

Alaska Dispatch

News and voices from the Last Frontier

Published in *Alaska Dispatch* (<http://www.alaskadispatch.com/>)

New permitting ideas can help big projects mix with big landscapes in Alaska

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February 4, 2014

No one is happy with the way in which big projects are reviewed and permitted by regulatory authorities. Over the years, federal and state laws have spawned a dizzying number of permitting or other requirements that a half dozen agencies -- or more -- may need to review and/or approve. The bigger the project, the more reviews required and, typically, the longer it takes to complete the permitting process. And with each agency offering its own views of the steps that must be taken to mitigate for a project's environmental impacts, significant dollars may be spent on environmental benefits that may be fragmented, and limited.

In recent years, state and federal authorities have been giving unprecedented attention to this state of affairs. The State of Alaska has worked to better coordinate state agency reviews of infrastructure projects. And the feds have taken this on, too, with the president issuing two significant executive orders that have important ramifications for Alaska: Executive Order 13580, which established a new interagency process, chaired by the deputy secretary of the Interior, to coordinate the permitting and reviews of energy projects in Alaska, followed by Executive Order 13604, which exhorted federal agencies to rethink how they can more efficiently complete the permitting of major infrastructure projects.

The current focus of attention in federal circles is how to improve the way in which permitting agencies evaluate the environmental impacts of projects and what type of compensatory mitigation they require developers to provide for unavoidable impacts. The Interior Department, for example, is scheduled to soon be releasing a new policy approach in response to Secretary Sally Jewell's recent secretarial order. As directed by the secretary, Interior agencies will be working together (and, hopefully, with other federal agencies) to identify mitigation projects that address needs on a landscape level, where the developers' dollars will make a difference. Now, all too often, developers' mitigation dollars are spent on small isolated areas, on or adjacent to a project site, that have limited environmental benefits. The idea is not to require more mitigation than is appropriate, but to spend those dollars where they will make more of an impact.

The White House also will soon be announcing a similar concept under the president's infrastructure permitting initiative. In response to an explicit request by the president, teams at the White House and the Office of Management and Budget have been working with agencies to address permitting bottlenecks. One of the ideas they are exploring is whether agencies can work together and identify mitigation needs on a regional level -- up-front -- and then match project-based mitigation requirements with agreed-upon regional needs, so that mitigation investments produce environmental results that matter.

These approaches make particular sense in Alaska, where a larger lens on project impacts and how they can best be mitigated, better matches the reality on the ground. For example, if a new oil and gas development on the North Slope will have unavoidable impacts on the environment, rather than requiring project developers to undertake expensive, on-site mitigation that may have limited environmental benefits, such

funds may be directed to an already-identified regional mitigation need -- such as addressing a neighboring legacy cleanup site or enhancing an important wildlife corridor.

More attention on landscape-level environmental needs and opportunities may have additional benefits by helping to identify particularly sensitive areas where a proposed project may not meet the first test of mitigation analysis -- namely, that its environmental impacts can be mitigated. Most projects can be reconfigured so that their environmental harms can be compensated for through mitigation, but some cannot, simply because of where they sit in the broader landscape, and what they may do to that landscape. The proposed Pebble mine project and its risk of non-compensable injury to the Bristol Bay watershed comes to mind.

The challenge will be to get the many federal and state agencies that are permitting major infrastructure projects working together to move away from one-off mitigation requirements that drive developers crazy and often produce limited environmental benefits. If the agencies can work together with local citizens and other interested parties and identify landscape-level needs in areas in which large projects are being considered, they can match up compensatory mitigation requirements with those real needs. This should speed up the permitting process, while also producing better results.

In the coming weeks and months, Secretary Jewell and the White House will be putting meat on the bones of these improvements to the federal permitting process. If both federal and state permitting authorities embrace these new ideas, Alaska can be a place where a landscape-level approach to sensible and timely project permitting takes hold. The state's remarkable landscapes certainly merit our best run at it.

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