Denali Citizens Council

dvocating for Denali's Wilderness, Wildlife and Way of life.

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August 19, 2013

Re: Revisions and additions to oil and gas regulations

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed revisions and additions to regulations related to oil and gas plan of operations and geographical areas. The Denali Citizens Council (DCC) is a local non-profit citizens group established in 1974 to provide Alaskan citizens with a voice in the management of Denali National Park and Preserve and surrounding communities. DCC's mission is to promote the natural integrity of Denali National Park and Preserve by supporting the ecological and wilderness values for which the park was established and by fostering responsible planning and sustainable development throughout the Denali region.

DCC has closely tracked regulations related to oil and gas exploration since shallow gas exploration in the Healy Basin was first proposed. As approved, the Healy Basin Gas Exploration License surrounds the largest community in the Denali Borough (Healy), and underlies several subdivisions and remote residential areas. The license area also contains lands, including the Stampede Townships, which have long been recognized by the state, residents, and visitors as valuable for recreation and wildlife habitat. Many of our members live within the Healy Basin, and would be directly impacted by oil and gas exploration or development. We feel that it is critical for the state to clearly disclose any impacts to exploration licenses that would result from the proposed changes and additions, and give the public additional opportunities to comment. We hope the state will carefully consider our concerns, respond to our questions, and allow additional time to comment after the information we have requested is made available.

## I. Plan of Operations, 11 AAC 83.158

### Changes to plan of operations approval are not described

Nowhere does the letter attached to the public notice explain how proposed changes to the plan of operations would impact the public notice and approval process for plan of operations, besides "The proposed regulations also include changes for plans of operations to clarify that plans of operation are required for all oil and gas operations that affect state oil and gas leases or exploration licenses.[1]" Current practice for Plan of Operations includes public notice on the state's website, and the state must also consider whether the inclusion of additional mitigations are necessary to protect the state's best interest. The

[1] DNR letter dated July 12, 2013, attached to public notice. It is not explained what part of the proposal this sentence is referring to.

site-specific details provided in a Plan of Operations are critical when considering whether additional mitigations will be necessary. In approving HB 129, the legislature was clear that changes would only impact areawide lease sale areas.[2] Any change from current practices for exploration licenses should be thoroughly described in a public notice, along with DNR's reason for such changes.

DCC is particularly concerned about how changes in the approval process (from the "commissioner" to the "department" numerous times throughout the proposed revision to 11 AAC 83.158) would change the process for Plan of Operations approval. On several occasions during the public comment period DCC attempted to gain information about what the proposed changes to 11 AAC 83.158 would accomplish. We were told that our questions could not be answered, but could be responded to if submitted as public comments. When we then attempted to find out what other permitting processes are currently determined by the department or the commissioner we were told that because of our involvement with the Healy Basin Gas Exploration License we could not speak directly to the Department of Natural Resources (DNR). Our questions were to understand how these proposed changes would impact the Healy Basin, and are in no way related to the appeal. DNR's refusal to respond to requests for clarification obfuscates the public process and impedes our ability to provide meaningful feedback on these proposed regulatory changes. We urge DNR to consider the questions we have raised in our comments, and other requests for clarification, and resubmit the proposed regulatory changes for public comment with additional information.

**Additions to plan of operations information beneficial**

DCC supports requiring disclosure of wastewater treatment and disposal sites in a plan of operations. We also support the identification of surface owners, along with contact information. If surface owner addresses were gathered, it seems that it would be relatively easy to directly notify surface owners of the plan of operations. DCC encourages the state to consider this as an option.

**Submission with adequate time to review**

DCC appreciates the proposed timeline for submission of the plan of operations to the DNR 120 days prior to operations. We hope that this will translate into adequate time for the public to review as well, and to provide feedback when needed. As mentioned elsewhere, past and current practice has been to notify the public of plan of operations applications. This should not change, and if it is to change it should be disclosed in the public notice (which is not currently the case) so that the public has an opportunity to comment. We would prefer to see public notice requirements explicitly included as part of this section.

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[2] See Sectional Analysis House Bill 129

## II. Exploration and Development by Geographical Area, 11 AAC 83.650-695

### Contradictory language confuses what land would be included

The proposal (11 AAC 83.660(c)) states that a geographical area for exploration "may include leased or unleased acreage." Under the definitions section, a "'Geographic area' means a defined area within an area that has been offered for oil and gas or gas only leasing under AS 38.05.180." It appears that DNR is proposing to include lands other than those offered under AS 38.05.180, and thus providing contradictory language. Also, when HB 129 was passed it was clear that the bill only applied to lands known previously as areawide lease sales.[3] DNR appears to be taking this a step further in applying the statute to unleased lands. This is inappropriate, and should be corrected or clarified.

### Detailed information must inform the permitting process

Under previous regulations, site specific details are disclosed before the state determines whether specific activities are in the state's best interest. DCC is very concerned that the state and public have adequate information to determine potential impacts when operations are proposed with the same specificity that plan of operations have had. Site-specific information is necessary to inform the public process. DCC encourages the state to consider including the same detailed information about site-specific operations as is required currently in a plan of operations. This would allow the state and public adequate information to determine what is in the best interest of the state and its residents.

### Language to exclude cities ignores the best interest of other residents

We appreciate the attempt to exclude population centers from geographical areas under this proposal, but would like to see increased protections for residents who live in more remote areas. Within the Denali Borough there are a number of residential areas that are not incorporated. No distinct line is drawn that defines the boundaries of unincorporated communities. If the state is going to delineate between communities of 200 or more, how will it determine how boundaries of unincorporated communities are drawn? We would prefer to see all residential areas excluded from geographical areas.

Also, populations on the ACDO are updated every 10 years. Considering that this proposal would approve geographical areas for a period of 10 years with no further public comment or review, population data is likely to be outdated. For example, if this proposal is approved, and the state approved a geographical area in 2018 (using 2010 census data), the approval could then be valid until 2028. Surely the state understands that census data could change drastically in the 18 years between 2010 and 2028. Assuming there will be no change to population is inadequate, and does not assure that communities will be excluded from geographical areas for exploration or development. At a minimum, there should be an opportunity to review geographical areas when new census information is available. Also, there should be an opportunity for communities to petition to the state if population numbers have increased whenever there is

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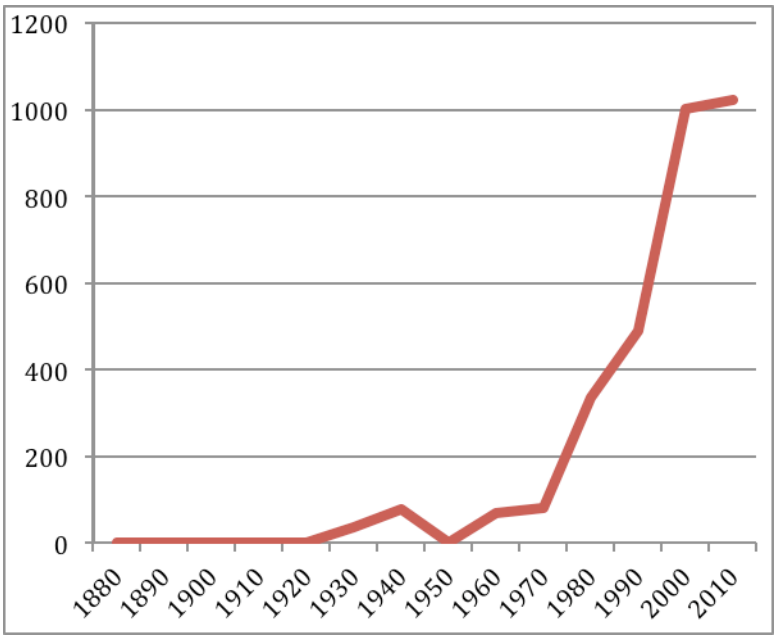
[3] See Sectional Analysis House Bill 129

information sufficient to support the claim (such as data from homeowners associations or local municipalities).




**Population of Healy, Alaska 1880-2010**
Note sharp increases in population during 10-year census periods, particularly in the last 40 years.

Census data accessed at http://www.commerce.state.ak.us/cra/DCRAExternal/Community/ on August 18, 2013

**III. Additional information is necessary to provide meaningful public input**

In addition to the concerns and questions we've noted elsewhere in this letter, we ask DNR to address the following questions through a supplemental public notice and allow for additional public comment:

- How will changing approval from the commissioner to the department change the Plan of Operations permitting process (such as public notice, opportunity to comment, scope of review, appeal)?
- Why was AS 38.05.133 deleted from statutory authority for 11 AAC 83.158?
- How would unleased lands within a geographical area for exploration be affected? Would a finding under the proposed geographical area regulations then commit the surface or subsurface use of previously unleased lands?
- How will the boundary of a community be determined under proposed (CITE section)? How will DNR address the time gap between census information availability (every 10 years) with a 10-year geographic area approval?

Once again, thank you for the opportunity to comment on the proposed revisions and additions to oil and gas regulations. We hope that clarification can be provided and that the public is given additional time with the new information to allow for meaningful and informed feedback.

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