



STATE OF MONTANA
ENVIRONMENTAL QUALITY COUNCIL
CAPITOL STATION
Helena, Montana 59601

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Telephone (406) 449-3742

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SEPTEMBER 4, 1980

TO: ENVIRONMENTAL QUALITY COUNCIL MEMBERS
RE: HJR-60 - COORDINATION OF PERMIT PROCEDURES

Enclosed are the findings and recommendations of House Joint Resolution 60 - Coordination of Permit Procedures.

After your consideration and approval, the material will be presented to the leadership of the 47th Legislature.

Would you please review this work and present your comments at the September 16th Environmental Quality Council meeting?

Sincerely,

Terrence D. Carmody
TERRENCE D. CARMODY
Executive Director

TDC:es

Enclosure

HJR-60
COORDINATION OF PERMIT PROCEDURES

MONTANA STATE LEGISLATURE
ENVIRONMENTAL QUALITY COUNCIL

STATE CAPITOL
HELENA, MONTANA

REPRESENTATIVE DENNIS G. NATHE
CHAIRMAN

TERRENCE D. CARMODY
EXECUTIVE DIRECTOR

SEPTEMBER 16, 1980

RON J. FENEX

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BACKGROUND

PERMIT COORDINATION In the last few years, various programs for coordinating permit procedures have been established in several states. In 1978, the Governor's Committee for Balanced Growth drafted a Coordination of Permit Procedures Act (COPPA) which would similarly unify permit processing in Montana. This proposal was prefiled as part of the Governor's package of legislation in the 46th session. However, the proposal did not meet the introduction deadline and was subsequently translated into HJR-60. The Governor's Committee thus initiated current efforts for coordinating permit review procedures.

HJR-60

PURPOSE AND DIRECTION The Montana Legislature, through HJR-60, assigned the Environmental Quality Council (EQC) the study of coordination procedures. The expressed purpose of the resolution was the coordination of permit procedures for projects contemplating the use of the state's natural resources. The legislature directed the council to prepare recommendations for the coordination of such procedures for the benefit of the applicant, the reviewing agencies, and members of the public; and report its findings and recommendations to the regular session of the 47th legislature.

THRESHOLD The legislature, in its resolution, directed that the following threshold be addressed:

- (1) provide opportunity to obtain information,
- (2) provide opportunity to present views,
- (3) improve communication and understanding,
- (4) reduce duplicative paperwork,
- (5) unify permit procedures,

- (6) provide a greater degree of certainty of permit requirements, and
- (7) establish a relatively stable time frame.

The following is a summary (and findings) of the work pursuant to HJR-60. Material relevant to coordination cited in this summary is appended.

PRELIMINARY WORK

GENERAL CONCEPTS The Environmental Quality Council staff commenced preliminary work on the resolution by gathering materials, studying pertinent laws, and researching reviews and experiences of other states. Certain general concepts, currently not formal elements of Montana's permit review procedures, emerged from this study. These concepts included master applications, informal hearings, conceptual reviews, and scoping techniques. State agencies have however, recently adopted a number of these procedures on an informal basis.

COMPLEXITIES Considerable inherent complexities, problems, and pitfalls also surfaced. Paramount among these are divergent philosophies, fragmented regulation, and federal involvement. Given the experiences of other states, and local political realities, it became apparent early in the investigation that achieving a concensus for a program for Montana would be difficult. Further, these drawbacks would require considerable attention from all those affected, and resolution of problems was essential in advance of the 1981 session.

STRATEGY To aid in overcoming these problems, a strategy of directly involving legislators, state agencies, applicants, and the public was developed. The general concepts, complexities, and problems were presented to Environmental Quality Council members in September of 1979. The expressed purpose of the resolution and the seven concerns (threshold) provided the primary guidelines for this presentation.

FEEDBACK The staff then received council direction to circulate the material to agencies, legislators, citizen's groups, and business interests--300 in all. The mailing was intended to encourage involvement, identify specific concerns, solicit input, and avoid or mitigate controversy. This circulation generated rather scant feedback, and more importantly, very few areas of common agreement emerged. Comment from legislators, state agencies, and developers was conspicuously missing. It is plausible to assume, however, that those affected or concerned reserved comment until conceptual details were revealed.

An expected amount of comment advocated substantive changes in permitting statutes rather than addressing clearly procedural problems. However, the intent of the resolution and research suggested a coordination program in which agencies retain present substantive responsibility.

THE WORKING PAPER

COMPREHENSIVE PROGRAM Between November of 1979 and January of 1980, the Environmental Quality Council staff developed a working paper (in the form of draft legislation) which detailed a permit coordination procedure that incorporated the purposes and objectives of HJR-60 with the research and input. In addition, many concepts of the executive branch bill of 1979 proved useful and were utilized in the draft.

The working paper suggested mandating, by statute, a coordinated procedure which would formally and comprehensively encompass all concerns raised in the resolution. Procedures, roles, time frames, and responsibilities were specifically defined, and would be, if adopted, formally instituted within the framework of a fully unified program. The threshold of the resolution, along with the feedback generated by earlier work provided the primary guidelines for these efforts. It was therefore an expression of legislative mandate, research, and input of those affected or concerned.

CIRCULATION The working paper was sent to council members for review, and subsequently the staff received direction to circulate the work to legislators, agencies, and interested parties. Cover letters encouraged review and comments. The letters also related concerns that not addressing problems early could well result in difficulties on the session floor.

MEETINGS On February 4th, the Environmental Quality Council staff met briefly with the executive branch mini-cabinet and again requested agency input. Despite previous involvement in coordination efforts, agency heads chose not to provide specific comment on the working paper at that time, but rather expressed an intent to work collectively on development of an alternative. Other meetings and discussions with developers, citizen's groups, and environmental organizations followed. A number of these same parties presented appropriate testimony and participated in discussion at subsequent Environmental Quality Council meetings.

FEEDBACK The working paper, while remaining within the constraints and intent of the resolution, attempted to incorporate tradeoffs and incentives for anticipated contesting parties. It was, along with the participation strategy, an effort to seek avenues and solutions which avoid the kind of polarization often associated with controversial issues. However, common areas of agreement and a broad-based concensus became difficult to identify, and resistance to coordination surfaced.

A portion of the feedback offered constructive criticism and provided useful suggestions. Other responses marked a complete reversal of previously acknowledged concerns. Some input appeared hostile, while others sympathized with the arduous task of overcoming polarized points of view. State agency involvement and comment was absent.

RESEARCH CONFIRMED Despite the approach taken, and the "balancing act" incorporated into the working paper, affected parties appeared unwilling to accept change, make concessions, or explore procedural alternatives. In short,

divergent philosophies remained strongly polarized, and thus provided no specific direction. As a result, serious questions were left unresolved.

As research suggested, nearly everyone would agree on the need to coordinate permitting procedures, but this consensus would become quite fragile when details were considered. Feedback confirmed that people tend to look at the need for coordination from their own particular point of view, or most are in favor of coordination as long as it changes nothing.

ADDITIONAL MATERIALS During the course of the investigation the staff prepared time frames, brief narratives and schematic flow charts of major permitting statutes. This material was utilized by the council to evaluate the details of the working paper as related to the individual permitting procedures.

EXECUTIVE BRANCH PROPOSED ALTERNATIVE

APPROACH On April 25th at the Environmental Quality Council meeting, the executive branch responded for the first time to the working paper by proposing an alternative intended to clarify, expedite, and coordinate permitting procedures. The approach consisted of four separate actions:

- (a) improve the provision of information and assistance to applicants
- (b) encourage state agency efficiency in the processing of permits
- (c) maintain state agency consultation with the Environmental Quality Council regarding the provision of public information and opportunities for public participation early in the permitting procedure, and
- (d) explore methods of achieving communication and cooperation before applications are filed.

The details of these actions were presented in the Executive Branch Response to the Environmental Quality Council's COPPA Working Draft.

The proposed alternative suggested that refinement and improvement of the present permitting system may not require legislative action in all cases, or could be expressed by rule rather than statute. The plan would establish, somewhat informally, the resolutions concerns on an incremental basis. In general, it advocated possible change be instituted a step at a time, utilizing separate actions.

The drafters of the executive branch proposal, not bound by the specific threshold of the resolution, not only recognized, but were able to avoid most of the inherent complexities and controversial issues and problems associated with establishing an all encompassing coordination program. The proposed alternative, if adopted, would require correspondingly less legislative intervention.

Incremental approaches to permitting programs are showing some advancement in other states, and a step by step implementation of selected concepts may be politically more feasible in Montana.

COMPARISONS After receiving the executive branch proposal, the Environmental Quality Council members directed the staff to draw comparisons between the working paper and the proposed alternative. This comparison was prepared, then utilized by the council to evaluate the various proposals that address HJR-60. Subsequent discussion of the two proposals were directed at the merits of a mandatory program suggested by the Environmental Quality Council as opposed to a voluntary program outlined by the executive branch.**

** Mandatory programs direct applicants to participate in a coordinated procedure when the proposed development requires multiple permits.

Voluntary programs leave participation to the discretion of the developer. An applicant may choose to identify and secure required permits by utilizing the coordinated program, or obtain permits through traditional channels.

Pursuant to satisfying the directives of HJR-60, it was felt that participation in a coordination program should be based on a clearly defined threshold. It was noted that state agencies have, since the enactment of the Montana Environmental Policy Act (MEPA), received directives to coordinate permitting procedures, including Executive Order 4-75. The authority for optional programs therefore already existed. Further, voluntary programs have been the subject of numerous problems and therefore considerable criticism. Conversely, leaving the use of the procedure to the developers option enhance the likelihood of enactment.

BASIC CHOICE Consideration of the preceding proposals concerning coordination left a basic choice; that of an encompassing mandatory coordination program, or adoption of a voluntary and incremental approach. This then, raised yet another fundamental issue: how extensive should coordination efforts be in order to satisfy the directives and the mandate of HJR-60? To obtain specific direction for subsequent work, the Environmental Quality Council staff requested the council to resolve this and other issues.

RESOLUTION OF ISSUES

QUESTIONS The following questions were posed for council consideration:

- (1) Of the seven concerns delineated in the resolution, which are considered to be major problems in Montana's present procedure?
- (2) To what extent should they be addressed to attain the intent of the mandate of HJR-60?
- (3) Which concepts of the working paper properly address the concerns of the resolution? Which do not?
- (4) Do any of the concepts require additional attention or alteration? If so, to what degree should changes be made?
- (5) What response, if any, is appropriate to the executive branch proposed alternative? Suggestions?
- (6) Are the questions (above) relevant to the proposed alternative? If so, to what degree should they be addressed?

JULY '80 MEETING Formal consideration of these questions did not subsequently materialize, and specific issues remained obscure and unresolved. Further attention was not given to these questions until an Environmental Quality Council meeting in July. At that time, several industry representatives again presented comments relative to the overall concept of coordination. They expressed concern that coordination efforts may diminish working relationships established between developers and regulatory agencies. They suggested that any loss of agency contact might affect professional rapport and therefore reduce overall effectiveness. Additionally, federal programs further complicate permit coordination at the state level. In general, business interests are not enthusiastic about coordinated procedures and "have learned to live with regulation."

A citizen's group representative reiterated that opportunity for cooperation and coordination could be attained under existing procedures, and the need for further legislation is questionable.

This discussion reflected the general desires of business interests, agencies, and citizens' organizations. It established that refinement and improvement of current permitting procedures may be attained without the expense of adopting legislation that addresses voluntary programs. The lack of enthusiasm provided relief of the burden of having to resolve differences associated with all encompassing, mandatory programs.

COUNCIL MOTION--RECOMMENDATIONS This, along with all previous consideration of coordination efforts, prompted the council to move that the permit review programs prepared in response to HJR-60 be given a negative recommendation. Additional recommendations include:

- (a) Creation of a facilitators position in the Governor's Office with the responsibility of assuring adherence to time limits. The facilitator would develop and make available a "permitting route" for those who desire or need it.
- (b) An amendment to the Montana Administrative Procedures Act (MAPA) which would subject agency rules to periodic review. This "sunset" provision would nullify rules proven unworkable.

APPENDIX

- A. EXECUTIVE ORDER 4-75, OFFICE OF THE GOVERNOR
- B. COORDINATION OF PERMIT PROCEDURES ACT (COPPA),
GOVERNOR'S COMMITTEE FOR BALANCED GROWTH, 1978
- C. HJR-60, MONTANA 46TH LEGISLATURE
- D. STAFF PRESENTATION, EQC MEETING, SEPTEMBER 26, 1979
- E. EQC MAILING, HOUSE JOINT RESOLUTION 60, OCTOBER, 1979
- F. WORKING PAPER - COORDINATION OF PERMIT PROCEDURES,
FEBRUARY 4, 1980
- G. GOVERNOR'S LETTER TO TERRENCE D. CARMODY, APRIL 22, 1980
- H. EXECUTIVE BRANCH RESPONSE TO EQC's COPPA DRAFT
- I. HJR-60 - COORDINATION OF PERMIT PROCEDURES, MAY, 1980
- J. SUMMARY - COORDINATION OF PERMIT PROCEDURES, MAY, 1980