex 090-55-251
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
071-0YD-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

Ketchikan Division

Post Office Box 6600
Ketchikan, Alaska 99901 U.S.A.
Telephone (907-225-2151
Telex 529-55-251
Answerback KAYPULPCO KET

April 1, 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.

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. 071-0YD-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 futher processing of our permit.

Louisiana-Pacific Corporation

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

STATE OF ALASKA

JAY S. HAMMOND, GOVERNO

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

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 7002
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 Officer

STATE PARK PLANNING

Consistent with ACMP.

LWCF

No comment.

Sincerely,

for Chip Dennerlein
Director

CD/cw

10-311EH

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

MAR 2 1 1980

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

Reference: 071-OYD-2-790391
Construct Berm & 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,

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

1 Incl
As stated

STATE OF ALASKA

FISCAL NOTE | Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSB 219
Title: Permit Reform
Sponsor: Bennett
Requestor Senate Resources

II. FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMEC
BRU, Program of Subprogram(s) Affected: Mgmt. of Land/Mineral/Energy Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		346.6				
200 TRAVEL		18.0				
300 CONTRACTUAL		94.5				
400 COMMODITIES		33.8				
500 EQUIPMENT		264.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		756.9				
CAPITAL		-				
REVENUE		-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		756.9				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		10				
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis (Attached)

Prepared By: Jim Barnett Phone: 265-4131
Division: Commissioner's Office - Anchorage Date: 5/20/83
Approved by Deputy Commissioner: Mary Hakkinen Date: 5/20/83
Department: Natural Resources

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor

Attachment to Fiscal Note for CSSB 219

I. Assumes following new personnel to process and coordinate CZM and permitting for development on state and federal lands, including OCS leasing, ming and timber sales.

Fairbanks	Annual Cost w/benefits
Nat. Resource Manager I	48,735
Nat. Resource Officer II	42,570
Nat. Resource Officer I	36,945
Clerk III	25,095
Anchorage	
Nat. Resource Manager I	42,570
Nat. Resource Officer II	36,945
Nat. Resource Officer I	32,175
Clerk III	22,305
Juneau	
Nat. Resource Officer II	36,945
Clerk III	22,305
	346.6

II. Assumes travel costs for adopting regulations and occasional meetings to resolve conflicts.

III. Contractual -

For publishing of notices and general overhead costs (phone, rent, etc.).

IV. Equipment costs include $250,000 for a system linking the three permitting centers.

Costs beyond FY 84 are not estimated, but comparable. Assumes that CSSB 219 is amended to exclude conveyance-related permits such as material sales, ROW's, etc.

SB 219
RELATING TO PROCESSING OF PERMITS BY STATE AGENCIES.
SPONSOR: BENNETT, FAHRENKAMP

In processing of permits by state agencies, places a time limit on the issuance of final decisions:

1) any time period specifically required by state law
2) if none required, 60 days if a public comment period is required
3) otherwise, 30 days

If no final decision is made within the specified time period, the permit is approved as submitted.

Requires an agency to notify an applicant within 10 days if the agency does not have authority to issue a permit or if a permit application is incomplete.

Allows for review of agency's final decision by the commissioner or board at an applicant's request. Decision must be issued within 10 days of the request if it's a review on the record, or 30 days after the conclusion of a review de novo.

In an appeal to the superior court, places burden of proof on the agency.

Defines permit, permit application, project, and state agency.

rec 4-12-83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SB 219
Title: "Processing of permits by state. . ."
Sponsor: Senator Bennett
Requestor: Senate Resources

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life & Property
BRU, Program of Subprogram(s) Affected: Fire Prevention

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-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 4-5-83

Approved by Commissioner: [signature] Date: 4/6/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/2

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3836
(907) 465-3835

Senate

Committee on Resources

MINUTES

June 13, 1983
3:04 p.m.

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chair
Senator Ziegler, Vice Chair
Senator Eliason
Senator P. Fischer
Senator V. Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

HCR 31 Relating to protection and preservation of the Kenai River.

HCR 27 Requesting the state to collect and use information on trapping for land use planning and land disposal.

HB 130 An Act relating to homesteads; and providing for an effective date.

SB 219 An Act relating to the processing of permits by state agencies; and providing for an effective date.

HCR 31

Representative Fritz, sponsor of the resolution, encouraged support of the resolution, and proposed deleting the last resolve clause in the measure in order to remove the fiscal impact.

Jay Nelson, Alaska Environmental Lobby, said that the Kenai Peninsula Conservation Society and the Katchemak Bay Conservation Society both favored the resolution, and he encouraged passage of the measure.

Senator Mulcahy moved that lines 18-22, page 2, be deleted, and asked unanimous consent. The motion passed without objection.

Senator Mulcahy moved that the Resources Committee Substitute be adopted and reported out with individual recommendations. The motion passed without objection.

HCR 27

Sandra Schubert, Resources Committee staff, explained the differences between the proposed committee substitute and the original resolution.

Kay Wallace, staff to Representative Hurlbert, said the Representative supported the committee substitute and encouraged the Committee's support.

Senator Mulcahy moved that the Resources Committee Substitute be reported out of Committee with individual recommendations. The motion passed without objection.

HB 130

Pat Pourchot, Resources Committee aide, explained the proposed committee substitute. He outlined requirements for homesteads and obtaining patent. He said the committee substitute tried to simplify and combine a homestead program and the existing remote parcel program. He explained an amendment proposed by the Department of Natural Resources which would allow the Department to limit the number of stakers in a lottery, when necessary.

Representative Rick Uehling, sponsor of the bill, said, in reference to DNR's proposed amendment, that the House would prefer a land-rush approach rather than restricting lotteries.

Senator Vic Fischer moved adoption of DNR's proposed amendment. The motion passed without objection.

Senator Mulcahy moved the amended Resources Committee Substitute be reported out of committee with individual recommendations. The motion passed without objection.

SB 219

Jim Palmer, Resources Committee aide, explained the proposed committee substitute. The committee discussed the provisions of the measure.

Phil Holdsworth, Alaska Miners Association, hoped that the intent of the language allowing flexibility of time limits (page 2, line

6, draft committee substitute) would mean that processing time could be shortened as well as lengthened. Senator Fahrenkamp said that was the intent.

Senator Mulcahy moved that the proposed committee substitute be adopted and reported out as a Resources Committee Substitute with individual recommendations. The motion passed without objection.

The meeting was adjourned at 3:37 p.m.

file SB 219

The following is a best efforts attempt, on short notice, to outline the hearings that have been held on SB 84. It should be noted the the issue of regulatory reform has been around quite a while and SB 548 - An Act relating to the processing of permits by state agencies - was worked on in 1980.

1980	SB 548
4/7	Introduced in Senate
4/15	Heard Senate Judiciary Committee
4/22	Passed Senate 15-00-05
5/26	Heard House Judiciary Committee
5/31	Heard House Judiciary Committee

1981	SB 84
1/15	Introduced in Senate
4/1	Heard Senate Resources Committee
4/10	Heard Senate Resources Committee
4/14	Referred to Senate Finance Committee
4/20	Waived by Senate Finance Committee
5/5	Passed Senate
____	Heard House Finance Committee
6/3	Heard House Judiciary Committee
6/22	Heard House Rules Committee
6/23	Heard House Rules Committee
9/25	Heard Joint House Labor & Commerce and Rep. Randolph Anchorage
10/16	Heard Rep. Randolph - Fairbanks
10/17	Heard Rep. Randolph - Fairbanks
10/29	Heard House Labor and Commerce Committee - Fairbanks

1982	SB 84
2/12	Heard House Labor and Commerce Committee
2/16	Heard House Labor and Commerce Committee
2/19	Heard House Labor and Commerce Committee
_____	Heard House Finance Committee
_____	Heard House Finance Committee
_____	Heard House Finance Committee
4/17	Hearing House Finanace Committee

MAY 1 1981

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

May 1, 1981

Honorable Bettye Fahrenkamp
Chairperson
Alaska State Legislature
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Document# 117-81

Dear Senator Fahrenkamp:

This letter is written to elicit your assistance with regard to CS for Senate Bill No. 84, "An Act relating to the processing of permits by state agencies; and providing for an effective date." This Bill would place time limits on processing applications for a State license or permit for a new project and would standardize some aspects of permit processing.

During the last legislative session, former versions of this Bill (HB 999 and CS for SB 548) were discussed in several work sessions. It was determined, at that time, that the provisions of the Bills should not apply to permit processing for public service and certain other programs. The exemptions were accomplished in the definition of a "project." The provisions of the Bill would apply to permit issuance to new projects. Project was defined to exclude "pursuing a trade or profession, providing a regulated public or health service, or operating a financial institution."

During this legislative session SB 84 and HB 415 contained the same exemption in the definition of a "project." However in CS for Senate Bill 84 the removal of two words has the result of limiting the exemption to "public health service" rather than to "public or health service." The Bill would now apply to the following public service licensure activities of the Division of Family and Youth Services within the Department:

Child Foster Home Licensing	AS 47.35.010.080
Child Day Care Home Licensing	AS 47.35.010.080
Adult Foster Home Licensing	AS 47.35.010.080
Child Day Care Center Home Licensing	AS 47.35.010.080
Residential Child Care Facility Licensing	AS 47.35.010.090
Adult Residential Care Facility Licensing	AS 47.35.010.090
Child Placement Agency Licensing	AS 47.35.100

These programs are social service programs and would not be eligible for exemption from the provisions of CS for SB 84. We are also concerned that pre-elementary schools certified under the authority of AS 14.07.020(8) would fall under the provisions of the Committee Substitute.

We believe that the committee did not intend the provisions of the Bill to apply to the above programs, and we are, therefore, suggesting that social service and educational programs be added to the exemptions in the definitive of "project" as follows:

> "(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing social services, education, or public health service, or operating a financial institution."

If we are in error in our assumptions on this matter, please contact me as soon as possible. There would be major impact on affected programs and a position paper and fiscal note would need to be prepared.

Thank you for your assistance.

Sincerely,

Helen D. Beirne
Commissioner

POSITION PAPER/Department of Health & Social Services

1-6-81

POSITION PAPER
SENATE BILL NO. 84

"An Act relating to the processing of permits by state agencies and to approval of Alaska coastal management programs; establishng the Permit Reform Commission; and providing for an effective date."

This Bill would place time limits on processing applications for a State license or permit for a new project and would standardize some aspects of permit processing.

During the last legislative session, former versions of this Bill (HB 999 and CS for SB 548) were discussed in several work sessions. It was determined, at that time, that the provisions of the bills should not apply to permit processing for public service and certain other programs. The exemptions were accomplished in the definition of a "project." The provisions of the Bill would apply to permit issuance to new projects. Project was defined to exclude "pursuing a trade or profession, providing a regulated public or health service, or operating a financial institution."

Senate Bill No. 84 contains the same exemptions in the definition of a "project." It is, therefore, our understanding that the provisions of this Bill would not apply to the following permit or licensure activities of the Department of Health and Social Services:

Child Foster Home Licensing	AS 47.35.010-080
Child Day Care Home Licensing	AS 47.35.010-080
Adult Foster Home Licensing	AS 47.35.010-080
Child Day Care Center Home Licensing	AS 47.35.010-080
Residential Child Care Facility Licensing	AS 47.35.010-090
Adult Residential Care Facility Licensing	AS 47.35.010-090
Child Placement Agency Licensing	AS 47.35.100
Certificate of Need	AS 18.07.010
Health Facility Certification and Licensing	AS 18.20.010
Health Facility Construction	AS 18.20.080

With the understandings contained in this position paper, the Department has no objection to passage of this Bill.

RECOMMENDED BY: John R. Pugh

John R. Pugh, Director
Division of Family and Youth Services

DATE: 1/28/81

Phoebe A Lindsey

Phoebe Lindsey, Director
Division of State Health Planning & Development

DATE: 1/28/81

APPROVED BY: Helen D. Beirne

Helen D. Beirne
Commissioner

DATE: 2/2/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 84

Title "An Act relating to the processing of permits by state agencies and to approval *

Requested by Department of Health & Social Services Date

* of Alaska Coastal management programs; establishing the Permit Reform Commission; and providing for an effective date."

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Health

BRU, Program, or Subprogram(s) Affected

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		-0-				

FUNDING (Thousands of Dollars)

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

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 1/29/81 PREPARED BY Phoebe A. Lindsey

AGENCY Division of State Health Planning & Development

PHONE 465-3037

Original: Legislative Finance

cc: . Budget and Management

Prime Sponsor (First Legislator Named)

Martha Hubbard

33-001 (Rev. 12/80

SB 84 Major Issues

(1) Exhaustion of Administrative Remedies:
Whereas present procedures allow for agency staff decision which must be appealed to the commissioner before going to court, the industry wants the option of going directly to court after staff decision without going to the commissioner. The industry argues this will lead to faster final determination. The administration argues this will not allow sufficient record so that courts must rehear everything thereby clogging up the works.

(2) Burden of proof in court proceedings:
Whereas present burden is upon the applicant or aggrieved person to show that agency decision is incorrect, the industry wants to transfer burden of proof to the agency to justify their position. The industry feels that this burden on the agency will encourage them not to unreasonably deny permits and place primary costs on the agency rather than the applicant. The administration argues that the industry bill places burden on agency, only with regard to applicants and not other interested parties thereby creating an equal protection problem. That could be corrected by placing the burden on the agency as to all parties. The administration also argues that shifting burden could cause more delays since if the agency approves a permit and an environmental group doesn't like it, the environmentalists could simply appeal without having to carry the burden of proof and delay things by forcing the agency to justify their position.

(3) Lead Agency and weight of input problem:
Whereas the administration's proposal calls for a 'lead agency' and requires that it give "great weight" to other agency input, the industry calls for DNR as the 'lead agency' and gives it more sole authority by only requiring it to consider and balance all competing factors in reaching its decision while allowing the lead agency final authority. One factor in this issue is that federal law requires a 'lead agency' to treat any local government which has adopted a coastal zoning plan as a "resource agency" which will have the weight to its input which the bill provides. The industry argues that by giving "great weight" to a local government's input, projects of statewide or national importance could be hindered or stopped by a small community. The administration argues that the industry's proposal denies public input and local government input. In reality it doesn't deny the input, but only allows it to be considered. The administration also argues that with 30 day limit on decision, public input will be impossible.

(4) Automatic approval after time limit issue:
The industry's position is that if the agency doesn't get its act together the permit should be approved automatically so that progress won't be hindered. The industry argues that this will give incentive to the agency to act promptly. The administration argues that this deadline is inflexible in the case of complex projects and could result in great injustice to the environment. The

(4) (continued)---
administration's regulations would allow commissioners to extend deadline almost at will. The administration argues that with automatic approval, agency and applicant could collude to allow automatic approval thereby averting an agency decision and not allowing the normal appeal process by an aggrieved interested party. In fact, an aggrieved interested party could still seek an injunction and declaratory judgment under various existing laws through normal court procedures although the aggrieved party would then carry the burden and cost.