

Alaska's government overreach takes resource projects out of the people's hands

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The public interest is no longer being served by Alaska's natural resources permitting system. When it comes to state resource development decisions, too little voice is given to Alaskans, project reviews are fragmented, local and tribal governments are sidelined, and too much power is concentrated in the executive branch, particularly the Department of Natural Resources.

The public interest in natural resource decision-making consists primarily of three types of interest: natural resource, social and economic. Natural resource interests include air and water and lands used for public purposes such as recreation, hunting and subsistence and as habitat that supports other public resources such as fish and wildlife. Social interests include impacts on a community's population, infrastructure and institutions, community services, health and safety, and local cultural values. The economic interest includes local employment and business opportunities, new or improved infrastructure, and increased public revenue.

Rather than considering and balancing the different public interests, state resource development decision-making is focused on the economic benefit to the permit applicant and the perceived economic benefit to a community. Impacts to other natural resource uses and values and a community's social structure are left out of the process in an effort to "streamline" permitting -- that is, to make it easier for individuals and companies to get natural resource development permits.

Resource development permits allow an individual or private company to use or exploit publicly-owned natural resources by, for example, allowing the discharge of pollutants into the air or water or physical damage to public land. Public participation provides us -- the owners and beneficiaries of the resources -- the opportunity to influence resource development decisions and help develop ways to deal with potential impacts to public interests. To be effective, public participation must occur when sufficient information is known about a project and in a way that considers the project as a whole.

Resource development projects often involve multiple activities, such as road and facility construction, water use, and material extraction. Each activity requires permits from different divisions within each resource agency. Since permittees act on their permitting authority separately, project reviews are piecemeal, and only public comments related to each individual activity are considered. There is no opportunity to analyze a project as a

whole. DNR coordinates certain large project reviews, such as large-scale mining, but this is done mostly as a service to applicants who pay for the privilege.

Local governments are often in the best position to provide input on projects that may impact their communities. Under the state coastal management program, local governments played a significant role in working with the state and federal government on the best way to resolve conflicts between competing resource uses and local values. But with the termination of the program in 2011, local governments are now accorded no more deference in development decisions than the general public.

Insufficient fish habitat protection threatens Alaska's valuable fisheries. The Alaska Department of Fish and Game has just two laws specific to fish habitat, one that prevents obstructions in fish-bearing streams and one requiring Fish and Game approval prior to work in salmon streams. The defunct coastal program addressed other important fish habitat outside streambeds, including estuaries, offshore areas and tideflats. Now, fish habitat protection is mostly within DNR's discretion as part of their land use permit.

Fish and Game is in the process of changing its special area management plans so that rather than prohibiting certain activities in special areas, it will have discretion to permit activities without public notice. They also intend on putting multiple plans into a single review packet for public comment once a year, limiting the amount of public engagement on local issues.

Recently passed legislation allows DNR to hold a public notice and comment period only once every 10 years for oil and gas exploration or development in multimillion-acre size areas. People will be required to comment without knowing the when, where, how, or what kind of exploration or development project might occur in or near their community. The courts are the last check on overreaching executive power. But that's under threat as well. A law passed in 2003 allows the state to go after public interest litigants for attorney fees when they lose a case. The governor has done just that, bringing a lawsuit against respected Alaskan statesman Vic Fischer and former first lady Bella Hammond for their public interest challenge of Pebble mine activities.

And things could get worse. House Bill 77, currently pending before the Legislature, will concentrate even more power in the DNR commissioner and further fragment project reviews by allowing general permits "notwithstanding any other provision of law" for any activity the commissioner finds is unlikely to result in significant or irreparable harm to state land or resources. Individual activities authorized by general permits will not be subject to public notice and comment. The legislation will also make it harder to appeal DNR decisions to court by requiring appellants to prove they are "substantially and adversely affected" by a DNR permitting decision.

Then there's Administrative Order 266, recently issued by the governor to establish regulatory "efficiency" guidelines for state agencies. It is intended to reduce costs and minimize the burden on the affected public of complying with state regulations. To implement the order, resource agencies may loosen regulatory requirements, such as

public notice, in order to reduce costs for developers. It will be difficult for the public to track and respond to these potential changes.

We need our legislators to act as a check on this overreach of executive power. They should stop or substantially change HB 77 and pass legislation enforcing an Alaska Supreme Court ruling that DNR has a constitutional duty to analyze and give public notice on cumulative impacts of oil and gas projects. The Legislature should also conduct oversight hearings on resource agency regulation changes proposed under Administrative Order 266. Other ideas to protect the public interest in permitting decisions include:

1. providing for coordinated project reviews that give the public and local governments the opportunity to analyze projects as a whole;
2. giving local governments deference on issues of local concern; and
3. increasing statutory fish habitat protection.

Tell your legislators you want this administration's power grab stopped. And help elect a new governor; one that values Alaskans and local and tribal governments as partners in the development of this great state -- someone like gubernatorial candidate Byron Mallott. Contact your legislator. Vote. Make your voice heard.

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