

LEG. FINANCE - BILLS 1983 - 1984 1799

HB 14

1799

Original sponsors: Martin, Lindauer
and Tischer

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 14 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) the orderly development of state resources is being unneces-
12 sarily delayed by the length of time required to obtain permits from state
13 agencies, by the complexity of the permitting process, and by the number of
14 agencies involved in the permitting process;

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

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

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

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

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

2 ARTICLE 8A. PERMIT PROCESSING.

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

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

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

16 (b) Final regulations classifying its permits shall be adopted
17 by each state resource agency by October 1, 1984, following appropri-
18 ate notice and hearing. Permits applied for after October 1, 1984,
19 must be issued in accordance with the time periods specified in (a) of
20 this section, and the provisions of the implementing regulations.

21 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PRO-
22 CESSING. (a) Upon a finding by the head of a resource agency that a
23 permit being considered involves unusually complex issues so that the
24 agency cannot render a final decision within the time period specified
25 in AS 44.62.632(a), the head of the agency may prescribe a time period
26 not to exceed a total of 120 days within which the final decision will
27 be made. The finding of the head of the agency may be appealed by the
28 applicant to the superior court under the Appellate Rules of Proce-
29 dure.

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

6 (c) Failure of a resource agency to make a final decision within
7 30 days after the receipt of a completed permit application for a
8 class I permit, within 65 days after the receipt of a completed permit
9 application for a class II permit, or within a time period extended by
10 (a) or (b) of this section or by AS 44.62.634, is approval of the
11 application. In an appeal of a permit issued by operation of this
12 subsection, the record shall be considered in the light most favorable
13 to the applicant, and the permit shall be accorded a presumption of
14 regularity.

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

17 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource
18 agency receives a permit application that does not contain sufficient
19 information concerning the project's compliance with the agency's
20 statutes and regulations, the agency shall notify the applicant within
21 15 days after receipt of a permit application for a class I permit,
22 and within 30 days after receipt for a class II permit.

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

27 (c) If a timely request under (a) and (b) of this section is
28 made, the time period specified in AS 44.62.632 is suspended from the
29 date of request to the date of full compliance with the request.

1 Subsequent requests for additional information may be made, but must
2 relate only to new issues raised by the response to the initial noti-
3 fication. Subsequent requests do not extend the time periods speci-
4 fied in AS 44.62.632.

5 (d) Nothing in this section grants a resource agency the author-
6 ity to request information beyond the authority given to it by other
7 statutes.

8 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
9 agency that is solely responsible for issuing coastal management
10 consistency determinations under AS 46.40. For resource development
11 activities on state and federal land, water, and submerged land, the
12 lead agency is the Department of Natural Resources. In all other
13 cases, the lead agency is that resource agency that has principal
14 administrative responsibility for the type of development for which
15 the consistency determination is required, even though the development
16 may require permits from more than one resource agency. The lead
17 agency is solely responsible for preparing and submitting state com-
18 ments on federal permit applications. For classes of activities for
19 which no agency with principal responsibility exists the governor
20 shall designate a resource agency to be a lead agency for each class
21 by administrative order no later than October 1, 1984.

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

1 evidence received. The lead agency shall balance competing factors in
2 reaching its final decision. No resource agency other than the lead
3 agency has primary expertise in the balancing of competing factors.

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

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

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

14 (f) Nothing in this section or AS 46.40 authorizes a lead agency
15 or any resource agency to deny or condition a consistency determina-
16 tion because of impacts which may be caused by activities not them-
17 selves requiring a state or federal permit or disposal of interest in
18 state land.

19 (g) In making a consistency determination under this section for
20 an activity occurring outside the boundaries of a coastal resource
21 district with an approved district plan, the lead agency or any re-
22 source agency may consider only those statewide standards and guide-
23 lines adopted by the Alaska Coastal Policy Council under AS 46.40.-
24 040(1).

25 Sec. 44.62.636. COMMENT PERIOD. (a) A coastal resource dis-
26 trict or state agency that receives a request for comment in connec-
27 tion with a permit application or plan review being processed by a
28 resource agency shall submit the comments in accordance with the
29 following schedule:

1 (1) comments on class I permits shall be submitted within
2 15 days after receipt of the request by the commenting coastal re-
3 source district or state agency;

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

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

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

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

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

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

29 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. Judicial review

1 by the superior court of a decision issued under AS 44.62.632 - 44.-
2 62.637 shall be by filing a notice of appeal in the superior court in
3 accordance with the applicable Rules of Appellate Procedure. The
4 review is governed by the provisions of AS 44.62.560(b) - (e) and
5 AS 44.62.570.

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

7 (c) As used in AS 44.62.632 - 44.62.638,

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

12 (2) "permit" means a permit, license, certification, con-
13 sistency determination, or other authorization or approval issued by a
14 resource agency as a written document that is required to be obtained
15 or is solicited from a state agency before the construction or opera-
16 tion of a project; "permit"

17 (A) does not include the approval of a unit agreement,
18 a unit development plan, or a unit exploration plan, or convey-
19 ances of interest in state land or water;

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

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

28 (4) "resource agency" includes the Department of Natural
29 Resources, the Department of Environmental Conservation, and the

1 Department of Fish and Game with respect to permits issued for the
2 protection of fish habitat or the regulation of state sanctuaries,
3 refuges, and critical habitat areas.
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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. SB 14 (FIN)
Title: Act relating to processing of permits

Sponsor: Martin
Requestor: House Finance Committee
Date of Request: 4/6/84

FISCAL DETAIL

Agency Affected: all
Program Category Affected: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: House Finance Committee Phone: 465-3706
Division: Al Adams, Chair Date: _____

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: Jan. 11, 1984

(Revised for 1984 Session)

REQUEST

Bill/Resolution No.: HB 14

Title: "...processing permits"

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: _____

General Government

BRU, Program or Subprogram(s) Affected: _____

Legal Services Operations

Sponsor: Rep. Martin

Requestor: Off. of Gov. - OMB

Date of Request: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director

Division: Administrative Services

Phone: 465-3672

Date: 1-11-84

Approved by Commissioner: Norman C. Gorsuch

Agency: Department of Law

Date: 1-11-84

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

January 11, 1984

This legislation radically alters the procedures for review of state permits as well as state review of coastal management standards for projects located in coastal regions of Alaska, where 80 to 90% of the development in Alaska is taking place. Passage of the bill would require wholesale changes to existing procedures and inevitably to regulations promulgated by the department's of Fish and Game, Natural Resources, Environmental Conservation and the Office of the Governor. Considerable, long-term fiscal impact will occur on the part of these agencies in order for them to implement the shortened permit review process required by the bill.

In the foreseeable future, this legislation will probably generate some litigation and/or administrative appeals by various public interest groups. The cost associated with the defense of these appeals will be borne, in large part, by the Department of Law. It is speculative at this point as to the exact cost such appeals may generate.

The requirements of Sec. 20, SLA 1983, Ch. 63, for OMB to render a conclusive state consistency determination when a project requires two or more state or federal permits, has been implemented under Governor Sheffield's Administrative Order No. 78. The streamlining of natural resources permitting, covered by the order, eliminates the processing of individual permits in a piecemeal fashion, which has been a source of much of the delay in the former permitting process. The state's natural resources agencies are presently promulgating new regulations to conform to Administrative Order No. 78 in order to encourage the coordinated development of the state's resources, while insuring that future residents will continue to enjoy productive resources.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/31/84

REQUEST

Bill/Resolution No.: HB 14
 Title: Act Relating to Processing
of Permits
 Sponsor: Martin, Lindover & Tischer
 Requestor: House Finance
 Date of Request: 1/30/84

FISCAL DETAIL

Agency Affected: Environmental Conservation
 Program Category Affected: All Permit
Programs
 BRU, Program or Subprogram(s) Affected:
Environmental Quality Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	0	0				
200 TRAVEL	0	0				
300 CONTRACTUAL	0	0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0				

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Douglas Redburn Phone: 465-2634
 Division: Environmental Quality Management Date: 1/31/84

Approved by Commissioner: Richard A. New Date: 2/1/84
 Agency: ADEC

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS HB 14
 Title: "Act relating to processing of permits...."
 Sponsor: Martin, Lindauer, Tischer
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Department of Fish & Game
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: Habitat

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES		259.0	259.0	259.0		
200 TRAVEL		31.0	31.0	31.0		
300 CONTRACTUAL		45.0	45.0	45.0		
400 SUPPLIES		4.0	4.0	4.0		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		339.0	339.0	339.0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		339.0	339.0	339.0		
FEDERAL FUNDS						
OTHER						
TOTAL		339.0	330.0	339.0		

POSITIONS:

FULL-TIME		6.0	6.0	6.0		
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

See attached page

ANALYSIS: Attach a separate page for analysis

Prepared By: Beverly Reaume, Director Phone: 465-4120
 Division: Administration Date: 02/01/84
 Approved by Commissioner: [Signature] Date: 2-1-84
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

FISCAL NOTE ANALYSIS: CS SB 219 and HB 14

100 Personal Services

Region IV Full Time	Habitat Biologist III	Permitter	53.7
Region III Full Time	Habitat Biologist II	Permitter	45.5
Region II Full Time	Habitat Biologist II	Permitter	52.0
Region II Full Time	Habitat Biologist III	Coordinator	53.7
Region II Full Time	Clerk Typist II	Clerical	25.6
Region III Full Time	Clerk Typist II	Clerical	<u>28.5</u>

259.0

200 Travel for Permitters & Coordinator 31.0

300 Contractual for Permitters & Coordinator 45.0

400 Supplies for Permitters & Clerical 4.0

TOTAL 339.0

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/6/84

REQUEST

Bill/Resolution No.: HB 14
Title: Act Relating to Processing of Permits
Sponsor: Martin, Lindauer, Tischer
Requestor: Law
Date of Request: 2/6/84

FISCAL DETAIL

Agency Affected: Environmental Conservation
Program Category Affected: All permit programs of DEC
BRU, Program or Subprogram(s) Affected: Environmental Quality Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		105.2				
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.2				

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		105.2				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		4				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General funds

ANALYSIS: Attach a separate page for analysis

Prepared By: Douglas Redburn Phone: 465-2634

Division: Environmental Quality Management Date: 2/6/84

Approved by Commissioner: [Signature] Date: 2/7/84

Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Analysis

Personnel Services request is allocated as follows:

- 1 Clerk Typist III in Southeastern Regional permitting office in Juneau @ \$25,577
- 2 Clerk Typist III in Southcentral Regional permitting office in Anchorage @ \$25,577/position x 2
- 1 Clerk Typist III in Northern Regional permitting office in Fairbanks @ \$28,446

Total -----> \$105,177/year

Services provided include decreasing turnover time in typing permits and position paper to meet time frame requirements of the legislation, decrease time related to mailings/correspondence, and automating permit conditions into computer data base. No new professional positions are being requested.

DR/bp

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/1/84

REQUEST

Bill/Resolution No.: HB 14
Title: Permit Reform

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMEC

Sponsor: Martin
Requestor:
Date of Request:

BRU, Program or Subprogram(s) Affected:
Mgmt. of Land/Mineral/Energy Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		300.0				
200 TRAVEL		19.0				
300 CONTRACTUAL		99.0				
400 SUPPLIES		35.5				
500 EQUIPMENT		30.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		483.5				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		483.5				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		8				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert Butts *Robert Butts* Phone: 465-2400
Division: Oil and Gas Date: 2/1/84

Approved by Commissioner: *Alvin D. Zamora, Deputy Comm.* Date: 2/1/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Attachment to Fiscal Note for HB 14

- I. Assumes the following additional personnel will be needed to process and coordinate CZM and permitting for development on state and federal lands, including OCS leasing, mining and timber sales. Other funds associated with permit reform are in the Governor's proposed FY85 DNR budget, Minerals & Energy Mgmt. BRU, Petroleum Mgmt. component, \$192.9 GF; and Land/Water Mgmt. BRU, Land/Water Public Use component, \$92.7 interagency receipts.

<u>Fairbanks</u>	<u>Annual Cost w/benefits</u>
Nat. Resource Manager I	54,600
Nat. Resource Officer I	40,700
Clerk III	28,000
<u>Anchorage</u>	
Nat. Resource Manager I	47,600
Nat. Resource Officer I	35,800
Clerk III	26,300
<u>Juneau</u>	
Nat. Resource Officer II	40,700
Clerk III	26,300
	<u>\$300,000</u>

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

III. Contractual -

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

- IV. Equipment costs include \$30,000 for upgrading the existing communication system linking the three permitting centers.

Costs beyond FY 85 are not estimated, but comparable. Assumes that HB 14 is amended to exclude conveyance-related permits such as material sales, ROW's, etc.

PART 2B
OFFICE OF MANAGEMENT AND BUDGET--DIVISION OF
GOVERNMENTAL COORDINATION

Latest regulation draft to implement A.O. 78

Chapter

50. Project Consistency With the Alaska Coastal Management Program
(6 AAC 50.010 -- 6 AAC 50.190)

CHAPTER 50.

PROJECT CONSISTENCY WITH THE ALASKA COASTAL MANAGEMENT PROGRAM

Section

- 10. Purpose of regulations
- 20. Federal consistency determinations
- 30. State permit consistency determinations
- 40. Preapplication assistance
- 50. Categorical approval and general concurrence determinations
- 60. Scope of project to be reviewed
- 70. Consistency review process
- 80. Confidential information and fees
- 85. Emergency expedited review
- 90. Public participation
- 100. Review period deadlines and extensions
- 110. Conclusive consistency determination
- 120. Issuance of permits
- 190. Definitions

6 AAC 50.010. PURPOSE OF REGULATIONS. The regulations in this chapter are intended to implement, interpret, and make specific

(1) the responsibility of the office of management and budget (OMB) to implement the Alaska Coastal Management Program (ACMP) by rendering all federal consistency determinations authorized by sec. 307 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. sec. 1456, and all conclusive consistency determinations for any project requiring two or more state agency or federal permits as required by AS 44.19.145(a)(11); and

(2) the responsibility of resource agencies to implement the ACMP by making conclusive consistency determinations for projects requiring the permit of a single state agency and no federal permit and by coordinating their own permit procedures with the consistency review of a project. (Eff. ___/___/___, Reg. ___)

Authority: Art. III, Secs. 1, 16, and 24
Alaska Const.
AS 44.19.145(a)(11)
AS 46.40.100(a)

6 AAC 50.020. FEDERAL CONSISTENCY DETERMINATIONS. The division of governmental coordination of the office of management and budget (DGC) will coordinate any consistency review and render any consistency determination authorized by sec. 307 of

the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. sec. 1456, in the manner provided in this chapter and within time limits established in that act or the regulations implementing the act. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.030. STATE PERMIT CONSISTENCY DETERMINATIONS.

(a) A resource agency will coordinate the consistency review and render a conclusive consistency determination for a project which requires only the permit of a single state agency and no federal permit. The agency will coordinate the review and render its determination in the manner provided in this chapter.

(b) DGC will participate in a single agency consistency review in the same manner as the other resource agencies participate. DGC will also, on request of the coordinating agency, act as a facilitator to attempt to resolve any disputed issues. If the project includes a disposal of interest in state land, DGC will either concur in the determination or require modifications necessary for its concurrence.

(c) DGC may at any time, with reasonable notice, review the consistency review procedures, files, or decisions of any coordinating agency.

(d) DGC will coordinate the review and render a determination for a project which requires the permits of two or more state agencies or a federal permit, in the manner provided in this chapter. (Eff. __/__/__, Reg. __)

Authority: Art. III, Secs. 1, 16, and 24
Alaska Const.
AS 44.19.145(a)(11)
AS 46.40.100(a)

6 AAC 50.040. PREAPPLICATION ASSISTANCE. DGC will on request assist any potential applicant for a state permit which is necessary for a project, by providing and explaining the project questionnaire described in 6 AAC 50.080, identifying persons to contact in other state or federal agencies, determining the scope of activities which comprise the project, and providing any other assistance or information at its disposal to facilitate review and approval of the applicant's proposed project. Any resource agency will on request provide similar assistance and will also provide application forms for its own permits. DGC and all resource agencies will regularly inform each coastal resource district of proposed projects which may have significant and direct impacts on that district. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)
AS 46.40.100(a)

6 AAC 50.050. CATEGORICAL APPROVAL AND GENERAL CONCURRENCE DETERMINATIONS. (a) The consistency review of an activity will be expedited as provided in (b) and (c) of this section if it meets the requirements of those paragraphs.

(b) An activity which requires one or more state or federal permits, each of which has been categorically approved by DGC

as being consistent with the ACMP, and which requires no additional permit, is deemed to have been conclusively determined by DGC to be consistent with the ACMP.

(c) An activity which requires one or more state or federal permits, not categorically approved as provided in (b) of this section, and which is a routine activity, which can be effectively made consistent with the ACMP by imposing standard stipulations on the applicable permit may be approved under a general concurrence determination as provided in this chapter. Subsequent activities which are described in the general concurrence determination are deemed to be consistent with the ACMP if the stated stipulations are enforced.

(d) An activity which requires one or more state or federal permits and which is not within the categories described in (b) or (c) of this section, is subject to review as an individual project as provided in this chapter.

(e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations which it has issued. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including but not limited to cumulative impacts. Before publishing or amending these lists, DGC will distribute the proposed lists or amendments for comment in the manner provided in this chapter for a project consistency review. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.060. SCOPE OF PROJECT TO BE REVIEWED. The scope of activities which are to be reviewed for consistency with the ACMP as part of a project will be determined based statements of the applicant, the information provided in the project questionnaire, and any additional information which DGC or a resource agency finds necessary. If there is disagreement among the agencies, DGC will make the final decision. If DGC determines that a project under review by a resource agency is one requiring a federal permit, or the permits of two or more state agencies, DGC will immediately notify the applicant and the resource agency that the consistency review will be coordinated by DGC, and will commence as provided in 6 AAC 50.070, when DGC has received completed applications for all necessary permits, and a completed project questionnaire. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.070. CONSISTENCY REVIEW PROCESS. (a) Except as provided for placer mining activity in (b) of this section, any resource agency which receives an application for a permit for a project, or DGC on request, will give the applicant a project questionnaire on a form prepared provided by DGC. Based on the information provided by the applicant in response to the questionnaire, the resource agency, or DGC if requested, will identify all resource agencies which the applicant must contact regarding the project.

(b) A project questionnaire will not be required for

placer mining activity which is authorized by an annual placer mining application known as the tri-agency placer mining application. These applications must be submitted to DNR and will be promptly forwarded by DNR to DGC for review as provided in this chapter.

(c) For a project requiring a federal permit or the permits of two or more state agencies, the applicant must submit a packet including all necessary applications and the questionnaire to DGC, except that confidential information or fees must be handled as provided in section 080 of this chapter. For a project requiring the permits of a single state agency, the applicant must submit a packet including all necessary applications and the questionnaire to the agency.

(d) Immediately upon receipt, the agency will review the packet and will inform the applicant if it appears to be incomplete. A packet submitted to a resource agency is incomplete unless the questionnaire shows that no other agency permit is required for the project or the packet contains evidence that the other state agencies have determined that no other permit is required. If the packet appears to be complete, and the project does not include a disposal of interest for state land, the coordinating agency will immediately assign a project number, and note the date as Day 1 of the consistency review process. For a project which includes a disposal of interest in state lands, the consistency review will begin at a date which DGC and DNR agree will most effectively coordinate the consistency review and DNR's own statutory responsibilities. Acceptance of the packet does not preclude any agency from requesting additional information from the applicant as necessary for its consistency review or its own statutory responsibilities. On or before Day 2, the coordinating agency will distribute copies of the packet to all resource agencies, other state agencies represented on the Coastal Policy Council as provided in AS 44.19.155, all affected coastal resource districts, and other interested parties. For a 30 day review the distribution may be limited in the discretion of the coordinating agency but will if requested include all affected coastal districts with approved plans. Along with the packet, the coordinating agency will distribute a notice establishing a comment deadline at day 34, or at day 17 in a 30-day review period, or later if extended as provided in section 100 of this chapter.

(e) If it determines that the public notice, if any, provided by the resource agencies as part of their review of a permit is not adequate to inform persons who may wish to comment about the project, the coordinating agency will as soon as possible publish a public notice in newspapers or on radio in the affected areas, describing the project and the consistency review process. In evaluating the adequacy of public notice of a project, the coordinating agency will consider the magnitude of likely impacts, including cumulative impacts on the affected area, and will not expand the scope of projects for which public notice is statutorily required. DGC will encourage the joint public notice of project reviews when a permit from more than one agency is required.

(f) The coordinating agency on its own initiative or at the request of a resource agency or affected coastal district with an approved plan may request from the applicant by day 25, or day 15 of a 30-day review period, any additional information necessary for its consistency review or its own statutory

responsibilities.

(g) Comments must be received by the coordinating agency on or before the comment deadline established by the coordinating agency. Each commenter shall send copies of its comments to the resource agencies and, if requested, to the applicant and affected coastal districts. Verbal comments must be confirmed by written comments postmarked within five working days of the verbal comments. If stipulations are recommended, a brief written justification must be provided for each. Upon request, the coordinating agency will send copies of comments to other interested parties.

(h) The coordinating agency will prepare a project status report based on its review of the project packet and the comments received before the comment deadline. This report will include a proposed consistency finding, and a statement of any issues to be resolved. The coordinating agency will distribute this report to all resource agencies, other agencies which have commented, affected coastal resource districts, and the applicant, on or before day 44, or day 24 in a 30-day review period.

(i) If a resource agency, an affected coastal resource district, or the applicant does not concur with the proposed consistency determination, it may prepare a project position paper which describes its concerns and includes a proposed alternative consistency determination which meets its concerns. Each party will distribute its project position paper to all resource agencies, affected coastal resource districts, the applicant, and DGC on or before day 49, or day 29 in a 30-day review period, or ~~within~~ ^{within} 5 days of receiving the project status report, ~~whichever is later~~. This requirement may be satisfied by transmitting the substance of a position to the coordinating agency by telephone or other telecommunication device and sending written confirmation by mail or courier on or before this deadline.

(j) The coordinating agency will issue a conclusive consistency determination on or before day 50, or day 30 in a 30-day review period, if it has not received notice of any project position paper. If the coordinating agency receives a project position paper, it will elevate the review as necessary to the division directors and then commissioners of the resource agencies and will extend the decision deadline in accordance with section 100 of this chapter by up to 15 days at each higher level. The coordinating agency, or DGC on request, will arrange meetings and will mediate among the resource agencies, the affected coastal resource districts, and the applicant for the purpose of attempting to resolve any disputed issues and to formulate a mutually acceptable consistency determination. If no consensus is reached, the coordinating agency will render a determination consistent with any policy direction given by the commissioners or the governor. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.080. CONFIDENTIAL INFORMATION AND FEES. Any application for a state permit requiring information which must by law be held in confidence, and any fee associated with a state permit must be submitted by the applicant directly to the agency with responsibility for issuing the permit. The agency will delete the confidential information from any copy of the

application which is distributed for a consistency review under this chapter. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.085. EMERGENCY EXPEDITED REVIEW. If an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law causes an applicant to need an expedited agency permit or consistency review, or if the head of the coordinating agency finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the head of the coordinating agency may modify the review process established in this administrative order as necessary to meet the emergency. Any modifications made according to this section shall be made in writing by the head of the coordinating agency based upon clear and convincing evidence of a need for such modification. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.090. PUBLIC PARTICIPATION. (a) Any person may comment on a proposed project by submitting written comments to the coordinating agency on or before the comment deadline. The coordinating agency will provide a copy of the project packet to any person on request.

(b) If the coordinating agency receives a request for public hearing regarding the project by day 34, or day 17 of a 30-day review period, and finds that the request is based on concerns not already adequately addressed in the review, or is made by the governing board of an affected coastal resource district, it will schedule and hold a hearing in the area affected by the project.

(c) At least 15 but no more than 30 days before the date of a public hearing, the coordinating agency will give a notice of the time and place of the hearing

(1) by publication in a newspaper which is circulated in the area to be affected by the project;

(2) by written notice to elected municipal officials in the area to be affected by the project; and

(3) if the project is to be located in the unorganized borough, by radio and/or television announcements.

(d) If new information or issues are presented at a public hearing that have not been considered or resolved by project reviewers, the coordinating agency will summarize those portions of the hearing testimony and distribute the summary to other resource agencies, affected coastal resource districts and the applicant within five days following the hearing. Recommendations for a proposed determination based on the hearing summary may be submitted to the coordinating agency in writing within 7 days of receipt of the hearing summary. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.100. REVIEW PERIOD DEADLINES AND EXTENSIONS. (a) The coordinating agency will complete a review by either day 30 or day 50 unless it extends the applicable decision deadline as provided in (b) or (c) of this section. Each resource agency will, after consultation with DGC, establish standards for determining whether a 30-day or 50-day decision deadline will apply. DGC will complete a review by day 30 only if all required permits must be issued within 30 days.

(b) An associate director within OMB or a division director within the coordinating agency may grant an extension of a consistency review as long as the consistency determination is made within any time limit imposed by federal law or regulation. An extension and the reasons for it must be stated in writing and, except for an extension granted under (b)(1) of this section, must be based on clear and convincing evidence of the need for the extension. The limits on extensions are:

(1) for a project located in the unorganized borough the coordinating agency will without request extend both the comment and decision deadlines by 10 days;

(2) if a commenting agency requests time to perform a field review, the coordinating agency will, in its discretion, extend the remaining deadlines by up to 10 days;

(3) if the project involves a disposal of interest in state land or resources and DGC is the coordinating agency, it will on DNR's request extend both the comment and decision deadlines for any period necessary to most efficiently coordinate the consistency review and the DNR disposal process;

(4) for a project which is subject to the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Pub. L. No. 95-87, 91 Stat. 445 (1977), 30 U.S.C. § 1201 et seq., the consistency review deadlines will be extended as necessary to conform to the requirements of SMCRA and the Alaska Surface Mining Control and Reclamation Act, AS 27.21;

(5) if a public hearing is held as part of the consistency review process, or as part of a resource agency review of a necessary permit the coordinating agency will extend both the comment and decision deadlines as necessary;

(6) if the coordinating agency requests additional information from the applicant as provided in section 070 of this chapter, the agency will, in its discretion, extend the remaining deadlines for a period equal to the time elapsed between the request and receipt of the information;

(7) if the coordinating agency determines that a consensus among the resource agencies, any affected coastal resource district, and the applicant cannot be reached within a 50-day review period, it will state in writing the issues or conditions which require additional time for review, and will extend the remaining deadlines for up to 15 days for each higher level of review provided in section 070 of this chapter;

(8) if the applicant requests an extension, the coordinating agency will extend the remaining deadlines as requested;

(9) if the coordinating agency determines that the

project involves unusually complex issues, it will in its discretion, extend the deadlines as necessary. In this event it will by day 50, or day 30 of the 30-day review period, distribute to the resource agencies, the affected coastal resource districts, and the applicant, a written statement of the issues which remain to be resolved. The coordinating agency will distribute updated statements promptly as issues are resolved.

(c) All time periods in this chapter will be calculated using calendar days. Any action required to be taken on a Saturday, Sunday, or state or federal holiday, must be taken on or before the next working day. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.110. CONCLUSIVE CONSISTENCY DETERMINATION. (a) In rendering a conclusive consistency determination, the coordinating agency will give careful consideration to all comments, and will give due deference to the comments of resource agencies and affected coastal districts with approved plans. Due deference means that deference which is appropriate in the context of the commenter's expertise and area of responsibility, and all the evidence available to support any factual assertions. A coastal resource district whose district plan has been incorporated into the ACMP is deemed to have expertise in the interpretation and application of its plan. If the coordinating agency rejects a stipulation or recommendation requested by a resource agency or an affected coastal resource district with an approved plan, and the stipulation is in the commenter's respective area of expertise, the coordinating agency will make a written finding stating the reasons for rejecting the stipulation.

(b) The coordinating agency will render a written conclusive consistency determination before the decision deadline as set in accordance with sections 070 and 100 of this chapter. It will distribute its determination to the applicant and to all resource agencies, all other agencies which commented on the project, and all affected coastal resource districts. The determination will describe the scope of the project which was reviewed. If the project is determined to be consistent with the ACMP, the determination will state any conditions or stipulations which must be included in applicable state or federal permits to ensure that the project is consistent with the ACMP. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

6 AAC 50.120. ISSUANCE OF PROJECT PERMITS. A resource agency will issue any permit which is necessary for a project, except a lease, within 5 days after it issues or receives the conclusive consistency determination for that project, unless it is precluded from doing so by law, by procedures established by the agency pursuant to law or regulation, or by reasons beyond its control. A resource agency will issue a lease at the time and in the manner provided by applicable law, regulation, and agency procedure, but not before it issues or receives a conclusive consistency determination for the appropriate project. A project permit must contain any applicable conditions or stipulations required by the conclusive consistency determination, and may not contain any additional condition or stipulation for the purpose of ensuring consistency. (Eff. __/__/__, Reg. __)

Authority: Art. III, Secs. 1, 16, and 24
Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.190. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "ACMP" means the Alaska Coastal Management Program, as amended, which was developed as provided in AS 46.40, 6 AAC 80, and 6 AAC 85, and approved on by the Secretary of the United States, Department of Commerce under authority of sec. 305 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. sec. 1454;

(2) "affected coastal resource district" means a coastal resource district as defined in AS 46.40.210(2) in which a project is proposed to be located, or which may experience a direct and significant impact from a proposed project;

(3) "approved plan" means a coastal resource district plan that has been approved by the Alaska Coastal Policy Council and filed with the Lt. Governor's office;

(4) "commenting agency" means an agency which comments or makes recommendations to the coordinating agency;

(5) "consistency" means compliance with the standards of the ACMP, including the enforceable policies of an approved coastal resource district plan;

(6) "coordinating agency" means the agency responsible for coordinating and facilitating the review and rendering the determination;

(7) "DGC" means division of governmental coordination within the office of management and budget in the Office of the Governor;

(8) "direct and significant impact" means an effect of a project which may contribute or lead to a change or alteration in the natural, social, cultural or economic characteristics of a coastal district;

(9) "disposal of interest in state land" means the sale, lease or other disposition of state-owned or managed land or resources by the Department of Natural Resources;

(10) "determination" or "consistency determination" or "conclusive consistency determination" means a document issued by the coordinating agency containing a brief description of the project, the findings of the consistency review together with any stipulations, conditions or modifications to the project, if any, which must be attached to the applicable permits, and a brief justification for those necessary modifications, conditions, or stipulations;

(11) "OMB" means the office of management and budget in the Office of the Governor;

(12) "permits" means any permit, lease, authorization, license or any other determination necessary for completion of a project or a discrete phase of a project;

(13) "project" means any activity or use which will be located in or may affect the coastal zone of Alaska and which is subject to consistency review under sec. 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456), or which requires the issuance of one or more state permits; when a land or water activity is developed or authorized in discrete phases, and each phase requires agency decision(s) about permits, each phase shall be considered a "project;"

(14) "resource agency" means the Alaska Department of Environmental Conservation, or the Alaska Department of Fish and Game, or the Alaska Department of Natural Resources;

(15) "review" or "consistency review" means the evaluation of a project against the ACMP standards. (Eff. __/__/__, Reg. __)

Authority: AS 44.19.145(a)(11)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

February 1, 1984

SUBJECT: Comparative analysis of
HB 14 and SB 219

TO: Representative Terry Martin

FROM: Billy G. Berrier *BGB*
Director,
Division of Legal Services

You have requested a comparative analysis of the latest versions of HB 14 and SB 219. These versions are CSHB 14 (Resources) and CSSB 219 (Resources) am. There is a proposed amendment in the Judiciary Committee report accompanying HB 14 to change the lead agency for activities occurring on private land or for access to private land from the Department of Natural Resources to the Office of the Governor, Division of Policy Development and Planning.

*Section 1. Findings. The findings number 1-4 in SB 219 are contained in HB 14 with non-substantive language changes in 2 and 3. In 2 the phrase in the Senate bill is "have resulted in excessive costs to the public" and in the House bill is "have cost Alaskans millions of dollars."

Section 3 of the Senate bill reads:

(3) unnecessary delay in the processing of permit applications is not in the public interest.

The comparable Section 3 in the House bill reads:

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

Finding 5 of the House bill is not contained in the Senate bill.

Representative Terry Martin
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February 1, 1984

*Section 2 adds new sections to AS 44.62. The new section will be compared separately.

Section 44.62.632 In (a)(1) and (2) there is a difference in grammar but not in substance since the word "permit" follows the class designation in the House bill but not in the Senate bill. In the Senate bill under (a)(2) the final decision of a public hearing is held must be within 85 days while in the Senate bill the period is 75 days. In (1) the required date for adopting classifying regulations is October 1, 1983 in the Senate bill and is February 1, 1984 in the House bill. The corresponding effective dates in these paragraphs conform to the respective deadline dates. (As a practical matter an entirely new date must be used because of the time that has elapsed since these were written.)

Section 44.62.633. Paragraph (a) of the Senate bill has no counterpart in the House bill.

In paragraph (b) the Senate bill references the time period as 44.62.632 while the House bill references it as 44.62.632(a). Either reference has the same effect since the time period involved is contained in (a). Also in (b) the time period prescribed by the head of an agency may not exceed a total of 120 days in the House bill while the Senate bill has no comparable limitation.

Paragraphs (c) of the Senate bill and (c) of the House bill are worded differently but have the same substantive effect except the House bill explicitly provides that automatic approval does not occur if the additional information requirement in 44.62.634 has not been met and the Senate bill does not have this.

Paragraphs (d) in each are identical except the Senate bill has a qualifier "unless otherwise provided by law" which the House bill does not have.

Paragraphs (e) of the Senate bill and (b) are identical except the House bill modifies the word "conflict" by the word "irreconcilable" while the Senate bill does not.

Paragraph (f) of the Senate bill is identical with 44.62.635(b) of the House bill.

Representative Terry Martin
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Section 44.62.634 Paragraph (a), (b) and (c) are identical. Paragraph (d) of the House bill has no counterpart in the Senate bill.

Section 44.62.635 Paragraph (a) of both are identical. Each contain a time requirement of October 1, 1983 which has passed.

Paragraph (b) of the House bill is identical with 44.62.633 (f) of the Senate bill.

Paragraphs (b), (c) and (d) of the Senate bill are identical with paragraphs (c), (d) and (e) of the House bill.

Paragraph (e) of the Senate bill is identical with paragraph (f) of the House bill except the Senate bill uses the term "effects that" may be caused by activities while the House bill uses the term "impacts which".

Paragraph (f) of the Senate bill is identical with paragraph (g) of the House bill.

Section 44.62.636, 44.62.637 and 44.62.638 of the House bill have no counterparts in the Senate bill.

*Section 3 of both bills add definitions to AS 44.62.636. The lead in numbers differ because of the additional sections in the House bill.

Definitions (1), (3) and (4) are identical.

In definition (2) the House bill includes "comments on pending permit applications before governmental entities" while the Senate bill does not have this language. Otherwise the definitions are identical.

BGB:ojb
J3/031

League of Women Voters of Alaska

127 N. Franklin, No. 909
Juneau, Alaska 99801
February 1, 1984

HAND DELIVERED

The Honorable Albert P. Adams
Chairman
House Finance Committee
Alaska Legislature
Room 507, Capitol Building
Juneau, Alaska 99801

RE: Permit Reform Legislation
(CS HB 14 (Res) and CS SB 219 (Res) am)

Dear Representative Adams and Committee Members:

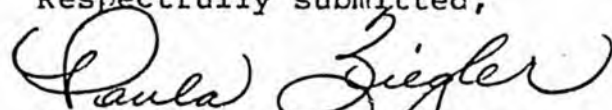
We respectfully request that the subject bills be tabled.

The League of Women Voters of Alaska has followed (and participated in) the subject of permit processing reform for the past three years. The Governor has issued Administrative Order No. 78, which we think will streamline the permit issuance process (including coastal consistency determinations) and assure timely issuance of permits, without sacrificing the public participation and local government participation processes we so strongly support. The process established in Administrative Order No. 78 should be given at least a year to work, and its performance then evaluated, before any further consideration is given to legislation on this subject.

We recommend that your committee, in reviewing the operating budget, assure adequate staffing of permit processing functions in each affected agency including OMB.

If these bills are not tabled, we request a further opportunity to express our specific objections to their contents.

Respectfully submitted,


Paula Ziegler, President

PZ:DEC:sd



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

ADMINISTRATIVE ORDER NO. 78

Procedures for the Alaska Coastal Management Program
Project Consistency Reviews

A. ORGANIZATION, PURPOSE AND IMPLEMENTATION OF THE ORDER

1. This Administrative Order is organized in seven parts:

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A. Organization, Purpose and Implementation of the order.	1
B. Definitions.	3
C. Types of Consistency Reviews.	6
D. Agency Responsibility for Consistency Reviews.	8
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2. This Administrative Order (A) sets out the specific steps of the interagency permit review process established by the Memorandum of Understanding (MOU) agreed to by the State resource agencies, the Departments of Natural Resources (DNR), Environmental Conservation (DEC), Fish and Game (DFG), and the Office of Management and Budget (OMB) on September 6, 1983. These procedures are designed to expedite the State review and decisions about resource-

related land and water uses and activities in coastal areas, and to provide for determinations of consistency with the Alaska Coastal Management Program (ACMP) for all projects which are located within or may affect the coastal zone of Alaska as required by AS 44.19.145(a)(11), the Alaska Coastal Management Act (AS 46.40), and the Federal Coastal Zone Management Act of 1972, Pub. L. No. 92-583, 86 Stat. 1280 (1972), as amended, 16 USC §1451 et. seq. This order supercedes Sections 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, of Administrative Order 54, dated April 23, 1979.

Administrative Order 54 remains in force except in so far as it is inconsistent with this order. Review of projects shall take place in an orderly and timely fashion according to the principles set out in this order. Typically, a routine project review shall be completed in either 30 or 50 days depending on the type of project being considered. Nothing in this Administrative Order shall be construed as conferring standing upon any party, public or private, to institute litigation against the State government or any agency thereof, nor to diminish or expand the existing statutory authorities of the State agencies or coastal resource districts.

3. This order will be effective on December 31, 1983. The resource agencies, with OMB/Division of Governmental Coordination (DGC), will identify a list of permits, or other approvals which are subject to consistency review and designate the appropriate review schedule for each by

December 31, 1983. Agencies will review their existing regulations for conformance with this order and propose any necessary changes by March 1, 1984.

B. DEFINITIONS

1. "ACMP" means the Alaska Coastal Management Program, as approved by the Secretary of the United States Department of Commerce under authority of the Coastal Zone Management Act of 1972, § 305, 16 U.S.C. § 1454, and includes AS 46.40, 6 AAC 80, 6 AAC 85, and all coastal resource district approved plans;
2. "affected coastal resource district" means a coastal resource district as defined by AS 46.40.210(2) in which a project is proposed to be located, or which may experience a direct and significant impact from a proposed project;
3. "approved plan" means a coastal resource district plan that has been approved by the Alaska Coastal Policy Council and filed with the Lt. Governor's office;
4. "commenting agency" means an agency which comments or makes recommendations to the coordinating agency.

5. "consistency" means compliance with the standards of the ACMP, including the enforceable rules or policies of an approved coastal resource district plan;
6. "consistency determination" means a document issued by the coordinating agency containing a brief description of the project, the findings of the consistency review together with any stipulations, conditions or modifications to the project, if any, which must be attached to the applicable permits, and a brief justification for those necessary modifications, conditions, or stipulations.
7. "consistency review" means the evaluation of a project against the ACMP standards;
8. "coordinating agency" means the agency responsible for coordinating and facilitating the consistency review;
9. "DGC" means Division of Governmental Coordination within the Office of Management and Budget in the Office of the Governor;
10. "direct and significant impact" means an effect of a project which may contribute or lead to a change or alteration in the natural, social, cultural or economic characteristics of a coastal district;

11. "disposal of interest in state land" means the sale, lease or other disposition of state-owned or managed land or resources by the Department of Natural Resources;
12. "OMB" means the Office of Management and Budget in the Office of the Governor;
13. "permits" means any permit, lease, authorization, license or any other determination necessary for completion of a project or a discrete phase of a project;
14. "project" means any activity or use which will be located in or may affect the coastal zone of Alaska and
 - (A) which is subject to consistency review under sec. 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456); or
 - (B) which requires the issuance of one or more state permits.

When a land or water activity is developed or authorized in discrete phases, and each phase requires agency decision(s) about permits, each phase shall be considered a "project.";

15. "resource agency" means the Alaska Department of Environmental Conservation, or the Alaska Department of Fish and Game, or the Alaska Department of Natural Resources.

C. TYPES OF CONSISTENCY REVIEWS

1. A project will be reviewed for consistency as follows:

- a. Categorical Approval

A project requiring one or more state or federal permits, each of which has been categorically determined by OMB/DGC, to have no significant impact on the coastal zone, and which requires no additional state or Federal approvals, is deemed to have been conclusively approved by OMB/DGC as consistent with the ACMP. OMB/DGC will publish, and amend as necessary, a list of state and federal permits, which have been categorically approved. Before publishing or amending this list, OMB/DGC will distribute the proposed list or amendment for comment in the manner provided in this order for a project consistency review.

b. General Concurrence

Any project which requires one or more state or federal permits which are considered routine and which can be effectively managed by a standard set of operating conditions or requirements, may be deemed to be consistent with the ACMP. Subsequent activities defined and conditioned by the general concurrence consistency determination are deemed to be consistent with the ACMP. OMB/DGC will publish, and amend as necessary, a list of state or federal permits, which have been designated for a general concurrence classification. Before publishing or amending this list, OMB/DGC will distribute the proposed list or amendment for comment in the manner provided in this order for a project consistency review.

c. Individual Project Reviews

Any project which requires one or more state or federal permits not within the two classifications described above, is subject to review as an individual project in the manner provided in this order.

2. Any resource agency or coastal district may request OMB to amend, by addition or deletion, the lists of permits for

categorical or general concurrence determinations based on new information about the impacts of these activities, including the cumulative impacts.

D. AGENCY RESPONSIBILITY FOR CONSISTENCY REVIEWS

1. When permits from two or more state agencies or one or more federal permits are required for a project to proceed, OMB is the coordinating agency and will render a consistency determination, which is conclusive and binding for all the required project permits, according to the procedures outlined in this order.

2. When only one state and no federal agency permit is required for a project to proceed, that agency which is responsible for the permit is the coordinating agency and will conduct the consistency review for that project according to the procedures outlined within this order. The Office of Management and Budget will routinely review single agency consistency determinations to insure uniform interpretation of the coastal standards, to insure adequate public notice of project reviews and for consistency with the ACMP. Cf. Hammond v. North Slope Borough, 645 P.2d 750, 762 n.8 (Alaska 1982).

3. In single agency permit projects, OMB/DGC will participate in the same manner as other commenting agencies. If however, the single agency permit is a disposal of interest in State land, OMB will review the agency consistency determination and either concur with the determination, or require modifications to allow for concurrence.

4. The coordinating agency will give careful consideration to all comments, and will give due deference to the comments of resource agencies and affected coastal districts with approved plans. Due deference means deference to the opinion of a resource agency or an affected coastal district with an approved plan which is appropriate in the context of the commenter's expertise and area of responsibility, and all the evidence available to support any factual assertions. A coastal resource district with an approved plan is deemed to have expertise in the interpretation of its plan.

5. If stipulations or recommendations which have been requested by a resource agency or an affected district with an approved plan are excluded from the consistency determination, then the reasons for the exclusion must be recorded by the coordinating agency and provided to the agency or district on request.

E. PROCEDURES FOR CONSISTENCY REVIEWS1. Preapplication Activities

- a. OMB and resource agency representatives will be available in designated regional offices in Juneau, Anchorage, and Fairbanks for preapplication consultation with any applicant. A project questionnaire prepared by OMB/DGC in consultation with the resource agencies, will be used to determine the scope of the project and the relevant resource agency permits required for a project. Based on information provided in the project questionnaire and additional consultation with the applicant, designated personnel within each resource agency will inform the applicant of permits required by that agency, provide appropriate application forms, and discuss the general information requirements required for the review. Also, based on the responses to the project questionnaire, each agency will inform the applicant if permits from other state or federal resource agencies may be required, and will provide the applicant with the names and addresses of people who will be able to provide the more specific permit application information. The DEC Permit Information Centers, located at the DEC regional office locations in Juneau, Fairbanks, and Anchorage, will also be available to provide general

information about permit requirements of other agencies.

b. Each agency responsible for issuing a permit will make the final determination on whether a permit is required for a specific project. If there is disagreement among agencies about the appropriate scope of the project to be reviewed, OMB will make the final decision.

c. Project questionnaires will not be required for placer mining activity covered by the Annual Placer Mining Application (Tri-Agency Placer Mining Application). These applications must be submitted to DNR, and DNR will distribute the Annual Placer Mining Application for the coordinating agency according to the procedures within this order.

2. Application for Project Review

a. A project consistency review begins with the acceptance of a packet including the completed application forms for the project, and the completed project questionnaire. The packet must be submitted to the State as follows:

i. Projects which require permits from two or more

state agencies, or one or more federal permits, must be submitted to the OMB office within the region in which the project is to occur, except that projects affecting more than one region must be submitted to the OMB central office in Juneau.

- ii. Project application packets which require the payment of fees or contain confidential information must be sent to the resource agency which requires either the fees or the confidential information. In this case, the agency will extract the fees or the confidential information and immediately forward the packet to the appropriate coordinating agency office.
 - iii. Projects which require only a single agency permit must be submitted to the agency responsible for issuing the permit.
- b. Upon receipt, agency staff will review the packet to determine if application forms have been properly completed for agency permits which the project questionnaire indicates may be required.
 - c. If a single permit application is received, the agency

can accept the application for processing only if the applicant's answers to the project questionnaire indicate that no other permits are necessary, or if the applicant furnishes evidence that the other agencies have been contacted and have determined that no additional permits are required.

- d. For projects which require only one permit, the agency acceptance of a completed application packet for the project initiates the consistency review. For a project that require two or more state permits or a federal permit, OMB acceptance of a completed application packet initiates the consistency review except as provided for in section E 3(c) below.

3. Project Review Schedules

- a. Projects will be reviewed and approved according to either a 30 or 50-day review schedule. The 50-day schedule will be used except when all necessary permits must be issued in 30 days. For a single agency consistency review coordinated by a resource agency, each agency, in conjunction with OMB, will determine by December 31, 1983, which schedule is most appropriate.
- b. The time periods in this order apply to the review and

decisions about project consistency and, to the degree possible under existing law, to the associated agency permits except as provided for in E3(d) below. They are designed to insure timely public and agency participation within a sound and routine consistency review process. The number of days allotted for each step of the review as described below represents calendar days. Reviewers should move through the procedures quickly, insuring that all requirements are met and appropriate parties are involved in concert with public notice requirements. Note the application of procedures for granting extensions in Part F as well as the public hearings provisions in Part G.

- c. OMB and DNR will jointly agree when the consistency review will commence when a project with multiple permits includes a DNR disposal of interest.
- d. For department initiated projects (e.g., state oil and gas lease sale), the coordinating agency shall establish the schedule for the consistency review. The deadlines shall not be shorter than those included in this order.
- e. If an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law causes an applicant to need an expedited agency permit or consistency

review, or if the head of the coordinating agency finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the head of the coordinating agency may modify the review process established in this administrative order as necessary to meet the emergency. Any modifications made according to this section shall be made in writing by the head of the coordinating agency based upon a clear and convincing need for such modification.

4. Regional Level Review and Decision

a. Review Start-up

50-Day Schedule

30-Day Schedule

(Day 1-2)

(Day 1-2)

The completed project application packet, excluding any confidential information and fees, will be distributed by the coordinating agency to the appropriate state agencies, any affected local coastal districts, and other interested parties. For 30-day permits distribution may be more limited. Thirty-day permits shall be distributed to affected coastal districts with approved plans on request. OMB will encourage the joint public notice of project reviews when two or more state or federal permits are required.

b. Staff Research and Comment

50-Day Schedule

(Day 3-34)

30-Day Schedule

(Day 3-17)

Each agency/affected coastal district shall conduct its internal review of the project. Agencies, coastal districts, and the applicant are encouraged to informally discuss the project and exchange additional information while pertinent comments are developed. Comments must be received by the coordinating agency on or before day 34 in a 50 day review or day 17 in a 30 day review. Each commentator shall send copies of the comments to the resource agencies and, if requested, to the applicant and affected coastal districts. Verbal comments are acceptable but must be followed up by written comments postmarked within five working days of the verbal comments. If stipulations are recommended, a brief written justification must be provided. Upon request, the coordinating agency will send copies of comments to the applicant and other interested parties.

c. Additional Information Requested

50-Day Schedule

(by Day 20)

30-Day Schedule

(by Day 10)

Based on the initial review, agencies or affected coastal districts with approved coastal plans may request from the applicant through the coordinating agency any additional information pertinent to their statutory authorities or primary area of expertise. The review deadline may be extended from the date of the request until adequate information is provided by the applicant according to the procedures for extending deadlines, Part F.

d. Consideration of Comments

50-Day Schedule

(by Day 34-44)

30-Day Schedule

(by Day 18-24)

The coordinating agency is responsible for facilitating discussion, defining consistency issues, and seeking agreement on alternative measures which would allow the project to proceed in a manner consistent with the Alaska Coastal Management Program standards, including the enforceable rules of approved plans. The coordinating agency will identify unresolved project issues on the basis of project comments and dialogue among reviewers. Agencies will also use this forum for identification of project issues pertinent to their specific statutory authorities.

e. Consistency Agreement

50-Day Schedule
(by Day 44)

30-Day Schedule
(by Day 24)

When OMB is the coordinating agency, it will render a consistency determination when agreement is reached among the resource agencies, the applicant, affected coastal districts with approved plans, and OMB on the consistency of a project, or on the additional measures necessary for consistency. If OMB, the resource agencies, the applicant, and affected districts with approved plans are unable to reach agreement by the day indicated above, the coordinating agency will elevate the project to director-level review outlined at part E5 below.

f. Agency Permits Issued

50-Day Schedule
(Day 50, or not more than five days after consistency determination received.)

30-Day Schedule
(Day 30, or not more than five days after consistency determination received.)

Each resource agency responsible for issuing a project permit, will, in addition to meeting all its specific statutory and regulatory provisions, comply with the project consistency determination. This may require that stipulations related to an agency's respective area of expertise or statutory authority developed during the consistency review be made part of the appropriate agency permits.

5. Director-Level Review

Project review at the director-level will begin when issues cannot be resolved at the regional-level or when a public hearing is scheduled, or the review enters Day 44 or Day 24, as applicable. To the extent possible, the resource agencies, the applicant, affected coastal resource districts and other parties are encouraged to resolve their differences prior to director-level and subsequent reviews.

a. Issue Paper

50-Day Schedule
(by Day 45)

30-Day Schedule
(by Day 25)

The coordinating agency will develop a brief project issue paper which identifies the unresolved issues. This issue paper shall be distributed, at a minimum, to designated persons within the resource agencies, OMB/DGC, the applicant and any affected coastal resource district with an approved plan.

b. Position Papers

50-Day Schedule
(by Day 50)

30-Day Schedule
(Not applicable)

A commenting agency, applicant, and affected coastal resource district may develop and distribute a brief project position paper on the unresolved issues which should include proposed mitigation or alternative measures which could allow the project to proceed in a manner consistent with the ACMP standards, including the enforceable rules of affected coastal districts with approved plans if any exist.

c. Negotiation

50-Day Schedule
(by Day 50-55)

30-Day Schedule
(by Day 25-29)

Representatives from coastal districts with approved

plans and agency directors, in consultation with their commissioner's office and regional staff and the applicant may enter into a project negotiation process facilitated by the coordinating agency. Any agency, applicant or an affected district with an approved plan may request the coordinating agency hold meetings to resolve the issues.

d. Consistency Agreement

50-Day Schedule
(by Day 55)

30-Day Schedule
(by Day 29)

The coordinating agency will render a consistency determination when agreement is reached among the resource agencies, the applicant, affected coastal districts with approved plans, and OMB on the consistency of a project, or on the additional measures necessary for consistency.

If the agencies, the applicant or the affected districts with approved plans are unable to reach agreement during the project negotiation, they may request the project be elevated to cabinet level review outlined at part E 6 below.

e. Agency Permits Issued

50-Day Schedule
(Day 60 or not more than five days after the consistency determination is received.)

30-Day Schedule
(Day 30, or not more than five days after the consistency determination is received.)

Each resource agency responsible for issuing a project permit will, in addition to meeting all its specific statutory and regulatory provisions, comply with the consistency determination. This may require that stipulations related to an agency's respective area of expertise or statutory authority determined during the consistency review be made part of appropriate agency approvals.

6. Cabinet Level Review

a. Issue Paper and Recommendations

50-Day Schedule
(by Day 57)

30-Day Schedule
(by Day 30, if extension granted.)

The coordinating agency in conjunction with the agencies will summarize and present issues which are not resolved and recommendations or options for their resolution, to the resource agency commissioners and director of OMB/DGC. Affected districts with approved plans and the applicant may also present their written recommendations for cabinet level consideration.

b. Policy Direction

50-Day Schedule
(by Day 63)

30-Day Schedule
(by Day 37)

The resource agency commissioners will review the issues and recommendations presented and give appropriate policy direction.

c. Consistency Determination Issued

50-Day Schedule
(by Day 65)

30-Day Schedule
(by Day 39)

The coordinating agency will issue the project consistency determination to the applicant and distribute copies to all affected coastal districts, resource agencies, and other interested parties unless the time period has been extended as provided in Part F of this order.

d. Agency Permits Issued

50-Day Schedule

(by Day 65 or not more than five days after the consistency determination is received.)

30-Day Schedule

(by Day 39 or not more than five days after the consistency determination is received.)

Each resource agency responsible for issuing a project permit will, in addition to meeting all its specific statutory and regulatory provisions, comply with the project's consistency determination. This may require that stipulations related to an agency's respective area of expertise or statutory authority developed during the consistency review be made part of the appropriate agency permits.

F. PROCESS FOR GRANTING EXTENSIONS

1. An associate director within OMB or a division director within the coordinating agency may grant an extension of a consistency review for any reason stated below except that no extension may be granted which would cause the total review period to exceed a time limit imposed by federal law or regulation:

- a. if a project is located in the unorganized borough the commenting and decision deadlines will without request be extended by 10 days;
- b. if a resource agency requests time to schedule and perform a field review, comment and decision deadlines may be extended up to 10 days;
- c. if consensus cannot be reached at the regional level of review by the resource agencies, OMB-DGC, the affected coastal districts with approved plans, and the applicant on the stipulations and measures necessary to ensure that a project is consistent with the ACMP and the project review is elevated to the director and/or commissioner levels, an extension for up to 15 days will be granted at each elevation;
- d. if a disposal of interest in state land or resources is required for the project to proceed, the DNR may obtain on request an extension for the consistency review to insure that the OMB consistency review process is coordinated with the DNR disposal process in a logical and efficient manner. For a project which is subject to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. No. 95-87, 91 Stat. 445 (1977), 30 U.S.C. § 1201 et. seq.,

the consistency review schedule will conform to the requirements of SMCRA and the Alaska Surface Mining Control and Reclamation Act, Alaska Stat. § 27.21.

e. if a public hearing is held, both the comment and decision deadlines timeframe may be extended as necessary according to the procedures described in part G of this order;

f. if it is found by day 15 of a 30-day review or by day 25 of a 50-day review, that additional information is necessary from the applicant for project review, the review will be suspended for the time period requested by the applicant or until requested information is provided;

g. if it is found that the issues involved in project review are unusually complex (e.g. a pipeline or hydroelectric project), the commenting and decision deadlines may be extended as necessary. In this event, by day 50 of an extended 30-day project review or by day 70 of an extended 50-day project review a written statement must be issued which describes the the issues which require further review. This statement will be distributed to the applicant, all agencies which have commented, and any affected coastal resource district.

h. if the applicant requests an extension for any reason, the comment and decision deadlines will be extended for any period which is mutually agreeable.

2. Discretionary extensions (extensions other than F (1) (a) above) of the consistency review must be made in writing by the appropriate state official and shall be authorized only when there is a clear and convincing need for such extension.

G. PUBLIC HEARINGS PROCEDURES AND TIMEFRAMES

1. Request for Public Hearing

A request for a public hearing must be made by day 17 of a 30-day review or by day 34 of a 50-day review. The request must be made to the coordinating agency.

2. Decision to hold a Public Hearing

A decision to hold a public hearing must be made within five (5) days of the receipt of a request for a public hearing.

3. Notice of Hearings

A public notice of the hearing will be published as soon as

possible following the decision to hold a public hearing in at least one newspaper which receives general distribution in the community affected by the project. The coordinating agency shall also provide written notice of the public hearing to appropriate state and local elected officials. A project located in the unorganized borough should receive an additional notice of public hearings by radio and/or television announcements when available and appropriate. A representative from the coordinating agency must attend the hearing. The notice of the public hearing shall be given not less than 15 days prior to the public hearing nor more than 30 days prior to the public hearing. If a decision is made to hold a public hearing, the hearing shall be held in the affected coastal resource district.

4. Review of Public Hearing

If new information or issues are presented at a public hearing that have not been considered or resolved by project reviewers, the coordinating agency will summarize those portions of the hearing testimony and distribute the summary to other project reviewers including the applicant within five days following the hearing.

5. Additional Project Review

The coordinating agency, commenting agencies, and districts

with approved plans may recommend additional stipulations on the basis of the hearing summary. Such recommendations must be submitted in the form of a position paper presented within seven days of the receipt of the hearing summary.

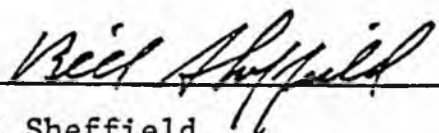
Administrative Order No. 78

ORDER:

I, Bill Sheffield, Governor of the State of Alaska, order all executive agencies to comply with this order. I further order that all agencies shall make the best use possible of all available telecommunications or electronic communication systems and any other means available to expedite the transmission of information and comments regarding project consistency determinations. In addition, I order the Office of Management and Budget, Division of Governmental Coordination to provide me on or before July 30, 1984, with a written report prepared in accordance with the procedures established in this order for project consistency reviews, on the implementation and success, as well as necessary modifications desirable to carry out the implementation of this order.

DATE:

Dec 20, 1983



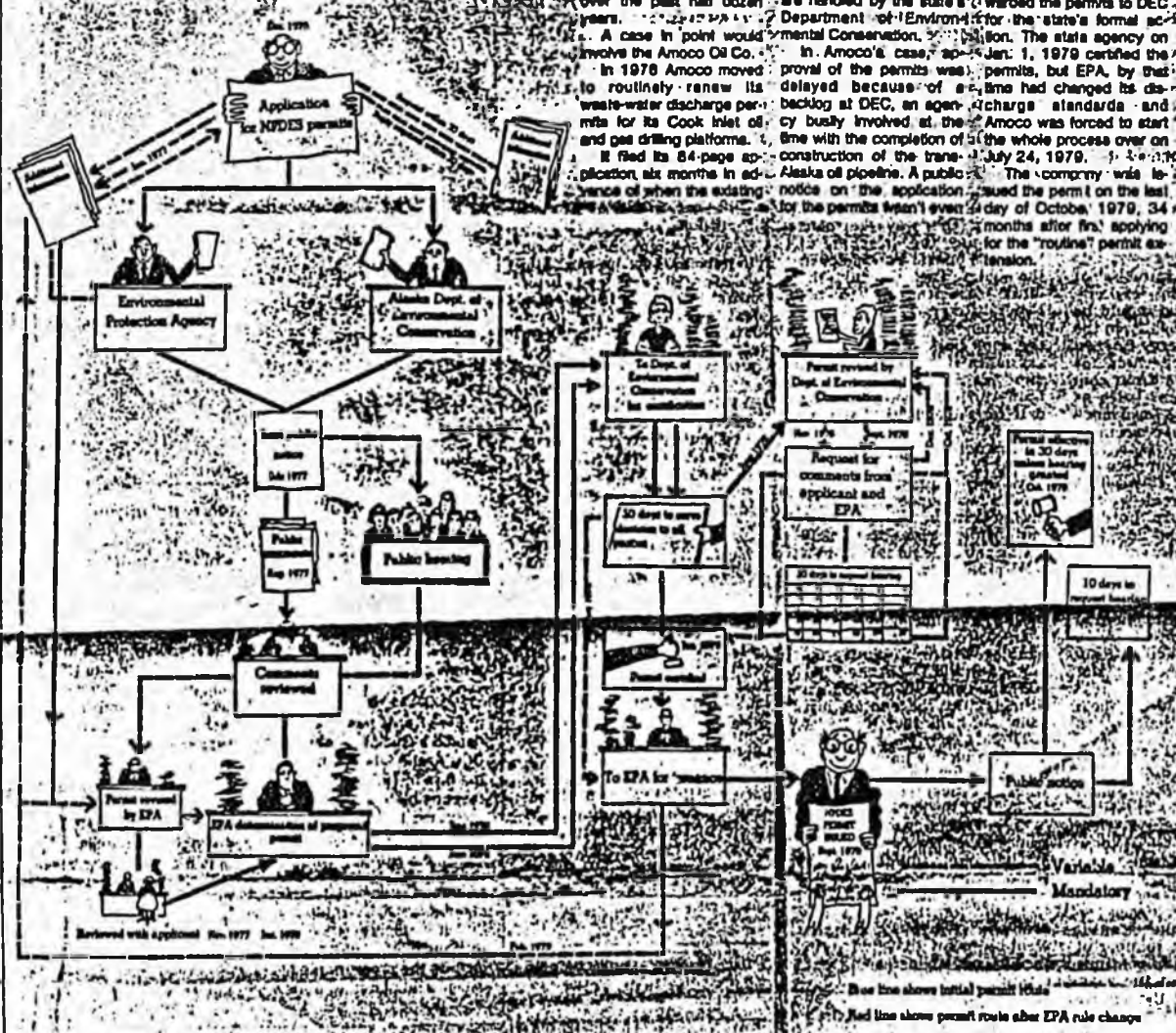
Bill Sheffield
Governor of Alaska

Torturous route of 'routine' permit

While lengthy delays in issuance of state permits may not be the norm, there are a number of examples where delays have taken place, especially over the past half dozen years.

A case in point would involve the Amoco Oil Co. In 1978 Amoco moved to routinely renew its waste-water discharge permits for its Cook Inlet oil and gas drilling platform. It filed its 84-page application six months in advance of when the existing

permits would expire on June 30, 1977, in Alaska. Environmental Protection Agency standards under the National Pollutant Discharge Elimination System are handled by the state's Department of Environmental Conservation. In Amoco's case, approval of the permits was delayed because of a backlog at DEC, an agency busy involved at the time with the completion of construction of the trans-Alaska pipeline. A public



Red-tape tangle

Unwieldy process of gaining permits frustrates business

By CHUCK KLEESCHULTE
Daily News business reporter

Back in December of 1977, ARCO presented preliminary plans to four government agencies seeking permission to build a bridge across the Kuparuk River on the North Slope.

ARCO, which intended to build the 300-foot bridge in the summer of 1980, applied 2 1/2 years early just to make sure it wouldn't encounter regulatory problems. The plan seemed to work.

Less than two months after the submission, ARCO won conceptual approval for the span from the Alaska Department of Fish and Game.

Then the year before construction was planned, Fish and Game asked ARCO to speed up construction to late summer 1979 so work crews would be finished before the start of the caribou insect relief season in July and August.

ARCO agreed, but only after all state agencies promised to expedite ARCO's acquisition of remaining permits. By mid-summer all the state's agencies had approved, and ARCO gained permission to build the bridge's center span.

But the project hit a detour on Aug. 16, just before full construction was to start. The U.S. Fish and Wildlife Service objected, saying the design suffered from inadequate erosion control and provisions for fish passage through culverts beneath the bridge.

Negotiations finally settled that dispute, but not until Nov. 6. By then, however, ARCO could no longer meet a state requirement that work be finished by spring breakup 1980.

ARCO received final approval on May 2, 1980. A week later the isolated center span, which had been built the previous fall, washed out. The company then gave up in disgust, and moved equipment to the Kuparuk field via a new bridge built upstream.

Along the way the permits were reviewed by five agencies who asked eight more for comments. They passed through 26 channels of handling and at least four duplicative reviews of the nearly identical application.

"It was not one of our great success stories," said Tim Derigo, a senior landman for ARCO.

The bridge, while certainly not a typical example of the regulatory process in Alaska, is not totally unique. It represents one of Alaska Industries' greatest complaints—that government regulation and redtape is needlessly delaying projects, adding to their costs, driving up the prices which consumers eventually pay for goods and services and dampening long-term development of the state's economy.

Environmentalists, however, while admitting there have been delays in the past, say conditions have improved sufficiently to lessen the need for permit reform legislation currently under consideration by state lawmakers. They also worry that some segments of industry may be pushing for permit reform as a first step toward weakening environmental standards and safeguards.

"There's no question that the oil industry has individual cases, horror stories, where permits took far too long for them to receive. But agencies have made a real effort over the past two years to do a better job and they have cut delays way down," says Eric Myers, a consultant for the Northern Alaska Environmental Center.

"The industry's true desire now is to get the permitting and regulatory process of the state and to eliminate meaningful public participation. They are attempting to

Logging firm must hack through forest of permits

By CHUCK KLEESCHULTE
Daily News business reporter

The scope of the frustration of business in dealing with government-required permits might best be seen by looking at what one firm, Ketchikan's Louisiana-Pacific, goes through after winning a U.S. Forest Service timber sale, but before it can start cutting wood.

According to KLP's former forestry and public affairs manager Don Finney, a timber firm first must submit a camp, road-building and logging plan to the Forest Service. Then, to put in a temporary camp on floats so it can start to build a shore-based camp, it needs an Army Corps of Engineers Navigable Waters permit.

That permit goes for review before the federal Environmental Protection Agency, the U.S. Fish and Wildlife Service and the Department of the Interior's River Basin Studies Commission, plus to the National Oceanic and Atmospheric Administration and the Coast Guard, plus to the state's Department of

All in all, over 30 agencies have to be consulted, some several times.

Natural Resources, its Division of Parks, the Department of Fish and Game and its Divisions of Sport Fish and Commercial Fisheries and the Department of Environmental Conservation, plus assorted private groups ranging from the Southeast Alaska Conservation Council to the United Fishermen of Alaska.

A float plane dock permit to get to the site has to go to the Federal Aviation Administration, while a tidelands permit is needed to get from the dock to dry land.

Once on land, the Corps will again have to be consulted to get a permit to mine rock as a base for a log dump. To get fuel to

run the heavy machinery may require additional permits.

To communicate with KLP's home office requires a permit from the Federal Communications Commission. Such a permit may require an environmental impact assessment. If not, a statement, by EPA on the site for the repeater antenna needed to get the signal back to Ketchikan.

Before the camp can open it will need a waste water discharge permit from EPA, through DEC, the state's sanitation approval from the Department of Health, and Social Services and water rights from elsewhere in DNR.

A business license will be

needed for the camp from the Department of Revenue, Alaska Employment Security will have to be contacted in the Department of Labor and the federal Social Security Administration will be involved on withholding of taxes on employee paychecks. Immigration in Canada also will become involved since equipment for Southeast logging operations often comes from Canada.

Finley said, all in all, over 30 agencies have to be consulted, some several times. Public hearings may be required, since some of the permits require formal public notice periods.

"Of course, if we fail to properly deal with all of the agencies, we will face local, state and federal law enforcement. That will add to the number of agencies and if we fail with them, then we can face the same number of judicial systems.

"Permitting is without a doubt one of our pet peeves," says Finney, currently project manager for the U.S. Borax molybdenum project at Quartz

Anchorage Daily News chart by Peter Dunbar

Regulatory process angers some businesses, defended as safeguard for public good

Continued from Page J-1

fast-track projects under the guise of permit reform," Myers claims.

While industry will admit it might welcome some changes in current environmental standards, they argue their desire for permit reform is not an attempt to turn back the clock on a decade of environmental legislation, but only to make the system workable.

Government regulation, leaves its mark throughout Alaska's economy.

According to a 1980 report by the legislature's Administrative Regulatory Review Committee government regulation costs Alaska industry \$1.3 billion annually — a tab eventually passed on to consumers. The direct cost to the budget of state regulatory employees was pegged at over \$50 million in fiscal year 1980, according to the legislative report — roughly the same as this year.

The legislative review didn't even make a guess at the cost to the economy of development not undertaken because regulatory costs made the activity economically unfeasible.

Nationally, the effects of government regulation also are starting to be tallied. Kenneth W. Chilton, associate director for the Center for the Study of American Business at St. Louis Washington University, said last week that industry three years ago spent \$100 billion a year to comply with federal regulation, and state rules tacked another \$25 billion onto the cost.

Robert Crandall, a fellow at the Brookings Institute in Washington, D.C., said last week the worst cost of regulations — far worse than their \$7 billion federal bureaucratic pricing last year — was the cost to the general public of higher goods and services caused by inefficiency in production.

In Alaska, everyone has to deal with the time, inconvenience and expense of government regulation.

Even if you aren't planning to drill an oil well on the North Slope, mine for gold outside Fairbanks, harvest timber in Southeast or fish commercially most anywhere, regulation will affect you.

Beside state agencies, the state has several independent regulatory commissions such as the Alaska Public Utilities Commission, Alaska Trans-



portation Commission and Real Estate Commission. And there are nearly two dozen quasi-regulatory boards ranging from the state's Board of Barbers and Hairdressers to the Welders' Examiners' Board.

All the agencies, and the 400 state employees who work in enforcing regulatory law, produce rules which often result in paperwork which produces costs often passed onto consumers.

State Sen. Rick Halford, R-Chuglak, owner of the Svalbard Lodge on the Denali Highway and a part-time air taxi operator, estimates he needs 50 licenses, permits and government approved forms yearly for his small business.

"I really suspect that up to 20 percent of the cost of small business might be overhead for licenses, permits and inspections. We just have to un-complicate the regulatory process," says Halford, who earlier this month introduced legislation to put most licenses on a two-year, instead of one-year renewal cycle to cut some of the administrative burden.

Former state Rep. Dick Randolph, in launching a petition drive to abolish the Alaska Transportation Commission last month, claimed its elimination could lower consumer prices in the state by 15 to 25 percent, by fueling greater competition among air carriers and trucking firms.

His claim is supported by some outside economists. Former Chairman of the Council of Economic Advisors Murray Weldenbaum in a 1980 report said the federal government could save consumers \$20 billion yearly if it

ended federal regulation of the airline, trucking, radio and broadcasting industries.

Lance Wells, executive director of the Alaska Air Carriers Association, without taking a position on abolition of the transportation commission, says the commission does produce questionable costs for carriers which they do pass on to consumers.

"There's no question that regulation produces an economic burden, an unnecessary one which affects the public," Wells says.

In resource industries the burden comes from winning approval of necessary permits.

While no one proposes doing away with permits which provide government a way of regulating activity to protect the environment and public safety, many industries would like to see the complexities of applying for permits lessened.

State sources estimates there are over 340 different state and federal permits and licenses which might be required to legally conduct business in the state.

Walt Egalka, logging manager for Sealaska Timber Industries, says the problem for industry is not necessarily in complying with the environmental or public safety regulations. The regulations are intended to carry out, but in dealing with the mountains of paperwork and the time it takes to apply for and gain

permits.

Don Finley, project manager for U.S. Borax's Quartz Hill molybdenum mine outside of Ketchikan, says his firm will need to gain approval of 59 different types of permits before mining can begin as scheduled in 1987.

One good example of the effect of regulation on industry is the effect of permitting on the oil industry.

While industry sources avoid making an estimate of higher costs they face from state regulations, Bill McConkey, former head of an administrative reform effort started by former Gov. Jay Hammond in 1979, says intertwining state and federal regulations probably hike oil company costs by several hundred million dollars yearly here.

O.K. O'Easy, Gilbreth manager of exploration and production affairs for AOGA, says firm totals are difficult to develop, but that some industry sources speculate that 25 to 40 percent of the cost of development may be induced by regulation. Much of that cost is for needed environmental safeguards, but part of it is due to the delays caused by regulation, independent of its objectives.

Hopkins says the oil industry itself estimates that it will take nine to 14 years to develop a new oil field in Alaska in the future. That's a delay which could be cut to five to seven years, even if everything would be installed exactly as currently required, to meet environmental objectives. If only industry wouldn't have to apply for

the permits, Hopkins says.

Exxon, Gilbreth said, reported last year it will need approval for 42 different permits before it can start offshore exploration in Norton Sound. Marathon Oil Co., on one of its Cook Inlet tracts, submitted 96 pounds of documentation to win one of its necessary approvals. Last year state regulations governing oil and gas filled 1,550 pages, the industry reports.

ARCO, in testimony before the U.S. Senate last year, said it costs \$100,000 in staff time for each U.S. Army Corps of Engineers wetlands permit and that the company usually needs to apply for 20 to 40 of them for operations on the North Slope valley.

The effect of regulation on industry, however, certainly can be overemphasized.

"So often the legislature and public forgets that it's not always bad that it takes a long time to get permits, or that permits are sometimes even denied. Permits are in place to protect the public's health, to protect the environment, to prevent uneconomical projects," says Jay Nelson, executive director of the Alaska Environmental Lobby in Juneau.

"There are projects which the public interest mandates have a tough time gaining approval," he says.

Nelson says, that while it might be possible to find permits which are duplicative and needless and worthy of elimination, industry largely seems to accept that most permits are reasonable.

"While industry may cite examples of all the permits they need to gain to proceed on a project, they seem to do it out of frustration over the time it takes to win approval more than a real desire to abolish the safeguards, the permits are designed to produce," Nelson says.

In both state and industry views, permitting is going much better now than three years ago.

Commissioners of the Department of Natural Resources Esther Wunnicke said last week problems still face industry, largely because of the duplicative, complex nature of resource permit reviews. But she says things are

much better now than they were in the 1978-80 period.

"There's no question things are better. There has been a dedicated effort by all state agencies to do their part to speed up permits and it has worked. More can be done, but a good first step to speed up the process has taken place," Wunnicke says.

Wunnicke added that lengthy delays now are caused not by any individual state agency, but because a permit might have to be reviewed by numerous state and federal agencies.

During 1978-80, oil related coastal zone permits were taking an average of 70 days to process, according to statistics compiled by Wendy Wolfe, an employee in the Office of Government Coordination in the state's Office of Management and Budget. The Department of Natural Resources Division of Mineral and Energy management was taking 82 days on average to process several different types of permits — that compares to 19 days on average in 1969.

By last year, however, the time to obtain coastal permits on average had fallen to 42 days, DNR's total permit average dropped to 45 days.

Oil leasing reviews, by DNR took an average of 106 days to process during 1980. They took just 49 days to review on average last year; more minor land use permits.

Kay Brown, director of the state's Division of Minerals and Energy Management, says the reasons for delays are sufficiently varied so there's no single answer to speeding permits. But she says better coordination among agencies has helped.

Environmentalists, in fact, argue that some of the delays credited to the state in processing permits are, in fact, caused by industry, submitting incomplete data upon which state agencies are expected to make decisions.

"In all fairness there has been a realization of the problems at the state level and there have been improvements. We just don't feel they've gone far enough yet," says Hopkins of AOGA.

Monday: Potential changes in the permitting process.

Legislators wrestle with demand to slash through red tape

By CHUCK KLEESCHULTE
Daily News business reporter
Second of two parts

For the past three years state lawmakers have been stewing over whether they should change the state's permitting system. Last week they turned up the heat on the issue.

Members of the Senate Resources Committee Friday joined House members in reviewing a regulatory permitting bill which would streamline the process by which permits are issued. The bill would make it mandatory that permits be issued on time — otherwise permits would go into effect automatically.

The issue must have had a familiar ring to hearing participants.

In early 1979 former Gov. Jay Hammond created a regulatory reform effort, headed by Anchorage resident Bill McConkey.

On the agenda was an effort to abolish all rules, permits, regulations and licenses that didn't survive a careful "public interest" analysis, streamlining of the regulatory process to assure "timely" decisions, elimination of duplicate or contradicting regulations — the so-called problem of "layering" — and construction of a system to keep the "mess" from reoccurring.

"We were all really serious about making reform work, or at least the governor and I were," says McConkey.

After a year of trench warfare among state agencies unhappy with proposed reductions in regulatory powers, McConkey left government, and the effort in the administration slowed to three smaller projects, one to revamp fishing permit overlaps, a second to unscramble natural resource and mining permits and a third to streamline administrative law procedures.

"Even though I liked political infighting you couldn't believe how difficult it was to get the bureaucracy to change," McConkey says.

The next battle front opened in 1980 when the oil industry proposed a bill which would have placed a mandatory 30-day limit on the time agencies could take to approve permits. The bill passed the Senate, but died in the House on the last day of the session. Permit bills have been a part of spring ever since in Juneau.

State Rep. Terry Martin, R-Anchorage, sponsor of this year's bill (HB14), says its important simply to put bureaucrats in their place. "I really believe there are a lot of state workers who won't turn loose of permits simply because they wouldn't have anything to do if they didn't study some poor permit too death," says Martin.

Under the current version of his bill, permits would be divided into classes. All permits would be issued within 30 or 65 days, with some plans getting up to 120-day reviews.

Under the bill, the state Department of Natural Resources would be designated as a "lead" agency for all regulations, giving the DNR authority to override objections from other commenting agencies and issue a permit, even in the case of objections.

Currently, most agencies will not issue a permit unless all agencies' concerns are settled. That is particularly the case for many federal permits which require comments by state agencies.

State objects to federal streamlining

By CHUCK KLEESCHULTE
Daily News business reporter

While the Sheffield administration is moving ahead on efforts to streamline the state's permitting process, it also is studying whether to sue the federal government to stop a move to streamline the issuance of Army Corps of Engineers wetlands permits.

Sources in the Governor's Office confirm that the administration is considering suing to block proposed "final" regulations issued earlier this month by the Corps' Washington, D.C. office regarding the issuance of so-called 404 permits. The permits are needed before any development activity can occur in coastal areas.

Doug Redburn, coastal management coordinator for the state Department of Environmental Conservation in Juneau, confirms the state is studying what response it should make concerning the regulations revising the permitting program.

"The state is certainly concerned about the pro-

posed changes. They look like they would certainly damage our ability to protect our interests," Redburn says.

The North Slope Borough already has joined a suit filed in December by 18 national environmental groups to block the proposed changes.

Under current regulations, the state is notified of all projects proposed in areas where 404 permits are required.

Under the proposed changes, the Corps would issue general permits regionally for a host of activities, and would no longer be required to notify the state about projects which fall under the general permit. The changes also would modify two classifications of waters covered by the federal permit requirements, limiting permitting to wetlands below headwaters and isolated wetlands.

While permits will still be required for development in much of the North Slope, the definitional change would remove the

The bill would specifically give DNR the power to review navigable water permits issued by the U.S. Army Corps of Engineers — a process now conducted by the state Department of Environmental Conservation.

Officials of the Alaska Oil & Gas Association and the state's Chamber of Commerce are strongly in favor of the bill.

All agencies have different mandates, but the primary agency, the one that has clear statutory authority for issuing a permit, should have a final say. You run into clashes all the time which just can't get solved if everyone can tie something up," says O.K. "Easy" Gilbreth, Jr., manager of exploration and production affairs for AOGA.

Boca de Quadra — the waters near U.S. Borax's Molybdenum deposit — for example, from state review.

"We need at least notice to know what's going on in order to protect our water quality for the benefit of our drinking water and fishery resources," said Assistant Attorney General Joe Geldhof.

Redburn agreed. "If we find out about a project we might still be able to object under the proposal, but there is a lot of land out there and the odds on us having someone wander by a development in time to protect our interests aren't very good," he said.

Bruce Batten, the Corps' public information officer in Anchorage, said the Corps will still notify the state of major projects, but not of projects covered by general permits. "It just makes sense for us to go to a system of general permitting for projects of the same type in the same area. It will relieve the public of the burden of permit processing," Batten said.

The environmental community, however, strongly opposes the concept of mandatory permit approval if time requirements for consideration aren't met. It also dislikes making the Department of Natural Resources the lead agency for approval of most permits.

"I don't think anyone can object to legitimate efforts to speed up permit issuance, but we don't think it's necessary to make all permits automatically go into effect if an agency doesn't meet a 30-day deadline. There are just too many good reasons why an agency might not meet a deadline," says Eric Smith, executive director of Trustees for Alaska.

The Sheffield administration, in testimony last week, proposed an using administrative muscle to break up any permitting logjams.

John Greely, Sheffield's assistant press secretary, says it's clear that Sheffield supports the need to cut regulatory red tape. "He ran on a platform of making it easier for business to do business. He is setting a tone to try to make it easier," Greely said.

Assistant Attorney General Joe Geldhof says the administration is proposing that rather than designation of a lead agency for all permits, Sheffield would prefer that his Office of Management and Budget serve as a coordinator to negotiate disputes among agencies to force them to workout disagreements within a set time.

"We don't want to turn OMB into a super permitting agency, it won't be issuing the permits. We've found already, though, that it's useful to have OMB mediate disputes. It also can help applicants by giving them one central agency to deal with, rather than make them go all over to get help," Geldhof said.

He said the administration is convinced the new system will speed permitting and ease industry complaints, without the administration giving up justifiable administrative prerogatives.

Given that no permit reform bill has yet to clear either house, the odds are that industry's best hope for permit relief this year will be from administrative change, rather than legislation.

Already, Sheffield's presence has seemed to make a difference in the way regulatory issues are resolved. One knowledgeable observer, who has worked under both the Hammond and Sheffield administrations, says that a change in personalities has worked wonders.

"A lot of the people have changed and the attitude is just different. It's more of a team effort now in permitting. Things really seem to be going more smoothly," said the employee who asked not be identified.

News 5/23/83

Your Representative Martin

Report: Average mine needs 88 permits

By CHUCK KLEESCHULTE

Daily News business reporter

A report sponsored by the state and unveiled Thursday before the Resource Development Council shows that the typical hard-rock mining project needs up to 88 different permits from federal and state agencies.

And some of the permits might have to be reappraised at different stages of a mine's development, according to the report.

Industry officials, not surprisingly, reacted to the report by renewing their call for legislative or administrative reform to cut duplicative or overlapping permits and to speed the permitting process.

"For the most part the environmental policies are very important, but the complications caused by the layering of legislation and the issuance of overlapping regulations are staggering," said Jami Fernette, the land and environmental coordinator for WGM, Inc., an Anchorage mineral industry consulting firm.

Fernette, under contract to the state's Office of Mineral Development in the Department of Commerce and Economic Development, sorted through all the federal and state permit requirements involving mining.

Her handbook, she said, documents the tendency by agencies to force miners to meet permit standards in "exacting" detail standards that could keep smaller miners away from mineral developments.

She said from her review it was not

possible to tally the cost of applying for and winning all the permits, not counting the cost of delay in mine development because of the permits.

"We do know the cost is rather staggering. Just collecting the statistics to allow you to apply for some of the permits will take weeks or months," Fernette said.

Hank Giegerich, of Cominco Alaska Inc., one of the sponsors of the proposed Red Dog mine outside Kotzebue, said he expects it will take at least two years to win permitting approval for the project. He said he expects about \$10 million of his \$20 million in development costs to result from regulatory-induced expenses.

"We have to have environmental safeguards, but the extent of the regulations have to be untangled," Giegerich said. "The duplication in permitting is mindboggling. If we're going to keep any development moving, we have to lessen the time and expense of government involvement."

Charles Webber, former commissioner of the Department of Commerce under the Hammond administration and current President of the Resource Development Council, said permitting in hard-rock minerals has to be simplified.

The council last year supported a permit reform bill that did not pass. It could be back before lawmakers next January.

7/5/83 Anch Daily News

Alaska Oil and Gas Association

AOGA

505 W. Northern Lights Boulevard
Suite 219
Anchorage, Alaska 99503
(907) 272-1481

January 13, 1984

Mr. Norman Gorsuch, Esq.
Attorney General
Department of Law
Pouch K, State Capitol
Juneau, Alaska 99811

Proposed Permit Reform Regulations
6 AAC 50.010-190

Dear Attorney General:

The Alaska Oil and Gas Association (AOGA) is a trade association whose member companies account for the majority of oil and gas exploration, development, production and transportation activities in Alaska. AOGA appreciates this opportunity to provide written comments on the proposed regulations concerning the inter-agency consistency review process.

Over the past six months, AOGA has developed extensive comments on various drafts of the Memorandum of Understanding, the Administrative Order and Regulations. We are extremely disappointed to see the most recent version of the Regulations which, through the course of their evolution, have moved farther from, rather than closer to, the objective of meaningful and definite permit reform. Most of AOGA's previous comments remain applicable.

Due to the short time available to generate further comments on the latest version of the Regulations, these comments will be brief and will concentrate on the key areas of deficiency.

First, and most obvious, is the absence of clear, reliable time limits for consistency decisions. We believe that the time limits set out in the regulations are completely negated by the numerous and extensive provisions for time extensions including the time extension inherent in the non-discretionary public hearing provided in 6 AAC 50.090(b). Many of the other extension provisions are based on uncertain grounds, i.e., standards which must be met in order to extend the time for decision are not capable of objective determination. Worse, many of the extension provisions are open-ended, such that extensions of indefinite duration may occur.

Mr. Norman C. Gorsuch, Esq.

January 13, 1984

Page 2

Equally important, in our view, is the failure to vest in a resource agency the power to balance competing interests in arriving at a consistency decision. We firmly believe that resource agencies are uniquely able to evaluate project proposals; realistically judge the impacts of the project on the coastal zone; balance and weigh all comments as well as consider the impacts of proposed stipulations and conditions on the project. Coupled with this deficiency may be the unauthorized vesting of decision-making authority in DGC, despite the clear statutory mandate that DGC is merely to "render", or officially promulgate, those decisions.

We believe that the creation of so-called district expertise in the interpretation and application of a district plan violates the letter and the spirit of the Alaska Coastal Management Act. This presumed "expertise" fails to recognize that the ACMP is supposed to be clear and understandable--capable of being objectively implemented or followed by all of the agencies of this state--without reference to special interpretations or reinterpretations by its drafters. Districts should be on an equal footing with the public in commenting on proposed projects.

The January 4, 1984, "Project Consistency Regulations" memorandum indicates that certain changes had been made in the regulations in order to address various concerns received during the public comment period. We have not been able to locate some of those changes. The indicated changes described in items 1, 2, and 19 do not appear to have been made.

In conclusion, we have found little in the proposed regulations that would give us confidence that the permitting situation in Alaska will be improved by the Administration's current efforts. From the latest draft of the regulations we have concluded that the administration has not made a positive step toward its state goal of achieving a streamlined and rational process for making consistency decisions.

We hope that the draft regulations will not be adopted in their current form, and we will continue to work with the administration to achieve effective permit reform.

Very truly yours,

WILLIAM W. HOPKINS
Executive Director

WWH:tp2:103

NUNAM KILUTSISTI

Protectors of the Land, Inc.

P.O. Box 2638 • Bethel, Alaska 99578

907/545-2256

May 18, 1983

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

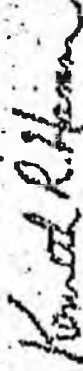
Dear Senator Fahrenkamp:

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

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

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

Sincerely,



Kenneth R. Hertz
CCS Technical Advisor

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



Cenaliulriit

The Yukon-Kuskokwim Coastal Resource Service Area Board

P.O. Box 1169

Barrow, Alaska 99557

(907) 543-2243

May 17, 1983

Public Opinion Message for Senate Resources Committee:

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

Dear Senators:

MAY 18 1983

I understand that the Senate Resources Committee has scheduled a hearing on SB 219 for Friday afternoon. I have also heard that before that time a Committee Substitute will be coming out, and that the CS will contain much the same language as the most recent CS for HB 34. That bill closely resembles last year's SB 84.

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

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

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

Sincerely,

CENALIULRIIT

Janet D. Kaiser

April 8, 1983

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

Re: Enclosed Coastal Management Legislation

Dear Senator Fahrenkamp:

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

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

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

Senator Fahrenkamp
April 8, 1983
Page 2

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

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

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

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

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

Senator Fahrenkamp
April 8, 1983
Page 3

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

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

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

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

Sincerely,

Byron I. Mallott
Byron I. Mallott

cc: Representative Terry Martin
Robert Loescher
Sam Kito



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

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CITY OF ANGOON and SIERRA)
CLUB,)
)
Petitioners,)
)
vs.)
)
ALASKA DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)
and SHEE ATIKA, INC.,)
)
Respondents.)
(C)

FILED BY _____
STATE OF ALASKA, 1ST DISTRICT
AT JUNEAU
FEB 10 1983
Barbara Pittman, Clerk
By SAU
No. 1JU-82-1919 Civil

MEMORANDUM OF DECISION AND ORDER

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

1. Petition for Review

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

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

The Coastal Management Act should be given a broader reading

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

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

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

27 3. Preliminary Injunction

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

1 question presented on the merits.

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

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

20 IT IS SO ORDERED.

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

22
23 Walter L. Carpeneti
24 Walter L. Carpeneti
Superior Court Judge

25 CERTIFICATION

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

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

31 Sharon L. Walker
32 Secretary to the Judge



Resource Development Council

for Alaska, Inc.

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

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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 .

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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.

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

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

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

Mano Frey
President

encl.



Resource Development Council

for Alaska, Inc.

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

POLICY STATEMENT NO. 11

REGULATORY REFORM

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DRAFT

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 -----