

# LEGAL SERVICES

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## MEMORANDUM

September 14, 2016

**SUBJECT:** Alaska LNG Project ownership (Work Order No. 29-LS1734)

**TO:** Senator Cathy Giessel  
Attn: Jane Conway

**FROM:** Emily Nauman   
Legislative Counsel

You asked whether the transition to sole State of Alaska ownership of the Alaska LNG Project is authorized under HCS CSSB 138(FIN) am H (28th Alaska State Legislature) (SB 138). The short answer is yes.

### Background

The statutory structure of the Alaska LNG Project, for the most part, arose out of the passage of SB 138. As outlined by the Memorandum of Understanding (MOU),<sup>1</sup> and Heads of Agreement (HOA),<sup>2</sup> the project was initially proposed to include several co-owners, including the Alaska Gasline Development Corporation (AGDC), TransCanada, ExxonMobil, ConocoPhillips, and BP. In 2015, the state bought out TransCanada's stake in the proposed pipeline.<sup>3</sup> More recently, other partners have expressed interest in backing out of the project and the governor has proposed that the state take full control and ownership of the project.<sup>4</sup>

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<sup>1</sup> Memorandum of Understanding entered into by TransCanada Alaska Company, LLC, Foothills Pipe Lines, Ltd., TransCanada Development Inc., and the State of Alaska (December 12, 2013).

<sup>2</sup> Heads of Agreement entered into by the State of Alaska, the Alaska Gasline Development Corporation, TransCanada Alaska Development, Inc., ExxonMobil Alaska Production, ConocoPhillips Alaska Production, and BP Exploration (Alaska), Inc. (January 14, 2014).

<sup>3</sup> Chester Dawson, *Alaska Buys Out TransCanada Stake in LNG Project*, Wall Street Journal, Nov. 25, 2015, available at: <http://www.wsj.com/articles/alaska-buys-out-transcanada-stake-in-lng-project-1448430182>.

<sup>4</sup> Chester Dawson, *Exxon Mobil Backs Out of Proposed Alaska LNG Project*, Wall Street Journal, Aug. 26, 2016, available at: <http://www.wsj.com/articles/exxon-mobil-backs-out-of-proposed-alaska-lng-project-1472263173>.

Related Statutes

*AS 31.25.005*

AGDC is directed to develop the Alaska LNG Project under AS 31.25.005.<sup>5</sup> Nothing in AS 31.25.005 limits the ownership structure of the project.

*AS 31.25.080*

AS 31.25.080(a)(1) states that AGDC "may enter into agreements with other persons for joint ownership, joint operation, or both of . . . an Alaska liquefied natural gas project," but the statute does not require AGDC to enter into such agreements.<sup>6</sup>

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<sup>5</sup> Related to the Alaska LNG Project, AS 31.25.005 reads:

The corporation shall, for the benefit of the state, to the fullest extent possible,

(1) develop and have primary responsibility for developing natural gas pipelines, an Alaska liquefied natural gas project, and other transportation mechanisms to deliver natural gas in-state for the maximum benefit of the people of the state;

. . .

(5) advance an Alaska liquefied natural gas project by developing infrastructure and providing related services, including services related to transportation, liquefaction, a marine terminal, marketing, and commercial support; if the corporation provides a service under this paragraph to the state, a public corporation or instrumentality of the state, a political subdivision of the state, or another entity of the state, the corporation may not charge a fee for the service in an amount greater than the amount necessary to reimburse the corporation for the cost of the service;

<sup>6</sup> AS 31.25.080(a)(1), in full, reads:

In addition to other powers granted in this chapter, the corporation may

(1) determine the form of ownership and the operating structure of an in-state natural gas pipeline developed by the corporation and may enter into agreements with other persons for joint ownership, joint operation, or both of an in-state natural gas pipeline or an Alaska liquefied natural gas project;

AS 31.25.390(6) defines "in-state natural gas pipeline" to mean "a natural gas pipeline for transporting natural gas in the state." The Alaska LNG Project does not meet this broad definition because part of the purpose of the project is to export gas from the state. It could be argued that because AS 31.25.080(a)(1) gives AGDC explicit authority to determine the structure of the in-state natural gas pipeline that explicit authority is also needed to determine the ownership structure of the Alaska LNG Project. However, I believe this argument is unlikely to be successful.

AS 31.25.080(a)(23) allows AGDC to "acquire an ownership or participation interest in an Alaska liquefied natural gas project. . . ." This language could be interpreted to mean that AGDC is only authorized to acquire a percentage, but not complete ownership of the Alaska LNG Project. Because of the impreciseness of the language, however, I do not believe a court would overrule a decision by AGDC to interpret the statute to allow complete AGDC ownership of the project.

*AS 31.25.110*

AS 31.25.110 creates the Alaska Liquefied Natural Gas Project Fund, the fund currently used to finance the Alaska LNG Project. The language of the fund provides no spending limitations related to project ownership.<sup>7</sup> I could not find an appropriation into the fund that limited use of the money in the fund related to ownership of the project.<sup>8</sup>

Conclusion

Legislative action is likely not required to transition the Alaska LNG Project to a solely state owned project. Please do not hesitate to contact me if I may be of any further assistance.

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<sup>7</sup> AS 31.25.110 reads:

The Alaska liquefied natural gas project fund is established in the corporation and consists of money appropriated to it. The corporation shall determine fund management and may contract with the Department of Revenue for fund management. If money is appropriated to the fund to finance the cost of an Alaska liquefied natural gas project, the corporation shall create an account in the fund for that purpose and hold the money appropriated for that purpose in that account. Interest and other income received on money in the fund shall be separately accounted for and may be appropriated to the fund. The corporation may use money appropriated to the fund without further appropriation for the purpose of managing the fund, for purposes related to an Alaska liquefied natural gas project, and for the purpose of transferring net revenue received by the corporation related to equity interests, contracts, and other activities to the appropriate fund of the state as determined by the commissioner of revenue in consultation with the commissioner of natural resources.

<sup>8</sup> See sec. 24(c), ch. 18, SLA 2014; sec. 52(a), ch. 18, SLA 2014; and sec. 5, ch. 1, TSSLA 2015.