

HB

212

BERING STRAITS COASTAL RESOURCE SERVICE AREA BOARD

Box 28

Unalakleet, Alaska 99684

(907) 624-3062

April 7, 1987

Representative Sam Cotton  
Representative Adelaide Hermann  
Co-Chairpersons  
House Resource Committee  
Pouch V  
Juneau, Alaska 99811

Dear Representative Hermann & Cotton:

The Bering Straits Coastal Resource Service Area Board has reviewed House Bill 212 and has some serious concerns about the bill. The BSCRSA Board disagrees with the findings of HB 212 and feels that HB 212 is based upon unsubstantiated generalities that are without substance. It is the opinion of the BSCRSA Board that HB 212 would effectively remove one of the few avenues open to rural residents to be actively and meaningful involved in a state decision making process that has a direct and significant impact on their lifestyle, culture, and economic system.

The BSCRSA Board would like to go on record as opposing this bill and urges that it be kept in committee until specific detailed substantiation is presented that indeed objectively indicates that:

- o Orderly development is being delayed by because state agencies participate in permit reviews.
- o There are a proliferation of state agency reviews, that such reviews place unjustified requirements on processing permits, and that the uncertainties created by the above costs residents millions of dollars in lost employment and higher prices.
- o State agency participation in permit reviews causes protracted delays in permit issuance and that state agency participation in permit reviews is not in the best public interest.
- o The social, economic, and environmental health and well being of the residents of the state is being adversely impacted by state agency participation in permit reviews.
- o DNR is able to provide more efficient processing of multi-agency permit applications than DGC.

In 1984 permit reform legislation was introduced that streamlined the permit review process, set specific time lines for permit reviews, and established a process that added balance to the permit review process that would ensure that development was indeed "orderly".

April 8, 1987

Representative Drue Pearce  
P.O. Box V  
Juneau, Alaska 99811

ATTN: Theresa Maser

Dear Theresa:

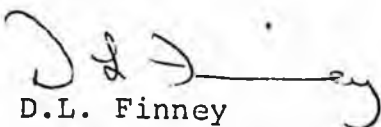
This is a paper I did seven years ago when I was working for the timber industry. Nothing has changed and if you wade through it you will see how time consuming and duplicative the process is and how it could be substantially shortened if the State had a single lead agency consolidating their position.

You may be interested to know that as of May 1, I will be the new General Manager of the Alaska Loggers Association. John Galea, who has held that position, is becoming the new State Forester. I will also still represent U.S. Borax interests in Ketchikan and the State, but because our Quartz Hill project will be on hold for a period of time awaiting market improvements, I will have time to do both jobs.

Therefore, I feel qualified to point out the importance of these Corps permits to the timber industry. They must have such a permit every time they enter a new area and need to establish a rafting ground, dock, airplane float or log transfer facility. I am told it now takes a minimum of two years to get one of these permits.

Please give me a call if you have any questions about this material.

Sincerely,

  
D.L. Finney  
Ketchikan Manager  
Quartz Hill Project

DLF:es  
Enclosure

# 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 as incurred 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.



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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-OYT-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.

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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 DDPD 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 Ti'elands Permit.

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

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

1. A non violent log transfer facility is employed.

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

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

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

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

#### INCONSISTENT DETERMINATION ATTACHMENT

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

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

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

At this point we seem to be in the position of not being able to get approval from DPDP until DEC issues 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:

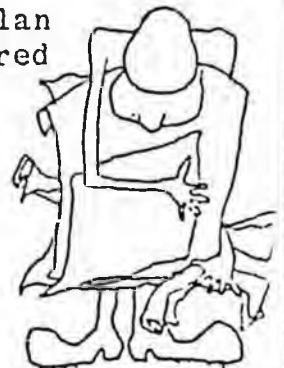
1. Log transfer methods should be non violent. This will reduce the amount of bark debris knocked off in the transfer process.
2. This permit shall expire in five years.
3. A sufficient amount of clean shot rock shall be placed over all fill material so that erosion and leaching of fill material will 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.



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

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

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

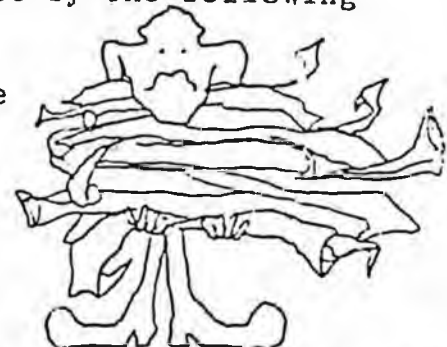
On March 3, 1980 we also received a copy of a letter from DPDP to the Corps (Exhibit AA) informing them they had received a Certificate of Reasonable Assurance from DEC stating that the subject project will comply with the requirements of Section 401 of the Federal Water Pollution Control Act. They further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

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

Neets Bay 12, NPACO-RF-P, No. 071-OYD-2-790398, State I. D. No. FD280-79121111FP 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 rapidly the bureaucracy has come upon us when one reviews the rather direct route to the permit received in 1977 as compared to the frightening growth and duplication that has sprung up by 1979, even when applied to an area for which there had been a previous permit issued.

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

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

3/80



## I. General Conditions:

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

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-503) (36 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

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

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

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

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

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

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

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

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

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

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

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim to 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.

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

p. That this permit does not authorize 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 transfers his interests herein to a third party pursuant to General Condition 1 hereof, he must restore the area to a condition satisfactory to the District Engineer.

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

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

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

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

The following Special Conditions will be applicable when appropriate:

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

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

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

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

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

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

#### MAINTENANCE DREDGING

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

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

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

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

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

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

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

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

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

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

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

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

*Louisiana-Pacific Corporation*

1000 Lakeside Drive  
Kodiak, Alaska 99587  
Telephone 907-225-2100  
Telex 01-450281  
Answerback 44-0000-0000

April 1, 1980

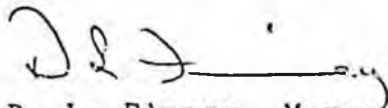
Mr. James E. Caruth, Chief  
Regulatory Functions Branch  
Department of the Army  
Alaska District, Corps of Engineers  
P.O. Box 7002  
Anchorage, Alaska 99510

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

Dear Mr. Caruth:

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

Sincerely,



D. L. Finney, Manager  
Forestry & Government Affairs

hr  
Enclosure

*Louisiana-Pacific Corporation*

REASONABLE  
KING  
TELEPHONE  
TELETYPE  
ADDRESS

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.

77.  
*Louisiana-Pacific Corporation*

Mr. Chip Dennerlein

-2-

April 1, 1980

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

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

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

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

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

57  
Louisiana-Pacific Corporation

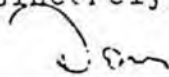
Mr. Chip Dennerlein

-3-

April 1, 1980

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

Sincerely,

  
D. L. Finney, Manager  
Forestry & Government Affairs

hr  
Enclosure

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



DEPARTMENT OF THE ARMY  
ALASKA DISTRICT, CORPS OF ENGINEERS  
P O BOX 7002  
ANCHORAGE ALASKA 99510

REPLY TO  
ATTENTION OF  
NPAO-REF-P  
Ward Cove 23

MAR 11 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

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

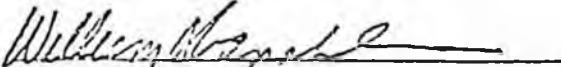
Mr. D. L. Robbins, Chief  
Construction/Operations Division  
Corps of Engineers  
Box 7002  
Anchorage, AK 99510

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 ACNP.

LWCF

No comment.

Sincerely,



for Chip Dennerlein  
Director

CD/cw

TO: ~~Representative Drue Pearce~~  
FROM: Don Finney/U.S. Borax, Ketchikan  
SUBJECT: HB 212

Excellent Bill--will greatly improve the process by consolidating and unifying the State's response and should expedite the permitting process with substantial savings in time and money.

You may want to consider specifically including the State's response to Department of Army Corps of Engineers permits under this legislation. Presently, the Corps advertises an applicant's request for a permit and sends it to each separate State agency for comment. In answering, each State agency writes their independent comments to the Corps without consultation with the other State agencies and often times this results in conflicts between the agencies.

The Corps then sends the permittee the individual comments and instructs the permittee to work out any problems they have with the State agencies and inform the Corps of their solution. This is time consuming and duplicative.

As with the consistency reviews, this process could be greatly improved by having one lead agency for the State that consolidates and represents the State's position.

It appears the necessary change to include the Corps permit response could be included in this legislation by the following changes:

On Page 3 under (11) add sub-paragraph:

(C) each State response to Department of the Army Corps of Engineers permits for navigable waters.

On Page 3 under (e) add the underlined as follows:

(e) The Department of Natural Resources is designated as the lead agency for consistency determinations and response to Department of Army Corps of Engineers permits for navigable waters that involve resource development activities on State land, water and submerged lands, and federal land, water, and the Outer Continental Shelf.

TESTIMONY OF  
D. E. CORNETT  
FOR  
EXXON COMPANY, U.S.A.  
BEFORE THE  
HOUSE RESOURCES COMMITTEE  
APRIL 13, 1987  
HB 212

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM DON CORNETT, THE ALASKA COORDINATOR FOR EXXON COMPANY, U.S.A. WE APPRECIATE THIS OPPORTUNITY TO OFFER OUR SUPPORT OF HOUSE BILL 212. THIS IMPORTANT BILL WOULD ESTABLISH THE DEPARTMENT OF NATURAL RESOURCES AS THE LEAD AGENCY FOR PERMITS AND COASTAL ZONE MANAGEMENT CONSISTENCY DETERMINATIONS FOR RESOURCES UNDER THE AUTHORITY OF THE DEPARTMENT. THE LEGISLATION WOULD ALSO ESTABLISH THE REQUIREMENT FOR THE BALANCING OF COMPETING FACTORS IN REACHING A DECISION ON BOTH PERMITS AND CONSISTENCY DETERMINATIONS.

LET ME SAY AT THE OUTSET THAT EXXON'S SUPPORT OF THIS LEGISLATION IS NOT INTENDED TO DOWNPLAY THE PROGRESS MADE UNDER FORMER GOVERNOR SHEFFIELD'S ADMINISTRATIVE ORDER 78, NOR IS IT A REFLECTION ON THE WORK OF THE DIVISION OF GOVERNMENTAL COORDINATION. INDEED, WE AT EXXON HAVE HAD FAVORABLE EXPERIENCE WITH THE DIVISION'S ACTIVITIES IN THIS REGARD SINCE THEY TOOK OVER THESE RESPONSIBILITIES SOME THREE YEARS AGO.

IT IS SIMPLY THAT WE BELIEVE THAT THE BEST INTERESTS OF BOTH THE INDUSTRY AND THE STATE WILL BE SERVED BY FIXING IN LAW THESE RESPONSIBILITIES WHERE THEY BEST BELONG: WITH THE DEPARTMENT WHICH HAS THE RESPONSIBILITY FOR, AND THE TECHNICAL KNOWLEDGE OF, THE DEVELOPMENT OF THE STATE'S RESOURCES. EXXON BELIEVES NOW, AS IT HAS IN THE PAST, THAT THE DEPARTMENT OF NATURAL RESOURCES IS THE PROPER AGENCY TO ADMINISTER PERMITS RELATED TO THE DEVELOPMENT OF THE STATE'S RESOURCES FOR WHICH IT HAS STATUTORY RESPONSIBILITY. WE ALSO BELIEVE THAT THE DEPARTMENT'S TECHNICAL ORIENTATION AND EXPERTISE MAKE IT THE APPROPRIATE AGENCY TO LEAD THE FORMULATION OF STATE CONSISTENCY DETERMINATIONS FOR ACTIVITIES ON STATE AND FEDERAL LANDS AND WATERS.

EQUALLY IMPORTANT, IN OUR VIEW, IS THE REQUIREMENT CONTAINED IN THIS LEGISLATION THAT THE LEAD AGENCY BALANCE COMPETING FACTORS IN REACHING ITS DECISION ON PERMITS AND CONSISTENCY DETERMINATIONS. EXXON STRONGLY SUPPORTS THIS BALANCING CONCEPT AND FURTHER BELIEVES THAT THE DEPARTMENT OF NATURAL RESOURCES HAS THE TECHNICAL EXPERTISE TO UNDERSTAND THE IMPLICATIONS OF BOTH PERMITS AND CONSISTENCY DETERMINATIONS AND TO BRING THE BENEFITS OF THEIR KNOWLEDGE TO THE PROCESS OF BALANCING THE COMPETING ARGUMENTS AND COMMENTS IN ORDER TO ASSURE THE BEST POSSIBLE DECISION.

IN SUMMARY, LET ME NOTE THAT THE ORDERLY, SAFE AND EFFICIENT DEVELOPMENT OF ALASKA'S NATURAL RESOURCES IS VITAL TO THE WELL-BEING OF THE STATE AND ITS PEOPLE. THIS LEGISLATION BEFORE YOU TODAY WILL HELP FOSTER THAT DEVELOPMENT BY PROVIDING PERMANENT, CONSISTENT PERMIT PROCEDURES AND BY PLACING COORDINATION AND APPROVAL RESPONSIBILITY WITH THE AGENCY WHICH HAS THE TECHNICAL EXPERTISE NECESSARY TO BEST PROTECT THE STATE'S VARIED INTERESTS. I URGE YOUR APPROVAL OF THIS LEGISLATION.

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

### OFFICE OF MANAGEMENT AND BUDGET DIVISION OF GOVERNMENTAL COORDINATION

STEVE COWPER, GOVERNOR

#### CENTRAL OFFICE

P.O. BOX AW  
JUNEAU, ALASKA 99811-0165  
PHONE (907) 465-3562

#### SOUTHEAST REGIONAL OFFICE

431 NORTH FRANKLIN  
P.O. BOX AW, SUITE 101  
JUNEAU, ALASKA 99811-0165  
PHONE (907) 465-3562

#### SOUTHCENTRAL REGIONAL OFFICE

2600 DENALI STREET  
SUITE 700  
ANCHORAGE, ALASKA 99503-2798  
PHONE (907) 274-1581

#### NORTHERN REGIONAL OFFICE

675 SEVENTH AVENUE  
STATION H  
FAIRBANKS, ALASKA 99701-4596  
PHONE (907) 456-3084

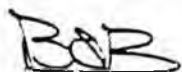
April 6, 1987

The Honorable Drue Pearce  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Pearce:

I appreciate the opportunity you have provided the Cowper administration to comment on House Bill (HB) 212 relating to the issuance of state permits and coastal consistency determinations. The enclosed paper describes the state's current consistency review process and position with respect to the underlying need for changes proposed in HB 212. I believe that after reviewing the factual discussion in the enclosure, you will conclude that there is little need for the statutory and regulatory changes proposed in HB 212. I would be happy to answer any questions you might have regarding this matter or arrange meetings with other agency representatives if you desire.

Sincerely,



Robert L. Grogan  
Director

Enclosure

cc: Commissioner Kelso, DEC, Juneau  
Commissioner Collinsworth, DFG, Juneau  
Commissioner Brady, DNR, Juneau  
Rod Swope, Office of the Governor, Juneau  
Joe Geldhof, Law, Juneau

vh87032601kfg

## ALASKA CONSISTENCY REVIEW PROCESS

Since adoption of the coastal consistency review regulations in early 1984, major progress has been made to achieve the following permit reform goals:

- ° establish regulatory deadlines for state permit decisions,
- ° eliminate repetitive state reviews and decisions on the same project,
- ° expedite state permit reviews and decisions,
- ° ensure uniformity in state agency comments on federal permit decisions,
- ° assist applicants in the processing of state and federal permits,
- ° provide adequate opportunity for public and local government participation in state permit decisions, and
- ° achieve a balanced, factually documented decision including consideration of the costs and benefits of requiring particular stipulations.

The state's system for reviewing and processing most project related permits, leases, and other legal approvals is governed by regulations adopted in March 1984, entitled Project Consistency with the Alaska Coastal Management Program (6 AAC 50). The regulation: require that coastal projects only be reviewed one time for approvals required by the Departments of Environmental Conservation, Fish and Game, and Natural Resources and for consistency reviews conducted by the Division of Governmental Coordination (DGC). These regulations, provide for (1) easy access to and participation in the decision making process by applicants, (2) expedient decisions on project consistency and (3) quick issuance of permits by the state resource agencies. Features of the existing regulations and additional efforts being taken by the state to improve the permitting process include the following:

- ° All appropriate permits and certificates for a project are evaluated in a single review. This eliminates duplicative and time consuming review of individual permits necessary for the same project.
- ° When a project requires permits of two or more state agencies or a federal permit, DGC coordinates the project review and renders a conclusive consistency determination on behalf of all the state resource agencies. This provides applicants with a single state agency contact (DGC) to coordinate the project review and, if necessary, resolve any outstanding conflicts. It also provides a single state voice for communicating the state's position on a project to federal permitting agencies.

- ° The consistency review regulations have streamlined the permitting process. Consistency determinations are completed in an average of 47 days. State resource agency permits are required to be issued within 5 days of the consistency determination. Previously, the state could take six months or longer to complete the review of a project for federal consistency with the Alaska Coastal Management Program (ACMP).
- ° If an applicant considers a decision by the State of Alaska to be unacceptable, opportunities exist to elevate a decision to policy makers of the state resource agencies for their reconsideration. Applicants are encouraged to participate in discussions of their project at each level of review.
- ° On request, DGC will assist applicants schedule pre-application meetings with all the concerned agencies (state, federal and local) to discuss their project prior to filing permit applications. At these pre-application meetings, agencies provide recommendations to an applicant for designing a project that will meet review criteria and ensure compliance with state, federal, and local requirements. Also, the applicant learns how the permit process works, who to contact for information, and what to expect during the review process. These pre-application meetings also provide a forum for informal agency contact to assess regulatory requirements for projects.
- ° A brochure which describes the state's consistency review to potential applicants has been mailed to approximately 5,000 potential applicants listed in business directories prepared by the Department of Commerce and Economic Development (attached). Part of the brochure includes a survey form which the applicant can return by mail to request additional assistance from DGC in dealing with the consistency review process.

Since January 1984, this office has processed 1,541 project reviews. Of this total, more than 98% were found consistent. The average review period for these projects was 47 days. The vast majority of projects reviewed under the current system are approved, and the average project review is completed in less than 50 days. Following the review, all state and most federal permits are promptly issued.

A review of the state's current consistency review record does not support the need for the statutory and regulatory changes contained in HB 212. To the contrary, HB 212 could conceivably result in a less efficient review process due to overlapping responsibilities, multiple lead agencies and increased variations in the review process compared to the existing system.

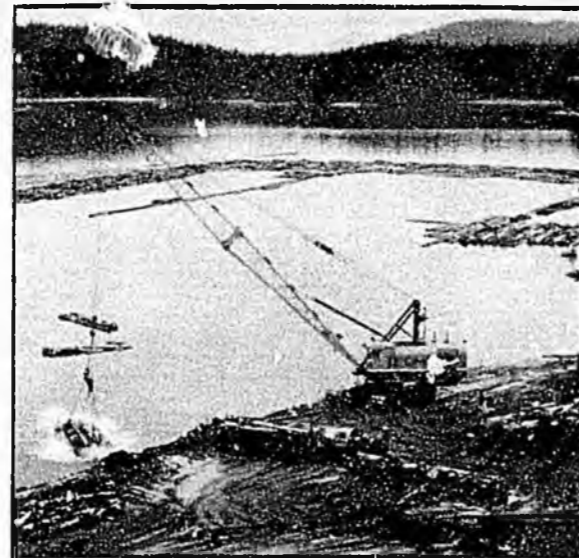
Division of Governmental Coordination  
 Office of the Governor, State of Alaska  
 P.O. Box AW  
 Juneau, Alaska 99811

**30-Day and 50-Day  
 Review Schedules**

Federal and state public notice requirements determine the review schedule for your project. A 30-day review schedule will be used if a public notice is not required and all associated state permits can be issued in 30 days. A 50-day review schedule will be used for projects with approvals requiring a public notice. These schedules limit the amount of time state agencies have to review your project and issue state permits if the project is found consistent with Alaska Coastal Management Program standards.\*

	30-Day Review	50-Day Review
Consistency review begins	Day 1	Day 1
Deadline for regional reviewers to request additional information	Day 15	Day 25
Public and agency reviewer comments due	Day 17	Day 34
Notification of preliminary determination	Day 24	Day 44
Request for elevation	Day 29	Day 49
Conclusive consistency determination issued (unless elevation requested)	Day 30	Day 50
If elevated, director's determination	Day 45	Day 65
If elevated again, commissioner's determination	Day 60	Day 80

\* These schedules may be extended only under circumstances outlined in 6 AAC 50.110.



**Elevation (Appeal) Process**

If you do not concur with the proposed determination on your project, you may request *elevation*, or further review by division directors within the state resource agencies. The directors review the proposed determination and any additional information included in the elevation request, then issue a second proposed determination.

You may then elevate the review to the commissioners of the resource agencies if the director-level review does not satisfy your interests. This is the final step in the administrative appeal process.

Each elevation review can take no longer than 15 days. State resource agencies and coastal districts may also request elevation. In actual practice, elevation has rarely been required.

**For More Information**

About a specific project, contact the DGC office nearest you:

Southeast Regional Office  
 Division of Governmental  
 Coordination  
 P.O. Box AW, Suite 101  
 431 North Franklin Street  
 Juneau, AK 99811-0165  
 Phone: (907) 465-3562

Southcentral Regional Office  
 Division of Governmental  
 Coordination  
 2600 Denali Street, Suite 700  
 Anchorage, AK 99503-2798  
 Phone: (907) 274-1581

Northern Regional Office  
 Division of Governmental  
 Coordination  
 Station H  
 675 Seventh Avenue  
 Fairbanks, AK 99701-4596  
 Phone: (907) 456-3084

If you have any questions about the *Consistency Review Process* or the *Alaska Coastal Management Program*, contact:

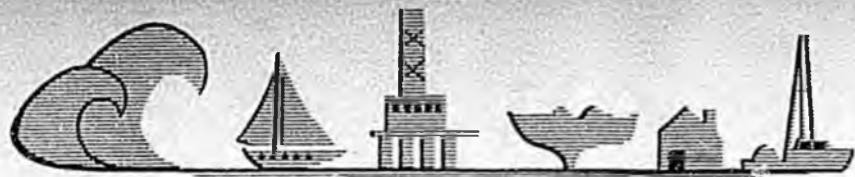
Division of Governmental  
 Coordination  
 P.O. Box AW  
 431 North Franklin Street  
 Juneau, AK 99811-0165  
 Phone: (907) 465-3562

Division of Governmental Coordination  
 Office of the Governor, State of Alaska  
 P.O. Box AW  
 Juneau, Alaska 99811

# How To Apply For State Permits In Alaska's Coastal Zone



Stamp



The State of Alaska has a streamlined, coordinated system for reviewing applications and issuing permits for proposed projects that would affect natural resources in Alaska's coastal zone. It's called the *consistency review process*.

This brochure briefly outlines the consistency review process for applicants seeking resource-related state and federal permits.\* The review process is more fully explained in state regulation 6 AAC 50. The consistency review process does not cover business licenses, municipal authorizations, or projects outside the coastal zone.

### The Consistency Review Process Provides

- Quick answers to whether your project is in the coastal zone and what permits you need.
- A one-stop, consolidated state response to coastal development projects and related state and federal permit applications.
- Specific timeframes and deadlines for permit issuance.
- A fast appeal process.

\* Federal agencies, please contact the Division of Governmental Coordination regarding procedures for direct federal actions.

### The State Permitting Process

The consistency review process is based on the Alaska Coastal Management Program and is designed to improve management of Alaska's coastal land and water uses. Project proposals are reviewed to:

- Determine the project's consistency with the Alaska Coastal Management Program.
- Identify permits required by the state resource agencies, that is, the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources.
- Trigger the issuance of necessary permits and other authorizations by state resource agencies.

### Who Handles The Consistency Review Process?

If a federal permit or permits from more than one state agency are required, the consistency review process is coordinated by a regional office of the Division of Governmental Coordination in the Office of the Governor. If permits from only one state agency are required, the state agency responsible for issuing those permits coordinates the review.

### To Start

Project applicants should complete the *Coastal Project Questionnaire* to determine which permits are needed. *Note: Placer miners see below.*

Copies of the questionnaire are available from the Division of Governmental Coordination (DGC), the resource agencies, or the U.S. Army Corps of Engineers (COE). Regional DGC contacts are shown on the back of this brochure. The COE has a toll-free telephone number: 1-800-478-2712.

Filling out the questionnaire properly is important and will help agencies process your project application without delays. If you have any questions or need assistance, contact a regional DGC or state agency office (listed on the questionnaire). The questionnaire includes a *Certification of Consistency* which must be completed and signed by you to meet federal requirements.

The Coastal Project Questionnaire will help identify which permits are needed, your contacts for the consistency review process and the DGC regional office that will be working with you.

**Placer miners** should submit a *Triagency Application* to the Department of Natural Resources (DNR) instead of completing the Coastal Project Questionnaire. Contact the DNR, Division of Mining and Geology, or the nearest DGC regional office for more information.

### Preapplication Meetings Can Save You Time

Before you settle on your final project plans and submit your application, the state can arrange for meetings between you and state agency representatives. These can help identify concerns and information needs, and encourage a mutual understanding of the project. To arrange for a preapplication meeting, call or write the coordinating agency contact.

### Review Begins When The Application Packet Is Complete

Consistency review begins upon receipt of your complete application packet, which will be prepared by you and the agencies. A complete packet includes:

- The Coastal Project Questionnaire and signed Certification of Consistency.
- Copies of any state permit applications needed for the project (originals go to the state agency issuing the permit).
- Copies of any federal permit applications needed for the project (originals go to the federal agency issuing the permit).
- Any additional pertinent information including public notices from agencies.

### Who Reviews The Project ?

The participants in the review process include:

1. You, the applicant
2. State resource agencies and the Division of Governmental Coordination
3. The affected local coastal community
4. Other interested members of the public

### Steps in the Review Process

#### Start-up

You will be notified when the review starts. You will receive your project's assigned review number, review schedule, and other information.

#### Information Requests

Agencies may request additional information from you up to the 25th day of the review. The coordinating agency may stop the review until that information is received.

#### Proposed Determination

After reviewing comments on the packet, the coordinating agency will develop a proposed consistency determination. It will be discussed with you, state resource agencies, and coastal districts.

#### Conclusive Determination

A conclusive consistency determination will be issued upon agreement of the proposed determination.

#### Permits

Agencies will issue state permits covered by the determination within five days after the conclusive consistency determination is issued.

see other side →

Name \_\_\_\_\_  
 Organization \_\_\_\_\_  
 Street (or Box #) \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Please send more detailed information on:

- Alaska Consistency Review Process  
 The Alaska Coastal Management Program

I would attend a consistency review process workshop scheduled in my area.

Yes \_\_\_\_\_ No \_\_\_\_\_

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF GOVERNMENTAL COORDINATION

STEVE COWPER, GOVERNOR

### CENTRAL OFFICE

P.O. BOX AW  
JUNEAU, ALASKA 99811-0165  
PHONE: (907) 465-3562

### SOUTHEAST REGIONAL OFFICE

431 NORTH FRANKLIN  
P.O. BOX AW, SUITE 101  
JUNEAU, ALASKA 99811-0165  
PHONE: (907) 465-3562

### SOUTHCENTRAL REGIONAL OFFICE

2600 DENALI STREET  
SUITE 700  
ANCHORAGE, ALASKA 99503-2798  
PHONE: (907) 274-1581

### NORTHERN REGIONAL OFFICE

675 SEVENTH AVENUE  
STATION H  
FAIRBANKS, ALASKA 99701-4596  
PHONE: (907) 456-3084

April 10, 1987

The Honorable Adelheid Herrmann  
Cochair Alaska House Resources  
Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representatives Herrmann and Cotton:

I appreciate the opportunity to provide the administration's position on House Bill (HB) 212 regarding the issuance of state permits and coastal consistency determinations. The enclosed paper describes the state's current consistency review process and position with respect to the underlying need for changes proposed in HB 212. I believe that after reviewing the factual discussion in the enclosure, you will conclude that there is little need for the statutory and regulatory changes proposed in HB 212. I would be happy to answer any questions you might have regarding this matter.

Sincerely,

BOB

Robert L. Grogan  
Director

Enclosure

cc: Alaska House Resources Committee

bs87041001kfg

## ALASKA CONSISTENCY REVIEW PROCESS

Since adoption of the coastal consistency review regulations in early 1984, major progress has been made to achieve the following permit reform goals:

- ° establish regulatory deadlines for state permit decisions,
- ° eliminate repetitive state reviews and decisions on the same project,
- ° expedite state permit reviews and decisions,
- ° ensure uniformity in state agency comments on federal permit decisions,
- ° assist applicants in the processing of state and federal permits,
- ° provide adequate opportunity for public and local government participation in state permit decisions, and
- ° achieve a balanced, factually documented decision including consideration of the costs and benefits of requiring particular stipulations.

The state's system for reviewing and processing most project related permits, leases, and other legal approvals is governed by regulations adopted in March 1984, entitled Project Consistency with the Alaska Coastal Management Program (6 AAC 50). The regulations require that coastal projects only be reviewed one time for approvals required by the Departments of Environmental Conservation, Fish and Game, and Natural Resources and for consistency reviews conducted by the Division of Governmental Coordination (DGC). These regulations, provide for (1) easy access to and participation in the decision making process by applicants, (2) expedient decisions on project consistency and (3) quick issuance of permits by the state resource agencies. Features of the existing regulations and additional efforts being taken by the state to improve the permitting process include the following:

- ° All appropriate permits and certificates for a project are evaluated in a single review. This eliminates duplicative and time consuming review of individual permits necessary for the same project.
- ° When a project requires permits of two or more state agencies or a federal permit, DGC coordinates the project review and renders a conclusive consistency determination on behalf of all the state resource agencies. This provides applicants with a single state agency contact (DGC) to coordinate the project review and, if necessary, resolve any outstanding conflicts. It also provides a single state voice for communicating the state's position on a project to federal permitting agencies.

- ° The consistency review regulations have streamlined the permitting process. Consistency determinations are completed in an average of 47 days. State resource agency permits are required to be issued within 5 days of the consistency determination. Previously, the state could take six months or longer to complete the review of a project for federal consistency with the Alaska Coastal Management Program (ACMP).
- ° If an applicant considers a decision by the State of Alaska to be unacceptable, opportunities exist to elevate a decision to policy makers of the state resource agencies for their reconsideration. Applicants are encouraged to participate in discussions of their project at each level of review.
- ° On request, DGC will assist applicants schedule pre-application meetings with all the concerned agencies (state, federal, and local) to discuss their project prior to filing permit applications. At these pre-application meetings, agencies provide recommendations to an applicant for designing a project that will meet review criteria and ensure compliance with state, federal, and local requirements. Also, the applicant learns how the permit process works, who to contact for information, and what to expect during the review process. These pre-application meetings also provide a forum for informal agency contact to assess regulatory requirements for projects.
- ° A brochure which describes the state's consistency review to potential applicants has been mailed to approximately 5,000 potential applicants listed in business directories prepared by the Department of Commerce and Economic Development (enclosed). Part of the brochure includes a survey form which the applicant can return by mail to request additional assistance from DGC in dealing with the consistency review process.

Since January 1984, DGC has processed 1,541 project reviews. Of this total, more than 98% were found consistent. The average review period for these projects was 47 days. The vast majority of projects reviewed under the current system are approved, and the average project review is completed in less than 50 days. Following the review, all state and most federal permits are promptly issued.

A review of the state's current consistency review record does not support the need for the statutory and regulatory changes contained in HB 212. To the contrary, HB 212 could conceivably result in a less efficient review process due to overlapping responsibilities, multiply lead agencies, and increased variations in the review process compared to the existing system.

ALEUTIANS EAST COASTAL RESOURCE SERVICE AREA  
P.O. BOX 90  
SAND POINT, ALASKA 99661  
(907) 383-2699

April 10, 1987

The Honorable Sam Cotten, Co-Chairman  
House Resources Committee  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Subject: House Bill 212

Dear Representative Cotten:

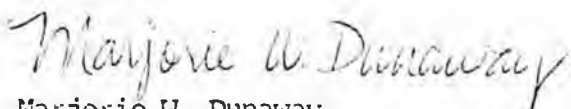
I am writing on behalf of the Aleutians East Coastal Resource Service Area (CRSA) Board to voice our adamant opposition to House Bill 212 which would designate the Department of Natural Resources (DNR) as the lead agency for consistency determinations on state or federal lands and waters. We are particularly concerned about this in relation to coastal consistency determinations.

Contrary to what is stated in the findings of the bill, we do not believe that the development of state resources is being unnecessarily delayed by the number of agencies involved in the permitting process. Rather, the process works smoothly and without undue delays, as the record clearly shows. Coastal consistency determinations, coordinated by the Division of Governmental Coordination, are under a review timeframe of 30 to 50 days. The vast majority of permit reviews are completed within this time. This does not constitute an unreasonable delay.

While some may believe that the efficiency of state permitting procedures would be enhanced by using state resource agencies as lead agencies, the impartiality of the current system would not. House Bill 212 would only require DNR to consider pertinent information and recommendations, not strive for a consensus among interested agencies and individuals. The responsibility to compile comments from agencies and coastal districts in order to prepare the state's consistency determination must be done by an objective party, not one of the resource agencies. The process of determining coastal consistency should be a state and district consensus, not a single agency perspective.

Thank you for your consideration of our comments.

Sincerely,



Marjorie W. Dunaway  
Program Coordinator

ALASKA MINERS ASSOCIATION  
COASTAL ZONE MANAGEMENT  
POLICY STATEMENT  
1985

The development and implementation of the Alaska Coastal Management program has far exceeded the intent of the original program established by the legislature in 1977. While the objectives stated in AS 46.40.020 clearly require both protection and balanced utilization of coastal resources, there has been a trend in recent years to use the Alaska Coastal Management Program as a tool to restrict or prohibit any type of development. We have watched Coastal Service Resource Areas, with the approval of the Coastal Policy Council, expand their jurisdiction hundreds of miles inland and claim that local subsistence uses have a priority over all other state, federal, and public uses. In effect, the State is giving up its regulatory authority over resource development to regional powers that are not accountable to state and federal concerns. This has resulted in far reaching unilateral decisions affecting resource development and subverting the intent of the original statute which was to promote the development of resources considered to be matters of state concern.

The Alaska Coastal Management Program has also resulted in the creation of additional bureaucracy within an already overgrown state government. Under the so-called "Permit Reform" regulations adopted by the Governor's Office (6AAC 50), the Office of Management and Budget coordinates consistency determination in the coastal zones. At least eight full-time state employees now "coordinate"--not review, comment, or mediate--but just coordinate state agencies. The net effect has been to add paperwork, delay decisions, and allow the permit process to be subject to political pressure by controlling it in an area of the Governor's Office. This burdensome cost of an additional layer of government can, at its sole discretion, negate the work of numerous state and federal agencies already vested with the authority to review and approve permit applications.

The Alaska Miners Association supports the following actions to bring the Alaska Coastal Management Program into a balanced, fair program:

- 1) Legislative approval of all coastal management plans.
- 2) Legislative affirmation of coastal zone boundaries

as originally defined in 1978 by the Alaska Department of Fish & Game.

3) Allow limited boundary extensions only where clear and convincing arguments can be made that activity in the uplands poses a serious impact on coastal resources.

4) The state must re-assert that mining, oil and gas development and other resource developments are Uses of State Concern and, as such, cannot be unduly restricted by local coastal plans. [ACC 85.900(D)]

5) The AMA supports HB 73 entitled "An Act Relating to Processing of Permits by State Agencies and to Administration of the Alaska Coastal Management Program."

6) The AMA supports legislation aimed at reducing the cost of government at a time of declining state revenues.

EXCERPT FROM MINERALS COMMISSION WORKING PAPER  
November 1986

COASTAL ZONE MANAGEMENT

ISSUE #2:

District coastal management programs are being challenged by the federal government for going far beyond the intent of the law; one program stands rejected as written. The objectionable portions of these programs have been:

- 1) unwarranted extension of program boundaries;
- 2) plans are not balanced as required by the federal act and AMP; subsistence and fisheries are designated as primary uses and all other uses are subservient even if those uses are Uses of State Concern and National Interest;
- 3) even though modified, some policies still remain absolute prohibitions to certain activities i.e., use of explosives in marine environment and no offshore petroleum storage.

RECOMMENDATIONS:

- a) Because the coastal zone regions have expanded far beyond reasonable definition of coastal areas, the legislature should affirm coastal zone boundaries as originally defined in 1978 by the Alaska Department of Fish and Game by biophysical areas and approved by the legislature in 1979.
- b) The legislature should again take action to pass legislation requiring legislative oversight of district management programs as originally stated in the ACMP.
- c) Limited boundary extensions should be allowed only where clear and convincing arguments can be made that activity in the uplands poses a serious impact on coastal resources.

ISSUE #3:

The CRSA's, with the approval of the Coastal Policy Council, have expanded their jurisdiction hundreds of miles inland and claim that local subsistence uses have a priority over all other state, federal and public uses. In effect, the state is giving up its regulatory authority over resource development, subverting the intent of the original statute which was, in part, to promote the development of resources considered to be matters of state concern.

**RECOMMENDATION:**

The state must re-assert that mining, oil and gas development and other resource developments are "Uses of State Concern", and as such, cannot be unduly restricted by local coastal programs.

**ISSUE #4:**

The Alaska Coastal Management Program has also resulted in the creation of additional bureaucracy within an already overgrown state government. Under the so-called "Permit Reform" regulations adopted by the governor's office, the Office of Management and Budget coordinates consistency determinations in the coastal zone. The net effect has been to add paperwork, delay decisions, and allow the permit process to be subject to political pressure by controlling it in an area of the governor's office. This burdensome cost of an additional layer of government can, at its sole discretion, negate the work of numerous state and federal agencies already vested with the authority to review and approve permit applications.

**RECOMMENDATION:**

Establish lead agency authority for permit processing under DNR and revoke Administrative Order 78 re: OMB/DGC in order to return CZM consistency determinations to the resource agencies.

## Untangling a Legal Web

# Conflicting Goals Block Efforts to Speed Permitting, Cut Costs

It has been said many times, in many ways: Alaska's future depends on the wise and prudent use of the state's natural resources. Nearly every dollar ever made or lost here is tied directly to the land and water.

That's why government at all levels puts so much effort into regulating the private industry which puts so much effort into bringing Alaska's natural resources into use.

Legislators point the way by enacting laws, but government agencies set the course of resource development by administering regulations under the law. Then the judicial branch is often called upon to interpret the regulations.

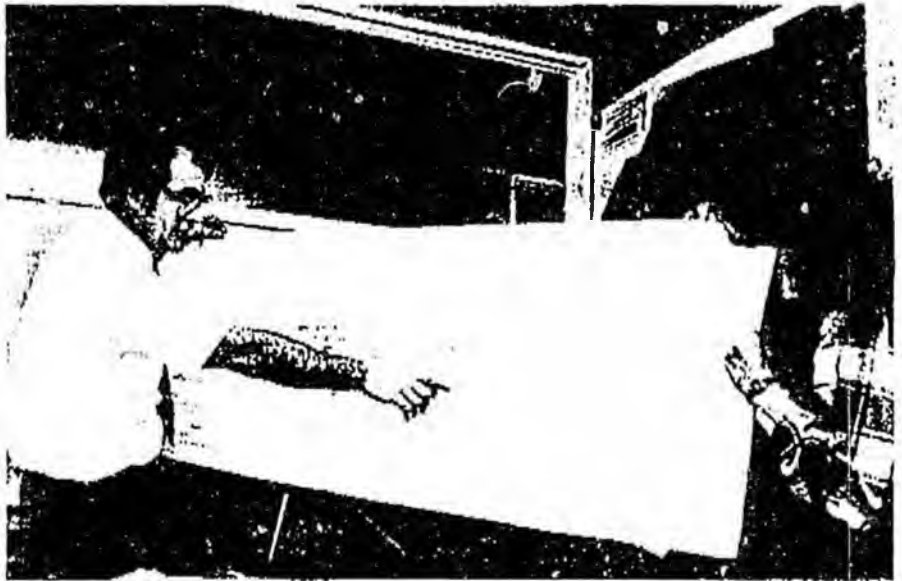
In no arena has this issue of "regulation" raged more fiercely than oil and gas development. Alaska, as a frontier region, has numerous built-in hurdles to overcome in getting profitable oil and gas projects on line. Not much can be done about climate, distance from market and variable reservoir characteristics.

A 300-million-bbl. field anywhere in the Lower 48 would be a major find. In Alaska today, the industry must walk away from such a marginal field if everything doesn't fall perfectly into place.

The way government taxes and regulates the oil industry here can make all the difference. That's why so many people have spent so much time trying to write, rewrite, reform and repeal so many regulations.

The regulation of any industry is an interlocking web of federal, state and local government jurisdictions nationwide. In Alaska, Native corporations, private inholders and foreign law and treaties (when product export is involved) must also be considered.

For example, if you wanted to drill an exploratory well, you would go to a book called *Directory of Permits* (available through the Alaska Department of Environmental Conservation). Looking under "Oil or Gas Exploration and Development Activities (Onshore and



*Pat Metz and Barbara Byrne of Arco Alaska Inc.'s Permits & Compliance Section review a chart showing stops in obtaining federal oil well drilling permits. There are 133 blocks indicating operator requirements and government paperwork stops. Permitting periods extend anywhere from seven days to three years within the flow chart. The operator concurrently goes through a state of Alaska permitting process in which 20 agencies have review privileges.*

Offshore), you would see a list of 98 permits, licenses and authorizations that apply. This would mean dealing with 12 state administrative departments or divisions, 15 federal agencies and possibly half a dozen boards and commissions within boroughs and municipalities.

You would need a work camp to support the drilling activity. Thirty-seven permits could apply here, not counting those from local government.

If you hit oil and wanted to run pipelines to production facilities, you would need 67 state and federal permits. How about building a natural gas conditioning plant for enhanced oil recovery of your new field? You could expect to go after 60 permits from state and federal officials. The local government would have some paperwork for you first, however. Permit requirements for an oil refinery at tidewater? — Don't ask!

### The Cost of Concern

It will cost Standard Alaska Produc-

tion Co. \$2 billion to put the Endicott field on the North Slope into production by 1988. Not a small portion of that cost is tied up in meeting government regulations, gaining permits and doing studies on fish and wildlife impacts.

George Nelson, president of SAPC, said, "We went before 13 reviewing agencies in three levels of government. We went through 25 review processes plus a two-year EIS (environmental impact statement) process. We filed 2,800 pounds of paper in applying for 40 permits and providing information required by the EIS process.

"More than 50 people devoted 172 man-years of effort in the four-plus years we were seeking government approval to bring 100,000 bbl. per day of domestic oil to American consumers. We could have spent 10 minutes on the phone to arrange for the delivery of a similar amount of foreign import oil!"

Pat Metz refers to the permitting process as the "cost of concern." He heads a staff of 20 in Arco Alaska Inc.'s per-

mits and compliance section. Metz echoes the thoughts of many in saying the mushrooming regulatory movement is choking resource development without significantly enhancing environmental protection. "We're forced to spend a lot of money to reduce a tiny bit of harm to a tiny bit less. The cost benefit ratio is out of whack."

Metz said part of the problem with the permitting process is the uncertainty it creates within the industry. "You never know whether a particular agency is going to give you a permit or not. You never know what they are going to ask you to do in order to secure that permit."

A regulatory roadblock can occur at any phase of a project, from seismic work to core drilling to exploratory drilling to development drilling.

Metz tells of one geological field program that was thwarted by permit denial: "The National Park Service had no objections to our geologists being on remote park land but refused to let a helicopter land within park boundaries. We were told we were welcome to walk in."

Another Arco geological party set off to work in the eastern Brooks Range. The project area was to include a corner of ANWR (Arctic National Wildlife Reserve). "The U.S. Fish and Wildlife Service said go ahead but be prepared to pay about \$2,500 to cover costs of a F&WS staff member to come along and monitor your operations in ANWR," Metz said. "After weighing the costs against the probable advantage of gaining data from that small corner of federal land, we told the Fish and Wildlife service we would stay off the reserve."

It is easy to show how the permit and regulatory process can redirect resource development efforts, slow them or even stop them cold. It is harder to define why well-intentioned environmental controls are causing so many problems and harder still to come up with reforms that work.

Those involved in resource development agree that until clear-cut jurisdiction and oversight authority is established, industry regulation will continue to be a jungle of federal, state and local rules, regulations, permit requirements and stipulations.

"The state of Alaska can do just an ab-

solutely terrific job of regulatory reform and not solve regulatory problems," Metz said.

"Even if the project is on state land, it's a sure bet some kind of federal permit will be needed, too."

### Battle of the Agencies

Conflict and confusion reign supreme when industry seeks permits to work in coastal areas. Since most of Alaska's commerce and industry hinges on tide-water access, the conflict is virtually constant.

Two major policies — one state and one federal — meet in this arena like rival thunder clouds. One is the Alaska Coastal Management Program. The other is Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers.

Charlie Elder, longtime construction manager for Standard Alaska Production Co., gave a good example of the regulatory complexity of these laws in writing for the *Juneau Report*, an SAIC publication that tracks state government activities.

"Two new developments in recent years have seriously complicated state permits procedures," he said, "leading to even greater confusion and delay in the system."

"One is the Alaska Coastal Management Program (ACMP). This sets up a series of very general goals — for example, 'protecting subsistence' — and gives the Office of the Governor authority to rule whether a particular construction project is 'consistent' with the coastal management goals.

"The second is a federal regulation extending Corps of Engineers permit authority into wetlands. The adopted definition of 'wetlands' results in a mammoth expansion of federal permitting authority over Alaska's private, state and federally owned lands, far beyond the Corps' traditional authority in navigable waters or coastal offshore areas.

"The problem comes when these two acts are implemented. The Corps' permit, needed to do any construction on wetlands, cannot be issued without the state coastal zone consistency determination. This effectively puts veto authority over large and small Alaska construction projects into the hands of a

small group of planners in the governor's office in Juneau."

Lack of guidelines on how ACMP consistency is determined places every project on the "negotiating table" and leads to unreasonable and expensive environmental stipulations. Elder and others say

As if ACMP certification weren't enough. Corps permit applicants must go on to satisfy a gamut of other concerns. Water quality, state and local floodplain standards, cultural resources, endangered species, federal species of concern and special area designations are among review categories. Other factors include conservation, economics, aesthetics, fish and wildlife values, land use, navigation, shore erosion, recreation, water supply and conservation, energy needs, safety, food and fiber production, mineral needs, property ownership and the general needs and welfare of the people.

All these are just for dredging or placing fill on wetlands. When it comes to putting something on that fill, such as facilities for an Endicott or Lisburne oil field, another round of permit authorization is required.

### The Gauntlet

For land-based Arctic work, the permitting process starts with the North Slope Borough. If permits cannot be issued under existing borough codes (as was the case with Lisburne), new ordinances must be enacted. This requires work from the borough planning department and public hearings, drafting new legislation and public hearings, consideration by the borough assembly and public hearings, then enactment and codification.

With borough permits in hand, the oil company goes to the state of Alaska. Here, the application winds through the departments of Natural Resources, Environmental Conservation and Fish and Game and then to the Office of the Governor.

Next, enter the federal government: Corps of Engineers, Fish and Wildlife Service, Environmental Protection Agency and sometimes the National Marine Fisheries Service.

It takes only one agency in that whole batch to stifle the process. The choice then is to compromise the program or

abandon it. The permit and compliance process is nothing more than the fine art of compromise, and compromise inevitably leads to higher project costs. The more spent on permits, studies, surveys, assessments, research, previews, reviews and post-study evaluations, the less money available for bringing oil out of the ground.

"Government is not good at sorting out good stipulations from bad stipulations or at assigning priority to requirements within the permit process," said George Wuerch, general manager of Fluor Alaska Inc.

Wuerch spent five years heading up government affairs for Northwest Alaskan Pipeline Co. (the company sponsoring a gas line project across Alaska and Canada to the Lower 48 which never came about) in Washington, D.C., and Alaska. "At the end of those five years, I reviewed my log books and found I had actually signed and transmitted 980 pieces of correspondence on permitting to various government agencies."

Engineers like Wuerch and Metz are the project participants who work most closely with government agencies because the ultimate project stipulations and mitigation measures government mandates often mean project design changes long before construction starts. Wuerch offers an example of how a simple permit application can snowball into a serious problem for the project.

"Agency people involved in the permit process are honorable people who want to do a good job," Wuerch said, "but they try to get all the players together at one time. Now, suddenly, instead of a permit applicant dealing with one agency or one staff, he gets a roomful of 20 or 30 people from a variety of agencies."

"Over the years, it has been common practice for an agency that does have statutory authority to issue a permit to allow other agencies with no say in this particular permit to sit in on negotiations with the applicant. They are extended the courtesy of contributing to the dialogue."

"In order to justify his presence, each feels he must contribute input. All this goes on the record, and permitting requirements on the application become cumulative because there is no mechanism for establishing priority or degree of relevance of all this input. The concern of any agency can turn into a stipulation in the permit without regard to the relevance, environmental

benefit or implementation cost to the applicant.

"I can think of no case where the lead agency said, 'That's a dumb idea. That doesn't belong here,' or 'What's your statutory authority for making that contribution?' Never did any agency say, 'Stop, that's not right,' or 'No, that doesn't fit.' They would invariably write in a comment as additional permit requirements for the applicant."

Roger Herrera, formerly Alaska lands and exploration manager for SAPC, put the compound stipulations problem in focus for the oil industry in a *Juneau Report* article:

"There is no overall state oil and gas policy, no one balancing of the state's overall interests. Yes, the permits get

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### Bills are introduced, but a real reform package has not yet been enacted.

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issued more quickly than in the past, but they're issued with stipulations that are unnecessary, expensive and which serve to discourage exploration.

"In the Beaufort Sea, each well is different from a regulatory standpoint, and is, therefore, perceived to be risky and controversial. The agencies are quite able to handle routine wells in a speedy and practical manner. Unfortunately, it's the non-routine wells, the new-area wildcats, that are so important. It's difficult for the agencies to deal with these because there is no overall state policy."

"One only has to look back at the record to see that wells could be permitted faster without adversely affecting the environment. Five or six years ago, wells on offshore state Beaufort Sea leases were permitted in a matter of a month or so. If one goes back to those locations today, it's very difficult to find where the wellsite was. So, the impact on the environment is acceptably small whether the permits take one month or one year."

#### Easier Said Than Done

The state government has worked to

ward permit streamlining and meaningful reform over the past few years. Bills are introduced each session, but a real reform package had not yet been enacted (See the accompanying report by Rep. Marco Pignatelli).

During a period of strong economy, with high oil prices and low unemployment, industry can put up with regulatory compliance costs and government feels little pressure for change. Such is not the case today and the pressure is on.

The state is scrounging for new money to feed its operating and public works budget through court actions and tax law change proposals directed at industry. Many feel that instead of boosting revenue through tax, fee and royalty increases to industry, the state should provide incentives for investment in Alaska. Regulatory reform is such an incentive.

However, changing the course of a bureaucratic juggernaut is far from easy. Tim Bradner, a frequent contributor to *AC&O* and student of government workings, focused on this challenge in an article for an oil industry newsletter:

"Unfortunately, it was easy to establish the regulatory mechanisms, but reforming them to excise the component that is 'excessive' is much more complex, and raises troubling moral and institutional questions. It is one thing to legislate a goal of maximum environmental or safety protection using the 'best available technology,' a term that became defined by regulators as the most sophisticated technology regardless of cost. It is quite another thing to try to modify this idea to inject the element of economic feasibility."

"While this implants the notion of economic constraint in the law of regulation, it leaves the problem of requiring regulators and industry to negotiate some standard of protection in either a quasi-regulatory setting or the political environment of a legislature, environments often charged with emotional advocacy and a lack of clear scientific or technical data supporting one position or the other."

Alaska's Legislature continues to struggle with regulatory reform, but the state has made some progress in the administrative arena. There exists the Division of Governmental Coordination within the Office of the Governor. This body acts as a clearinghouse and lead

agency that can get other resource agencies to make a simultaneous review of their respective permit and certification requirements of a project. The DGC deals only with projects that need permits, leases and approvals under the Alaska Coastal Management Program — in other words, most major projects statewide.

A paper outlining the features of DGC states, "When projects require the permits of two or more state agencies or a federal permit, DGC coordinates the review and renders a conclusive consis-

tency determination. This provides applicants with a single state contact which will facilitate the project review and, if necessary, the resolution of conflicts."

This sounds good on paper, but people like Pat Metz know it often falls short of true facilitation in practice.

Metz said it is a continual educational process as new or transferred agency people come in contact with permit applications. "We constantly are explaining what we want to do, how we want to do it and why. At the same time,

the agencies explain their problems and guidelines to us and we work together to reach compromises that achieve the aims of both parties. It's not an adversarial situation, but a constant negotiating process.

"There are a lot of good agency people who sit down with you and work hard to solve problems. But, there are always a few oddballs out there who have got it in for you and do what they can to mess up things. That's unfortunate, but this is where the importance of the upper levels of departments and commissions

## Battling for Reform

### Failed Bill Would Have Curbed Flow of Regulations By Requiring Justification of Costs Versus Benefits



By MARCO A. PIGNATELLI

Regardless of the reasons, regulations are issued with dismayed frequency. State agencies issue regulations for many reasons, often to comply with a new or revised federal or state law. Other times, agencies introduce regulations to change a procedure, alleviate an onerous situation or "improve" their ability to fulfill their mission.

Regulations have the same effect on citizens as law. In fact, they are called "administrative laws." Some attorneys specialize in administrative law because there is so much of it.

Recent controversial regulations include the subsistence issue, boat motor limits on the Kenai River, abolition of truck lift-axes, royalty oil and gas sales, access to state parks, local hire implementation and dividend and longevity bonus eligibility. Clearly, regulations are omnipresent in all aspects of our lives.

Legislators often complain that regulations tend to distort or subvert the intent of their legislation. There is an imbalance, some say, because it is easier for Alaska bureaucrats to issue regulations than for the Legislature to repeal them. In fact, it is just as easy to pass a constitutional proposition as it is to repeal an administrative regulation.

The imbalance comes about because the administrative branch can issue, change or repeal regulations by following the steps in Alaska's Administrative Procedures Act, without legislative enactment of a law.

Passing a law is much more difficult, especially considering a law must be signed by the governor.

Consequently, if the governor vetoes a bill repealing a regulation, the only legislative recourse is a two-thirds plurality vote to override his veto — a difficult proposition.

Past legislatures have sought to correct the imbalance by increasing legislative power to veto or repeal regulations. In 1980 and again in 1984, Alaskan voters rejected ballot propositions to give this added power to the Legislature.

In the most recent legislature, a different approach surfaced. House Bill 458 would have required government agencies to give the public two kinds of information to justify proposed regulations.

Sponsoring agencies would be required to publish a Justification of Need paper describing the problem the regulation was intended to address, explaining how the regulation would solve the problem, identifying the documents upon which the agency relied for its decision, and describing

the practical alternatives to the proposed regulation.

HB 458 would have also required a Financial Impact Analysis identifying who would bear the cost of new regulations and who would benefit from them, estimating the financial impact of the proposed regulations, discussing the least expensive alternative proposal, and disclosing the consequences of foregoing the regulation.

The bill would also have allowed the courts to invalidate regulations for which the agencies did not make good faith efforts to publish the information required above.

HB 458 underwent changes and was improved in the public hearing process with the assistance of Mike Abbott of the Resource Development Council and George Krusz of the Alaska State Chamber of Commerce.

But opposition to the bill was strong and swift. Though most of the key provisions were lifted from model legislation approved by the National Conference of Commissioners on Uniform State Laws, Alaska's commissioner strongly opposed it, saying it would make imposing regulations too time consuming and costly.

For now, at least, it appears government agencies will continue cranking out regulations with little to stand in their way.

*Editor's Note: Alaska Rep. Marco A. Pignatelli, R-Anchorage, was the prime sponsor of HB 458, a regulatory reform measure in the Legislature this year. The bill met strong opposition and died for lack of support in the House Judiciary Committee.*

## Regulatory Roadblocks

come into play. This is where the understanding comes in and the control necessary to deal with those situations that are punitive in nature."

Metz is talking about a system whereby a decision can be "bumped up" to higher levels — from agency staff to division head to commissioner to the governor, if necessary.

This happened when SAPC sought permission to use Primacord rope explosive in tidal waters seismic work in

Bristol Bay two years ago. Commissioner of Natural Resources Esther Wunnicke eventually denied the permit because of strong objections from the Department of Fish and Game, backed by commercial fishing interests and environmental organizations.

Now the Alaska Oil and Gas Association is funding a \$120,000 field test of linear explosive in tidal zones that will result in a final report on sealife impacts late this year. Armed with this in-

formation, the state will re-evaluate its prohibition of the use of explosives.

Just such a re-evaluation this spring led to a relaxation of drilling restrictions in the Beaufort Sea during the bowhead whale migration. This may save oil companies millions of dollars by allowing well completions in one season instead of requiring drillers to pull off a well, then re-enter and finish drilling months later.

The DGC operates under state statutes that have limited opportunities for review period extensions. A program description states, "Unless a public hearing is held, a field survey is undertaken, additional information is required, an applicant requests additional time, or some other highly unusual circumstances exist, no project can take longer than 65 days to review."

Industry people who work on permitting for a living will tell you those "highly unusual circumstances" are actually highly usual circumstances in the vast majority of cases. Metz said his department likes to have nine months to a year of advance notice of a proposed project just to get ready to apply for permits. Herrera speaks of "the 12-month period it takes to permit new exploration wells in unexplored offshore areas in both federal- and state-owned acreage."

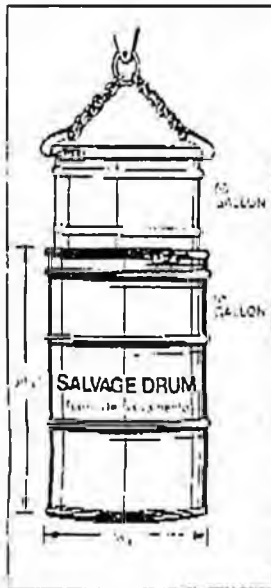
Herrera adds, "Had a six-month permit timeline instead of one-year period been adhered to (with no less scrutiny of environmental issues, only more concentrated in terms of time), there would probably be new oil production from state-owned lands coming on line in 1986 or 1987, as Prudhoe Bay production downturns become an issue."

Truly effective regulatory reform may never be achieved — certainly not to the satisfaction of all parties concerned. Tim Bradner believes this is because, "We have asked political institutions conceived for other purposes to undertake this intervention in a complex, decentralized, private economy. We should not be surprised at the distortions that result."

"Overall, this effort to reconcile continued economic growth in an increasingly competitive world with the important social and political goals of our times — environmental protection, health and safety — will remain one of the central problems in late 20th century American political life. The political rhetoric may change from time to time, but the issues will remain."

## YOU WILL SAVE MONEY ON OILSPILL CONTINGENCY EQUIPMENT

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- 85 gallon capacity (11.20 cu. ft.)
- 26" x 36" inside measurement
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### DISTINCTIVE FEATURES

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# Resource Development Council for Alaska, Inc.

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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.

Gov. Sheffield.

4/8/83

Page 2

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.

Gov. Sheffield

4/8/83

Page 3

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

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

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

Mano Frey  
President

encl.



# Resource Development Council

for Alaska, Inc.

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

**DRAFT**

POLICY STATEMENT NO. 11

REGULATORY REFORM

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

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

The Resource Development Council recommends the following:

I

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

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

continued...

II

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

III

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

IV

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

V

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

VI

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

VII

That the federal, state and local governments require agencies to review their regulations and work toward elimination of those that are archaic and not absolutely 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 -----

## ALASKA CONSISTENCY REVIEW PROCESS

Since adoption of the coastal consistency review regulations in early 1984, major progress has been made to achieve the following permit reform goals:

- ° establish regulatory deadlines for state permit decisions,
- ° eliminate repetitive state reviews and decisions on the same project,
- ° expedite state permit reviews and decisions,
- ° ensure uniformity in state agency comments on federal permit decisions,
- ° assist applicants in the processing of state and federal permits,
- ° provide adequate opportunity for public and local government participation in state permit decisions, and
- ° achieve a balanced, factually documented decision including consideration of the costs and benefits of requiring particular stipulations.

The state's system for reviewing and processing most project related permits, leases, and other legal approvals is governed by regulations adopted in March 1984, entitled Project Consistency with the Alaska Coastal Management Program (6 AAC 50). The regulations require that coastal projects only be reviewed one time for approvals required by the Departments of Environmental Conservation, Fish and Game, and Natural Resources and for consistency reviews conducted by the Division of Governmental Coordination (DGC). These regulations, provide for (1) easy access to and participation in the decision making process by applicants, (2) expedient decisions on project consistency and (3) quick issuance of permits by the state resource agencies. Features of the existing regulations and additional efforts being taken by the state to improve the permitting process include the following:

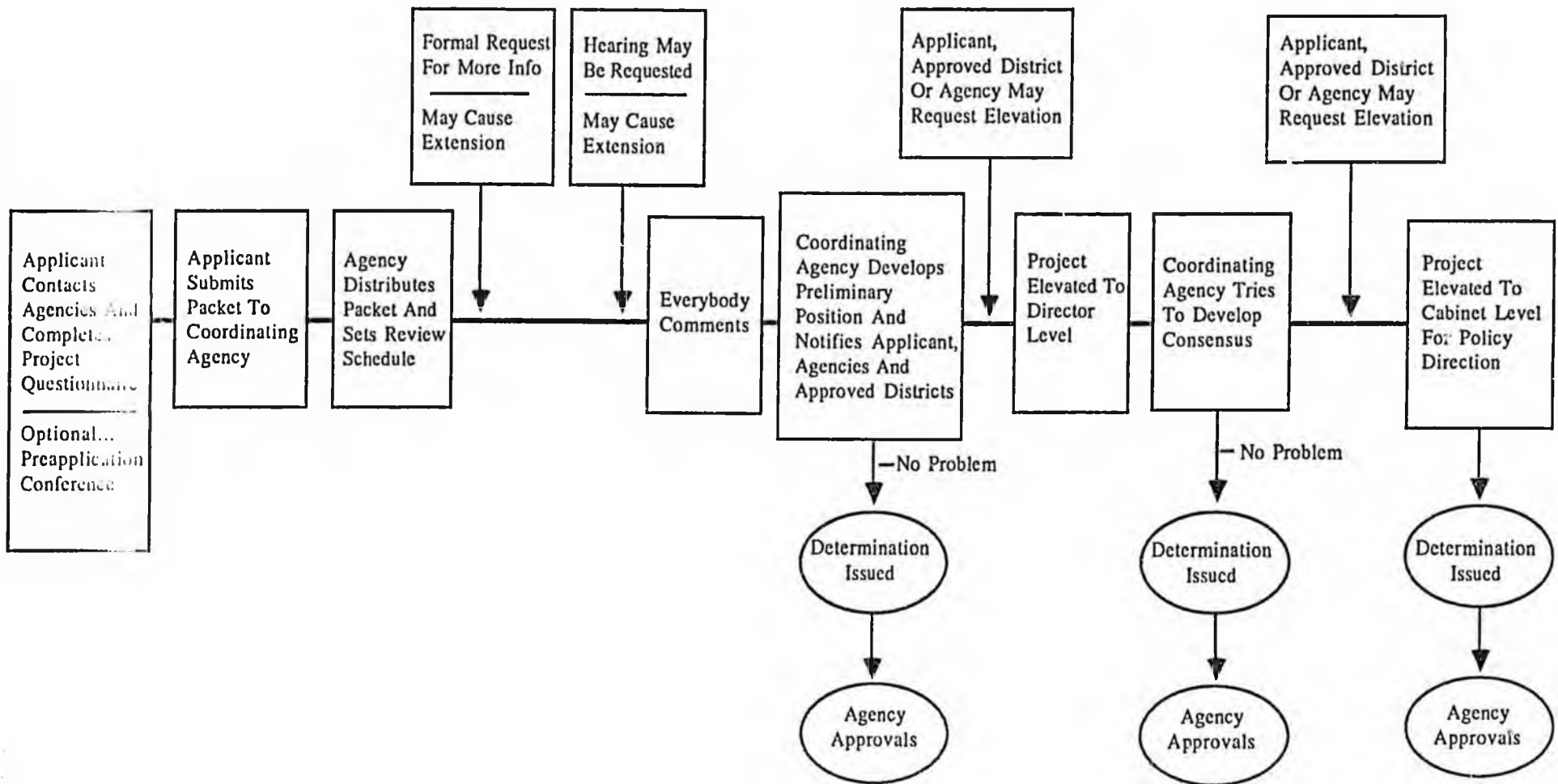
- ° All appropriate permits and certificates for a project are evaluated in a single review. This eliminates duplicative and time consuming review of individual permits necessary for the same project.
- ° When a project requires permits of two or more state agencies or a federal permit, DGC coordinates the project review and renders a conclusive consistency determination on behalf of all the state resource agencies. This provides applicants with a single state agency contact (DGC) to coordinate the project review and, if necessary, resolve any outstanding conflicts. It also provides a single state voice for communicating the state's position on a project to federal permitting agencies.

- ° The consistency review regulations have streamlined the permitting process. Consistency determinations are completed in an average of 47 days. State resource agency permits are required to be issued within 5 days of the consistency determination. Previously, the state could take six months or longer to complete the review of a project for federal consistency with the Alaska Coastal Management Program (ACMP).
- ° If an applicant considers a decision by the State of Alaska to be unacceptable, opportunities exist to elevate a decision to policy makers of the state resource agencies for their reconsideration. Applicants are encouraged to participate in discussions of their project at each level of review.
- ° On request, DGC will assist applicants schedule pre-application meetings with all the concerned agencies (state, federal, and local) to discuss their project prior to filing permit applications. At these pre-application meetings, agencies provide recommendations to an applicant for designing a project that will meet review criteria and ensure compliance with state, federal, and local requirements. Also, the applicant learns how the permit process works, who to contact for information, and what to expect during the review process. These pre-application meetings also provide a forum for informal agency contact to assess regulatory requirements for projects.
- ° A brochure which describes the state's consistency review to potential applicants has been mailed to approximately 5,000 potential applicants listed in business directories prepared by the Department of Commerce and Economic Development (enclosed). Part of the brochure includes a survey form which the applicant can return by mail to request additional assistance from DGC in dealing with the consistency review process.

Since January 1984, DGC has processed 1,541 project reviews. Of this total, more than 98% were found consistent. The average review period for these projects was 47 days. The vast majority of projects reviewed under the current system are approved, and the average project review is completed in less than 50 days. Following the review, all state and most federal permits are promptly issued.

A review of the state's current consistency review record does not support the need for the statutory and regulatory changes contained in HB 212. To the contrary, HB 212 could conceivably result in a less efficient review process due to overlapping responsibilities, multiply lead agencies, and increased variations in the review process compared to the existing system.

# PROJECT CONSISTENCY REVIEW PROCEDURES



4/13 SSHB 212

Dave: Min's Comm - DNR as lead agency

current prog process → unnecy cond'ns, exp'v

MOU gives auth' to agencies that they don't hv under state  
streamlining for cost - and time-effectiveness

Roy Gardner: Ave. Chamber

major leg'v prog - reg'y permit reform

take OMB out of the process - DNR the appropriate agency

power struggles under MOU -

prev. add'n of bad steps

DNR with prot. pub. interest

Bob Grogan: DGC

1540 applications under new process, 7 commit levels elev'ns, 16  
reviews in all

1) diff't lead agcy - confusing

2) hv explained state process to fed'l agcies & don't want to  
redo

3) use dev't shdn't be only trigger

4) defin of how to select lead agcy

5) does OMB hv auth'y to direct state agcies?

6) lead ageny - doesn't hv auth'y over others -

Mike Abbott, Jenny Hanley, Tim Hostedler, Tom Barnes, Martin Peal

Pete Metz ARCO - bill needs to give auth'y to DNR to override  
other agencies -

Pete Hanley SAFC -

→

AOGA analysis of reg'y process - 3/87, will send

Roy M. Michael - Atk Miners Assn -

Rick Harris - Sealaska

must DGC to be lead w/ > auth'y to deal w/ agencies