

**ALASKA NATURAL GAS DEVELOPMENT AUTHORITY  
CONDITIONAL RIGHT-OF-WAY LEASE**

**COMMISSIONER'S RESPONSE to PUBLIC COMMENTS  
and FINAL DECISION**

**ADL 229297**



Alaska Department of Natural Resources  
State Pipeline Coordinator's Office  
411 West 4<sup>th</sup> Avenue, Suite 2C  
Anchorage, Alaska 99501

July 11, 2006

## **PURPOSE**

Through this Response to Public Comments and Final Decision (Response and Final Decision), the Commissioner of the Department of Natural Resources (Commissioner) supplements the Commissioner's Analysis and Proposed Decision and Action (Analysis and Proposed Decision) dated February 24, 2006 and provides a review and response to public comments received on the application of the Alaska Natural Gas Development Authority (ANGDA) for a State conditional right-of-way lease providing for a natural gas pipeline running from Glennallen to Palmer.

## **PROCEDURAL PROCESS**

### **AS 38.35 Right-of-Way Lease Application Process**

On April 4, 2005, the ANGDA submitted an application for a pipeline conditional right-of-way lease across Alaska State lands for the Glennallen to Palmer pipeline. The application was submitted pursuant to the Alaska Right-of-Way Leasing Act, AS 38.35.

In accordance with AS 38.35.070, the State published notice of its receipt of the application from ANGDA in May 2005 in the Fairbanks Daily News Miner, Peninsula Clarion, Mukluk News, Anchorage Daily News, Cordova Times, Frontiersman, Valdez Star, Delta Wind, Copper River Bi-weekly and the Seward Phoenix Log. Notice was also published on the Alaska Department of Natural Resources (ADNR) and the Joint Pipeline Office websites.

The Analysis and Proposed Decision and the Draft Conditional Right-of-Way Lease (Conditional Lease) for the ANGDA project were issued on February 24, 2006. Public notice of the availability of the Analysis and Proposed Decision and the Conditional Lease, and of the public hearing locations and schedule, was published in the following newspapers: Fairbanks News Miner, Peninsula Clarion, Mukluk News, Anchorage Daily News, Cordova Times, Frontiersman, Valdez Star, Delta Wind, Copper Valley Record and Seward Phoenix Log.

In addition to publishing notices in the newspapers, letters were sent to individuals and organizations on a mailing list created for this project and notice was sent to 50 post offices for posting. The ADNR accepted comments that were received by ADNR by facsimile, US Mail, or hand delivery on or before the deadline of 5:00 P.M. on April 26, 2006.

Copies of the Analysis and Proposed Decision and the Conditional Lease were made available for public review at: Noel Wien Library in Fairbanks; Noel Wien Library in North Pole; Delta Junction Community Library; Juneau Public Library; Kenai Community Library; Valdez Consortium Library; Tok Community Library; Copper Valley Community Library in Glennallen; Anchorage Municipal Library in Anchorage; Palmer Library in Palmer; Sutton Public Library in Sutton; Alaska Resource Library and Information Services in Anchorage; Wasilla Public Library in Wasilla; and in the ADNR Public Information Offices in Fairbanks, Juneau and Anchorage. Copies of the documents were also made available on the Joint Pipeline Office website ([www.jpo.doi.gov](http://www.jpo.doi.gov)) at no cost. Hard copies were available upon request, at cost, from the Joint Pipeline Office.

### **Public Comment Process**

Public hearings were held in the following communities: Sutton, Glennallen, Lake Louise, Glacier View, Palmer, Chickaloon and Anchorage between March 17 and March 28, 2006.

A list of all individuals that offered oral testimony at the public hearings, or that offered written comments during the public comment period, with identification of any organization or business represented through the comments is made a part of this document and included as Attachment “A” to this Response and Final Decision. A table reflecting the comments received and the ADNR’s Response to those comments is made a part of this document and is included as Attachment “B” to this Response and Final Decision.

## **Alaska Coastal Management Program Review**

On May 15, 2006, the Office of Project Management and Permitting found this project consistent with applicable Alaska Coastal Management Program (ACMP) statewide and affected coastal resource district enforceable policies. The final consistency determination was issued for the portion of the project from Palmer to approximately Moose Creek. The proposed project leaves the coastal zone near Moose Creek.

## **RIGHT-OF-WAY LEASING ACT SUBSTANTIVE REQUIREMENTS**

### **Fit, Willing, and Able Standard**

The Alaska Right-of-Way Leasing Act (AS 38.35.010 -- AS 38.35.260) comprehensively sets out the procedural process that the Commissioner must follow and the substantive standards that the Commissioner must apply in (1) analyzing a right-of-way application; (2) negotiating/drafting a right-of-way lease document in a form that includes mandatory covenants; and (3) finally determining whether to offer a specific lease to a specific applicant. The standard for the ultimate decision -- whether to approve an application and offer a lease to an applicant -- is set out in AS 38.35.100(a), which states:

*The commissioner shall promptly determine, in a written finding, on an application filed under AS 38.35.050, whether the applicant is fit, willing, and able to perform the transportation or other acts proposed in a manner that will be required by the present or future public interest. In making a determination the commissioner shall consider whether or not*

*(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;*

*(2) the applicant has the technical and financial capability to protect state and private property interests;*

*(3) the applicants has the technical and financial capability to take action to the extent reasonably practical to*

*(A) prevent any significant adverse environmental impact, including but not limited to erosion of the surface of the land and damage to fish and wildlife and their habitat;*

*(B) undertake any necessary restoration or revegetation; and*

*(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife, and biotic resources of the area for subsistence purposes;*

*(4) the applicant has the financial capability to pay reasonably foreseeable damages for which the applicant may become liable on claims arising from the construction, operation, maintenance, or termination of the pipeline;*

*(5) the applicant has agreed that in the construction and operation of a pipeline within the right-of-way the applicant will comply with, and require contractors and their subcontractors to comply with, applicable and valid laws and regulations regarding the hiring of residents of the state then in effect or that take effect subsequently.*

### **Policy Declarations**

The Alaska Right-of-Way Leasing Act includes declarations of State policy regarding pipeline leasing in AS 38.35.010 and AS 38.35.017. AS 38.35.010 provides:

*The natural resources of this state in crude oil and natural gas and in its land for transportation of these resources and their products by pipeline towards markets both in and out of state are capable of making a significant contribution to the general welfare of the people of this state. It is the policy of this state that the development, use, and control of a pipeline transportation system be directed to make the maximum contribution to the development of the human resources of this state, the increase in the standard of living for all of its residents, the advancement of existing and potential sectors of its economy, the strengthening of free competition in its private enterprise system, and the careful protection of its incomparable natural environment.*

AS 38.35.017 provides:

*. . . it is the policy of the state that the overall strategy for development, use, and control of a pipeline or pipelines to develop the state's substantial North Slope natural gas resources be directed*

*(1) to enhance the standard of living of state residents by*

*(A) ensuring that, in conjunction with out-of-state market driven commercial demand for North Slope natural gas, state residents and businesses will have access, directly or indirectly, to that portion of gas that will meet the reasonably foreseeable in-state demands for it, including substitution of the North Slope natural gas for depleting gas reserves in Southcentral Alaska in order to maintain a vital domestic and industrial energy source, and ensuring that the pipeline or pipelines for the transportation of North Slope natural gas will be designed and located to be responsive to these requirements;*

*(B) making the maximum contribution to the development of job opportunities in this state by*

(i) *providing direct short-term construction and long-term operation-and –maintenance-related employment on the pipeline or pipelines, to the end that the resources be developed with qualified contractors and firms in this state for work to be performed, including the fabrication and installation of required facilities, and that state residents be employed, consistent with the law; and*

(ii) *providing necessary support services; and*

(C) *adding significant long-term property value to the tax base of the state and local governments, thereby providing the means to support public education, public health, transportation, and other essential state and local government projects and services;*

(2) *to ensure that the design, location, and construction of a pipeline or pipelines for delivery of North Slope natural gas to North American markets through connection to the North American natural gas pipeline network enhance opportunities for implementing gas deliveries using alternative technologies and the construction of other pipelines to deliver North Slope natural gas to foreign and domestic markets; and*

(3) *to ensure construction of the pipeline or pipelines consistent with careful protection of the state’s natural environment, with minimum environmental degradation, to the greatest extent possible, and with protection of fish, wildlife, and biotic resources for the use of persons who depend upon them by using available transportation infrastructure to initiate and complete project construction and maintenance and by avoiding duplication of facilities.*

### **Commissioner's Discretion**

The Commissioner is granted broad authority and discretion in applying the requirements of the Right-of-Way Leasing Act to an individual right-of-way lease application, as expressed in AS 38.35.015:

*The commissioner has all the powers necessary and proper to implement the policy, purposes, and provisions of this chapter, so as to subserve, as the exercise of reasoned discretion determines, the public interest, convenience and necessity . . .*

### **REVISIONS TO DRAFT CONDITIONAL RIGHT-OF-WAY LEASE**

In response to the public comments and to continuing internal review, amendments were made to the Conditional Right-of-Way Lease to include terminology that may be included in the Right-of-Way Lease, if issued.



consideration on a comparative basis due to the non-exclusive nature of the proposed Lease, and the lack of any third party's indication of interest in filing a competing right-of-way lease application in the near future.

## **FINDING AND DECISION ON APPLICATION**

On the basis of the entire record to date, which includes: the ANGDA Conditional Right-of-Way Application; the Draft Conditional Right-of-Way Lease; the Commissioner's Analysis and Proposed Decision and Action dated February 24, 2006; the public comments received in writing and through public testimony during the public comment process from February 24, 2006 through April 26, 2006; this Response to Public Comments and Final Decision; the attached Final Conditional Right-of-Way Lease for the ANGDA; and all records and documents now assembled in the files of this application process and maintained by the State Pipeline Coordinator's Office; I have determined that it is in the State's best interest to enter into a Conditional Right-of-Way Lease with the ANGDA. Section 2 of the Conditional Lease requires the ANGDA to provide evidentiary requirements to proceed to a right-of-way lease. This evidence includes, but is not limited to, the ANGDA's financial ability to design and construct the proposed pipeline. The evidence shall include documentation of the commitment of shippers to utilize the capacity of the pipeline for shipment of gas in the pipeline, such as executed letters of intent for gas purchase; documentation of the availability of gas to committed shippers, such as letters of intent for gas sales, and written preliminary lender commitments for construction financing.

A "fit, willing and able" determination to perform all of the acts proposed by a Final Right-of-Way Lease for the ANGDA will be made by the Commissioner in a manner required by the present and future public interest of the citizens of the State of Alaska, as set forth in AS 38.35.100.

The Commissioner's Analysis and Proposed Decision and Action, dated February 24, 2006, is incorporated into and made a part of this document by reference. The Alaska

Natural Gas Development Authority will be offered a pipeline Conditional Right-of-Way Lease, ADL 229297.

/s/ Michael L. Menge

July 13, 2006

Michael L. Menge, Commissioner

Date

Alaska Department of Natural Resources

This is the final agency decision on this application. To the extent that a person has standing to seek judicial review under AS 38.35.200, this decision may be appealed pursuant to Part VI of the Alaska Rules of Appellate Procedure, by filing a notice of appeal with the superior court within 30 days from the date of this decision.

Attachments: Commenter List – Attachment A (2 pages)

Response to Comments – Attachment B (81 pages)

Conditional Right-of -Way Lease and Exhibits– Attachment C (20 pages)

**ATTACHMENT A**

**LIST OF COMMENTERS**

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Testimony at the public hearings was given by the following individuals/organization/business representatives (this list contains those individuals who gave oral testimony – some also submitted written comments in support of their oral testimony):

**Sutton** had ten (10) attendees with the following individuals giving testimony: Jessica Dryden, Jennifer Harrison, Steven Renner, John Robertson, and Lynne Woods.

**Glennallen** had fifteen (15) attendees with the following individuals giving testimony: Michael Lanegan, Alan LeMaster, Mary Odden, Doug Vollman, and Robert Wilkinson.

**Lake Louise** had seventeen (17) attendees with the following individuals giving testimony: Jane Brown, Jean Holt, Gary Howard, Beverly Matthews, Sara Owens, and Victoria Paulson.

**Glacier View** had twelve (12) attendees with the following individuals giving testimony: Rick Brenden, Rex Close, Tom Lee, and Bill Stevenson.

**Palmer** had (20) attendees with the following individuals giving testimony: Teresa Fredrickson, Clarence Furbush, Gerry Keffer, and Maria Keffer.

**Chickaloon** had (6) attendees with the following individuals giving testimony: Jennifer Harrison, Robert Michel, Lisa Stevenson, Sarah Masco, and Javen Ose.

**Anchorage** had (14) attendees with the following individuals giving testimony: Warren Olson, Warren Keogh, Arthur Almon, and Lori Backes.

Written comments were received during the public comment period from the following individuals, companies and organizations: Mary and Jim Odden; Doug Wade, Chairman NAY'DINI'AA NA' (Chickaloon Village) Traditional Council; Jennifer Smith, State of Alaska, Department of Natural Resources, Division of Mining, Land and Water; Warren E. Olson; Gabriel Scott, Cascadie Wildlands Projects; Cliff Eames; Marcie Menefee, Alaska Department of Natural Resources, Division of Mining, Land and Water; Jessica Dryden; Delice Calcote; Peter C. Nagel, Alyeska Pipeline Service Company; Paul Twardock; Judith Bittner, Department of Natural Resources, State Historic Preservation Officer; Patricia Warren and Linda Harris; Theodore D.M. Bartko; Daniel Treat; Nancy Taylor; Robert Wilkinson: Robert Wilkinson, Copper Valley Electric Association, Inc. ; John O'Brien, Remote Aquatics; Jennifer Simmermeyer, President, Buffalo Mine Road/Soapstone Road Community Council; Pat Owens; Red Morton; Linda Rutledge; Robert E. Michel; Dennis W. Hamann; Janelle Eklund and Paul Boos; Peter M. Probasco; Nancy and Gary Heidelberg; Alan Renshaw, Usibelli Coal Mine, Inc.; Ruth McHenry, Copper Country Alliance, Robert F. McLean, Department of Natural Resources, Office of Habitat Management and Permitting, Susan Lee, Matanuska-Susitna Borough, Planning Division.

**ATTACHMENT B**

**ALASKA NATURAL GAS DEVELOPMENT AUTHORITY  
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**ATTACHMENT C**

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