

**HB 4**

**(FILE 2)**

<TARGET><BILL>HB 4</BILL><SUBJECT>HB 4 (FILE  
2)</SUBJECT><COMM>HRES28</COMM></TARGET>

# Representative Mike Hawker

## Alaska State Legislature



*Session:*

State Capitol  
Juneau, AK 99801  
907 465-4949 office  
907 465-4979 fax

*Interim:*

716 W 4<sup>th</sup> Avenue  
Anchorage, AK 99501  
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*House District 27:*

Anchorage  
Glen Alps  
Rainbow  
Indian  
Bird  
Girdwood

### **(AMENDED) BILL HEARING REQUEST**

**TO:** Rep. Dan Saddler, Co-chair, and Rep. Eric Feige, Co-chair  
House Resources Committee

**FROM:** Rep. Mike Hawker

A handwritten signature in black ink that reads "Mike".

**DATE:** Jan. 28, 2013

**RE:** House Bill 4, Instate Gasline Development Corp

I request that a Sponsor Substitute for House Bill 4 be scheduled for a hearing, pending referral, at your earliest convenience after Jan. 29, 2013.

House Bill 4 establishes AGDC as an independent public corporation of the state, charged with developing, financing, constructing and operating instate natural gas pipelines that deliver gas to Fairbanks, Southcentral, and other communities where possible, at the lowest possible costs.

Specifically, House Bill 4 directs AGDC to implement a plan for an instate natural gas pipeline; creates a regulatory framework for a contract carrier pipeline; repositions the Alaska Natural Gas Development Authority as a gas marketing subsidiary of AGDC; and provides AGDC tools to accomplish its mission, including the ability to hold certain information confidential; to issue revenue bonds backed only by investor commitments; and to pursue development of additional instate natural gas pipelines in the future.

A sponsor statement, a copy of the bill, and a sectional will be forwarded to your offices as soon as possible.

Please feel free to contact me, or my legislative aide Rena Delbridge, at 465-4949 for any additional information, or to request additional background materials.

Representative Mike Hawker  
Alaska State Legislature

Rec'd  
1-23-13  
10:15 a.m.



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**BILL HEARING REQUEST**

**TO:** Rep. Dan Saddler, Co-chair, and Rep. Eric Feige, Co-chair  
House Resources Committee

**FROM:** Rep. Mike Hawker

A handwritten signature in black ink, appearing to read "MH", written over the name "Rep. Mike Hawker".

**DATE:** Jan. 22, 2013

**RE:** House Bill 4, Instate Gasline Development Corp

I request that House Bill 4 be scheduled for a hearing at your earliest convenience after Jan. 29, 2013.

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Specifically, House Bill 4 directs AGDC to implement a plan for an instate natural gas pipeline; creates a regulatory framework for a contract carrier pipeline; repositions the Alaska Natural Gas Development Authority as a gas marketing subsidiary of AGDC; and provides AGDC tools to accomplish its mission, including the ability to hold certain information confidential; to issue revenue bonds backed only by investor commitments; and to pursue development of additional instate natural gas pipelines in the future.

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Thank you,



# Representative Mike Hawker

## Alaska State Legislature

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### Sponsor Statement

Sponsor Substitute for House Bill 4  
In-state Gasline Development Corp

House Bill 4 (HB 4) creates an entity charged with getting Alaska's natural gas into the hands of Alaskans. HB 4 empowers the Alaska Gasline Development Corporation (AGDC) to lead Alaska into a natural gas future.

For decades, Alaskans have looked to natural gas to ease crippling instate energy costs and air quality problems; to support new industry and jobs; to promote economic development; and to generate state revenue as the resource is commercialized. HB 4 provides AGDC the authority and resources to develop, finance, and operate a 500 million cubic feet per day gas pipeline from the North Slope, serving Fairbanks and Southcentral, at the lowest possible cost, without delay. While pursuing this project, AGDC is structured to be responsive if alternatives materialize that provide greater benefit to Alaskans, including potential partnership with industry on a large-diameter export pipeline. Finally, HB 4 enables AGDC to consider future pipelines that extend the benefits of natural gas to more Alaskans.

This legislation includes ways for the state to support AGDC and an instate natural gas pipeline and to alleviate uncertainty and risk, thereby minimizing the prices Alaskans pay for natural gas. HB 4 maximizes state efforts; separates AGDC from political influence; and creates a regulatory environment for a contract carrier pipeline that encourages future development of oil and gas resources. HB 4 also provides crucial checks and balances to ensure AGDC is accountable to Alaskans.

To date, private sector companies have not built a gas pipeline of this magnitude. The risks and costs associated with a pipeline spanning the 700-mile-plus length of Alaska are significant for any private sector entity. Yet, Alaskans remain in critical need of natural gas for instate use. The state can act now to bring a project together, opening new private sector development opportunities while addressing our instate energy issues.

This is Alaska's opportunity to advance the state's interests to get Alaskan gas into the hands of Alaskans on our schedule, without waiting for others to determine our future.

# An Alaska Natural Gas Future *for Alaskans*

House Bill 4: In-State Gasline Development Corp.  
Rep. Mike Hawker and Speaker Mike Chenault

*Presentation to the House Resources Committee, Feb. 4, 2013*

# Alaska Gas for Alaskans

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Alaska has long wanted to develop Alaska's rich  
North Slope natural gas resource

1. **As clean, reliable, reasonably priced energy for Alaskans**
  - Electric and home heating costs
  - Economic development for communities
  - Industrial development opportunities
  
2. **As a commercial product, generating state revenue**
  - Production taxes and royalty gas
  - Future oil and gas exploration and development

# Alaska Gas for Alaskans

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## Alaska has tried for decades

- Some milestones met
- Divergent interests
- Massive scale, costs, risks

*Alaska still has no gasline*

*What we've been doing isn't working*

# Alaska Gas for Alaskans

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**By 2010, frustration with a lack of progress on a big line**

- Trying to make others develop a pipeline for Alaska, on our terms, wasn't delivering the results we wanted

**Fresh approach: Decide what we want, and do it ourselves**

- Instate-energy as primary driver
- Use the state as a catalyst
- Provide opportunities for the private sector partners

## Alaska Gas for Alaskans

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### House Bill 369 of 2010 goals:

1. Build a team under AHFC leadership
2. Consolidate state's gas pipeline work to date
3. Fill in data gaps; decide optimal route
4. Report back to the Legislature with a project plan

*House Bill 369 passed with broad, bipartisan support*

# Alaska Gas for Alaskans

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## AGDC delivered with the July 2011 Project Plan

- A pipeline for Alaskans is possible
- An in-state line could deliver competitively priced gas to major population centers
- Project will require firm, long-term contracts for pipeline capacity in order to support financing
- Legislative action required

## Alaska Gas for Alaskans

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AGDC recommended legislation for the authority to:

- Determine pipeline ownership structure
- Work confidentially with private sector partners
- Operate as a contract carrier
- Decide rates and tariff terms

AGDC further needs the state to:

- Waive property taxes and state land lease fees
- Provide sufficient funding

# Alaska Gas for Alaskans

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## Now, House Bill 4:

- Provides further direction for AGDC
- Includes AGDC recommendations
- Maintains momentum – delays hurt!
  - AGDC estimates \$200 million per year inflation
  - Southcentral gas supply (and costs) increasingly uncertain
  - Fairbanks energy costs and air quality – no end in sight
  - As urban costs increase, rural communities hurt more
  - Continuing expectation for state to offset high cost

# Alaska Gas for Alaskans

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## Sponsor principles for HB 4:

1. Keep politics out of pipeline development
2. Build in maximum flexibility, options for AGDC
3. Support an aggressive, responsible schedule driven by the needs of Alaskans
4. Let the markets shape pipeline decisions
5. Provide reasonable backstops for Alaska gas consumers
6. Include ways the state can further keep costs down and enhance a pipeline project's success
7. Respect state policy of encouraging future development of Alaska oil and gas basins

# Alaska Gas for Alaskans

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## House Bill 4 strikes a balance

- Equips AGDC for success in developing a gasline
  - AGDC has significant authority and autonomy – and a clear mission
  - AGDC poised to shift gears if another project develops that delivers gas to Alaskans at the lowest possible costs, without delay
- Institutional ‘checks and balances’ – a pipeline, yes, but not at any cost
  - May not go forward unless there is a commercial project that has sufficient contractual support for financing without additional state financial participation
  - Must deliver gas to Alaskans at a competitive price

## Alaska Gas for Alaskans

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Under House Bill 4, AGDC will:

1. Continue work in the in-state line
  - Requires sufficient shipper support to finance a pipeline
  - Target date: Gas flowing in 2019
2. Work with TransCanada and the three producers to see if the two projects can merge into one
  - Uncertain; no development commitment to date by TC and producers
3. Be prepared for participation in other frameworks
  - For example, a spur line off an AGIA line
4. Once the main instate line is complete, evaluate other pipeline opportunities
  - Lines off the main line connecting communities, industrial developments
  - Other stand-alone Alaska gas pipelines

# Alaska Gas for Alaskans

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## House Bill 4:

1. Provides the framework for AGDC to serve as Alaska's natural gas pipeline corporation
2. Maximizes state's efforts in gas pipeline development
3. Resolves regulatory uncertainties while supporting future development of Alaska resources

## Alaska Gas for Alaskans

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### Establishes AGDC as Alaska's gas pipeline entity

- HB 4 moves AGDC from its present location as a subsidiary of Alaska Housing Finance, to a stand-alone state corporation
- Locates AGDC under Department of Commerce, Community and Economic Development *for administrative purposes only*
  - AGDC will be governed by a 5-member board with expertise in relevant fields, appointed by the governor, confirmed by the legislature
- Provides clear transition language

## Alaska Gas for Alaskans

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### Clearly states AGDC's purpose:

- To advance an instate gas pipeline as described in the July 2011 project plan, with modifications as appropriate, making gas available to Fairbanks, Southcentral, and other communities in the state at the lowest rates possible;
- To develop pipelines serving utility and industrial customers, at commercial reasonable rates;
- To develop pipelines offering commercial rates to shippers and that offer access for shippers producing gas in Alaska

## Alaska Gas for Alaskans

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Provides clear statutory abilities to AGDC to function as a corporation and to accomplish its purpose

AGDC may:

- Enter into ownership and operating partnerships
- Create subsidiaries, including a subsidiary to market gas
- Issue revenue bonds limited to AGDC's own backing to finance a pipeline
- Enter into confidentiality agreements necessary to participate with private sector shippers, partners, financiers
- Keep confidential information like field studies and tariff models that are assets AGDC is developing for the state
- Exercise the state's existing power of eminent domain

## Alaska Gas for Alaskans

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### House Bill 4 also:

- Exempts AGDC and ANGDA from the state procurement code and state personnel act
- Exempts AGDC from the Executive Budget Act
- Applies public official disclosure rules to AGDC board members

## Alaska Gas for Alaskans

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### Maximizes state's efforts in gas pipeline development

- Additional state support for a project in the public's interest will help reduce delays and keep costs as low as possible

### House Bill 4:

- Redefines ANGDA as an AGDC subsidiary
- Adapts ANGDA's purpose to serve as a gas marketer
- Encourages the DNR commissioner to work with an AGDC gas marketing subsidiary to make state royalty gas available for shipment through an AGDC pipeline
- Limits judicial review of state permitting decisions and authorizations to avoid delays

## Alaska Gas for Alaskans

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- Waives state and local property taxes during pipeline construction
- Requires state entities to cooperate and share information with AGDC
  - AGDC requests receive priority (except for AGIA requests)
  - AGDC and state entities can enter into confidentiality agreements if necessary to protect third-party information in the state's possession
- Calls on the state to provide water, sand, gravel, and other non-hydrocarbon natural resources to AGDC
  - AGDC will pay usual prices; cost cannot be included in tariff base and passed on to pipeline shippers
- Directs DNR to waive annual fees on a state right-of-way lease for AGDC

# Alaska Gas for Alaskans

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## Resolves regulatory uncertainties

- Regulatory uncertainties add risk, which adds costs and can deter private sector participation. AGDC needs to know how a pipeline will be regulated before soliciting private sector partners

## House Bill 4:

- Allows natural gas pipelines to operate as contract carriers through changes to the Right-of-Way Leasing Act and through Regulatory Commission of Alaska oversight
- Reinforces state policy that pipelines should be fair; offer reasonable access to new/future shippers; and encourage future development of Alaska's oil and gas resources

# Alaska Gas for Alaskans

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## Why a contract carrier?

- Shippers need to know that the space they are 'reserving' by signing long-term commitments will be available
- Those firm, uninterruptible contracts are the way gas pipelines are financed
- The future income promised through those contracts secures revenue bonds
- House Bill 4 establishes contract carrier status while providing for expansions in the future

# Alaska Gas for Alaskans

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## Right-of-Way Leasing Act

- Includes a set of covenants a lessee must agree to
- HB 4 modifies covenants reflecting common carrier principles, to allow for contract carriage
  - ‘Nuts and bolts’ of covenants remain the same
  - Contract carrier covenants still require a pipeline, per contractual terms, to provide connections with other pipelines and facilities
  - Contract carrier covenants still require expansions on commercially reasonable terms
  - Contract carrier covenants still require a pipeline to ship without discrimination

## Alaska Gas for Alaskans

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### Regulatory Commission of Alaska oversight for a contract carrier gas pipeline

- Mandates a baseline package of rates and terms (recourse tariff) available to all interested parties, and allows negotiations of rates and terms off the baseline
- Requires RCA to decide if precedent agreements are 'just and reasonable'
- Premise is contracts entered into willingly by two parties are just and reasonable - with checks and balances
- Provides certainty and protection for public utilities

## Alaska Gas for Alaskans

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- Allows confidential filing of precedent agreements; requires public filing of final contracts
- Requires a CPCN (building permit) from the RCA, with special terms for an AGDC pipeline reflecting the state-sanctioned mission
- Directs RCA to intervene when a dispute threatens the public health and safety; requires contracts to include dispute resolution terms
- Sets standards for fair, accessible open seasons; requires open seasons for new capacity/expansions
- Sets timelines that should not interfere with commercial processes

Thank you

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House Bill 4:  
In-state Gasline Development Corp.

Sponsors:  
Rep. Mike Hawker & Speaker Mike Chenault

Contact: Rena Delbridge, Staff to Rep. Hawker  
(907) 465-4949 – [Rena.Delbridge@akleg.gov](mailto:Rena.Delbridge@akleg.gov)



## Representative Mike Hawker Alaska State Legislature

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### **Sectional Analysis: Sponsor Substitute for House Bill 4, Version O**

“An Act relating to the Alaska Gasline Development Corporation; making the Alaska Gasline Development Corporation, a subsidiary of the Alaska Housing Finance Corporation, an independent public corporation of the state; establishing and relating to the in-state natural gas pipeline fund; making certain information provided to or by the Alaska Gasline Development Corporation and its subsidiaries exempt from inspection as a public record; relating to the Joint In-State Gasline Development Team; relating to the Alaska Housing Finance Corporation; relating to the price of the state’s royalty gas for certain contracts; relating to judicial review of a right-of-way lease or an action or decision related to the development or construction of an oil or gas pipeline on state land; relating to the lease of a right-of-way for a gas pipeline transportation corridor, including a corridor for a natural gas pipeline that is a contract carrier; relating to the cost of natural resources, permits, and leases provided to the Alaska Gasline Development Corporation; relating to procurement by the Alaska Gasline Development Corporation; relating to the review by the Regulatory Commission of Alaska of natural gas transportation contracts; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline developed by the Alaska Gasline Development Corporation; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline that provides transportation by way of contract carriage; relating to the Alaska Natural Gas Development Authority; relating to the procurement of certain services by the Alaska Natural Gas Development Authority; exempting property of a project developed by the Alaska Gasline Development Corporation from property taxes before the commencement of commercial operations; and providing for an effective date.”

#### **Section 1 - Findings and Intent**

- Finds that an Alaska Gasline Development Corporation (AGDC) natural gas pipeline is in the best interests of the state, and required for public convenience and necessity.  
*The Regulatory Commission of Alaska (RCA) uses these standards in issuing a building permit to a project. Through this section, the legislature is making these findings on behalf of the RCA.*
- Finds it is the state’s policy to make the state’s royalty gas available to be shipped in an AGDC pipeline.  
*Royalty gas may be an important volume for an in-state gas pipeline. This finding does not address ownership of state royalty gas, only transportation.*
- Finds that locating AGDC under the Department of Commerce, Community and Economic Development, for administrative purposes only, will advance AGDC’s mission.  
*Establishing AGDC as an independent state entity with a clear purpose and the statutory authority to meet its mission will make AGDC more likely to succeed.*

- Provides intent that AGDC's transfer from an Alaska Housing Finance Corporation (AHFC) subsidiary to a stand-alone corporation will be treated as a repositioning and not as creating a new entity.  
*This intent should prevent the need to dissolve AGDC and re-create it as a new corporation; as a transfer, AGDC will need to amend bylaws and regulations.*
- Provides intent that AGDC will procure services, labor, products and resources from Alaska businesses, including Alaska Native corporations and municipal organizations, when prices are competitive.
- Provides intent that AGDC will, as possible, hire Alaskans; establish hiring facilities in Alaska; and use Department of Labor and Workforce Development systems.

**Section 2 (conforming)** deletes from AS 18.56.086, *Alaska Housing Finance Corp, Creation of subsidiaries*, the ability to create a pipeline subsidiary.

**Section 3 (new corporation)** adds a new chapter, Alaska Gasline Development Corporation, to AS 31, *Oil and Gas*. This section is the statutory authority for the stand-alone corporation.

*(As AHFC's statutes were the basis for developing AGDC's statutes, similarities are noted for each section.)*

**Sec. 31.25.010, Structure**, establishes AGDC as an independent public corporation of the state, located for administrative purposes in DCCED, and makes provisions for asset distribution upon termination.

*(Termination language is from AHFC 18.56.020)*

**Sec. 31.25.020, Governing body**, establishes a five-member board of directors, serving staggered, seven-year terms. Members are appointed by the governor and must be confirmed by the legislature. In making appointments, the governor shall consider expertise in natural gas pipeline construction, operation and marketing; finance; and large project management. Members may be removed only for cause; vacancies will be filled in the same way as original appointments are made. Board members receive \$400 compensation per day spent on official board business, in addition to actual expenses.

*(Similar to AHFC 18.56.030, except AHFC requires a regional quota of board members, and permits board members to designate a deputy. AHFC's board includes commissioners; AGDC's board does not)*

*A small, highly qualified, specialized board with long terms is expected to be flexible and responsive, and able to see through an important project. Compensation is commensurate with that paid to Alaska Railroad and Permanent Fund Corporation board members; AHFC board members are compensated at a substantially lower level, \$100.*

**Sec. 31.25.030, Meetings of board**, directs the board to annually elect officers; defines a quorum as a majority of members; and requires meetings at least once every three months. Electronic meetings are allowed. For a meeting in which the board authorizes a bond issuance, at least 24 hours public notice is required. At least three board members are required for major votes, including bond sales; sale or disposition of assets; determining a pipeline ownership structure; and participation in a pipeline project.

*(Similar to AHFC 18.56.040, with the addition of the majority for major votes threshold)*

*A quorum for a meeting requires three members. To avoid a situation in which a minority of the board is able to carry a major, substantive vote, this section requires a majority of members for certain votes.*

**Sec 31.25.035, Minutes of meetings**, requires the board to keep minutes.

*(From AHFC 18.56.045)*

**Sec. 31.25.040, Administration of affairs**, allows the board to manage the assets and business of the corporation; the board may adopt, amend, and repeal bylaws and regulations; and the board will delegate corporation administration to the executive director. Requires the board to adopt formal procedures for procurement processes.

*(Similar to AHFC 18.56.050, with the addition of requiring formal procedures for procurement)*

*AGDC is exempt from the State Procurement Code (HB 4, Section 3, 31.25.140). To ensure fairness in procurement, the board must adopt clear procedures.*

**Sec. 31.25.045, Executive director**, requires an executive director who is appointed by and serves at the pleasure of the board. The director may not be a board member.

*(From AHFC 18.56.052)*

**Sec. 31.25.050, Legal counsel**, directs the corporation to retain legal counsel.

*(AHFC 18.56.055 makes the attorney general the legal counsel for AHFC. Under this section, AGDC will retain independent legal counsel instead.)*

**Sec. 31.25.060, Employment of personnel**, allows the board to engage professional and technical consultants, and allows the executive director to hire corporation employees and contract with consultants. The board sets duties and compensation for corporation personnel.

*(Similar to AHFC 18.56.060. Both the board and the corporation have the ability to contract for services. AHFC allows the director to engage professional and technical advisors only with the board's approval. AGDC does not have this requirement as the director may have to move quickly in retaining specialized professional services and as a high number of contracts will be awarded for technical services.)*

**Sec. 31.25.065, Personnel exempt from State Personnel Act**, exempts AGDC from the State Personnel Act.

*(From AHFC 18.56.070)*

**Sec. 31.25.070, Purpose**, directs AGDC to advance an instate natural gas pipeline as described in AGDC's July 2011 project plan, with modifications as necessary, making gas available as soon as practicable to Fairbanks, Southcentral, and other communities where possible; and try to ship and deliver gas at commercially reasonable rates.

**Sec. 31.25.080, Powers and duties**, lists 21 powers of the corporation, including the abilities to determine pipeline ownership and operating structures; plan, finance, construct and operate a pipeline system; lease, rent, acquire and manage property; exercise eminent domain; transfer or dispose of all or part of a pipeline system; operate as a contract carrier; conduct hearings; sue and be sued; adopt bylaws; borrow money; and invest funds. Prohibits development of a pipeline that competes under the terms of the Alaska Gasline Inducement Act (AGIA). Requires publication of open season results.

*This section includes abilities for general corporation operation, such as the ability to make contracts and to adopt an official seal, carried over from AHFC statutes. This section also includes a number of abilities specific to AGDC's purpose. Under this section, AGDC may not develop a project that competes under the terms of AGIA, unless a project under AGIA has been abandoned or the licensee is no longer receiving state inducements. If AGDC received commitments for capacity in an open season, AGDC must publicize the name of each shipper; the amount of capacity allocated; and the length of time of the commitment.*

**Sec. 31.25.090, Confidentiality; interagency cooperation**, allows state agencies to share information with AGDC; requires state agencies to cooperate with AGDC and give priority to AGDC requests, except for requests from the AGIA coordinator; and directs AGDC to avoid duplicating state work on a pipeline. State entities must provide non-hydrocarbon resources like water, sand and gravel to AGDC at usual cost, but those costs may not be recovered in the pipeline tariffs. DNR will grant AGDC a right-of-way lease at no appraisal or rental cost if certain conditions are met; the fee waiver carries with the lease in case of a transfer, which must be approved by the commissioner. AGDC may enter into confidential agreements as necessary, including with other state entities; information covered by a confidentiality agreement is not subject to disclosure under the Public Records Act. AGDC may also keep other information confidential, including the results of field studies; technical information; trade secrets; and commercial negotiations. AGDC may waive confidentiality of some information.

**Sec. 31.25.100, In-state natural gas pipeline fund**, establishes the instate-natural gas pipeline fund within AGDC and directs fund use.

**Sec. 31.25.110, International borrowing**, provides AGDC the authority to access international capital markets to borrow money.

*(From AHFC 18.56.084)*

**Sec. 31.25.120, Creation of subsidiaries; sale of natural gas by a subsidiary**, allows AGDC to create subsidiary corporations to meet AGDC's mission, including to acquire and ship the state's royalty gas. Allows a subsidiary, together with the DNR commissioner, to pledge state royalty gas to honor delivery commitments. The DNR commissioner will decide how much gas to pledge, and at what price.

*(Similar to AHFC 18.56.086, but tailored to AGDC)*

**Sec. 31.25.130, Administrative procedure; regulations**, exempts AGDC from the Administrative Procedure Act, except for the Open Meetings Act portion. Provides board direction related to bylaws, regulations, and public notice of meetings.

*(From AHFC 18.56.088, but tailored by removing parts that relate to extending loans (for housing))*

**Sec. 31.25.140, Exemption from the State Procurement Code and the Executive Budget Act; corporation finances**, exempts AGDC and its subsidiaries from the State Procurement Code and the Executive Budget Act. Requires an annual independent audit.

*(AHFC has a partial exemption in 18.56.089. AGDC's exemption is broader. Both require annual asset reviews and independent audits.)*

**Sec. 31.25.150, Federal taxation of interest on bonds and bond anticipation notes**, provides that, if interest on bonds or notes becomes taxable under federal income tax laws, the legislature may pay off the principal and interest.

*(From AHFC 18.56.103. This section creates a moral, but not legal, obligation of the state. It serves as reassurance for lenders who count on the tax-exempt quality of revenue bonds.)*

**Sec. 31.25.160, Bonds and notes**, allows the corporation to issue bonds and notes in one or more series, limited to the corporation's own backing.

*(Similar to AHFC 18.56.110. With this section, AGDC can issue bonds to meet its corporate purpose of financing a gas pipeline, supported by anticipated revenue from the pipeline, as evidenced by long-term transportation contracts. Much of AHFC's bonding authority directly relates to housing and other specific programs, and as such was not included. Also, AHFC is limited to the amount of bonds issued in a calendar year without legislative authorization. AGDC does not have this limitation, as exact project costs cannot be determined with certainty at this time, and may fluctuate if delays occur in project progress.)*

**Sec. 31.25.170, Independent financial advisor**, allows the corporation to retain a financial advisor in negotiating the private sale of bonds or notes to an underwriter.

*(From AHFC 18.56.115)*

**Sec. 31.25.180, Validity of pledge**, declares as valid and binding any pledge of assets or revenue of the corporation to payment or interest.

*(From AHFC 18.56.120. This is a standard statement that lenders need to see. It assures lenders that AGDC has the statutory authority to pledge revenue; in turn, that protects AGDC contracts under the U.S. Constitution contracts clause so that future state legislative action cannot violate protected contracts.)*

**Sec. 31.25.190, Capital reserve funds**, allows AGDC to establish capital reserve funds to secure its obligations, and directs fund management. Requires annual reports to the governor and legislature.

*(From AHFC 18.56.125 with structural modifications per legal counsel. This section includes a moral, but not legal, obligation of the state to replenish, if necessary, a reserve fund created to cover interest payments due on bonds.)*

**Sec. 31.25.200, Remedies**, permits enforcement of rights by those holding AGDC obligations.

*(From AHFC 18.56.130 with structural changes by legal counsel. Lenders need to see this standard statement.)*

**Sec. 31.25.210, Negotiable instruments**, declares that obligations are promises to pay an amount of money.

*(From AHFC 18.56.135. This is a standard statement that lenders need to see.)*

**Sec. 31.25.220, Obligations eligible for investment**, AGDC obligations as legitimate investments.

*(From AHFC 18.56.150. This allows investment in AGDC bonds by the state and by other private institutions in the state.)*

**Sec. 31.25.230, Refunding obligations**, permits the corporation to refund obligations and provides direction for managing refunds.

*(From AHFC 18.56.160. This is a standard statement that lenders need to see. Bond refinancing is common. As refinancing occurs, this section allows AGDC to refund prior obligations.)*

**Sec. 31.25.240, Credit of state not pledged**, prohibits AGDC from pledging the state's credit. AGDC obligations are limited to AGDC's backing.

*(From AHFC 18.56.170)*

**Sec. 31.25.250, Limitation on personal liability**, protects corporation officers from personal liability.

*(From AHFC 18.56.180)*

**Sec. 31.25.260, Tax exemption**, exempts AGDC from paying state and local taxes on corporation property or property income.

*(From AHFC 18.56.190. This exemption applies to the corporation. The state and local property tax exemption in HB 4, section 32, applies to a project owned or financed by, in whole or in part, AGDC.)*

**Sec. 31.25.270, Annual report**, requires an annual report to the governor, legislature and public, including an independent audited financial statement.

*(From AHFC 18.56.200; omits an additional reporting requirement for mortgage loans investments.)*

**Sec. 31.25.390, Definitions.**

**Section 4 (procurement code exemption)**, adds new paragraphs to AS 36.30.850(b), *Public Contracts, State Procurement Code, Application of this chapter*, exempting AGDC, its subsidiaries, and ANGDA contracts from the state procurement code. The exemption is reinforced in AGDC's statutes (HB 4 Section 3) and in ANGDA's statutes (HB 4 Section 22).

**Section 5 (RCA accounting, conforming)** amends AS 37.05.146(c)(22), *Public Finance, Fiscal Procedures Act, Definition of program receipts and non-general fund program receipts*.

**Section 6 (gas or electric utilities, conforming)** amends AS 38.05.180 (bb)(1), *Public Land, Alaska Land Act, Oil and gas and gas only leasing*, to conform with Section 10 creating covenants specific to a contract carrier pipeline.

**Section 7 (definitions)** repeals and reenacts AS 38.34.099, *Public Land, In-State Natural Gas Pipeline, Definitions*, to refer to the definitions in the new 31.25 (HB 4, Section 3).

*This relocates definitions relevant to AGDC from the In-State Natural Gas Pipeline statute –created by HB 369 in 2010 – to the AGDC corporate statute in Section 3. As portions of the In-State Natural Gas Pipeline statute remains, this section refers to the new location for definitions.*

**Section 8 (right-of-way leases, conforming)** amends AS 38.35.100(d), *Public Land, Right-of-Way Leasing Act, Decision on application*, to conform to Section 11, right-of-way leasing for a contract carrier.

**Section 9 (right-of-way leases, conforming)** amends AS 38.35.120(a), *Public Land, Right-of-Way Leasing Act, Covenants required to be included in lease*, to conform to Section 11, right-of-way leasing for a contract carrier.

**Section 10 (right-of-way leases, conforming)** amends AS 38.35.120(b), *Public Land, Right-of-Way Leasing Act, Covenants required to be included in lease*, to conform to Section 11, right-of-way leasing for a contract carrier.

**Section 11 (contract carrier covenants)** adds a new section to AS 38.35, *Public Land, Right-of-Way Leasing Act*, to establish covenants for a contract carrier gas pipeline. This section does not alter the existing covenants in the Right-of-Way Leasing Act. A carrier must agree to abide by the covenants in order to receive a state right-of-way lease. Of 14 existing covenants for common carriers, 11 still apply to a contract carrier. The others are adapted to reflect contract carrier principles, while retaining the policy that pipelines on state rights-of-way should encourage broader development of oil and gas resources by expanding when commercial opportunities exist and shipping without unreasonable discrimination.

**Section 12 (right-of-way leases, costs)** adds a new subsection to AS 38.35.140, *Public Land, Right-of-Way Leasing Act, Payment of rental and costs*, requiring a right-of-way lease to be issued at no cost to AGDC.

*This reinforces in the Right-of-Way Leasing Act the provision in HB4, Section 3 (31.25.090, Interagency cooperation; confidentiality) that leases should be made at no rental fee/cost to AGDC.*

**Section 13 (judicial review)** adds new subsections to AS 38.35.200, *Public Land, Right-of-Way Leasing Act, Judicial review of decisions of commissioners on application*, limiting judicial review of state lease, permit or other authorization decisions. Claims challenging this provision must be brought within 60 days of the effective date of HB 4; future claims alleging a constitutional violation must be brought within 60 days of the action and must be filed in superior court. The court may not grant injunctive relief.

*One of the significant risks in megaproject development is costly delays triggered by lawsuits and/or injunctive relief while a lawsuit is being decided. There is precedence for limiting injunctive relief on projects the state determines are in the best interests of the public (TAPS and the federal Alaska Natural Gas Pipeline Act of 2004).*

**Section 14 (personnel act exemption)** exempts AGDC and subsidiaries from AS 39.25.110, *Public Officers and Employees, State Personnel Act, Exempt service*. This exemption is reinforced in AGDC's corporate statutes.

**Section 15 (public officials disclosures)** makes the board of directors of AGDC and subsidiaries subject to public official financial disclosure rules in AS 39.50.200, *Public Officers and Employees, State Personnel Act, Definitions*.

**Section 16 (confidentiality)** amends AS 40.25.120(a), *Public Records and Recorders, Public Record Disclosures, Public records; exemptions; certified copies*, to exempt eligible information and information covered by an AGDC confidentiality agreement from disclosure under the state Public Records Act. This relates to HB 4, Section 3, allowing AGDC to keep certain information confidential.

**Section 17 (ANGDA as gas marketer)** amends AS 41.41.010(a), *Public Resources, Alaska Natural Gas Development Authority, Establishment of the authority*, enabling ANGDA to act as a gas marketer instead of a gas transporter, and eliminating proscriptive language regarding gas supply and gas markets.

*This section retains ANGDA's purpose of acquiring natural gas produced in the state and delivering it to market, in sufficient quantity to help assure the long-term viability of a pipeline, but removes other purposes including designing, constructing, operating and maintaining a pipeline and other facilities.*

**Section 18 (ANGDA as AGDC subsidiary)** amends AS 41.41.010(b), *Public Resources, Alaska Natural Gas Development Authority, Establishment of the authority*, to make ANGDA a subsidiary of AGDC. ANGDA is currently situated in the Department of Revenue.

**Section 19 (ANGDA as gas marketer)** amends AS 41.41.010(d), *Public Resources, Alaska Natural Gas Development Authority, Establishment of the authority*, to clarify ANGDA's role as a gas marketer.

**Section 20 (ANGDA board)** repeals and reenacts AS 41.41.020, *Public Resources, Alaska Natural Gas Development Authority, Authority governing body*, to state that ANGDA will be governed by the AGDC board of directors.

**Section 21 (ANGDA board compensation)** amends AS 41.41.060, *Public Resources, Alaska Natural Gas Development Authority, Compensation of board members; per diem and travel expenses*, to reflect the new 31.25.020, entitling AGDC's board to receive compensation when serving as ANGDA's board.

*AGDC's board will receive \$400 per day compensation when acting as ANGDA's board; this is the same amount board members receive while acting as AGDC's board.*

**Section 22 (ANGDA procurement)** amends AS 41.41.070(d), *Public Resources, Alaska Natural Gas Development Authority, Authority staff*, to include legal and bond counsel in the services for which ANGDA may contract, and exempts contracted services from the state procurement code.

*With the repeal (HB 4, Section 35) of the provision making the attorney general the legal counsel for ANGDA, this section enables ANGDA to contract for legal and bond services.*

**Section 23 (ANGDA disclosure)** amends AS 41.41.090(b), *Public Resources, Alaska Natural Gas Development Authority, Conflicts of interest*, to remove involvement with a "project" from the circumstances requiring disclosure. ANGDA board members must disclose conflicts of interest; as ANGDA will no longer be developing projects, an interest in a project in which ANGDA has invested assets does not need to be disclosed.

**Section 24 (ANGDA confidentiality)** amends AS 41.41.150(a), *Public Resources, Alaska Natural Gas Development Authority, Public access to information*, to expand ANGDA's existing confidential records authority to include information in a confidential agreement between ANGDA and AGDC.

**Section 25 (ANGDA as gas marketer)** amends AS 41.41.200, *Public Resources, Alaska Natural Gas Development Authority, Powers of the authority*. This removes ANGDA's authority to exercise eminent domain, as ANGDA would serve as a marketing arm and not as a pipeline builder.

**Section 26 (ANGDA property)** amends AS 41.41.450, *Public Resources, Alaska Natural Gas Development Authority, Property of the authority*. As HB 4 deletes the definition of "project" from ANGDA's statutes, references to a "project" are changed to mean 'for the purposes of the corporation.' With this change, ANGDA is able to acquire property for the corporation's purpose, but not for a project.

**Section 27 (ANGDA PLAs)** amends AS 41.41.500, *Public Resources, Alaska Natural Gas Development Authority, Contract terms relating to use of Alaska resources*. As HB 4 deletes the definition of "project" from ANGDA's statutes, references to a "project" are changed to mean 'for the purposes of the corporation.' With this change, ANGDA shall have project labor agreements that secure timely completion of a project of the corporation.

**Section 28 (ANGDA definitions)** amends AS 41.41.990, *Public Resources, Alaska Natural Gas Development Authority, Definitions*. The definition of "board" is changed to mean the AGDC board acting as ANGDA's board.

**Section 29 (RCA, conforming)**, amends AS 42.04.080(a), *Public Utilities and Carriers and Energy Programs, Regulatory Commission of Alaska, Decision-making procedures*, to allow the RCA to appoint a panel for hearing matters under the new 42.08.

*The RCA needs the statutory authority to appoint a panel and hear a matter that comes before them under one of two existing regulatory statutes. This adds the new regulatory chapter created in HB 4, 42.08, to that statutory direction, so the RCA will be able to act on matters that come up under the new regulatory chapter.*

**Section 30 (RCA review of public utility contracts)**, amends AS 42.05, *Public Utilities and Carriers and Energy Programs, Alaska Public Utilities Regulatory Act*, by adding a new section related to RCA review of contracts entered into by a public utility with AGDC for transportation or for contracts public utilities sign to purchase gas or store gas transported on an in-state natural gas pipeline regulated under 42.08. Public utility contracts with AGDC may include a covenant for public utilities to collect rates sufficient to meet contractual obligations. Contracts to buy or store gas to be shipped on an in-state natural gas pipeline regulated under 42.08 must be submitted to the RCA before they take effect. The RCA has 180 days to disapprove contracts as presented or, if contracts are found not just or reasonable, to disapprove the contracts. Contracts approved are not subject to further RCA review. The RCA may extend the 180 day review period if a public utility fails to provide supplemental information that is available to the public utility.

*This section provides an interface between regulation of public utilities, and regulation of a contract carrier natural gas pipeline. If the RCA approves a contract involving a utility and the pipeline carrier, the utility has assurances that it will be able to recover its costs in rates charged to utility customers.*

**Section 31 (RCA conforming)** amends AS 42.05.711, *Public Utilities and Carriers and Energy Programs, Alaska Public Utilities Regulatory Act, Exemptions*, to exempt a pipeline subject to regulation under 42.08 from regulation under 42.05.

**Section 32 (RCA conforming)** amends AS 42.06, *Public Utilities and Carriers and Energy Programs, Pipeline Act*, by adding a new section to article 7 exempting a pipeline subject to regulation under 42.08 from regulation under 42.06.

**Section 33 (RCA natural gas pipeline contract carrier)** adds a new chapter to AS 42, *Public Utilities and Carriers and Energy Programs*, to create Chapter 08, In-state Pipeline Contract Carrier. Chapter 08 applies to an in-state natural gas pipeline providing contract carriage, and exempts an in-state natural gas pipeline subject exclusively to federal jurisdiction.

*House Bill 4 provides for a new category of gas pipeline carriage, contract carriage, and includes a new regulatory framework for a contract carrier gas pipeline. The new 42.08 is a shift from traditional cost-based regulation, and directs the Regulatory Commission of Alaska to instead evaluate whether negotiated contracts are fair and reasonable. Checks and balances are included to set basic rules ensuring fair and open processes; to promote exploration and development of Alaska's gas basins; to protect the public welfare; and to require heightened scrutiny for contracts entered into by affiliated parties.*

**Sec. 42.08.010, Application of chapter; exemption**, applies this chapter to an in-state natural gas pipeline providing service as a contract carrier. Exempts an in-state natural gas pipeline subject exclusively to federal jurisdiction.

**Sec. 42.08.020, Qualification of the Alaska Gasline Development Corporation**; findings, determines that AGDC is financially and managerially fit, willing and able to provide service under 42.08. States that an AGDC pipeline is required by public convenience and necessity. Directs the RCA to determine whether any entity applying under 42.08 is technically fit, willing and able.

*The findings made on behalf of the RCA in this section are findings that the RCA usually needs to make in issuing a pipeline building permit – a Certificate of Public Convenience and Necessity. The advance findings are not valid for an applicant other than AGDC. For AGDC and any applicant, the RCA will need to determine whether the entity is technically able to build the project and provide the service proposed.*

**Sec. 42.08.220, General powers and duties**, provides enabling direction for the RCA under 42.08. Requires permits for construction, interconnections, expansions and abandonment. Enables the RCA to intervene in disputes that were not accounted for in contractual dispute resolution mechanisms, and that threaten the public safety and welfare. Prohibits the RCA from requiring rates or tariff regulations, except as provided in the chapter, and from conducting further review of contracts approved under 42.08.

**Sec. 42.08.230, Commission decision-making procedures**, directs the RCA to appoint a panel to consider and decide matters under 42.08, and to expeditiously adjudicate matters.

**Sec. 42.08.240, Publication of reports, orders, decisions and regulations**, is the standard RCA direction for publishing reports, orders, decisions and regulations.

**Sec. 42.08.250, Application of Administrative Procedure Act**, is the standard RCA exemption from Administrative Procedure Act adjudication procedures. Instead, the RCA's adjudication procedures would apply. The rest of the Administrative Procedures Act still applies to regulations adopted by the RCA.

**Sec. 42.08.260, Annual report**, requires the RCA to include in its annual report activities related to 42.08.

**Sec. 42.08.300, Open seasons**, sets rules a carrier must follow when holding an open season. Provides parameters for holding an open season to ensure fairness and openness for all interested potential shippers, including advance notice. Requires a carrier to hold an open season for pipeline expansion when the carrier has received requests for firm service from potential shippers that would enable a commercially reasonable expansion. Provides that expansions may not violate the terms of AGIA. Allows a carrier to make pre-subscription agreements before an open season begins. Requires a carrier to award firm transportation service without undue discrimination or preference.

**Sec. 42.08.310, Transportation service**, provides that firm service can only be made available through presubscription agreements or open seasons. Requires a carrier to offer a recourse tariff with rates determined on a cost-of-service basis. Allows that negotiated firm transportation rates may be different from recourse rates. Requires a carrier to provide interruptible service in capacity not used in firm service.

**Sec. 42.08.320, Review of certain contracts by the commission**, requires a carrier to submit all precedent agreements to the RCA; precedent agreements with other than a public utility may be kept under seal. The RCA has 180 days to approve or disapprove precedent agreements as just and reasonable. Sets the standard for determining if a contract is made at arm's length and allows additional RCA scrutiny of contracts made between affiliated parties that are not substantially similar to transactions made between unaffiliated parties. Approved contracts are not subject to further review.

**Sec. 42.08.330, Contract carriage certificate**, requires a certificate of public convenience and necessity (CPCN) for a carrier to construct a pipeline and to transport gas. The RCA has 180 days to issue a CPCN once application is made, providing that the applicant is found fit, willing and able to perform the services proposed. The RCA may attach conditions to and amend, suspend or revoke a CPCN. Operating authority may not be transferred and service may not be abandoned without RCA approval.

**Sec. 42.08.340, Filing requirements; public inspection**, requires an instate natural gas pipeline carrier to file all recourse tariffs, rules, regulations, terms and conditions pertaining to service, and all contracts with shippers. Requires changes in tariff rates/rules and service conditions to be filed with the RCA.

**Sec. 42.08.350, Uniform system of accounts**, requires a carrier regulated under 42.08 to maintain records and accounts in accordance with the uniform system of accounts.

**Sec. 42.08.360, Expansion; dispute resolution**, enables contracts to provide for expansion, unless an expansion would violate the terms of the Alaska Gasline Inducement Act. Requires contracts to include procedures for resolving disputes.

**Sec. 42.08.370, Regulatory cost charge**, implements the standard RCA assessment of a user fee on regulated entities; includes a cap and directs administration of the user fee.

**Sec. 42.08.380, Effect of chapter on taxes and royalties**, declares that nothing in 42.08 will change the calculation of production taxes or of royalties due the state.

**Sec. 42.08.400, Public records**, requires RCA records be available to the public, except as provided by law. Precedent agreements will be kept confidential. Firm transportation and other contracts will be public, except for information that the carrier and the RCA agree could cause competitive harm.

**Sec. 42.08.410, Investigations**, allows the RCA to investigate matters in 42.08, and maintains the role of the Department of Law's Regulatory Affairs and Public Advocacy section.

**Sec. 42.08.510, Designation of service agents**, requires an instate natural gas pipeline carrier to file a named, permanent resident as its agent (standard RCA provision).

**Sec. 42.08.520, Effect of regulations**, states that regulations adopted by the RCA under 42.08 have the effect of law (standard RCA provision).

**Sec. 42.08.530, Judicial review and enforcement**, makes RCA final orders subject to standard RCA judicial review, except in the circumstances set forth in HB 4, Section 13, addressing the development, construction and initial operation of a natural gas pipeline by AGDC.

**Sec. 42.08.540, Joinder of actions**, allows appeals to be joined under applicable court rules (standard RCA provision).

**Sec. 42.08.900, Definitions**, defines terms standard to the RCA (commission, commissioner, record) and includes HB 4 terms (instate natural gas pipeline, instate natural gas pipeline carrier).

**Section 34 (property tax exemption)** adds a new subsection to AS 43.56.020, *Revenue and Taxation, Oil and Gas Exploration, Production and Pipeline Transportation Property Tax, Exemptions*, exempting an AGDC-owned or financed project from state and local property taxes during construction.

*This is one way the state can help an AGDC project succeed. Waiving property taxes for a period of time will help keep construction costs down during a highly risky time in pipeline development. Cost savings during construction would be reflected in the tariffs paid for gas shipped on an AGDC line.*

**Section 35 (repealer)** repeals 11 statutes.

- Repeals AS 36.30.850(b)(45) *Public Contracts, State Procurement Code, Application of this chapter*, a prior exemption that applied to an AHFC pipeline.
- Repeals AS 38.34.030, *Public Land, In-State Natural Gas Pipeline, Joint In-State Gasline Development Team*; 38.34.040, *Duties of the Development Team*; 38.34.050, *Cooperation and access to information*; and 38.34.060, *Conflicts of interest*, all of which were part of HB 369 in 2010 and relate to the Joint In-state Gasline Development Team.
- Repeals AS 41.41.030, *Public Resources, Alaska Natural Gas Development Authority, Term of office*; 41.41.040, *Removal and vacancies*; 41.41.050, *Quorum and voting*; 41.41.080, *Legal counsel*; 41.41.100, *Budget*; and 41.41.990(4), *Definitions*, all related to the transition of ANGDA to a marketing role and to an AGDC subsidiary.

**Section 36 (repealer)** repeals Section 1 of 2002 Ballot Measure No. 3, the findings of which are no longer necessary with ANGDA's revised authority.

**Section 37 (transition and intent)** expresses the legislative intent that the existing state right-of-way lease between AGDC and DNR is amended to reflect the contract carrier covenants in HB 4 (the Alaska Constitution bars the Legislature from passing laws that apply retroactively to contracts in place). Also expresses intent for a smooth transition for AGDC from its status as a subsidiary of AHFC, to an independent corporation.

Specifically, this section includes:

- The intent is that this repositioning does not interfere with, delay or disrupt AGDC's work.
- The intent that the governor should appoint the new AGDC board within 90 days of the effective date.
- The AHFC board will remain in place until a new board is appointed; and will cooperate with the new board in a smooth transition.
- The intent is that the transition is a change in placement only, and will not require dissolving AGDC and creating a new corporation.
- The intent is that AGDC, including employees and directors, continue in-place while the boards are transitioning. This is not explicitly stated but rather is implied.

**Section 38** is revisor's instructions

**Section 39** sets an immediate effective date.

# Fiscal Note

State of Alaska  
2013 Legislative Session

Bill Version: HB 4 (C)  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB004-REV-AHFC-AGDC-02-04-13  
Title: IN-STATE GASLINE DEVELOPMENT CORP  
Sponsor: HAWKER, CHENAULT  
Requester: House Resources

Department: Department of Revenue  
Appropriation: Alaska Housing Finance Corporation  
Allocation: Alaska Gasline Development Corporation  
OMB Component Number: 2986

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
<b>OPERATING EXPENDITURES</b>								
Personal Services		1,212.1						
Travel								
Services		2,422.2						
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>3,634.3</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1061 CIP Rcpts		3,634.3						
<b>Total</b>	<b>0.0</b>	<b>3,634.3</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time		7.0						
Part-time								
Temporary								

<b>Change in Revenues</b>								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 330,000.0

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? /

**Why this fiscal note differs from previous version:**

Initial version of fiscal note. This initial fiscal note incorporates the fiscal impacts of all state agencies affected by its implementation.

Prepared By:	Frank Richards, Manager Pipeline Eng. and Government Affairs	Phone:	(907)330-6352
Division	Alaska Gasline Development Corporation	Date:	02/02/2013 04:30 PM
Approved By:	Dan Fauske, President AGDC	Date:	02/02/13
	Department of Revenue		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2013 LEGISLATIVE SESSION

BILL NO. HB 4

**Analysis**

This omnibus bill allows the Alaska Gasline Development Corporation (AGDC) to continue its statutory mission of delivering natural gas from Alaska's North Slope to Fairbanks and Southcentral Alaska. In its current form, the bill does the following:

- Creates an in-state natural gas pipeline fund;
- Creates a new independent state corporation and moves AGDC as a subsidiary of the Alaska Housing Finance Corporation to the new independent corporation;
- Makes certain information provided to or created by the Alaska Gasline Development Corporation exempt from inspection as a public record;
- Exempts property of a project developed by AGDC from property taxes before commencement of commercial operations;
- Exempts a pipeline owned by AGDC from common-carrier restrictions;
- Limits the review of natural gas transportation contracts by the Regulatory Commission of Alaska;
- Modifies the Alaska Natural Gas Development Authority statutes to allow it to act as a gas marketing entity for AGDC;

This legislation will have a fiscal impact for the following state agencies:

**Department of Natural Resources**

- State Pipeline Coordinators Office
- Office of History and Archaeology
- Division of Geological and Geophysical Surveys
- Division of Mining, Land and Water

**Department of Environmental Conservation**

- Division of Environmental Health - Air Quality
- Division of Environmental Health - Drinking Water
- Division of Environmental Health - Food Safety and Sanitation
- Division of Environmental Health - Solid Waste Management
- Division of Spill Prevention and Response - Contaminated Sites
- Division of Spill Prevention and Response - Industry Preparedness & Pipeline Operations
- Division of Spill Prevention and Response - Prevention and Emergency Response Program
- Division of Water

**Department of Transportation & Public Facilities**

- Statewide Engineering and Design Services

See attachment for budget details for each agency.

Department	FY14	FY14	FY15	FY16	FY17	FY18	FY19
AGDC	3,283.3	3,634.3	4,495.4	4,495.4	4,495.4	4,495.4	4,495.4
ANGDA	775.0		825.0	700.0	400.0	400.0	400.0
DOL	102.3		136.4	136.4	136.4	136.4	136.4
DNR			670.3	2,434.4	2,786.7	2,786.7	408.9
DEC	290.8		410.6	808.0	2,428.1	2,594.6	2,617.1
DOT&PF	711.8		690.8	690.8	690.8	690.8	690.8
<b>Total:</b>	<b>5,163.2</b>	<b>3,634.3</b>	<b>7,228.5</b>	<b>9,265.0</b>	<b>10,937.4</b>	<b>11,103.9</b>	<b>8,748.6</b>

# Fiscal Note Attachment

File Name: HB004-DOR-AHFC-2-1-13  
Title: In State Gasline Development Corp.  
Sponsor: Representative Hawker; Representative Chenault

# Alaska Gasline Development Corporation

## Component 2986

	FY14 Appropriation Requested	Included in Governor's base budget for FY14	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>							
Personal Services	3,283.3	1,212.1	4,495.4	4,495.4	4,495.4	4,495.4	4,495.4
Travel							
Services		2,422.2					
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>3,283.3</b>	<b>3,634.3</b>	<b>4,495.4</b>	<b>4,495.4</b>	<b>4,495.4</b>	<b>4,495.4</b>	<b>4,495.4</b>
<b>Positions</b>	<b>23</b>	<b>7</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>

This bill creates an In-state Natural Gas Pipeline Fund but does not capitalize the fund. Assuming the fund is capitalized, AGDC will begin to utilize the fund during FY2014.

The total project costs for AGDC to project sanction, including prior year appropriations, are \$400 million. Other state agency needs through FY19 (as detailed in this attachment) are an additional \$27 million. AGDC would reimburse agencies for their costs through reimbursable service agreements. Capital expenditures from the In-state Natural Gas Pipeline Fund and additional appropriations are anticipated according to the following schedule (in million \$):

AGDC total project cost to project sanction:	\$400,000.0
*Agencies need through construction (FY14 - FY19):	<u>\$27,000.0</u>
	<b>\$427,000.0</b>
Prior year appropriations:	<u>(\$72,000.0)</u>
Funding needed:	<b>\$355,000.0</b>
FY14 Governor's Capital:	<u>-\$25,000.0</u>
Funds needed to project sanction/construction:	<b>\$330,000.0</b>

\* Includes cost for AGDC, ANGDA, DEC, DNR, DOT/PF and LAW and assumes costs beyond FEL 3 and through FY19.

To continue the project, AGDC will need 23 additional staff to be added during FY 2014 at an average annual fully-loaded cost of approximately \$156,500 per year.

Positions	Position description	Salary only
1	President	\$375,000
2	Vice President	\$285,000
3	Director, Administrative Services	\$120,000
4	Controller	\$95,000
5	Financial Accounting Manager	\$73,000
6	Financial Accountant	\$57,000
7	Financial Accountant	\$57,000
8	Financial Accountant	\$57,000
9	Accounts Payable Manager	\$71,000
10	A/P Clerk	\$43,000
11	A/P Clerk	\$43,000
12	Community Relations Representative	\$49,000
13	Stakeholder Engagement	\$57,000
14	Admin Support	\$43,000
15	Admin Support	\$43,000
16	Procurement Manager	\$73,000
17	Risk Manager	\$73,000
18	Human Resources	\$73,000
19	Payroll Manager	\$71,000
20	IT/IS Manager	\$73,000
21	Desktop Support	\$57,000
22	Desktop Support	\$57,000
23	Network Supervisor	\$57,000

The operating budget costs identified (personal services) will be expended in support of the capital budget items in each of the subsequent fiscal years.

Total AGDC expenditures are budgeted in the following categories:

Project Plan Completion	\$ 30,000,000
Commercial Operations	13,825,000
Pipeline Engineering	93,784,000
Facilities Engineering	182,962,000
Support Activities	79,429,000
<b>Total</b>	<b>\$400,000,000</b>

**Project Plan Completion:** Completion of the project plan required by HB 369 and delivered to the Legislature in July, 2011 including all preliminary engineering and commercial analysis up to that point. This coincides with the stage gate at the end of FEL-1.

**Commercial Operations:** Advance commercial discussions with potential shippers and markets. Develop agreements to allow for the future development of this project. Engage and work with the Prudhoe Bay operations & owners on numerous integration issues.

**Pipeline Engineering, Environmental & Permitting:** Advance pipeline route data collection and design, utilizing the information to refine project cost estimates and plans necessary for serious commercial discussions and project development approvals. Develop engineering work in-line with industry best practices for mega-projects. Advance engineering design to be ready for placing long lead equipment and stock orders. Collect key environmental data necessary for regulatory permits preparation prior to construction.

**Facilities Engineering, Environmental & Permitting:** Advance preliminary and front-end engineering development, utilizing the information to refine project cost estimates and plans necessary for serious commercial discussions and project development approvals. Develop engineering work in-line with industry best practices for mega-projects. Advance engineering design to be ready for placing long lead equipment and stock orders. Collect key environmental data necessary for permits preparation prior to construction.

**AGDC Support Activities:** Home office activities to support the commercial and engineering development of the project including all external affairs, accounting, budget, legal, records management and managerial oversight activities.

# Alaska Natural Gas Development Authority

**Component Number 2708**

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>							
Personal Services	350.0		350.0	350.0	350.0	350.0	350.0
Travel							
Services	425.0		475.0	350.0	50.0	50.0	55.0
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>775.0</b>	<b>0.0</b>	<b>825.0</b>	<b>700.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>
<b>Positions</b>	<b>2</b>		<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>

## Acquisition of Natural Gas

ANGDA will pursue natural gas purchases and finalize any gas sales contracts. ANGDA will continue to evaluate the natural gas reserves purchased to meet aggregated electric utility needs. Staff will include a natural gas marketing manager and a natural gas marketing analyst.

## Alaska Stand Alone Pipeline - Open Season

ANGDA has bid in the Alaska Standalone Pipeline (ASAP) preliminary Expression of Interest and will continue to participate as a potential shipper on behalf of the utilities if requested. Continued interest by the rail belt utilities can be assessed as additional information progresses forward. The role of ANGDA would be one of a gas marketer and would also include the negotiation of gas contracts with entities interested in an aggregated approach to contractual negotiations.

## Royalty Gas

Negotiate with potential shippers to be serviced as part of the ASAP project and possible counterparties to Alaska royalty gas agreements.

# Department of Natural Resources

In the preparation of this fiscal note certain assumptions have been made:

- 1) Participating State agencies will provide separate fiscal notes.
- 2) Schedule assumptions are based on AGDC's currently proposed schedule.
- 3) Construction oversight begins in FY2016 and continues through FY2017 and FY2018. Operational oversight begins in FY2019. The cost estimate for these activities is for DNR only and does not include estimates for other State agencies.
- 4) Assume a two and one half-year construction schedule segregated into four geographic areas.
- 5) Assume SPCO will administer material sales within the right-of-way and the material sites after initial sale.

## STATE PIPELINE COORDINATOR'S OFFICE

### State Pipeline Coordinator's Office

Component Number **1191**

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>					
Personal Services			520.5	1,961.1	2,256.9	2,256.9	329.6
Travel			10.0	200.0	250.0	250.0	25.0
Services			4.0	70.0	76.5	76.5	15.0
Commodities			7.0	20.0	20.0	20.0	7.0
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>541.5</b>	<b>2,251.1</b>	<b>2,603.4</b>	<b>2,603.4</b>	<b>376.6</b>

### POSITIONS

8      8      8

Costs include SPCO expenses to coordinate the participation of DNR divisions in pre-construction permitting and work associated with AGDC's development of plans and processes required by the State Lease, lease compliance and the preparation and issuance of Notices to Proceed (NTP).

Eight new long-term, non-permanent (LTNP) Natural Resource Specialist (NRS) III (range 18) positions will be created in FY2016 and will exist through FY2018. All remaining positions will be partial use of existing SPCO positions, FY2015 through FY2019.

Travel would be for public meetings, public hearings, agency coordination and monitoring of contractors performing field work and compliance oversight. Other, contractual and supply costs include aerial photos, satellite imagery, field supplies, maps, office space, telephones, core service charges and related expenses.

### **STATE PIPELINE COORDINATOR'S OFFICE POSITIONS:**

Listed below, by year, are the new and existing positions in Anchorage needed for pre-construction permitting /plan development and preparation of the NTPs. Existing positions used for the project will be assigned to work on a part time basis. New positions specific to the project will be classified as LTNP and will not extend beyond construction. Another option that will be considered is the use of contractors versus hiring LTNP employees. All contract support would be managed by permanent SPCO employees.

#### **SPCO FY2015**

- One Natural Resource Specialist (NRS) IV (range 21)
- One Natural Resource Manager (NRM) III (range 22)
- Two Natural Resource Specialist (NRS) III (range 18)
- One Information Officer III (PIO) (range 20)
- One Engineer IV (range 27)
- One Deputy State Pipeline Coordinator
- One State Pipeline Coordinator - total 3 months
- Administrative Support

#### **SPCO FY2016**

Pipeline construction oversight begins in FY2016. Because the activity is ramping up in FY2016, the estimated costs are lower than in FY2017 and FY2018.

- Eleven Natural Resource Specialist (NRS) III (range 18) – **eight of the eleven are new, long-term, non-permanent positions**
- One Natural Resource Manager (NRM) III (range 22)
- One Engineer IV (range 27)
- One Technical Engineer I (range 24)
- One Information Officer III (PIO) (range 20)
- One Deputy State Pipeline Coordinator
- One State Pipeline Coordinator - total 6 months
- Administrative Support

#### **SPCO FY2017 and FY2018**

Pipeline construction continues in FY2017 and FY2018:

- Eleven Natural Resource Specialist (NRS) III (range 18) – **eight of the eleven are new, long-term, non-permanent positions created in FY2016**
- One Natural Resource Manager (NRM) III (range 22)
- One Engineer IV (range 27)
- One Technical Engineer I (range 24)
- One Information Officer III (PIO) (range 20)
- One Deputy State Pipeline Coordinator
- One State Pipeline Coordinator - total 6 months
- Administrative Support

**SPCO FY2019 and FY2020**

Operational oversight and lease administration will require:

- Two Natural Resource Specialist (NRS) III (range 18)
- One Natural Resource Manager (NRM) III (range 22)
- One Engineer IV (range 27)
- One Technical Engineer I (range 24)
- One Information Officer III(PIO) (range 20)
- One Deputy State Pipeline Coordinator
- One State Pipeline Coordinator - total 1 month
- Administrative Support

**DIVISION OF MINING, LAND AND WATER**

Component Number 3002

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>					
Personal Services			93.5	***	***	***	***
Travel			2.0				
Services			1.0				
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>96.5</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

Assumptions:

- 1) DNR/DMLW will be required to supervise, review and approve a title report prepared by SPCO regarding State owned lands in the pipeline ROW.
- 2) DNR will not be required to transfer title of any State lands to DOT/PF.
- 3) DNR/DMLW will not be responsible for title or ROW acquisitions from entities other than DNR managed lands including lands owned by private persons, boroughs, the university, mental health trust, ANCSA corporations, native allotments, and the federal government.
- 4) DNR/DMLW will review and approve all land surveys associated with granting an in-state gasline ROW and developing an in-state gasline across State land.

- 5) DNR/DMLW will participate in the ROW planning effort to some degree across State land, the review of the AS 38.35 ROW lease to be prepared by SPCO for issuance to DOT/PF. DMLW will participate in identifying lands within legislatively designated areas over which the ROW will cross and assist the responsible State agencies with efforts to extricate the ROW from the LDAs.
- 6) SPCO will issue AS 38.35 ROW across lands to DOT/PF, and SPCO will be responsible for issuance of the majority of the land use permits and material sales necessary within the ROW, but that DNR/DMLW will be required to issue some land use permits (within and outside the ROW), and material sales (outside the ROW) during the construction phase for gasline construction and maintenance (beyond FY2016).

The costs to DMLW would include expenses during FY2015 for providing assistance during the development team's planning efforts and pre-application meetings as well as costs associated with materials sales and permitting, as necessary, during the construction of the gasline.

DMLW has concluded that costs for FY2016 and beyond are indeterminate as the necessity, number and size of the permits or material sales outside the ROW are not known at this time. This budget does not include any estimated funding needed for DMLW for fiscal years 2016-2020.

#### **DMLW FY2015**

- One Natural Resource Manager (NRM) III (Range 22), 3 months for the supervision, review and approval of a title report prepared by SPCO staff.
- One Land Surveyor (LS) II (Range 22), 2 months for review and approval of all land surveys associated with granting an in-state gasline ROW.
- One Natural Resource Specialist (NRS) III (Range 18), 3 months for participation in the ROW planning effort to some degree across state land, the review of the AS 38.35 ROW lease to be prepared by SPCO for issuance to DOT/PF, DMLW will participate in identifying lands within legislatively designated areas over which the ROW will cross and assist the responsible state agencies with efforts to extricate the ROW from the LDAs.

Travel will be for planning and attending public meetings, as well as survey review and approval.

#### **DMLW FY2016 and beyond**

Indeterminate fiscal impact for FY2016 and beyond as the necessity, number and size of the permits or material sales are not known at this time. DMLW would utilize a Natural Resource Specialist (NRS) II – (Range 16) – at a rate of approximately \$96,250 per year for issuance of land use permits (within and outside the ROW), and material sales (outside the ROW) during the construction phase for gasline construction and maintenance.

**OFFICE OF HISTORY & ARCHAEOLOGY**

Component Number 451

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services			30.3	30.3	30.3	30.3	30.3
Travel			2.0	2.0	2.0	2.0	2.0
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>32.3</b>	<b>32.3</b>	<b>32.3</b>	<b>32.3</b>	<b>32.3</b>

The Office of History and Archaeology anticipates using one archaeologist for review and monitoring of the cultural resource project program. OHA estimates utilizing the position for three months and some travel costs needed for site visits.

- One Archeologist II (range 18), 3 months

**DIVISION OF GEOLOGICAL AND GEOPHYSICAL SURVEYS**

Component Number 1031

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services				66.6	66.6	66.6	
Travel				11.1	11.1	11.1	
Services				68.0	68.0	68.0	
Commodities				5.3	5.3	5.3	
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>151.0</b>	<b>151.0</b>	<b>151.0</b>	<b>0.0</b>

The Division of Geological and Geophysical Surveys (DGGS) cost estimate assumes that the state needs to understand the geohazards to ensure the applicant has identified and considered all geologic hazards along the route.

DGGS will use the following personnel in Fairbanks for management of geohazards project related studies and review of existing information. Travel and services will be for associated site visits, data gathering, and lab analyses.

- One Geologist IV (range 21), 2 months
- One Geologist III (range 19), 4 months
- One student Intern, 6 months

# Department of Environmental Conservation

## Summary of Cost for DEC

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services	244.9	0.0	229.3	689.8	1,959.4	2,115.8	2,086.9
Travel	8.2	0.0	14.2	24.4	109.4	119.4	117.0
Services	22.7	0.0	159.6	71.3	230.3	350.4	351.7
Commodities	15.0	0.0	7.5	22.5	129.0	9.0	61.5
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Benefits	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>290.8</b>	<b>0.0</b>	<b>410.6</b>	<b>808.0</b>	<b>2,428.1</b>	<b>2,594.6</b>	<b>2,617.1</b>

**Positions:** 2 0 3 6 19 20 20

## Division of Environmental Health

### Division of Environmental Health - Air Quality Component Number 2061

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services	40.9		13.5	23.9	12.8	28.9	
Travel	3.2		3.2	2.4	2.4	2.4	
Services	10.5		143.9	1.4	0.8	33.7	
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>54.6</b>	<b>0.0</b>	<b>160.6</b>	<b>27.7</b>	<b>16.0</b>	<b>65.0</b>	<b>0.0</b>

**Positions:** 0 0 0 0 0 0 0

The primary impact of this bill on the Division of Air Quality is the fee authority for permitting for the Alaska Gasline Development Corporation. The bill also exempts air quality permits required under the federal Clean Air Act from certain provisions related to permit appeals. This provision is helpful in preventing conflicts with regards to the Division's federally approved permitting program.

HB 4 would require pre-application assistance, data reviews, modeling, engineering plan review and approval for air quality permits in conjunction with development of the pipeline. The Division assumes four construction applications in FY2015. This includes one Prevention of Significant

Deterioration (PSD) permit and three Minor Source Specific (MSS) permits. Operation permits and compliance reviews would begin in FY2017.

Personal Services:

The Division assumes pre-application assistance will be provided by current staff (Environmental Program Manager III, and Environmental Program Specialist III) in FY2014 and current staff will provide oversight of term contracts in FY2015 through FY2018.

Travel:

Program staff will do a limited amount of traveling to manage this program, such as project site trips.

Services:

Much of the work effort will be completed by term contractors, with oversight by current staff. The majority of contractual work effort would be provided in FY2015.

**Division of Environmental Health - Drinking Water**

<b>Component Number</b>	<b>2066</b>						
	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services					100.5	120.7	120.7
Travel					15.0	15.0	15.0
Services					8.0	9.2	9.2
Commodities					8.0	0.5	0.5
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>131.5</b>	<b>145.4</b>	<b>145.4</b>
<b>Positions:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>

The primary impact of this bill on the Division of Environmental Health, Drinking Water component will be the requirement to perform engineered plan and record drawing submittal reviews, provide construction approvals, followed by operation approvals, for the water systems needed to support the labor camps. These water systems will also require routine compliance monitoring for public health protection.

Personal Services:

The Department will add one position to this component, an Environmental Engineer I, to review engineered plans for water systems and to provide construction approvals and operation approvals for the water systems needed to support the labor camps. This position will be filled for ten months

the first year to allow for classification and recruitment time, and for twelve months each year thereafter.

Travel:

Travel will be required to provide on-site reviews and compliance monitoring of the water systems for public health protection.

Services:

Contractual services include costs for training registrations and small contracts.

Commodities:

One-time costs to set up a new position are included in the first year only. Supplies necessary for training and inspections are included as well in this fiscal note.

**Division of Environmental Health - Food Safety & Sanitation**

<b>Component Number</b>	<b>2343</b>						
	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services					82.3	98.7	98.7
Travel					15.0	15.0	15.0
Services					6.9	7.9	7.9
Commodities					8.0	0.5	0.5
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>112.2</b>	<b>122.1</b>	<b>122.1</b>
<b>Positions:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>

The primary impact of this bill on the Division of Environmental Health, Food Safety & Sanitation will be an increase in the permitting and inspecting of labor camp kitchens and public accommodations.

Personal Services:

Ensuring these camps and facilities are permitted and inspected requires additional staffing. The Department will add one position to this component, an Environmental Health Officer III, to inspect and permit labor camp kitchens and public facilities. This position will be filled for ten months the

first year to allow for classification and recruitment time, and for twelve months each year thereafter.

Travel:

Travel will be required to provide technical assistance, inspect the labor camps and public facilities, and staff training and certification.

Services:

Contractual services include costs for training registrations and small contracts.

Commodities:

One-time costs to set up a new position are included in the first year only. Supplies necessary for training and inspections are included as well in this fiscal note.

**Division of Environmental Health - Solid Waste Management**

**Component Number 2344**

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
	FY14	FY14	FY15	FY16	FY17	FY18	FY19
<b>OPERATING EXPENDITURES</b>							
Personal Services					89.8	107.8	107.8
Travel					15.0	15.0	15.0
Services					7.4	8.5	8.5
Commodities					8.0	0.5	0.5
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>120.2</b>	<b>131.8</b>	<b>131.8</b>
<b>Positions:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>

The primary impact of this bill on the Division of Environmental Health, Solid Waste Management component will be an increase in permitting the solid waste treatment facilities and landfills associated with pipeline construction. These facilities pose a high risk to human health and the environment. They are authorized to operate either by permit or plan approval, which allows the Solid Waste Program to ensure that these facilities meet the design and operational standards in the regulations. After an authorization is issued, the Program further assesses compliance with the regulations by conducting on-site inspections of these facilities.

Personal Services:

The Department will add one position to this component, an Environmental Program Specialist IV, to inspect solid waste treatment facilities and landfills. This position will be filled for ten months in

the first year to allow for classification and recruitment time, and for twelve months each year thereafter.

Travel:

Travel will be required to provide technical assistance and compliance monitoring to the labor camps, as well as training and certification of staff.

Services:

Contractual services include costs for training registrations and small contracts.

Commodities:

One-time costs to set up a new position are included in the first year only. Supplies necessary for training and inspections are included as well in this fiscal note.

**Division of Spill Prevention & Response - Contaminated Sites**

**Component Number 2386**

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>							
Personal Services			11.8	87.7	87.7	87.7	87.7
Travel				6.0	6.0	6.0	6.0
Services			0.7	5.2	5.2	5.2	5.2
Commodities			7.5				
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>20.0</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>
<b>Positions:</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>

The Contaminated Sites component of the Division of Spill Prevention and Response would be required to research sites located within the proposed pipeline right-of-way and participate in the development of the Environmental Impact Statement. During construction of the pipeline, the program would conduct inspections, assessments and possibly cleanup oversight activities associated with contaminated soil and groundwater which may occur as a result of oil and hazardous substance releases at construction camps and other pipeline support infrastructure. This fiscal note assumes that construction of an in-state gasline would begin in FY2017.

Personal Services:

The program needs an Environmental Program Specialist II, range 16, to research sites located within the proposed pipeline right-of-way, prepare input to the Environmental Impact Statements and conduct inspections.

Travel:

Travel will be required to conduct research and inspection activities will be necessary.

Services:

The Department of Law would be consulted as needed.

Commodities:

The Division would incur one time set-up costs for the new position identified.

**Division of Spill Prevention & Response - Industry Preparedness & Pipeline Operations**

**Component Number 1922**

	FY14	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY14 Request	FY15	FY16	FY17	FY18	FY19
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services				278.7	278.7	364.4	364.4
Travel				5.0	6.0	6.0	6.0
Services				16.7	22.7	22.7	22.7
Commodities				15.0		7.5	
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>315.4</b>	<b>307.4</b>	<b>400.6</b>	<b>393.1</b>

**Positions:** 0 0 0 2 2 3 3

The Industry Preparedness and Pipeline Operations component would be required to conduct contingency plan reviews, inspections, spill exercises and plan modifications/renewals as warranted. This fiscal note assumes that construction of an in-state gasline would begin in FY2017.

Personal Services:

The program needs one Technical Engineer/Architect II, range 25, and an Environmental Engineer II, range 23 in FY2016 to review designs, contingency plans, exercises and plan modifications for the gas pipeline. An Environmental Program Specialist III, range 18, will be needed in FY2018 to inspect and issue renewals as warranted.

Travel:

Travel to conduct inspections, permitting, and preparedness activities will be necessary.

Services:

The Department of Law would be consulted as needed.

Commodities:

The Division would incur one time set-up costs for each new position identified above.

**Division of Spill Prevention & Response - Prevention & Emergency Response Program**

**Component Number 2064**

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
<b>OPERATING EXPENDITURES</b>								
Personal Services				95.5	869.4	869.4	869.4	
Travel			6.0	6.0	30.0	40.0	40.0	
Services			2.8	35.8	133.0	216.9	251.9	
Commodities				7.5	90.0		60.0	
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>8.8</b>	<b>144.8</b>	<b>1,122.4</b>	<b>1,126.3</b>	<b>1,221.3</b>	
<b>Positions:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>9</b>	<b>9</b>	<b>9</b>	

The Preparedness and Emergency Response Program would be required to increase inspection activities for pipeline camps, preparedness planning as well as response activities associated with the pipeline. This fiscal note assumes that construction of an in-state gasline would begin in FY2017.

Personal Services:

The program needs one Environmental Program Specialist III, range 18, beginning in FY2016 to review and comment on permit activities for the pipeline camps. Eight Environmental Program Specialist III, range 18 positions (four stationed in Fairbanks and four stationed in Anchorage) will be needed in FY2017 for preparedness planning and to address response activities associated with pipeline camps during the construction and operational phases along the right-of-way.

Travel:

Travel to conduct inspections, permitting, and preparedness activities will be necessary.

Services:

The program assumes one Incident Management Team size response annually, annual training, and additional leased space for eight new positions in field camps or field offices in nearby communities. The Department of Law would be consulted as needed.

Commodities:

The Division would incur one time set-up costs for the new positions identified above as well as personal protection equipment for Arctic weather to be used during inspections. Additionally, the program will require the purchase of four vehicles in FY2017, two staged in Anchorage and two staged in Fairbanks to conduct inspections of the pipeline, camps and for use in emergency

responses. Wear and tear on these vehicles is expected to be high with an accelerated replacement schedule, therefore in FY2019; the program will purchase two replacement vehicles.

**Division of Water - Water Quality**

<b>Component Number</b>		<b>2062</b>					
	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services	204.0		204.0	204.0	438.2	438.2	438.2
Travel	5.0		5.0	5.0	20.0	20.0	20.0
Services	12.2		12.2	12.2	46.3	46.3	46.3
Commodities	15.0				15.0		
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>236.2</b>	<b>0.0</b>	<b>221.2</b>	<b>221.2</b>	<b>519.5</b>	<b>504.5</b>	<b>504.5</b>
<b>Positions:</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>4</b>

HB 4 would require approval for wastewater treatment systems constructed in conjunction with the development of the pipeline. The Department would be responsible for permitting multiple wastewater discharges from sinks and showers, drinking water treatment plants, domestic treatment plants, dewatering activities and stormwater. The Division will start project planning in 2014 and require two permitting positions. Construction will start in 2017 and require one engineering and one compliance position. Plan reviews and compliance inspections would occur during construction, with periodic inspections post construction. Assumptions are based on the proposed gasline schedule.

Personal Services:

The Division of Water would need an Environmental Program Specialist IV, range 20, and an Environmental Program Specialist III, range 18, to write permits. Beginning in FY2017, one Environmental Engineer I, range 22 would be needed to review plans and one Environmental Program Specialist IV, range 20, would be needed to conduct inspections.

Travel:

Division staff will need to travel to attend meetings, trainings and conduct inspections.

Services:

Department of Law would be consulted as needed.

Commodities:

Includes one-time set up costs for two positions in FY2014 and two positions in FY2017.

## Department of Transportation and Public Facilities

The Department's positions will manage the Utility Permit process for the Gas Line. The positions will issue utility permits and monitor Gas Line construction to ensure the highway asset is protected and that traffic safety and federal eligibility are maintained.

AGDC's July 1, 2011 Project Plan has nearly 70% of the Gas Line within the Department's Dalton, Elliot, and Parks Highway Right-of-Way (ROW). The importance of these transportation corridors to Alaska's transportation future cannot be overstated. A Utility Permit(s) issued by the Department will be the mechanism for permitting the construction and operation of the Gas Line within the ROW's and across several major bridges. The Department will assign conditions within the Utility Permit to ensure: safety to the traveling public during construction; traffic improvements are constructed to allow for safe ingress and egress for construction related traffic; the structural integrity of Alaska's highway assets is maintained or improved, and sufficient spatial distance is allowed for future expansion of highway infrastructure with the 75-100 year lifespan of the Gas Line within the existing ROW.

If a utility is permitted and built in the state's ROW, and that ROW becomes necessary for future highway improvement; the state bears the cost of relocating that utility. It is DOT&PF's responsibility to ensure the line's use of the state's ROW does not impact future anticipated highway needs. Specifically for the Parks Highway corridor between the Gas Line's Willow departure and at least Talkeetna Junction, the 75-100 year horizon identifies a four lane divided highway section as the safe and efficient highway section. A four lane limited access facility will occupy most of the existing ROW, so the Gas Line must be outside of that planned highway, or federal eligibility will be in jeopardy for future improvements requiring additional ROW or relocation of the Gas Line. Other highway alignments may have similar ROW constraints.

### Statewide Engineering and Design

**Component Number 2357**

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
<b>OPERATING EXPENDITURES</b>	<b>FY14</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Personal Services	364.3		364.3	364.3	364.3	364.3	364.3
Travel	45.0		45.0	45.0	45.0	45.0	45.0
Services	280.0		280.0	280.0	280.0	280.0	280.0
Commodities	22.5		1.5	1.5	1.5	1.5	1.5
<b>TOTAL OPERATING</b>	<b>711.8</b>	<b>0.0</b>	<b>690.8</b>	<b>690.8</b>	<b>690.8</b>	<b>690.8</b>	<b>690.8</b>

**Positions:** 3 3 3 3 3 3

An Engineer/Architect IV, Range 26, will serve as the technical expert, manage consultant activities, oversee regional staff who will be issuing permits and authorizations, oversee construction management consultants, documentation for continued federal eligibility, and coordination of utility permit conditions. An Environmental Impact Analysis Manager II, Range 22, will oversee work done in the ROW to insure compliance with federal and state requirements, ensure our processes provide for rapid permitting decisions and no delays in construction. An Administrative Assistant, Range 12, will assist with the day to day activities of the two professionals.

**Travel:**

Staff travel for coordinated meetings, on-site inspections, surveying and associated duties.

**Services:**

Contractual services include costs for core services, small contracts and consultation with the Department of Law and lease space.

**Commodities:**

One-time costs to set up a new position are included in the first year only. Routine supplies are included in out years.

## **Department of Law**

HB 4 relates to creation of the Alaska Gasline Development Corporation (AGDC public corporation or new AGDC) as a public corporation, with corporate powers and duties. It establishes a fund for moneys appropriated by the legislature for use by the corporation, authorizes establishment of subsidiary corporations, gives power to issue revenue bonds and establish capital reserve funds, provides tax exemptions and establishes reporting requirements. The intent of the bill is that the existing Alaska Gasline Development Corporation (existing AGDC), a subsidiary of Alaska Finance Housing Corporation (AHFC), and all of its assets and liabilities, would be merged or transferred into the new AGDC public corporation. It also transitions the Alaska Natural Gas Development Corporation (ANGDA) from a stand-alone public corporation into a subsidiary of the new AGDC public corporation. The purpose of the new AGDC is to advance the in-state natural gas pipeline under the project plan that was prepared by the existing AGDC.

HB 4, in part, amends Title 42 by adding new sections to Article 5, and adding a new chapter AS 42.08, which require the review and investigation of certain contracts, and/or disputes arising under the Act by the Regulatory Commission of Alaska. The Attorney General, under AS 44.23.020(e), has the right to participate as a party in such proceedings to ensure the public interest is represented. The Regulatory Affairs and Public Advocacy Section within the Department of Law will need at least 1 FTE PAUA I position to meet the increased demand on the section's time and resources to participate in such proceedings.

The Department of Law does not anticipate any further fiscal impacts from this legislation.

**Component Number 2091**

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
	FY14	FY14	FY15	FY16	FY17	FY18	FY19
<b>OPERATING EXPENDITURES</b>							
Personal Services	87.5		116.6	116.6	116.6	116.6	116.6
Travel	0.4		0.6	0.6	0.6	0.6	0.6
Services	12.0		16.0	16.0	16.0	16.0	16.0
Commodities	2.0		2.7	2.7	2.7	2.7	2.7
Capital Outlay	0.4		0.5	0.5	0.5	0.5	0.5
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>102.3</b>	<b>0.0</b>	<b>136.4</b>	<b>136.4</b>	<b>136.4</b>	<b>136.4</b>	<b>136.4</b>

**Positions:** 1 1 1 1 1 1 1

**ECONOMIC DEVELOPMENT**

3,634.3	3,283.3	6,917.6	6,917.6	-2,422.2	4,495.4	4,495.4		4,495.4	4,495.4		4,495.4	4,495.4		4,495.4	4,495.4		4,495.4
	775.0	775.0	775.0	50.0	825.0	825.0	-125.0	700.0	700.0	-300.0	400.0	400.0		400.0	400.0		400.0
<b>3,634.3</b>	<b>4,058.3</b>	<b>7,692.6</b>	<b>7,692.6</b>	<b>-2,372.2</b>	<b>5,320.4</b>	<b>5,320.4</b>	<b>-125.0</b>	<b>5,195.4</b>	<b>5,195.4</b>	<b>-300.0</b>	<b>4,895.4</b>	<b>4,895.4</b>	<b>0.0</b>	<b>4,895.4</b>	<b>4,895.4</b>	<b>0.0</b>	<b>4,895.4</b>
	2	2	2		2	2		2	2		2	2		2	2		2
	0	0	0		0	0		0	0		0	0		0	0		0
7	23	30	30		30	30		30	30		30	30		30	30		30
7	25	32	32	0	32	32	0	32	32	0	32	32	0	32	32	0	32

	54.6	54.6	54.6	106.0	160.6	160.6	-132.9	27.7	27.7	-11.7	16.0	16.0	49.0	65.0	65.0	-65.0	0.0
	0.0	0.0	0.0		0.0	0.0		0.0	0.0	131.5	131.5	131.5	13.9	145.4	145.4		145.4
	0.0	0.0	0.0		0.0	0.0		0.0	0.0	112.2	112.2	112.2	9.9	122.1	122.1		122.1
	0.0	0.0	0.0		0.0	0.0		0.0	0.0	120.2	120.2	120.2	11.6	131.8	131.8		131.8
	0.0	0.0	0.0	20.0	20.0	20.0	78.9	98.9	98.9		98.9	98.9		98.9	98.9		98.9
	0.0	0.0	0.0		0.0	0.0	315.4	315.4	315.4	-8.0	307.4	307.4	93.2	400.6	400.6	-7.5	393.1
	0.0	0.0	0.0	8.8	8.8	8.8	136.0	144.8	144.8	977.6	1,122.4	1,122.4	3.9	1,126.3	1,126.3	95.0	1,221.3
	236.2	236.2	236.2	-15.0	221.2	221.2		221.2	221.2	298.3	519.5	519.5	-15.0	504.5	504.5		504.5
<b>0.0</b>	<b>290.8</b>	<b>290.8</b>	<b>290.8</b>	<b>119.8</b>	<b>410.6</b>	<b>410.6</b>	<b>397.4</b>	<b>808.0</b>	<b>808.0</b>	<b>1,620.1</b>	<b>2,428.1</b>	<b>2,428.1</b>	<b>166.5</b>	<b>2,594.6</b>	<b>2,594.6</b>	<b>22.5</b>	<b>2,617.1</b>
		0	0		0	0		0	0		0	0		0	0		0
		0	0		0	0		0	0		0	0		0	0		0
	2	2	2	1	3	3	3	6	6	13	19	19	1	20	20		20
0	2	2	2	1	3	3	3	6	6	13	19	19	1	20	20	0	20

	102.3	102.3	102.3	34.1	136.4	136.4		136.4	136.4		136.4	136.4		136.4	136.4		136.4
<b>0.0</b>	<b>102.3</b>	<b>102.3</b>	<b>102.3</b>	<b>34.1</b>	<b>136.4</b>	<b>136.4</b>	<b>0.0</b>	<b>136.4</b>	<b>136.4</b>	<b>0.0</b>	<b>136.4</b>	<b>136.4</b>	<b>0.0</b>	<b>136.4</b>	<b>136.4</b>	<b>0.0</b>	<b>136.4</b>
	1	1	1		1	1		1	1		1	1		1	1		1
0	1	1	1	0	1	1	0	1	1	0	1	1	0	1	1	0	1

		0.0	0.0	541.5	541.5	541.5	1,709.6	2,251.1	2,251.1	352.3	2,603.4	2,603.4	0	2,603.4	2,603.4	-2,226.8	376.6
			0.0	32.3	32.3	32.3		32.3	32.3		32.3	32.3		32.3	32.3		32.3
	0	0.0	0.0		0.0	0.0	151	151.0	151.0		151.0	151.0		151.0	151.0	-151	0.0
		0.0	0.0	96.5	96.5	96.5	-96.5	0.0	0.0		0.0	0.0		0.0	0.0		0.0
<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>670.3</b>	<b>670.3</b>	<b>670.3</b>	<b>1,764.1</b>	<b>2,434.4</b>	<b>2,434.4</b>	<b>352.3</b>	<b>2,786.7</b>	<b>2,786.7</b>	<b>0.0</b>	<b>2,786.7</b>	<b>2,786.7</b>	<b>-2,377.8</b>	<b>408.9</b>
		0	0		0	0		0	0		0	0		0	0		0
		0	0		0	0		0	0		0	0		0	0		0
		0	0		0	0	8	8	8		8	8		8	8	-8	0
0	0	0	0	0	0	0	8	8	8	0	8	8	0	8	8	-8	0

**UTILITIES**

	711.8	711.8	711.8	-21.0	690.8	690.8		690.8	690.8		690.8	690.8		690.8	690.8		690.8
<b>0.0</b>	<b>711.8</b>	<b>711.8</b>	<b>711.8</b>	<b>-21.0</b>	<b>690.8</b>	<b>690.8</b>	<b>0.0</b>	<b>690.8</b>	<b>690.8</b>	<b>0.0</b>	<b>690.8</b>	<b>690.8</b>	<b>0.0</b>	<b>690.8</b>	<b>690.8</b>	<b>0.0</b>	<b>690.8</b>
		0	0		0	0		0	0		0	0		0	0		0
		0	0		0	0		0	0		0	0		0	0		0
	3	3	3		3	3		3	3		3	3		3	3		3
0	3	3	3	0	3	3	0	3	3	0	3	3	0	3	3	0	3



## ASSOCIATED GENERAL CONTRACTORS of ALASKA

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8005 Schoon Street • Anchorage, Alaska 99518  
Telephone (907) 561-5354 • Fax (907) 562-6118

3750 Bonita Street • Fairbanks, Alaska 99706  
Telephone (907) 452-1809 • Fax (907) 456-8599

February 1, 2013

Representatives Chenault and Hawker  
State Capitol  
Juneau, AK 99801

Re: HB 4

Dear Mike:

On behalf of the Associated General Contractors of Alaska, a construction trade association of over 660 business members, representing the majority of the construction industry in Alaska, thank you for sponsoring HB 4.

Alaskans have been talking about a gas line for over thirty years, and until recently, it has been a lot of hot air. Your effort almost 3 years ago to fund the Alaska Gas Line Development Corporation resulted in considerable progress and momentum on a badly needed project. We are at a critical juncture in Alaska's energy future and an Alaska Gas Line is important to our future and our sustainability. The momentum needs to continue, and frankly needs some of the "acceleration" that HB4 will provide.

An Alaska natural gas pipeline will provide clean energy and great economic opportunities for decades, for the maximum benefit of all Alaskans.

I assure you that we are continually working to maintain the highest level of skills and talent in the construction industry in Alaska and we are ready, willing and able to take on this project.

Thank you for your service to the people of Alaska and your sponsorship of HB4.

Sincerely,

John MacKinnon  
Executive Director  
Associated General Contractors of Alaska



# THE ALLIANCE

...for responsible development of Alaska's Oil, Gas & Mineral Resources

## Resolution 02-13

WHEREAS, the Alaska Support Industry Alliance was established in 1979;  
and

WHEREAS, the Alliance represents more than 500 businesses who employ  
more than 35,000 workers in the State of Alaska; and

WHEREAS, the Alliance mission statement is to promote responsible  
exploration, development and production of oil, gas and mineral resources  
for the benefit of all Alaskans; and

WHEREAS, the Alaska Stand Alone Pipeline (ASAP) is an opportunity to  
develop and produce Alaska's natural gas resources for the benefit of all  
Alaskans; and

WHEREAS, the ASAP project utilizes a risk-based, phased and gated  
methodology which employs a disciplined approach towards project  
development and allows for appropriately timed exits to ensure  
accountability and fiscal responsibility, and

WHEREAS, House Bill 4 makes the Alaska Gas line Development  
Corporation an independent public corporation of the state, with the correct  
authority, autonomy, and responsibility to execute the legislative priority of  
bringing affordable natural gas to Alaskans.,

NOW THEREFORE BE IT RESOLVED; the Alaska Support Industry Alliance  
supports HB 4 in its current form.

*Rebecca Logan*

*1/30/2013*

---

Rebecca Logan, General Manager - January 30, 2013



Suggested by: Councilor Navarre

**CITY OF KENAI**

**RESOLUTION NO. 2013-02**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, SUPPORTING LEGISLATIVE EFFORTS TO CONSTRUCT A NATURAL GAS PIPELINE FROM THE NORTH SLOPE TO SOUTH CENTRAL ALASKA.

WHEREAS, the development of an in-state natural gas pipeline is in the best interest of the State of Alaska; and,

WHEREAS, known reserves in the Cook Inlet Basin are insufficient to supply the demand for natural gas in South Central Alaska in the future; and,

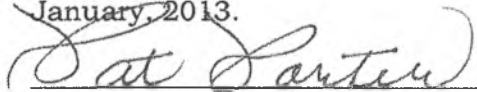
WHEREAS, the City of Kenai continues to support an Alaska North Slope natural gas pipeline and appreciates the Legislature's actions in creating the Alaska Gasline Development Corporation (AGDC) which in turn has created the Alaska Stand Alone Gas Pipeline (ASAP); and,

WHEREAS, an Alaska natural gas pipeline project will provide a long-term affordable, clean energy solution for the majority of Alaskans and Alaska businesses; and

WHEREAS, House Bill 4 includes many of the necessary provisions and solutions to forward a successful Alaska natural gas pipeline project.

NOW, THEREFORE, BE IT RESOLVED, THE COUNCIL OF THE CITY OF KENAI, ALASKA, supports Legislative efforts to fund AGDC as they move forward in developing a project to construct a natural gas pipeline from the North Slope to South Central Alaska.

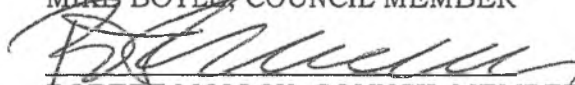
PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of January, 2013.

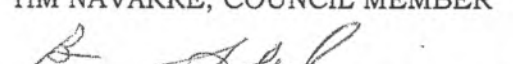
  
PAT PORTER, MAYOR

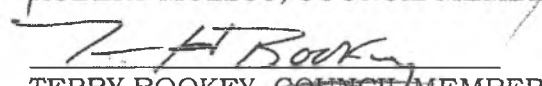
  
RYAN MARQUIS, VICE MAYOR

MIKE BOYLE, COUNCIL MEMBER

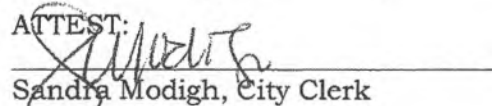
  
TIM NAVARRE, COUNCIL MEMBER

  
ROBERT MOLLOY, COUNCIL MEMBER

  
BRIAN GABRIEL, COUNCIL MEMBER

  
TERRY BOOKEY, COUNCIL MEMBER

ATTEST:

  
Sandra Modigh, City Clerk



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

Founded 1975  
Executive Director

Rick Rogers

2012-2013 Executive Committee

Phil Cochrane, President

L.F. "Len" Horst, Sr. Vice President

Ralph Samuels, Vice President

Eric Fjelstad, Treasurer

Lorna Shaw, Secretary

Tom Maloney, Past President

Bob Berto

Patty Bielawski

J.B. "Bill" Brackin

Pat Carter

Steve Denton

Ella Ede

Stan Foo

Paul Glavinovich

Bill Jeffress

Scott Jepsen

Wendy Lindskoog

Lance Miller

Kara Moriarty

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Thomas Mack

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Karen Matthias

Sam Mazzeo

Ron McPheters

James Mery

Denise Michels

Hans Neidig

Lisa Parker

Judy Patrick

Charlie Powers

Glenn Reed

Mike Satre

Keith Silver

Loralie Simon

John Sturgeon

Jan Trigg

Ex-Officio Members

Senator Mark Begich

Senator Lisa Murkowski

Congressman Don Young

Governor Sean Parnell

February 1, 2013

The Honorable Mike Chenault  
The Honorable Mike Hawker  
Alaska House of Representatives  
Capital Room 208  
Juneau, AK 99801

RE: HB 4

Dear Speaker Chenault and Representative Hawker,

On behalf of the Resource Development Council for Alaska, Inc., (RDC), I am writing in support of HB 4, which empowers the Alaska Gasline Development Corporation (AGDC) to further advance an in-state gas pipeline.

RDC is a statewide, non-profit, membership-funded organization founded in 1975. The RDC membership is comprised of individuals and companies from Alaska's oil and gas, mining, timber, tourism, and fisheries industries, as well as Alaska Native corporations, local communities, organized labor, and industry support firms. RDC's purpose is to link these diverse interests together to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

Reliable and affordable energy supplies are critically important to Alaska residents and are vitally needed to grow our economy and provide energy for resource development projects and community development. RDC has consistently supported the development of commercially-viable energy from diverse sources, including coal, natural gas, hydroelectric and other renewable and nonrenewable alternatives. RDC has also supported public policies and fiscal decisions to improve the commercial viability of developing Alaska's North Slope and Interior natural gas resources. HB 4 removes constraints identified by AGDC in moving an in-state gas line development project forward: funding the project to an open season; providing needed confidentiality for collaboration with private entities and information sharing; and establishing contract carrier status to support firm commercial transportation commitments.

The economics of natural gas delivery are inversely proportionate to line capacity, and a 500 MCF or smaller line faces significant economic challenges. HB 4 requires any line to stand on its own, underpinned by capacity commitments and without incurring

future financial liabilities to the State. Future appropriations, loan guarantees or other underwriting of an AGDC gas line project would require legislative approval. Should such become necessary, RDC would evaluate the appropriateness of public financial support carefully. The ultimate determination of whether to commit additional public funds would need to be based on the project's merits, the impacts on competing sources of energy, and the burden such a project may put on the fiscal health of the State.

The best case for Alaska is a large capacity line serving both in-state and export (or Lower 48) markets. While market forces will dictate the viability of a large capacity line, HB 4 allows AGDC to participate in a large diameter gas line project. AGDC could add value to such a project by providing for the in-state gas infrastructure to meet our growing energy needs, both residential and industrial.

HB4 establishes AGDC as a stand-alone agency with a specific mission to deliver gas to Alaskans at the most affordable price. Given the growing concern we have with regard to the long-term fiscal sustainability of our State, we encourage the AGDC enabling legislation to sunset the agency should future circumstances render its mission obsolete or unachievable.

RDC looks forward to passage of HB 4. Ultimately free market forces will allow project economics to dictate the best energy solutions for Alaska consumers considering both price and reliability. HB4 provides an appropriate balance by providing public sector support in early stages sufficient to bring the project to an open season where economics will determine the project's fate.

RDC applauds your leadership as cosponsors of this legislation, and we appreciate the opportunity to share our views of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Rogers", with a long horizontal flourish extending to the right.

Rick Rogers  
Executive Director



# ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., Ste. 105, Anchorage, Alaska 99503 (907) 563-9229 [www.alaskaminers.org](http://www.alaskaminers.org)

February 5, 2013

Speaker of the House Mike Chenault  
Representative Mike Hawker  
Capitol Room 208  
Juneau, AK 99801

Dear Speaker Chenault and Representative Hawker:

The Alaska Miners Association (AMA) writes to express its support for HB4, an Act to advance an in-state natural gas pipeline.

AMA is a non-profit membership organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,500 individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. Our members look for and produce gold, silver, platinum, molybdenum, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials.

It is without question that Alaskans across the state are struggling with substantial energy costs. Our large mines and development projects are no exception. Hardrock mines with milling processes are extremely energy-intensive operations, and our mines pay millions of dollars each year for power. Alaska's operating mines consume power from coal, hydro, and limited natural gas sources, with all using at least some diesel generation. Only four of seven large mines are connected to power grids in the state. The mines currently in operation require anywhere from 20 to 50 megawatts of power, and development projects on the horizon estimate needing hundreds of megawatts of power. At least two development projects in the state are pursuing gas pipelines connecting directly to their projects - infrastructure that could benefit surrounding communities, provided a stable supply of gas is available. Many more projects are in locations that would directly benefit from an in-state line and consistent supply of gas.

Today mining is Alaska's second largest industry, and our mines employ over 5,000 people directly, paying \$650 million in payroll each year. Mining pays millions in revenues to local governments, the state government through rents, royalties, and taxes, and Alaska Native Corporations. It is important to keep operation costs manageable and ensure mining is feasible; energy is by far the highest cost factor. Actions that reduce costs will help to ensure the industry stays strong and new projects come on board.

AMA believes HB4 allows the Alaska Gasline Development Corporation (AGDC) to pursue a large diameter line, which would improve the commercial viability of Alaska's natural gas resources and help move the resources to market outside of Alaska. It also allows AGDC to pursue the needed infrastructure that will meet our in-state residential and industrial energy needs. This is a win-win situation for all Alaskans, and we applaud your leadership in the introduction of this legislation.

Thank you,

A handwritten signature in black ink, appearing to read "D. Crockett". The signature is fluid and cursive.

Deantha Crockett  
Executive Director

# Division of Legislative Audit

## Report Digest #04-30054-10

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SUMMARY A Special Report on the Department of Revenue (DOR), Alaska Natural Gas  
OF: Development Authority (ANGDA), Selected Operational Issues, October 8, 2010

### PURPOSE OF THE REPORT

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of ANGDA. The primary objectives of the audit were to determine whether ANGDA duplicates the efforts of other state agencies or initiatives of the State, identify the extent to which ANGDA coordinates, cooperates, and shares information with other state agencies, and to determine whether ANGDA's long range plans changed or were modified based on work of other state agencies or initiatives.

Other objectives included identifying ANGDA's assets, appropriations, and outstanding financial commitments as well as determining how ANGDA has expended its available funding for the period of July 1, 2003, through April 30, 2010.

### REPORT CONCLUSIONS

ANGDA has not duplicated the efforts of other agencies working on a large-diameter main natural gas pipeline. This is due to ANGDA's policy of modifying its plans based on other pipeline initiatives. ANGDA started out with a plan to acquire and condition North Slope (NS) gas and construct a pipeline. However based on other initiatives, ANGDA modified its goal to focus on a pipeline that would spur off a larger pipeline accessing the NS gas supply. ANGDA's decision to pursue a spur line minimized its role in accomplishing its fundamental mission. It also resulted in ANGDA conducting activities that stretched the bounds of its statutory authority.

ANGDA did not successfully coordinate efforts with the state agency pursuing a small diameter in-state pipeline (the Office of the Governor). This lack of cooperation resulted in both entities pursuing alternative projects that would achieve the same objective.

ANGDA generally received adequate cooperation from other state agencies and routinely shares its information with other agencies and the public through a variety of mechanisms.

ANGDA's appropriations, spending, outstanding financial commitments, and detailed assets, are presented in Appendix A-D of this report.

### FINDINGS AND RECOMMENDATIONS

1. The legislature should consider ANGDA for sunset after resolution of uncertainties surrounding the development of NS natural gas.

ANGDA does not play a lead role in acquiring and conditioning NS natural gas or constructing a pipeline to transport the gas. Plans to develop natural gas, including building a large-diameter and/or a small-diameter pipeline, are being led by other private or public entities. The Alaska Gas Inducement Act (AGIA) licensees are guiding the progress of building a large-diameter pipeline. The Joint In-state Gasline Development Team, created by HB 369, is guiding the development of a small-diameter pipeline.

Public entities should not outlast their public purpose. Sunset laws enacted throughout the nation ensure public entities do not continue in perpetuity. These laws subject public entities to periodic evaluation to verify their continued existence is justified by a public purpose, and the public's interest is being adequately served.

ANGDA is not subject to sunset provision and, therefore, is at risk of outlasting its public purpose. Once the AGIA and Denali open seasons conclude, and the pipeline plan required under HB 369 is complete, the legislature should evaluate whether ANGDA has a significant and unique role in state pipeline efforts. If ANGDA does not have such a role, the legislature should consider whether the continued existence of a separate authority to carry out ANGDA's activities is justified and in the public's best interest. ANGDA's continued existence without a significant role is a waste of state resources and dilutes crucial decision-making in the State's effort to bring NS gas to market.

2. ANGDA should work with DOR's accounting staff to properly present assets in its financial statements and note disclosures.

ANGDA's financial reporting and disclosure of capital assets associated with its conditional ROW lease is inaccurate and not in accordance with generally accepted accounting principles. Specifically, ANGDA's financial statements for the period ending June 30, 2010, overstate capital assets by over \$3.5 million. The required notes to the financial statements reported that ANGDA incurred capitalized costs in the process of obtaining a conditional right-of-way (ROW). However, the amount reported includes significant costs unrelated to and incurred after obtaining the conditional ROW, and is not adjusted for accumulated amortization.



# Representative Mike Hawker

## Alaska State Legislature

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Co-Chair Saddler and Co-Chair Feige,

Included are responses to questions posed by House Resources Committee members in hearings Feb. 4 and Feb. 6 on House Bill 4, In-State Gasline Development Corp. These responses are provided in part by my office and in part by the Alaska Gasline Development Corporation (AGDC).

Additionally, my office has provided via email to the committee co-chairs copies of the 2010 Alaska Natural Gas Development Authority audit, by the Division of Legislative Audit. That document and a summary are available online at <http://www.legaudit.state.ak.us/pages/digests/2010/30054dig.htm>

Thank you,

A handwritten signature in black ink that reads "Mike Hawker".

Representative Mike Hawker

**Question:** Explain why the State Procurement Code is a problem and why AGDC should be exempt.

AGDC is already exempt from the procurement code; House Bill 369 in 2010 exempted an AHFC natural gas pipeline subsidiary. As HB 4 repositions AGDC as a stand-alone state corporation, HB 4 also moves the existing procurement code exemption from an AHFC subsidiary to AGDC. As requested by the committee, AGDC has prepared a comprehensive explanation for the need for a procurement code exemption; that explanation is attached at the end of this letter.

**Question:** Is it a violation of AGIA for a) the legislature to ask AGDC to or b) for AGDC to calculate the maximum technical capacity of the size and specification of pipe AGDC plans to use for the instate natural gas pipeline project designed to carry no more than 500 million cubic feet per day?

HB 4 sponsors have requested a Legislative Legal Services opinion on whether legislators, in making this request, could violate AGIA. The advisory opinion will be forwarded to the committee co-chair offices upon receipt, for distribution to the committee.

AGDC's legal counsel is still determining if this request could put AGDC at risk of violating AGIA.

**Question:** What would the \$400 per day board member compensation apply to; what is ‘official board business?’ What kind of work load should new board members anticipate? If AGDC’s board meets on the same day as the members also meet as ANGDA’s board, do board members get compensated for both meetings?

The \$400 per day applies to days that the board meets and other official business as required by the board; for example, attendance by a board member at some other related meeting, at the request of the board. If AGDC’s board meets twice in a day, once as AGDC’s board and once as a subsidiary corporation’s board, they receive \$400 for each meeting. This is reasonable in considering the amount of time and effort required to prepare for a board meeting, and helps maintain the separation between a subsidiary and the parent corporation.

House Bill 4 allows for compensation for “official board business”. This is identical to the allowances in Alaska Housing Finance Corporation and Alaska Industrial Development and Export Authority statutes (AS 18.56.030-AHFC, AS 44.80.050 -AIDEA). Both AIDEA and AHFC compensate board members for board meetings. Days spent outside of board meetings are not compensated when spent preparing for board meetings. Members of two related boards (AGDC and a subsidiary, such as ANGDA) receive compensation per meeting; if meetings for AGDC and for a subsidiary are on the same day, board members receive compensation for both meetings.

The sponsors intend that the compensation is for board meetings and other official, authorized board business, such as meetings a board member may be required to attend that are not board meetings. The sponsors further intend that board members receive compensation for each board meeting they attend, if serving as boards of multiple corporations; even if they meet twice in one day, once as AGDC’s board and once as a subsidiary’s board. Board compensation is to reflect the time and engagement required not only for the meeting, but for the off-hours time members must invest in preparing for meetings.

The learning curve for new board members is, as the committee suggested, likely to be high; that said, the appointment of board members with expertise in specialized, relevant areas should result in members relatively knowledgeable in the matters that will come before the board, as opposed to board members starting from scratch on complex issues. The sponsors acknowledge there will need to be, in part, a public service motivation for board members in accepting a board position.

**Question:** Provide more information comparing and contrasting AGDC and other public corporations of the state in regards to corporate authority and, specifically, applicability to the State Procurement Code; Administrative Procedure Act; State Personnel Act; Executive Budget Act; and legal counsel.

The sponsors continue working on this labor-intensive request. Initial review has compared the Alaska Railroad Corporation; Alaska Housing Finance Corporation; Alaska Permanent Fund Corporation; Alaska Student Loan Corporation; Alaska Aerospace Corporation; Alaska Industrial Development and Export Authority; and Alaska Energy Authority. Preliminarily:

- State Procurement Code: For all, at least some contracts are exempt; alternatively, some are exempt but are also required to develop procurement regulations substantially similar to the procurement code (AHFC, Aerospace, Railroad). AEA does not appear to be statutorily exempt.

- Administrative Procedures Act: AGDC would be exempt except for the Open Meetings Act under HB4. Also exempt except for the Open Meetings Act are Aerospace, AHFC, and AIDEA. The Permanent Fund and Alaska Railroad are partially exempt.
- State Personnel Act: All but AEA are exempt; AGDC would be exempt under HB4.
- Executive Budget Act: The Alaska Railroad is exempt; AGDC would be exempt under HB4. AHFC, AIDEA and ASLC are partially exempt; the operating budgets only are subject.
- Legal Counsel: Under HB4, AGDC will retain independent legal counsel. The Attorney General is by statute legal counsel for AIDEA and AHFC. Aerospace may hire legal counsel. The railroad must advise the Department of Law before initiating legal action.

House Bill 4 requires AGDC to retain legal counsel. The sponsors believe a deviation from the norm is appropriate for AGDC. The Attorney General is also legal counsel for the administration in regards to the Alaska Gasline Inducement Act and the contract between the commissioners of Natural Resources and Revenue, and licensee TransCanada.

Further, AGDC will engage with private sector partners; shippers; and financial institutions, and in doing so will require prompt, priority service from its legal counsel in order to retain a level relationship with these other entities. Subjecting AGDC to the potential for delays; sub-prioritization; and counsel dependent on state resources risks placing AGDC at a disadvantage in negotiations with these private sector entities. For these reasons, the sponsors believe it is appropriate to allow AGDC to retain its own legal counsel, other than the Attorney General.

**Question:** What constitutes ‘property’ in relation to ANGDA, AS 41.41.450?

HB4, Section 26, conforms ANGDA section 41.41.450, Property of the authority, to reflect the elimination of the term “project” from ANGDA’s definitions. With the change in HB4, ANGDA could still acquire property as described above, for the purposes of the corporation, but not for the purposes of financing a project. An example of property ANGDA may need to acquire is office space. Real property is physical land and the improvements attached to that land; personal property would be other property not attached (for example, an office is real property, and the office furniture is personal property).

ANGDA statute: Sec. 41.41.450. Property of the authority.

The authority may acquire, by purchase, lease, or gift, upon terms that it considers proper, land, structures, real or personal property rights, rights-of-way, franchises, easements, and other interests in land it considers necessary or convenient for the financing of the project or a part of the project.

House Bill 4, Section 26:

Sec. 41.41.450. Property of the authority. The authority may acquire, by purchase, lease, or gift, upon terms that it considers proper, land, structures, real or personal property rights, rights-of-way, franchises, easements, and other interests in land it considers necessary or convenient for the purposes of the corporation [THE FINANCING OF THE PROJECT OR A PART OF THE PROJECT].

**Question:** HB 4, Section 3, 31.25.230, provides for refunding obligations. How will this work? Would any excess be returned to the general fund?

In general, a reduction in the cost of the debt or the pipeline operating costs would result in a lower tariff going forward. If the tariff was based upon the cost of the original financing, a later refinancing to lower cost debt would result in refunding/repaying the original bonds and a recalculation of new tariffs going forward at a lower rate. There would likely be little to no extra revenues to go back to the general fund.

**Question:** HB 4, Section 3, 31.25.260 exempts AGDC corporate property from state and local taxes. Would this apply to AGDC's partners? Does this give AGDC an advantage over the private sector?

AS 29.45 exempts state entities from state and local taxes. AGDC would be a state entity, and thus exempt per existing statute. AGDC's subsidiary corporations would likely also be tax exempt. AGDC's partners would not derive tax-exempt status from being partners with AGDC or any AGDC subsidiary.

The sponsors do not believe AGDC's tax-exempt status confers an advantage over private sector companies. First, AGDC would not be undertaking a gas pipeline if a private sector company was doing the project; without competition, there is little case for claiming an advantage. Further, AGDC's exemption does not affect the private sector's tax burden; the private sector would need to pay taxes whether AGDC was a partner or not. Finally, if a private company owned part of the pipeline, it would be subject to property taxes; but would also be ensured the opportunity to earn a regulated rate of return that would likely be of far greater value to the company than the cost of the property tax due. To that end, the sponsors find it unlikely that the private companies would forgo the benefits of pipeline ownership simply to enjoy a reprieve from property taxes.

AS 29.45.030. Required exemptions.

(a) The following property is exempt from general taxation:

(1) municipal property, including property held by a public corporation of a municipality, state property, property of the University of Alaska, or land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

(A) a private leasehold, contract, or other interest in the property is taxable to the extent of the interest; however, an interest created by a nonexclusive use agreement between the Alaska Industrial Development and Export Authority and a user of an integrated transportation and port facility owned by the authority and initially placed in service before January 1, 1999, is taxable only to the extent of, and for the value associated with, those specific improvements used for lodging purposes

**Question:** HB 4, Section 34, exempts an AGDC-owned-or-financed project from paying state and local property taxes during construction. Can you estimate the amount of property taxes that the project would be subject to without this exemption?

AGDC has not done this calculation due to the high degree of uncertainty involved – where equipment and materials will be staged, for how long, etc. It is proposed mainly as a method for avoiding the tremendous accounting effort to track inventory and equipment movements during construction between different boroughs in the State. As such inventory and equipment is moved into a given borough, it becomes subject to property taxes in that borough, and ceases to be subject to property tax in the borough in which it was previously located.

**Question:** Provide detail on the types of information that could be held confidential under HB 4, and the types of confidentiality agreements AGDC could enter into.

HB 4 allows for certain information to be held confidential, and does not set time limits for that protection. In HB 4:

- AGDC can sign confidentiality agreements with private sector companies to protect information exchanged between the two. The information covered by these agreements will probably never be made public, as the agreements are the private sector's assurance that they may talk and negotiate freely with AGDC.
- AGDC can sign confidentiality agreements with a state entity and a third party to share information that the state is already holding confidential. As AGDC would be a 'third party' to existing confidentiality agreements or confidential information, AGDC would not disclose this information at any time (for example, taxpayer data that is protected by the state).
- AGDC can keep self-generated data and information confidential. This information includes results of field studies, technical data, and tariff models that are assets AGDC is developing for the state, using state money. While HB 4 does not restrict the confidentiality by time, this information may be of public benefit once a pipeline is operational.
- AGDC's open season negotiations are confidential, out of respect for the years of negotiations that generate first precedent agreements, then firm transportation agreements. However, HB 4 does require (as does FERC for an Alaska gas project) that certain information be released after a successful open season. After signing precedent agreements, AGDC is to release, for each successful bid, the name of the shipper; the amount of capacity contracted for, and the length of the commitments. This information is intended to assure Alaskans that, in an open season, AGDC has signed on enough credit-worthy shippers with long-term contracts that will be sufficient to support revenue bonds issued to pay for the pipeline.
- Also in HB 4, a contract carrier pipeline will need to provide precedent agreements to the Regulatory Commission of Alaska for review. While those contracts will be confidential, once the conditions on the agreements are resolved and the precedent agreements turn into firm transportation agreements (about the time of project sanction), the RCA will make the firm agreements public. However, information that, if released, could cause commercial harm, can be held confidential if the RCA agrees the information should be privileged.

The primary information AGDC would hold confidential is the information obtained from other entities through confidentiality agreements. AGDC would keep that information confidential as long as required by the confidentiality agreements; a standard provision of confidentiality agreements is that the information becomes public to the extent AGDC uses it as part of a permit application process.

**Question:** Provide a list of pros and cons of making ANGDA a subsidiary corporation of AGDC.

Realizing that AGDC may need a gas aggregator/marketing subsidiary, the sponsors have ensured that HB 4 allows AGDC to create subsidiary corporations. Under HB 4, ANGDA becomes a subsidiary of AGDC. This reduces redundancies in state efforts developing natural gas. However, the sponsors are uncertain as to whether ANGDA will be used, as AGDC has the ability to create other subsidiaries as well; and the sponsors are uncertain as to whether a new role for ANGDA is sufficient to relieve concerns that ANGDA has exceeded its statutory authority, as identified in the 2010 legislative audit.

**Question:** Why does AGDC need a marketing subsidiary? How would a marketing subsidiary work? Does there need to be a firewall between AGDC and its marketing subsidiary? If so, why, and how? Does a marketing subsidiary have an advantage over other entities that want to ship gas through an AGDC line?

AGDC may need a subsidiary corporation to aggregate gas volumes on an AGDC pipeline. If an independent, private sector aggregator/marketer is involved in the AGDC project, AGDC would not need to create a subsidiary corporation for that purpose.

A gas marketing subsidiary would have the ability to acquire and transport gas in the ASAP pipeline. They could act as an aggregator for Alaska utilities or potential smaller customers who may not have the experience or wherewithal to do this on their own. A marketing subsidiary could also transport the state's royalty gas, if the DNR commissioner chooses to sell gas to customers through an AGDC pipeline.

In creating a marketing/aggregator subsidiary, AGDC can confer its statutory authorities to the subsidiary; for example, tax exemption. However, as AGDC would not need a marketing subsidiary if a private sector aggregator/marketer participates, it is unlikely that an AGDC subsidiary would have an advantage over other entities. Further, an AGDC marketing/aggregator subsidiary would have the same relationship with AGDC as other gas shippers; this is accomplished through a 'firewall' to prevent unfair information exchange or an inadvertent advantage.

The requirement that a shipper and a carrier who are affiliates have a strict "firewall" between them so neither one can unfairly benefit ensures the pipeline does not act anti-competitively by conferring an undue advantage on its affiliate. This is a standard business practice in the corporate world, and AGDC's potential partners and customers will expect a firewall to be in place. An example would be providing the marketing affiliate access to AGDC information while denying other marketing entities access to the same information. The firewall ensures a fair and competitive process for all shippers without undue discrimination, regardless of affiliation.

**Question:** HB 4 limits judicial review of state permitting and other decisions. Does the Legislature have the authority to limit judicial review, including jurisdiction for complaints?

The sponsors encourage the committee to pose this question to the Department of Law. The sponsors have included with this response a memo from Legislative Legal Services dated April 4, 2011; the memo references language similar to the judicial review limitation in House Bill 4, and was in fact written regarding a bill that was a precursor to HB 4. The memo indicates that while the Alaska Constitution states that a court's jurisdiction will be determined by law, the Alaska courts will ultimately decide their jurisdiction and whether the court is able to grant injunctive relief.

**Question:** HB 4 creates a new set of right-of-way lease covenants for a contract carrier. What are the implications for pipelines already operating on common carrier covenants in a state right-of-way lease?

Under HB 4, other pipelines would be able to apply to the state for a right-of-way lease as a contract carrier; further, HB 4 would not prohibit existing pipelines with a state right-of-way lease from requesting an amended lease agreement with the Department of Natural Resources to reflect contract carrier principles. DNR would best be able to discuss this question, including the lease amendment process and whether DNR anticipates other, existing pipelines seeking lease amendments.

## AGDC Response to Procurement Code Exemption Question:

AGDC, as a subsidiary of AHFC, was granted exemption from the state procurement code by HB369. The primary reason for continuing relief from the State of Alaska procurement regulations for acquiring goods and services for the purpose of construction of an in-state natural gas pipeline is to expedite the contracting and purchasing process in light of the urgency to construct a viable method of transporting natural gas for the residents of the State of Alaska.

A project as large as the proposed gas line project will require an enormous effort to acquire necessary design contractors, construction contractors, temporary housing, transportation, equipment, materials, quality control, testing, and supplies to name just a few of the major components.

Given the time constraints for construction in terms of both the urgency and Alaska's limited "fair weather" construction season for certain tasks, a typical 60 to 90 day solicitation to advertise, review, and award contracts based on current procurement methods could translate to tens of millions of dollars in costs. (The cost of carrying \$8 billion dollars for three months is roughly \$50 million).

The state procurement code focuses primarily on the lowest price, while the magnitude of this project will best be served by availability or other qualities as circumstances dictate to complete the project as expediently as possible.

Relief from existing procurement regulations would reduce costs in the following ways:

1. Reduced administrative burden (time & expense) to prepare, advertise, review and award Invitations to Bid or Requests for Proposals. For instance, the procurement code mandates a public notice with a minimum 21-day advertising period, a 10-day protest period and if there is a protest a stay of award. The time and expense to ramp up/train a procurement organization large enough to exercise traditional state procurement regulations would be significant.
2. Eliminates costly delays due to simple clerical errors in solicitations that require addendums or extensions of the bidding/proposal time. Under the procurement code, if there is an error in the bid the party submitting the bid must be withdrawn. There is no allowance for corrections. This is unfortunate as even under the federal procurement process there is allowance to correct errors. A project of this magnitude will require extensive schedule preparation and analysis. Once the schedule is established, a "critical path" will be defined where any deviations from the "critical path" will result in delays along the entire path, resulting in an extended completion date.
3. Eliminates potential for bid protests that may not be germane to the project, yet have the potential to inflict significant schedule delays, or whose only purpose is to delay the contract award and project completion. Current regulations contain very generous opportunities to file bid protests that may be unrelated to the project, or may be based on minor technicalities that nonetheless must be addressed by a Contracting Officer in a time-consuming manner. Allowing time for bid protests and a statutory response time requires the attention and resources of the Contracting Officer at the expense of an expedited project completion date.
4. Reduce delays along the scheduled critical path by allowing poor performing contractors, vendors or suppliers to be quickly replaced when needed. Typically projects of this size will incorporate

some form of performance based contracting method that allows the performance of the contractors, vendors, suppliers, etc., to be evaluated, and if necessary replaced quickly in order to maintain the established schedule. A relatively minor hiccup in the project can cause a major disruption in the project completion schedule, if AGDC does not have the flexibility to replace that element as quickly as possible.

Use of contracting methods such as “Time & Materials” or “Cost-Plus”, are common in the private sector and government contracting as well. They can be done with full transparency and accountability. Third party estimators and other resources can be used to verify that costs are reasonable or within a range that is acceptable. Internal controls can be put in place to monitor and audit the procurement process at all phases of the project.

The US federal government recognizes the need for an alternate contracting and purchasing process for large projects and in 1994 the Federal Acquisition Streamlining Act was placed into United States law with the goal of lowering procurement barriers.

This Act enables simplified procurement procedures where the procurement is limited, facilitate reliance of commercial off-the-shelf technology, and promotes fixed-price performance based contracting. The law alters the United States government procurement strategy from lowest bid to best value. The Federal Acquisition Reform Act of 1996 removed the traditional oversight mechanisms that had been in place for decades and paved the way for a new method of awarding federal contracts.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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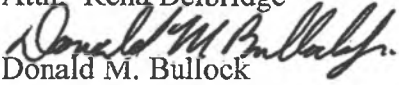
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Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 12, 2013

**SUBJECT:** Limiting judicial review (SSHB 4; Work Order No. 28-LS0021\O)

**TO:** Representative Mike Hawker  
Attn: Rena Delbridge

**FROM:**   
Donald M. Bullock  
Legislative Counsel

You asked whether the legislature has the power to limit judicial review as offered in sec. 13 of the above-referenced bill. Although the legislature has the power to establish jurisdiction for the courts under art. IV, sec. 1, Constitution of the State of Alaska,<sup>1</sup> what the legislature categorizes as an issue of jurisdiction may be found by the courts to be a violation under the separation of powers doctrine.

Section 13 of SSHB 4 adds two new subsections to AS 38.35.200 -- AS 38.35.200(c) and (d).<sup>2</sup> New subsection AS 38.35.200(d) describes appeals that are not subject to the

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<sup>1</sup> Article IV, sec. 1: **Judicial Power and Jurisdiction.** The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. *The jurisdiction of courts shall be prescribed by law.* The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law. (Emphasis added.)

<sup>2</sup> Section 13, SSHB 4:

\* **Sec. 13.** AS 38.35.200 is amended by adding new subsections to read:

(c) Except as provided for an applicant in (a) of this section and notwithstanding any contrary provision of law, an action or decision of the commissioner or other state officer or agency concerning the issuance or approval of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation under AS 31.25 that uses a right-of-way subject to this chapter may not be subject to judicial review, except that a claim alleging the invalidity of this subsection must be brought within 60 days after the effective date of this Act, and a claim alleging that an action will deny rights under the Constitution of the State of Alaska must be brought within 60 days following the date of that

limitations in AS 38.35.200(c), therefore this analysis addresses only AS 38.35.200(c) (subsection (c)). Subsection (c) limits appeals and provides for an accelerated process for judicial appeals from administrative actions related to the natural gas pipeline project. Subsection (c) is similar to AS 43.90.420<sup>3</sup> in the Alaska Gasline Inducement Act (AGIA) and 15 U.S.C. 720e in the Alaska Natural Gas Pipeline Act (ANGPA), both of which also provide for expedited resolution of disputes that would otherwise delay a natural gas pipeline project to transport North Slope natural gas to market. So far as I am aware, the ANGPA statutes have not been challenged in court.

Subsection (c) bars or limits access to the courts in two situations. First, the subsection bars or limits appeals from certain administrative actions, and second, the subsection sets a time period in which a person may make a challenge to the statute itself. Once in court, subsection (c) also restricts the authority of the superior court to grant injunctive relief.

#### **Limiting appeals from administrative actions**

Generally, administrative decisions are presumed to be judicially reviewable, unless the legislature provides otherwise. The bill provides otherwise in subsection (c) by denying a judicial appeal except where a constitutional right is affected.

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action. A claim that is not filed within the limitations established in this subsection is barred. A complaint under this subsection must be filed in superior court, and the superior court has exclusive jurisdiction. Notwithstanding AS 22.10.020(c), except in conjunction with a final judgment on a claim filed under this subsection, the superior court may not grant injunctive relief, including a temporary restraining order, preliminary injunction, permanent injunction, or stay, against the issuance of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation. In this subsection, "natural gas pipeline" has the meaning given in AS 38.34.099.

(d) An appeal of a permitting decision or authorization by the Department of Environmental Conservation under AS 46.03 or AS 46.14 that is made under a program approved or delegated by the United States Environmental Protection Agency is not

- (1) subject to the limitation in (a) of this section;
- (2) included in the actions or decisions described in (c) of this section.

<sup>3</sup> **Sec. 43.90.420. Statute of limitations.** A person may not bring a judicial action challenging the constitutionality of this chapter or the constitutionality of a license issued under this chapter unless the action is commenced in a court of the state of competent jurisdiction within 90 days after the date that a license is issued.

In *Bethel Utilities, Corp. v. City of Bethel*,<sup>4</sup> the Alaska Supreme Court considered the issue of whether the superior court had jurisdiction to consider an appeal from an administrative decision made by the City of Bethel. The Court described the presumption that an appeal from an administrative decision was appealable to the superior court:

Unless the legislature provides otherwise, administrative decisions are presumed to be judicially reviewable. 5 K. Davis, *Administrative Law* §§ 28.1; 28.4 (2d ed. 1984). Here, the Bethel City Council has not precluded judicial review. Therefore, the law does provide for appeals from the city council's administrative decisions. Thus, the appellate rules apply . . . .<sup>[5]</sup>

The case seems to make the point that, because of the general jurisdiction of the superior court, a specific grant of superior court jurisdiction for an administrative appeal is not necessary.<sup>6</sup> Subsection (c) affirmatively bars an appeal to court from an administrative action described in the subsection, but could face the same fate as AS 22.10.020(d), to which the court did not defer in *Bethel*.

The part of subsection (c) that addresses the type of action from which a judicial review is prohibited is as follows:

[A]n action or decision of the commissioner or other state officer or agency concerning the issuance or approval of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development

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<sup>4</sup> 780 P.2d 1018 (Alaska 1989).

<sup>5</sup> *Id.* at 1022 (footnotes omitted).

<sup>6</sup> The holding seems to conflict with AS 22.10.020(d), which states that the superior court has jurisdiction in all matters appealed to it from an administrative hearing when the appeal is provided by law. AS 22.10.020(d) states:

The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency *when appeal is provided by law*, and has jurisdiction over petitions for relief in administrative matters under AS 44.62.305. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency, except an appeal under AS 43.05.242, shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part. The hearings on appeal from a final order or judgment under AS 43.05.242 shall be on the record. (Emphasis added.)

Corporation under AS 31.25 that uses a right-of-way subject to this chapter [AS 38.35] may not be subject to judicial review[.]

The limitation in this subsection only applies to administrative approval of actions that are typically within the authority of state, including authority for land use and leasing, environmental permits not addressed in the next subsection, and business regulation. The bar of a judicial appeal is limited to necessary authorizations for single project -- a natural gas pipeline that uses a right-of-way subject to AS 38.35 that is being developed by the Alaska Gasline Development Corporation (AGDC), a state corporation. In other words, the limitation does not apply to a natural gas pipeline developed by any other person, does not apply to a pipeline that does not use a state right-of-way subject to AS 38.35, and does not apply to a permit issued by a federal agency that is outside of the state's authority.<sup>7</sup>

Subsection (c) includes an exception to the bar against a judicial appeal -- the allowance for the filing of "a claim alleging that an action will deny rights under the Constitution of the State of Alaska." A common issue in administrative actions is the right to due process, which is presumably a right that may be the basis for an allowable appeal. The right to due process in art. I, sec. 7, Constitution of the State of Alaska, is as follows:

**Due Process.** No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

A person claiming that a state action violates due process or affects another a constitutional right must file an appeal from the action within 60 days. The 60-day period in subsection (c) is twice as long as the 30-day period for filing a judicial review of a final administrative order under AS 44.62.560(a) (Administrative Procedure Act). The period for making an appeal seems adequate.

#### **Limiting the period for challenging the statute**

The second of the two situations relating to a court appeal is a challenge to the validity of subsection (c). A challenge to the validity of statute must be filed within 60 days after the effective date of the subsection.

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<sup>7</sup> AS 38.35.200(d) specifically exempts "[an] appeal of a permitting decision or authorization by the Department of Environmental Conservation under AS 46.03 or AS 46.14 that is made under a program approved or delegated by the United States Environmental Protection Agency." The failure to comply with requirements imposed by the federal government may result in the withdrawal of federal approval or delegation and the return of certain environmental regulation from the state to the federal government.

The legislature has enacted a number of statutes that requires a person bring an action within a limited time period, including the statutes of limitation in AS 09.10 and the period for filing from an administrative order as mentioned above. This limited period is similar to the limitations for appeals under AGIA and ANGPA and is based on the intent to expedite appeals that would cause unreasonable or unnecessary delays in bringing North Slope natural gas to market.

One problem with limiting the period for challenging the statute (or AGIA for that matter) is that the failure to bring a constitutional challenge within a limited period does not make an unconstitutional statute constitutional. Ultimately, it will be up to the court to decide whether a late-filed constitutional challenge will be allowed. Although the legislature may limit the period for bringing the appeal, a superior court might nevertheless exercise what it interprets to be its general jurisdiction under AS 22.10.020(a) and consider the challenge.

#### **Limiting the court's injunction powers**

Subsection (c) limits the powers of the superior court with regard to injunctions, stays, and restraining orders. That part of subsection (c) reads as follows:

Notwithstanding AS 22.10.020(c), except in conjunction with a final judgment on a claim filed under this subsection, the superior court may not grant injunctive relief, including a temporary restraining order, preliminary injunction, permanent injunction, or stay, against the issuance of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation.

If AS 22.10.020(c)<sup>8</sup> is strictly jurisdictional under art. IV, sec. 2, Constitution of the State of Alaska, the prohibition against injunctions, stays, and restraining orders could be upheld. On the other hand, the Alaska Supreme Court could find that injunctions, stays, and restraining orders are necessary tools of the superior court in the exercise of its constitutional powers, and find that the prohibitions in subsection (c) are not binding.

The Alaska constitution provides for the separation of powers by allocating powers between the legislature (art. II, sec. 1), the governor and the executive branch (art. III, sec. 1), and the judiciary (art. IV, sec. 1). The legislature may change court rules governing the administration of the courts or those governing practice and procedure by a

---

<sup>8</sup> AS 22.10.020(c): "The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court."

vote of two thirds of the members elected to each of the two houses,<sup>9</sup> but the legislature cannot reallocate constitutional powers. So long as Supreme Court finds that what the legislature considers a jurisdictional issue is actually one of judicial power, the Supreme Court may reject the limitations.

As discussed above, the Supreme Court has already rejected a jurisdictional limitation in AS 22.10.020 in favor of court power in *Bethel, supra*. In that case, the Alaska Supreme Court rejected limiting the language in AS 22.10.020(d) (that the superior court could only consider an appeal from an administrative agency "when provided by law") and ruled that "unless the legislature provides otherwise, administrative decisions are presumed to be judicially reviewable."<sup>10</sup> It is possible that a limitation by the legislature that prohibits an injunction, stay, or restraining order as provided in subsection (c) similarly could be set aside by the court if in conflict with the court's constitutional powers.

The resolution of the seeming conflict between the judicial power in art. IV, sec. 1, Constitution of the State of Alaska, and the jurisdiction of the courts prescribed by the legislature under the same constitutional provision and AS 22.10.020 cannot be predicted with certainty. The *Bethel* decision found authority for an administrative appeal when not specifically authorized by law; the Supreme Court could find authority for injunctions, stays, and restraining orders despite the enactment of subsection (c), which removes the authority, except in conjunction with a final order.

### Conclusion

Subsection (c) limits appeals, injunctions, stays, and restraining orders that could slow or stop progress in the development of an in-state natural gas pipeline by AGDC. The restrictions raise issues of legislative and judicial power and the separation of those powers. While the limitations provide protection for rights under the Alaska constitution, the resolution of the power conflict between the legislative and judicial branches may need to be settled by an action in court.

DMB:ljw:med

13-040.med

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<sup>9</sup> Article IV, sec. 15, Constitution of the State of Alaska.

<sup>10</sup> 780 P.2d at 1022.



THE STATE  
of ALASKA  
GOVERNOR SEAN PARNELL

Department of Natural Resources

Office of the Commissioner  
550 West 7th Avenue, Suite 1400  
Anchorage, Alaska, 99501-3650  
Phone: 907.269.8431  
Fax: 907.269.8918

February 12, 2013

The Honorable Dan Saddler, Co-Chair  
The Honorable Eric Feige, Co-Chair  
House Resources Committee  
State Capitol  
Juneau, AK 99801

Dear Representatives Saddler and Feige and members of the House Resources Committee:

In response to a question posed by Rep. Seaton relating to the Department of Natural Resources' administration of right of way leases, in consultation with the Department of Law, we offer the following response:

A lease with contract carrier covenants rather than common carrier covenants may be issued only to an applicant eligible to be regulated under the new AS 42.08 (Section 33 of HB4\O). Since AS 42.08 is limited to in-state natural gas pipelines, no oil pipeline can become a contract carrier. With respect to existing gas pipelines, there is no language within HB4 that would require any existing lease other than a single lease with AGDC to transition to contract carriage.

Under HB4, an existing lessee with a 38.35 right of way for an in-state gas pipeline may apply to amend its lease to include the 38.35.121 covenants instead of the 38.35.120 covenants. That would require notice to the public and a determination by the commissioner that 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." This is the same finding the commissioner must make before granting a lease in the first instance.

I have attached a summary of the lease amendment process including a recent example where DNR added lands to the TAPS lease. This process is expected to take at least 70-80 days.

While not considered a routine activity, the SPCO has amended the TAPS right-of-way lease 56 times over the life of the lease (<http://dnr.alaska.gov/commis/pco/tapsamendments.htm>).

If you have any additional questions, please let me know.

kindest regards,



Esther Tempel  
 Legislative Liaison

CC: Heather Brakes, Legislative Director, Governor's Office  
 Mike Thompson, Director, State Pipeline Coordinator's Office

Enclosures:

Aleyska Lease Amendment Request  
 Lease Amendment Public Notice  
 Commissioner's Analysis and Proposed Decision Public Notice  
 Commissioner's Analysis and Proposed Decision  
 Final Lease Amendment

## DNR Lease Amendment Summary

The AS 38.35 right-of-way lease amendment process is summarized as follows:

1. The State Pipeline Coordinator's Office (SPCO) receives a lease amendment request or application with payment.
2. The SPCO issues a 60-day notice of application for the proposed lease amendment.
3. The State Pipeline Coordinator (SPC) notifies the Commissioner of the request, reviews the request, and drafts the Commissioner's Analysis and Proposed Decision.
4. The SPCO issues a 30-day public notice of the Commissioner's Analysis and Proposed Decision.
5. At the close of public notice the Commissioner may sign the decision and it becomes the Final Decision.
6. If there are significant changes to the Proposed Decision, the Commissioner may choose to re-notice the Analysis and Proposed Decision, but it is not required by statute.
7. The lease amendment document is signed by the lessee.
8. The lease amendment is executed by the Commissioner.
9. The SPCO records the lease amendment document in the appropriate recording district(s).

RECEIVED

MAY 31 2012

STATE PIPELINE  
COORDINATORS OFFICE

TELEPHONE (907) 787-8700



P.O. Box 196860

ANCHORAGE, ALASKA 99518-8680

May 29, 2012

APSC Letter No. 25883

Mr. Frederick M. Thompson, State Pipeline Coordinator  
Alaska Department of Natural Resources  
411 West 4th Avenue, Suite 2C  
Anchorage, AK 99501

RE: Right-of-Way Lease, ADL 63574  
Trans Alaska Pipeline System, Fuel Gas Line Milepost 74.9 & 106.12  
Gate Valves 5 & 7 Replacement and Relocation (F802)

Dear Mr. Thompson:

Alyeska Pipeline Service, on behalf of the TAPS Lessees, hereby applies to modify the land description of the referenced Lease in order to accommodate the subject work. This package follows the several discussions at recent Monthly Lands and Permits Meetings about the work which also includes one federal-land valve site.

Also enclosed are:

1. a check for \$100.00 to cover the application fee,
2. Legal Description (Attachment A) and Project Narrative,
3. Final Design (Issued for Review) binder (2 paper w/ hand-corrected typo & 1 CD),
4. Project schedule (in triplicate),
5. Grant Stipulation Compliance Matrix (in triplicate),
6. Copy of the Department of the Army permit application (to follow).

Alyeska further requests a determination of need for a Notice to Proceed for the same work in accordance with SPCO letter no. 12-086-AS dated March 13, 2012, and the issuance of a Notice to Proceed pursuant to Stipulation 1.7.1 of the referenced right-of-way if your determination is affirmative. In accordance with the request in Joint Pipeline Office letter no. 00-62-MC dated August 1, 2000, we also address this request to the Federal Authorized Officer by copy of this letter.

The Final Design (Issued for Construction) package is anticipated by mid-June. Upon completion of construction, we will submit an as-built survey of the structure for the purpose of describing the permanent right-of-way addition.



SPCO-20120601-2

DELIVERING EXCELLENCE

APSC Letter No. 25883

5/29/2012

Page 2

And, this letter serves to request, pursuant to Stipulation 2.9.1 of the TAPS right-of-way lease, that Alyeska may conduct certain short-term, non-intrusive activities related to the work, such as dewatering and water quality monitoring, outside of the permanent and amended right-of-way limits. Such access would occur only if needed and be via foot, passenger vehicles and small, rubber-tired or tracked equipment and include the placement of hoses, and other small, portable equipment.

If you have any questions or need other information, please contact Tom Marchesani at at 787-8827 or myself at 787-8170.

Sincerely,



Peter C. Nagel, SR/WA  
Land and Right-of-Way

Enclosures

cc: Nolan Heath, Acting Federal Authorized Officer, BLM  
Joe Kemp DNR/JPO  
Pat Jarrett DNR/JPO  
SPCO Record Centers

**ATTACHMENT A**

**FGL Valve no. 5**

**Township 2 South, Range 14 East (Umiat Meridian)**

**Section 21 NW4, lands immediately adjacent to the existing TAPS right-of-way and the Dalton Highway containing approximately 0.25 acres (See attached drawing).**

**FGL Valve no. 7**

**Township 7 South, Range 14 East (Umiat Meridian)**

**Sections 16 NW4 and 9 SW4, lands immediately adjacent to the existing TAPS right-of-way and the Dalton Highway containing approximately 0.52 acres (See attached drawing).**

**TRANS ALASKA PIPELINE SYSTEM**  
**Project F802 – 2012 Fuel Gas Line Manual Gate Valve Replacements**  
**Project Narrative (May, 2012)**

**Project Purpose**

Project F802 will replace three of the existing Alyeska Pipeline Service Company's fuel gas line (FGL) mainline gate valve (MGV) sets, as well as make modifications to the Pump Station 3 (PS03) Lateral line. The purpose of the project is to replace existing below ground valve sets with above ground valve sets and off-set them further from the highway to ensure adequate distance from the highway to prevent vehicular damage and the long term integrity of the new pipe and valve set being installed.

**Location**

The project sites are located immediately adjacent to the Dalton Highway a) 74.9 (MGV-5, Dalton Hwy MP 342.1), b) 106.1 (MGV-7 and PS03, Dalton Hwy MP 311.7), and c) 135.3 (MGV-9, Dalton Hwy MP 282.4) miles south of Pump Station 1 on the Trans Alaska Pipeline System.

**Work Description**

The MGV-5 and MGV-9 sites will require 2 lengths of trenching for installing the off-setting pipe and two excavation holes for stopple work. The MGV-7 and Pump Station 3 Lateral site will have three stopple excavations. The trenching will be performed by construction vehicles travelling only on tundra mats. Excavations for stopple equipment will be 30 feet long by 15 feet wide at the surface (orientation along the pipe), sloping inward to a depth of 6 feet (two for MGV-5 and MGV-9 each, and three for MGV-7 & PS03). At the Pump Station 3 Lateral, 2-inch-diameter carrier pipe inside a 6-in. casing pipe will be installed across the highway to maintain service to the pump station during the project on a temporary basis. The excavations will be typical TAPS fuel gas line excavations extending below the pipe for purposes of welding, and will remain open until recoating is completed.

Each relocated MGV will be supported by 2 vertical supports of 4" diameter, 20' long steel pipes filled with new slurry backfill. Concrete pad with steel platforms and stairs will provide personnel access for valve operations. Clean gravel materials will be used for the construction of the required access workpads. The pads will be level with the elevation of the highway which should correlate to 3 to 4 feet above the grade level of the surrounding tundra. Chain-link fencing will be moved to the new above-ground valve locations and vehicle gates will be installed to control site access.

With the exception of the existing lateral piping crossing the highway at Pump Station 3, the existing valve sets and piping being retired will be physically removed from the ground prior to ground restoration activities. At the highway crossing, the retired piping will be abandoned in-place after being purged of natural gas and capped.

Backhoes, pick-up trucks, boom-trucks/cranes, and ancillary equipment; welding skids, heaters, light plants and equipment common to Alyeska Pipeline excavations are expected to be used. Traffic control, comprising signs, flaggers, lane closures, barriers (Jersey Barricades) and other contractor designed traffic control plans, will be implemented.

**Environmental Considerations and Mitigation**

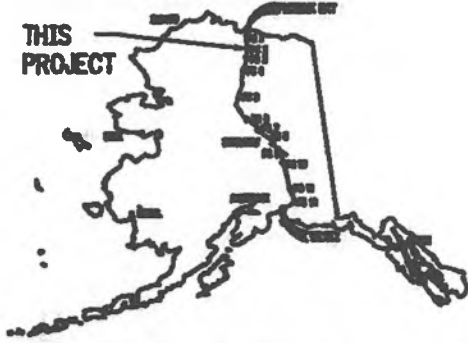
Adjacent to the highway and TAPS workpads, wetland plant communities predominate of the lowland tundra variety which includes mosses, lichens, herbs and low shrubs. The soils in this area consist of organic silt with some sand, gravel mixed with sand, numerous cobbles and scattered boulders.

The excavated material will be temporarily stockpiled on mats as needed to protect the natural ground surface, with the vegetation and organic soils stored separately from the gravel and silt, and then be used to backfill the excavations after the piping is installed and padding fill has been completed. The pad expansions are situated to utilize existing gravel embankments while maintaining vehicular access. When the project is complete, the disturbed areas will be restored to stable slopes approximating the original grade and drainage patterns in accordance with TAPS manual MR-48, section 23 (Erosion Control). Heavy equipment use will be confined to existing TAPS workpad, the new pad expansions and tundra mats. There is very minor loss in the area of waters of the U.S. in an area abundant in such, and no additional mitigation is planned.

**Schedule**

The field implementation is planned to begin after August 1, 2012, and be substantially complete by November 1, 2012.

THIS PROJECT

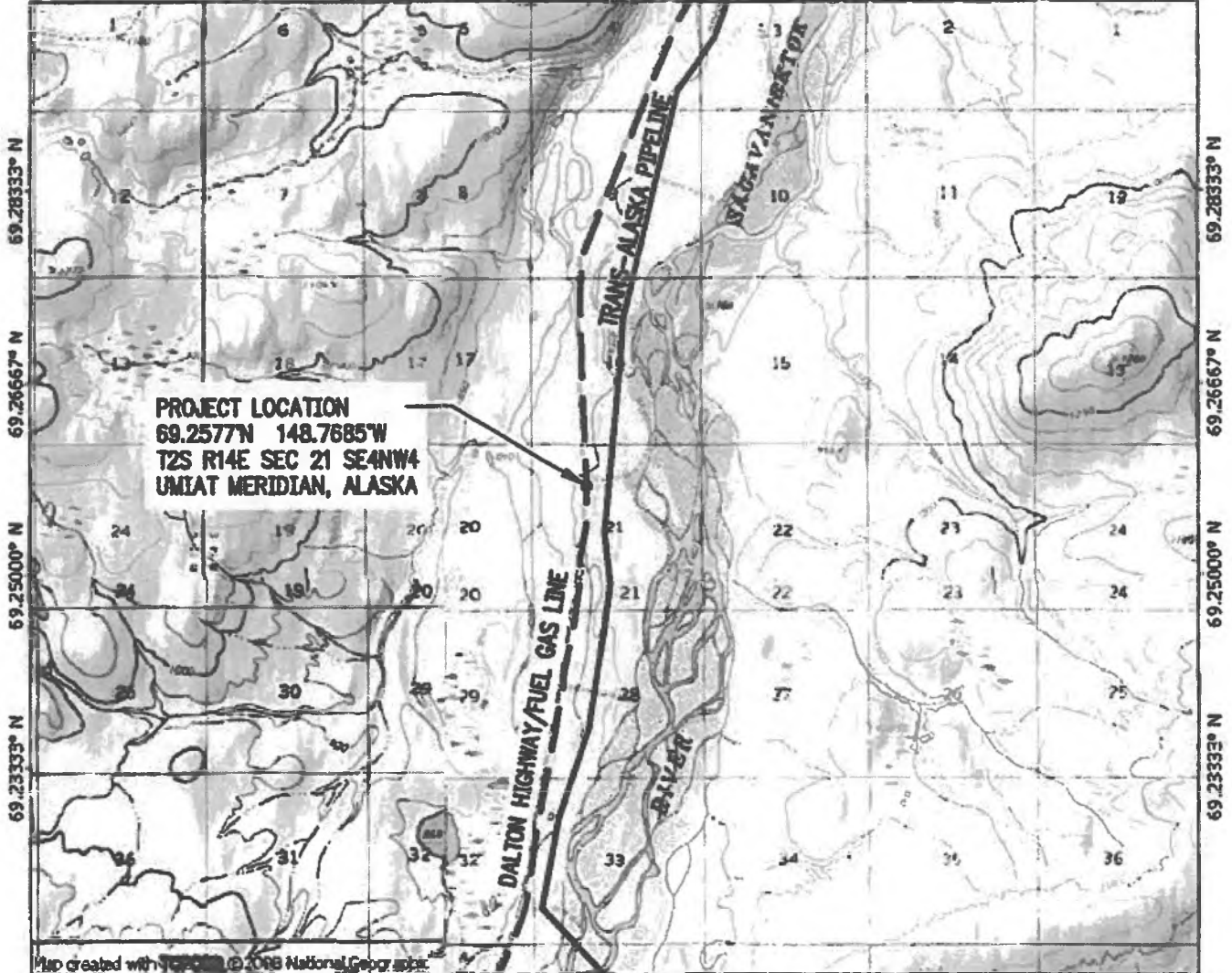


### PROJECT SITE INFORMATION

FGL STATION: 3954+86, MP 74.9, AL-15-G100 SH 14  
 DALTON HIGHWAY MP 342.1  
 LOCATION REFERENCE: 16.9 MILES SOUTH OF PUMP STATION 2



148.90000° W 148.85000° W 148.80000° W 148.75000° W 148.70000° W WGS84 148.63333° W



148.90000° W 148.85000° W 148.80000° W 148.75000° W 148.70000° W WGS84 148.63333° W

0.0 0.5 1.0 1.5 2.0 miles  
 0.0 0.5 1.0 1.5 2.0 2.5 3.0 3.5 km

TN 1 MN  
 21°  
 05/21/12

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
 TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
 LOCATION AND VICINITY MAP

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/24/12

PLATE 1

REV.	A	DWN. TAN	CKD. JAW	APPR. JPD
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SCALE: AS NOTED

SHEET 1 OF 5

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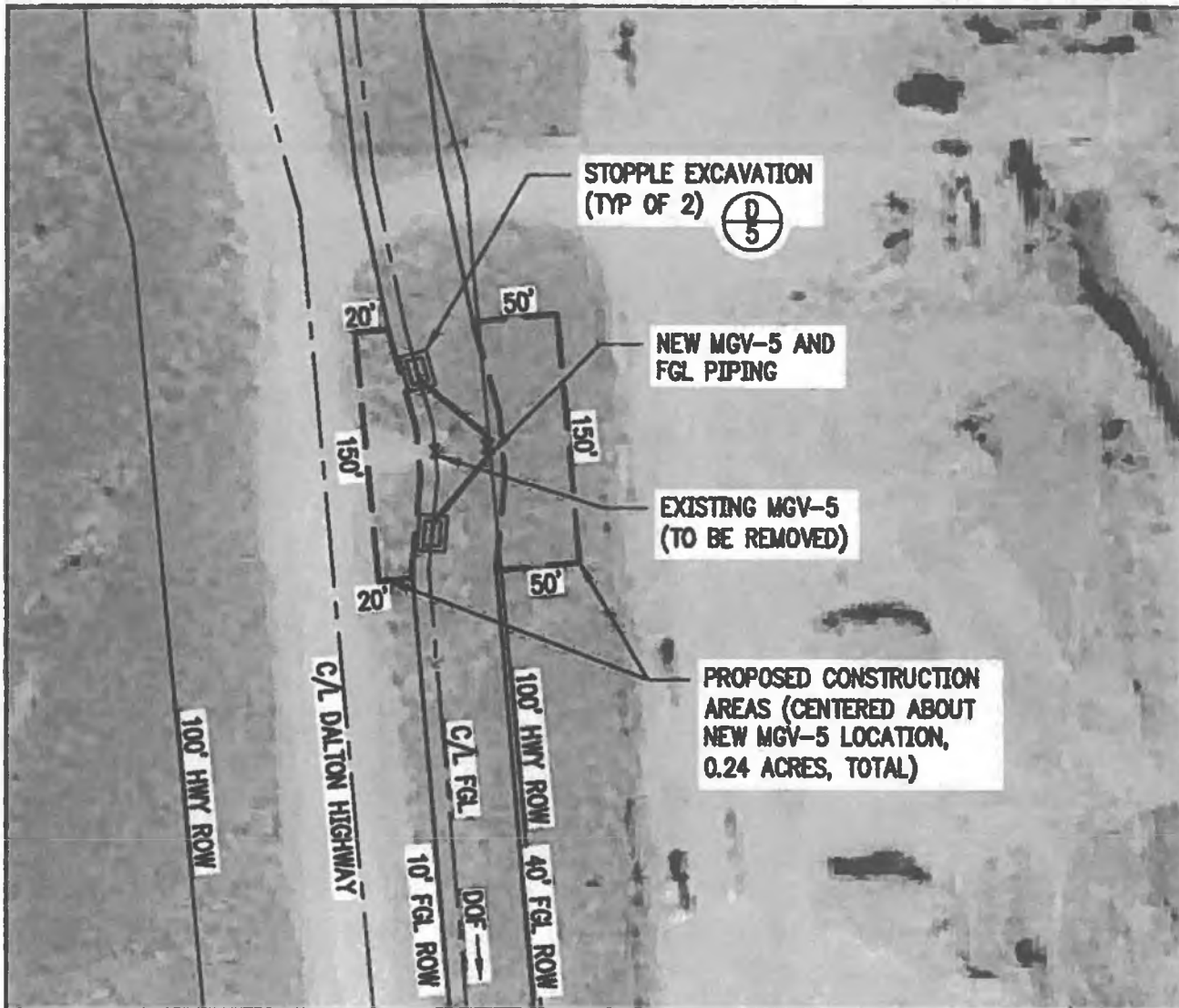


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PLAN

SCALE: 1" = 100'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/24/12

PLATE 2

REV. A DWN. TAN CKD. JAW APPR. JPD

SCALE: AS NOTED

SHEET 2 OF 5

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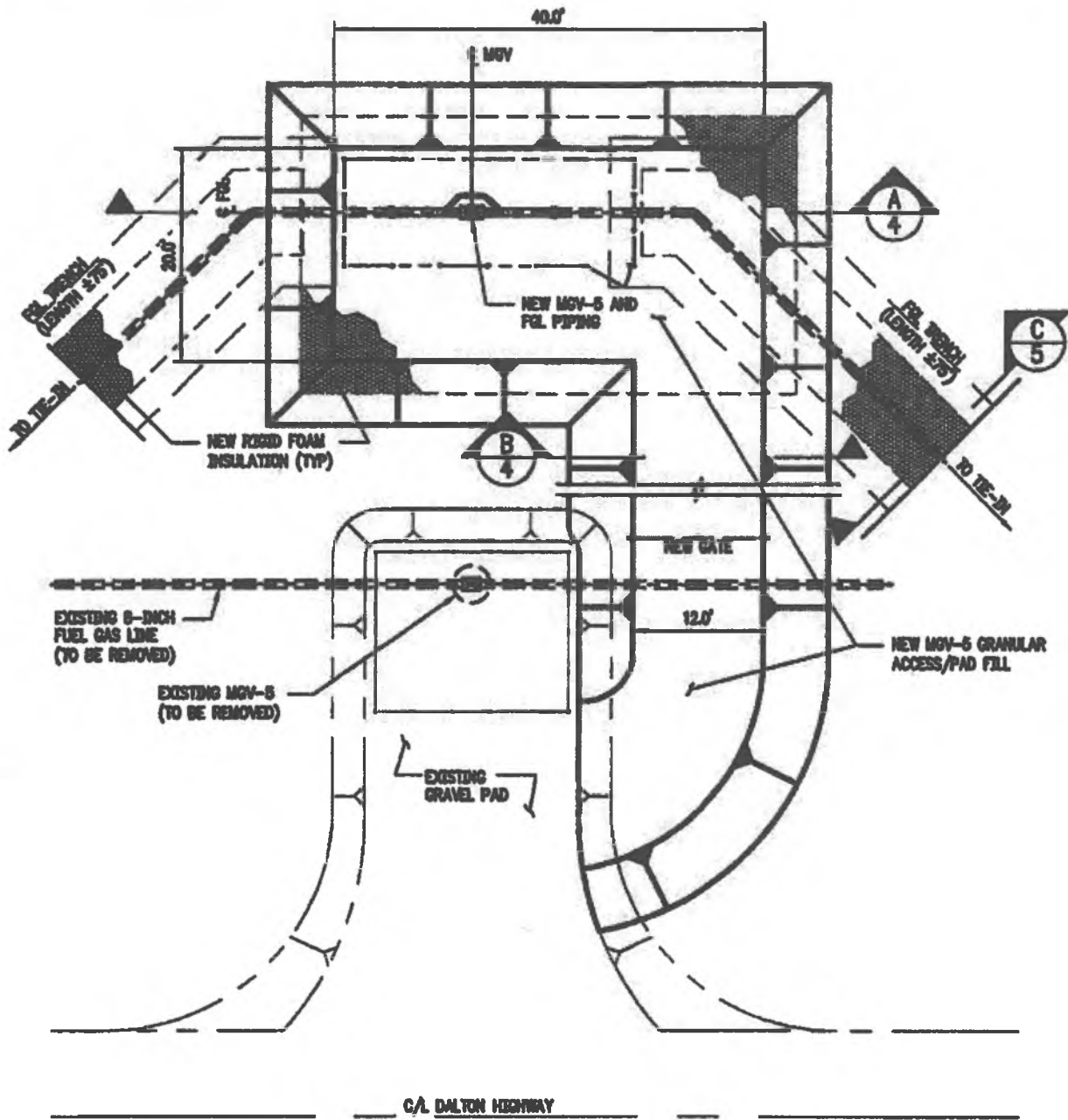
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**PLAN**  
SCALE: 1" = 15'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/24/12

PLATE 3

REV. A DWN. TAN CKD. JAW APPR. JPD

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SHEET 3 OF 5

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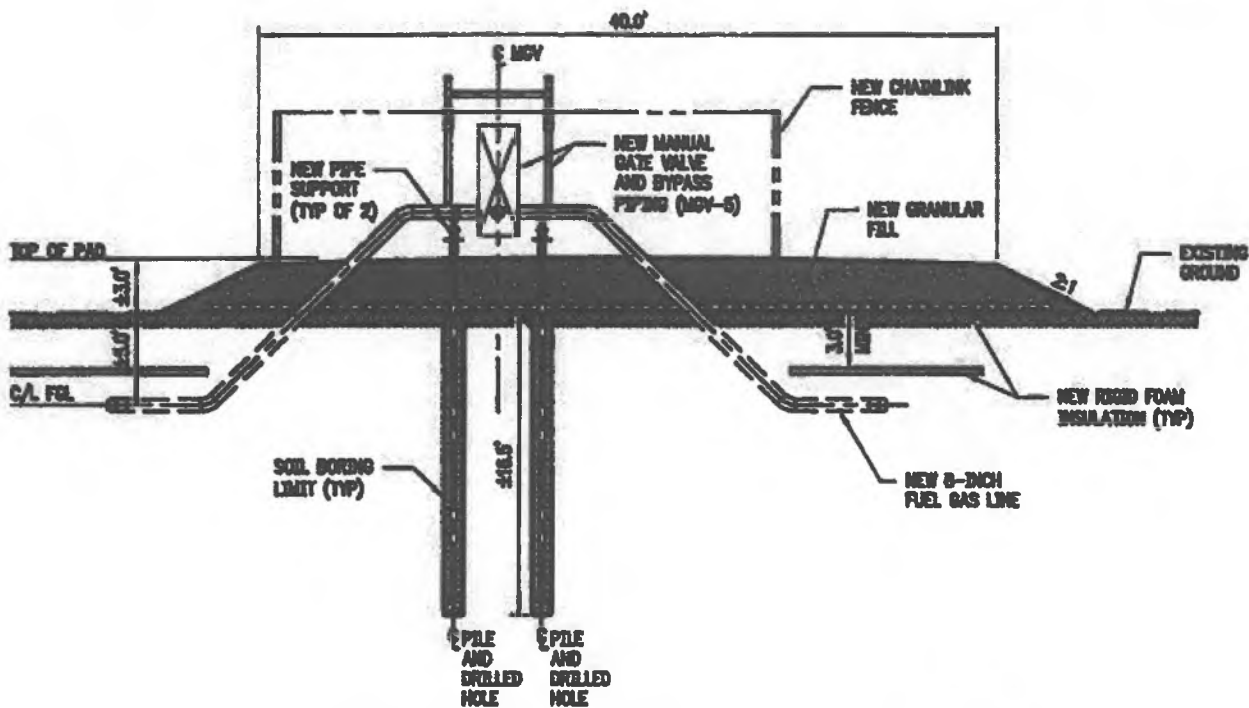
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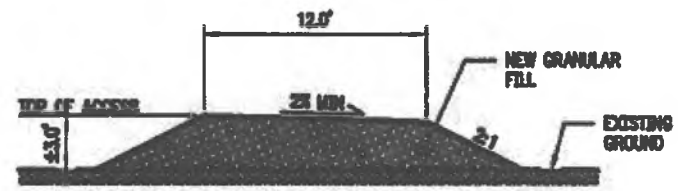
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SECTION - MGV-5 PAD A  
3

SCALE: 1"=10'



SECTION - MGV-5 ACCESS B  
3

SCALE: 1"=10'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/24/12	PLATE 4
SCALE: AS NOTED	SHEET 4 OF 5

REV. A	DWN. TAN	CKD. JAW	APPR. JPD
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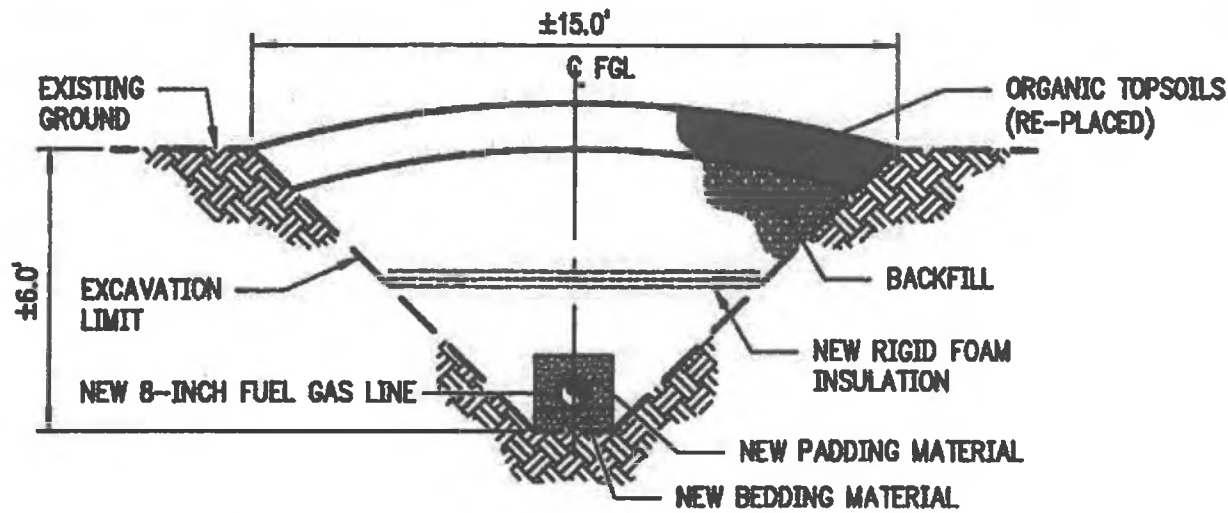
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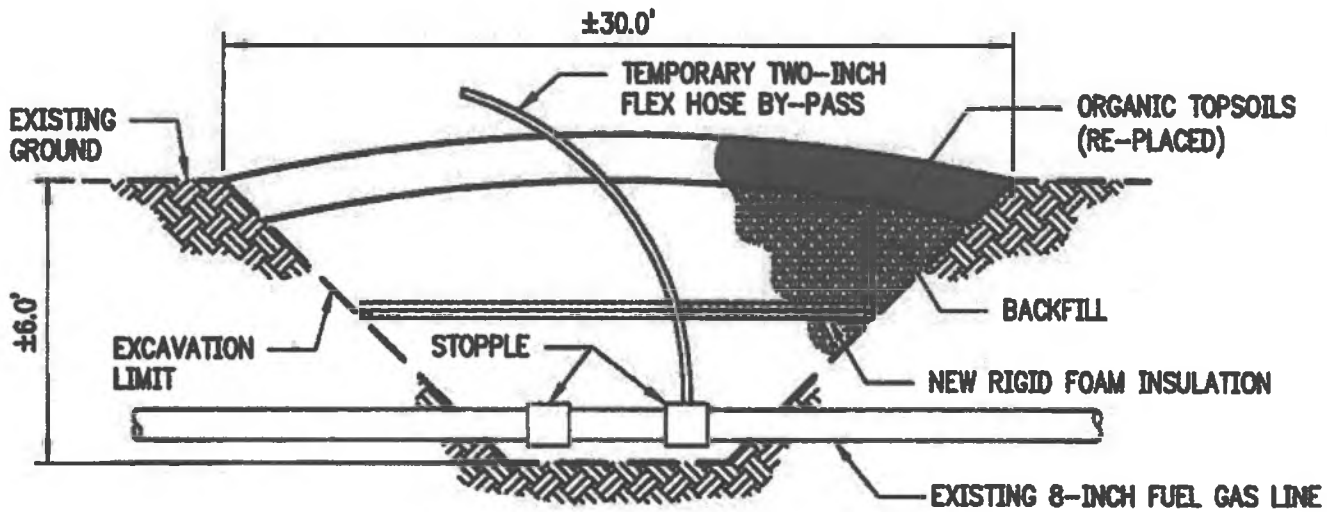
ESTIMATED FILL QUANTITIES		
	AREA (SF)	VOLUME (CY)
FGL TRENCH EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	2,000	280
FGL STOPPLE EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	900	90
MGV-5 ACCESS/PAD (IMPORTED GRANULAR FILL)	3,100	300



SECTION - FGL TRENCH EXCAVATION

C  
3

SCALE: NTS



SECTION - FGL STOPPLE EXCAVATION

D  
2

SCALE: NTS

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/24/12

PLATE 5

REV. A DWN. TAN CKD. JAW APPR. JPD

SCALE: AS NOTED

SHEET 5 OF 5

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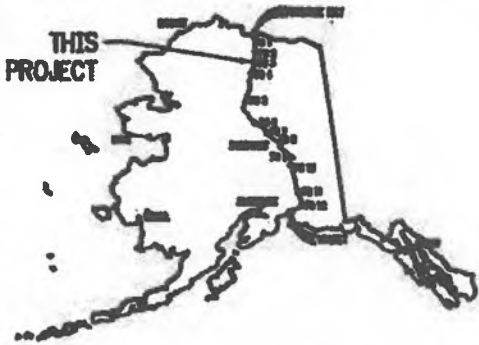
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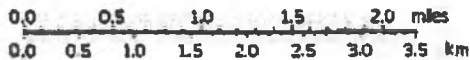
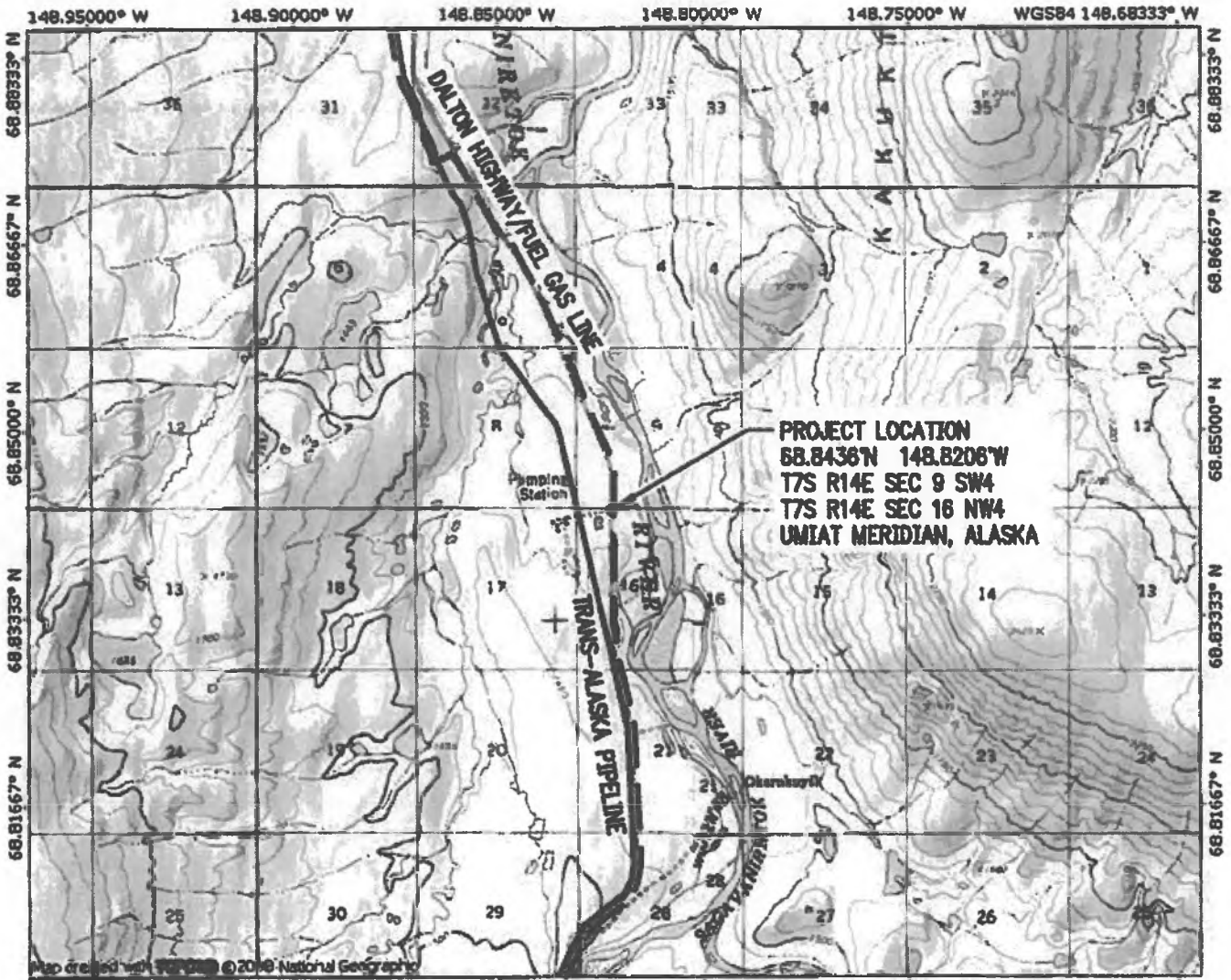
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### PROJECT SITE INFORMATION

FGL STATION: 5602+23, MP 108.1, AL-15-G100 SH 20  
 DALTON HIGHWAY MP 311.7  
 LOCATION REFERENCE: AT ENTRANCE TO PUMP STATION 3 FROM  
 DALTON HIGHWAY



TNT  
 MN  
 21°  
 05/21/12

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
 TAPS FUEL GAS LINE MG-7 REPLACEMENT  
 LOCATION AND VICINITY MAP

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/29/12

PLATE 1

REV.	A	DWN. TAN	CKD. JAW	APPR. JPD
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SCALE: AS NOTED

SHEET 1 OF 5

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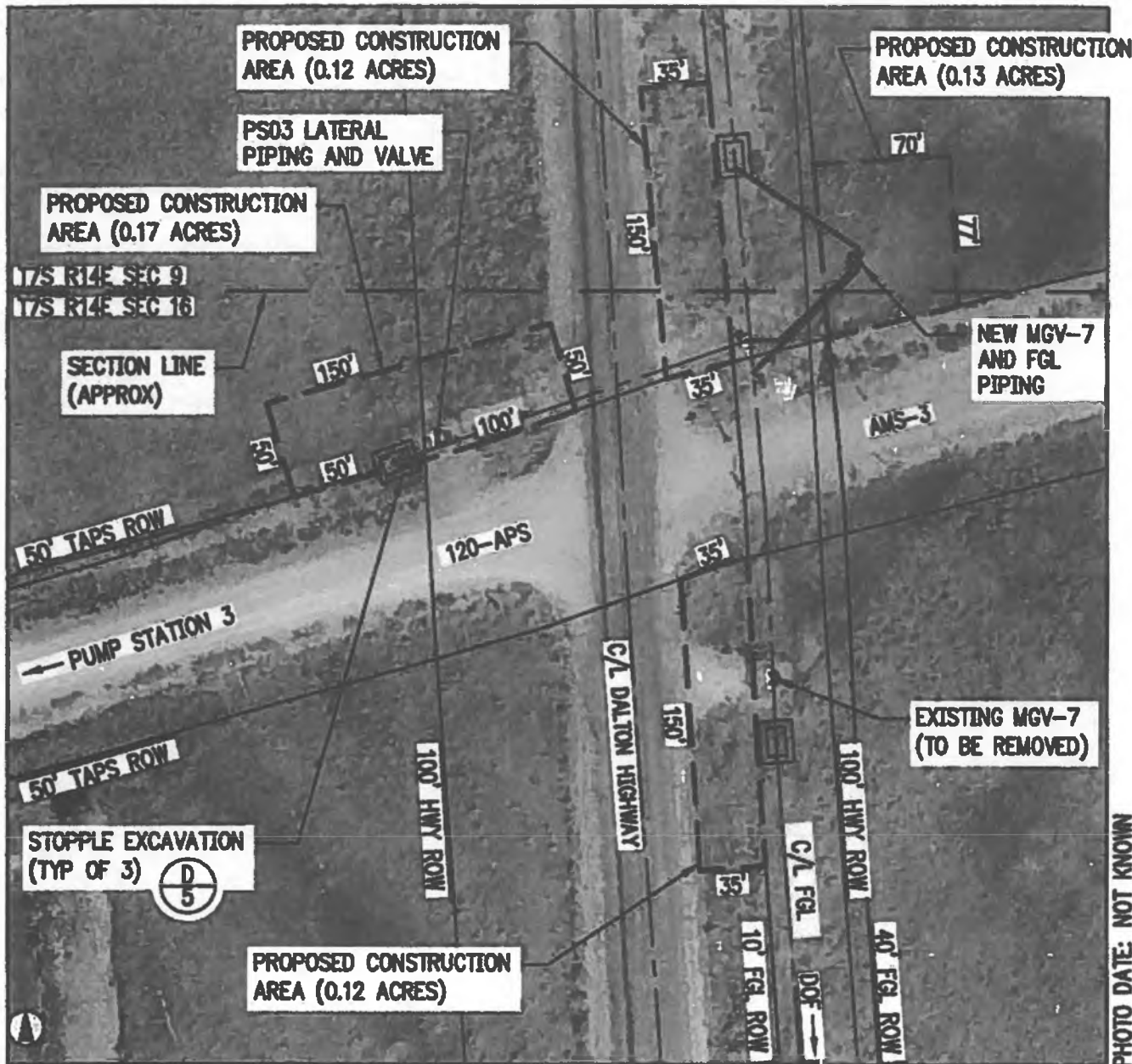


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**PLAN**

SCALE: 1" = 80'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MG-7 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/29/12

PLATE 2

REV. A DWN. TAN

CKD. JAW

APPR. JPD

SCALE: AS NOTED

SHEET 2 OF 5

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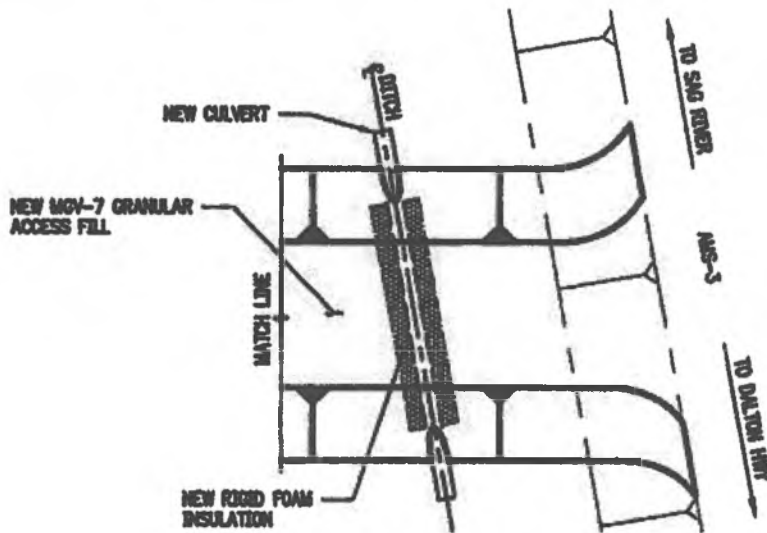
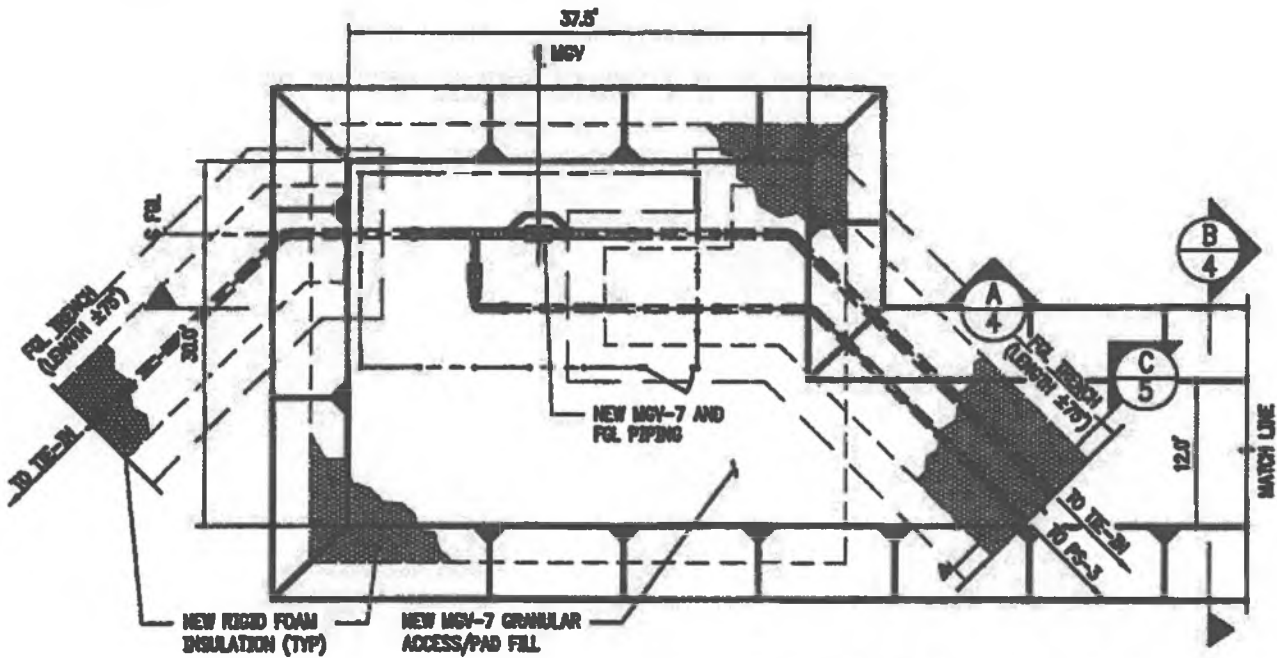
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PLAN

SCALE: 1" = 15'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGCV-7 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/29/12

PLATE 3

REV. A

DWN. TAN

CKD. JAW

APPR. JPD

SCALE: AS NOTED

SHEET 3 OF 5

AUTOCAD DWG DO NOT REVISE MANUALLY

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FILE DATE: -

PLOT SCALE: -

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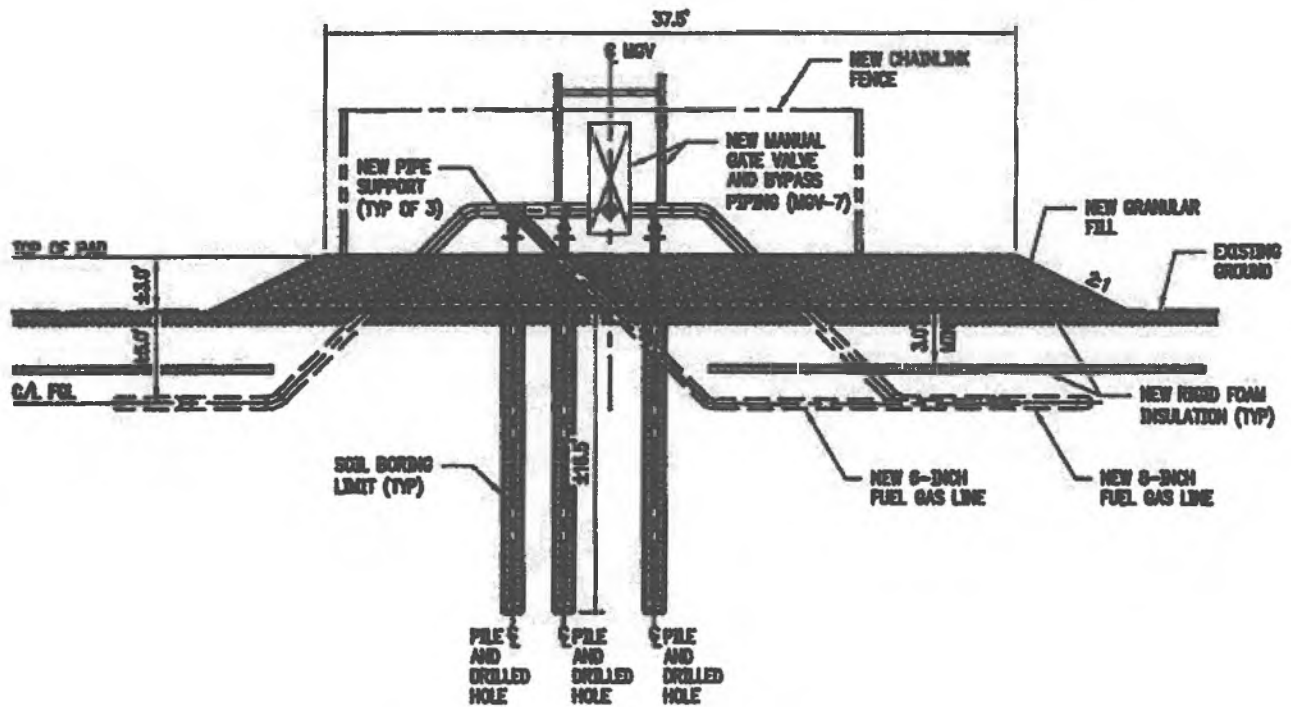
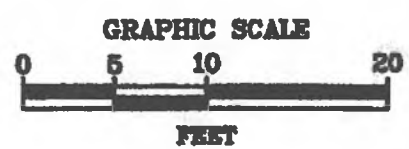
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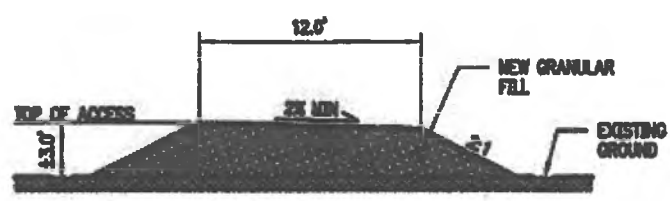
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SECTION - MGV-7 PAD (A/3)  
SCALE: 1"=10'



SECTION - MGV-7 ACCESS (B/3)  
SCALE: 1"=10'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-7 REPLACEMENT SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/29/12

PLATE 4

REV.	A	OWN. TAN	CHK. JAW	APPR. JPD
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SCALE: AS NOTED

SHEET 4 OF 5

AUTOCAD DWG DO NOT REVISE MANUALLY

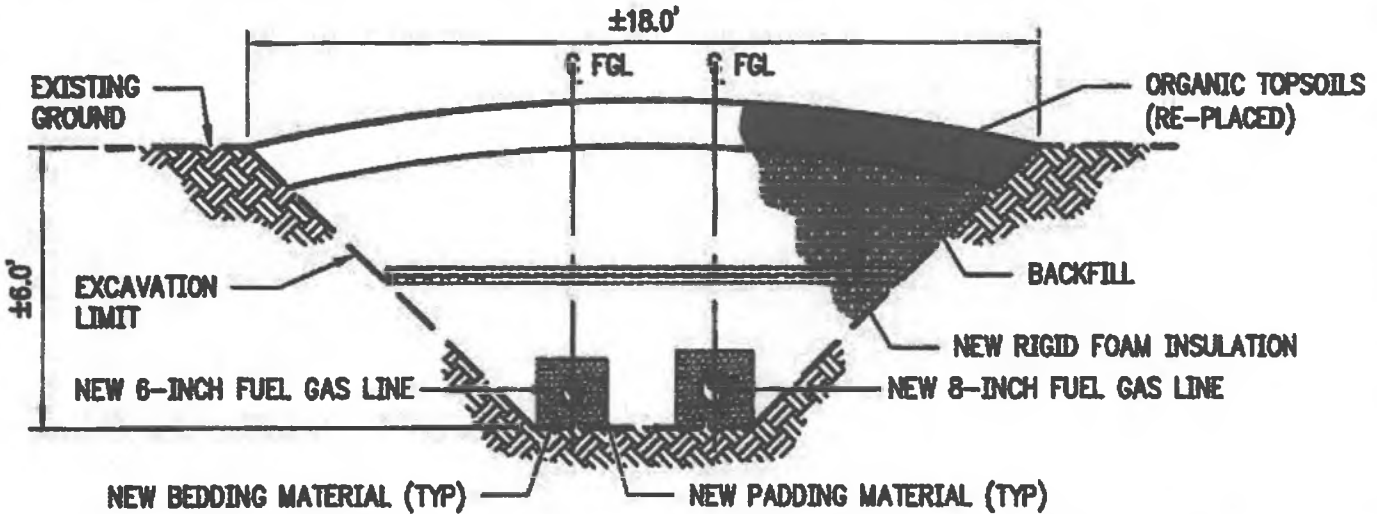
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## ESTIMATED FILL QUANTITIES

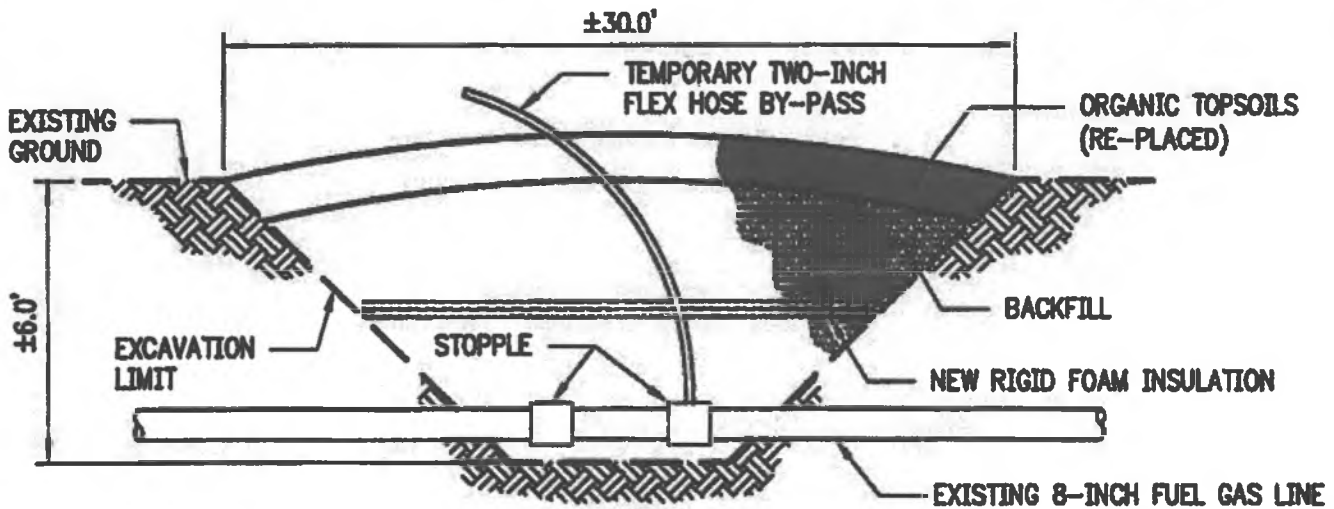
	AREA (SF)	VOLUME (CY)
FGL TRENCH EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	2,500	330
FGL STOPPLE EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	1,350	135
MGV-7 ACCESS/PAD (IMPORTED GRANULAR FILL)	3,100	300



### SECTION - FGL TRENCH EXCAVATION

SCALE: NTS

C  
3



### SECTION - FGL STOPPLE EXCAVATION

SCALE: NTS

D  
2

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-7 REPLACEMENT  
SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 05/29/12

PLATE 5

REV.	A	DWN. TAN	CKD. JAW	APPR. JPD
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SCALE: AS NOTED

SHEET 5 OF 5

AUTOCAD DWG. DO NOT REVISE MANUALLY

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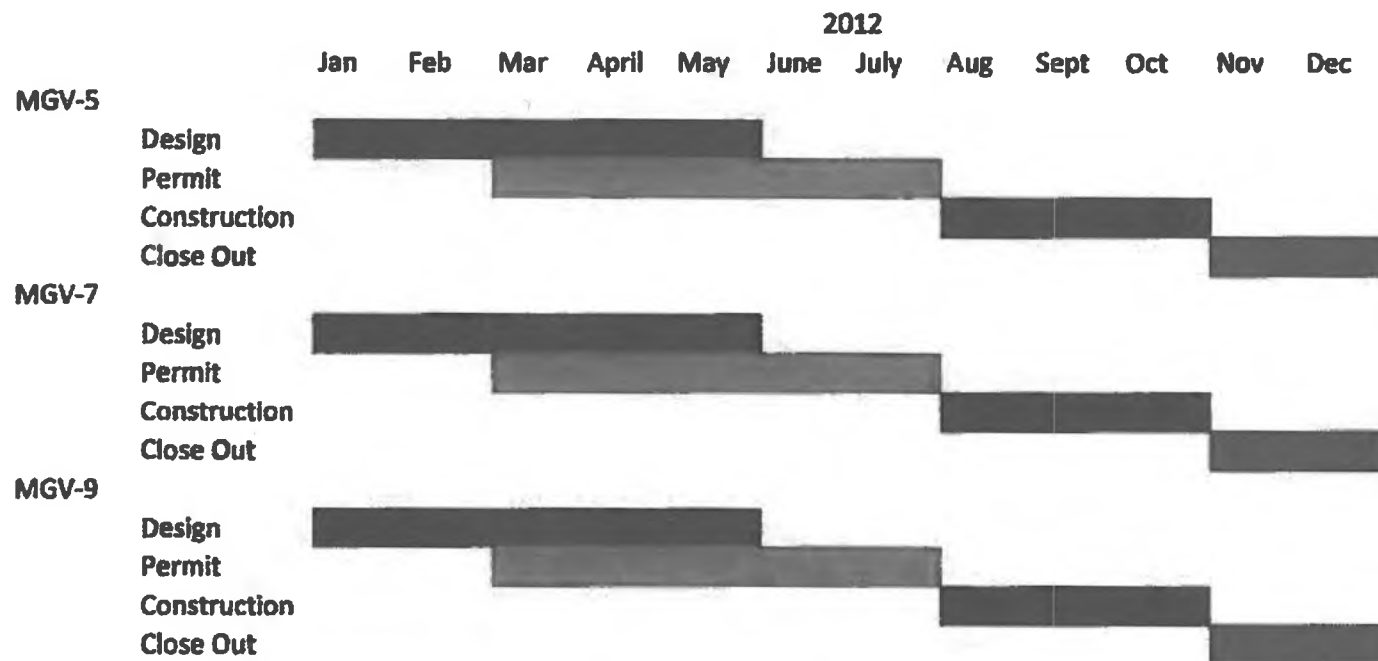
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## Trans Alaska Pipeline System, Alyeska F802 Project Schedule



**Trans Alaska Pipeline System, Fuel Gas Line 2012 Manual Gate Valve Replacements (F802)**

**STIPULATION MATRIX (Revision 0)**

Section	Stipulation Description	Demonstration of Compliance			Alaska Document	Req'd. Approval		Permit/ Variance
		NTPA	Drawings	Specifications		Written	Field	
1.7.1.1	Permission to Construct					X		NTP
1.7.1.2	Issuance of NTP	Stipulation Matrix						
1.7.2.1	Submission of Preliminary Design		X	X				NTP
1.7.4.1	NTP Applied for has FAO Approval of Prelim. Design for Pipeline Segment	X						
1.7.4.2	Survey Centerline		X					
1.7.4.3	NTPA Supporting Data	schedules	X	X				
1.9.1	Engagement of Archaeologist				GL-2 & 2005 Prog. Agmt			
1.9.2	Encountering of Sites - Investigation				EN-43, GL-2 & 05 Prog. Agmt			
1.9.3	Copies of Investigation Reports				GL-2 & 05 Prog Agmt			
1.11.1	Protection of Existing Facilities		x	x	MR-48 & FG-78	X		Utility Permit
1.12.1	Regulation of Public Access to Access Rds.	n/a						
1.13	Electronic Operated Devices	n/a						
1.14.1	Posting Right-of-Way				Completed, EN-43			
1.14.2	Brief Personnel on Fish & Game Regs.				ENV-003; EN-43-005			
1.15.1	Prohibit Obstruction to Passage of Small Craft		X					
1.16.1	Marking and Protecting Monuments				SR-55, Sec. 5.23.2			
1.16.2	Monument Restoration				SR-55, Sec. 5.23.2			
1.17.1	Fires				EN-43, Sec. 3.7			
1.18.1	Surveillance-Maintenance				MS-31			
1.18.3	Records				QA-38			
1.19.1	Housing and Quarters				On Request			
1.20.1	Health and Safety				SA-38			
2.1.1	Environmental Briefing				EN-43-002			
2.2.1.1	Pollution Control				EN-43-006			
2.2.2.1	Compliance with Water Quality Stds				EN-43-004			
2.2.2.2	Use of Mobile Ground Equipment in water	n/a						
2.2.6.2	Removal of Waste				EN43-006			
2.4.1.3	Erosion Control Facilities				MR-48-009.23			
2.4.3.1	Erosion Control at Streams	n/a						
2.4.3.2	Temporary Access Over Stream Banks	n/a						
2.5.1.1	Uninterrupted Movement and Safe Passage of Fish	n/a						
2.5.2.2	Avoid Channel Changes in Fish Spawning Areas	n/a						
2.5.2.3	Protect Fish Spawning Beds from Sediment	n/a						
2.5.2.4	Special Reqs to Protect Spawning Beds	n/a						
2.6.1.1	Material Purchase				Permit Acquisition Guidelines			
2.6.1.3	Excavation in River Beds	n/a						
2.6.2.1	Layout of Material Sites	n/a						

**Trans Alaska Pipeline System, Fuel Gas Line 2012 Manual Gate Valve Replacements (F802)**  
**STIPULATION MATRIX (Revision 0)**

Section	Stipulation Description	Demonstration of Compliance			Alaska Document	Req'd. Approval		Permit/ Variance
		NTPA	Drawings	Specifications		Written	Field	
2.7.1.1	Clearing Boundaries	n/a						
2.7.2.2	Tree Cutting	n/a						
2.7.2.3	Tree Falling Areas	n/a						
2.7.2.4	Hand Clearing	n/a						
2.7.2.5	Debris Removal			X	MR-48, Sec 14. 22. 23			
2.8.1	Disturbance of Natural water	n/a						
2.9.1	Oper. of Mobile Ground Equip. Off ROW	X	X	X		X		right of entry
2.11.1	Plan for Using Explosives	n/a			Master Spec C-415			
2.12.1	Restoration of Disturbed Land			X	MR48. sec 14: EN-43-005			
2.12.4	Disposal of Vegetation and Overburden				MR48 sec. 14; EN-43-003			
2.13.1	Notice of Oil Discharge				ODPCP, EN-43			
2.13.2	Immed. Notice of Discharge From Any Storage Facility				ODPCP, EN-43			
2.14	Contingency Plan				ODPCP, EN-43			
3.2.2.2	Min. Injury to Ground Organic Layer	n/a	X					
3.2.2.4	Continuous Inspection				QIP: AMS-004-01 Sec 2			
3.4	Earthquake and Fault Displacements				DB - 180			
3.6.1.1	Pipeline Designed for Hydrologic and Hydraulic Effects	n/a			DB - 180			
3.6.1.1.1.2	Bases of Design Flood	n/a						
3.6.1.1.1.5	Protection Against Channelization in Flood Plains	n/a						
3.9.1	Construction to Minimize Thermal and Environmental Changes	X	X	X				NTP
3.9.2	Construction and Operations	n/a						
3.10	Pipeline Corrosion	X		X	DB - 180			
3.11	Secondary Containment at Tank Farms							

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
STATE PIPELINE COORDINATOR'S OFFICE  
411 WEST 4TH AVENUE, SUITE 2  
ANCHORAGE, ALASKA 99501  
(907) 269-6403

NOTICE OF RIGHT-OF-WAY AMENDMENT APPLICATION  
TRANS-ALASKA PIPELINE SYSTEM – ADL 63574  
FUEL GAS LINE MANUAL GATE VALVE REPLACEMENTS

Subject to the provisions of Alaska Statutes (AS) 38.35.015 and AS 38.35.070 and pursuant to the regulations promulgated thereunder, the State Pipeline Coordinator's Office hereby gives notice that Alyeska Pipeline Service Company, as agent for the Trans-Alaska Pipeline System (TAPS) lessees, submitted a request to amend the Right-Of-Way Lease for the Trans-Alaska Pipeline, ADL 63574, to add approximately 0.78 acres of land adjacent to the Dalton Highway at two locations.

The purpose of the request is to replace two existing below ground valve sets on the TAPS Fuel Gas Line (FGL), as part of TAPS Project F802. FGL Manual Gate Valves (MGV) No. 5 and No. 7 will be replaced with above ground valve sets that will be set further from the highway on new gravel pads to ensure adequate distance from the highway to prevent vehicular damage. The project will increase the long term integrity of the new pipe and valve sets. Access workpads will be constructed from the Dalton Highway to the new valve sites and vehicle gates will be installed to control access.

The lands are generally described as:

**FGL MGV No. 5**

Township 2 South, Range 14 East, Umiat Meridian, Alaska,  
Section 21, NW4, lands immediately adjacent to the existing TAPS right-of-way and the Dalton Highway at milepost 342.1, containing approximately 0.24 acres, and

**FGL MGV No. 7**

Township 7 South, Range 14 East, Umiat Meridian, Alaska,  
Section 9, SW4, and Section 16, NW4, lands immediately adjacent to the existing TAPS right-of-way and the Dalton Highway at milepost 311.7, containing approximately 0.54 acres.

Pursuant to AS 38.35.070(3), copies of the notice or application will be furnished, at cost, to persons requesting them.

**AS 38.35.200 governs judicial review of decisions of the commissioner:**

**38.35.200. Judicial review of decisions of commissioner on application.**

**(a) An applicant or competing applicant or a person who has direct financial interest affected by the lease who raises objections within 60 days of the publication of notice under AS 38.35.070 are the only persons with standing to seek judicial review of a decision of the commissioner under AS 38.35.100.**

**(b) The only grounds for judicial review of a decision of the commissioner are**

- (1) failure to follow the procedures set out in this chapter; or**
- (2) abuse of discretion so capricious, arbitrary, or confiscatory as to constitute a denial of due process.**

**Any objections pursuant to AS 38.35.200 must be submitted to the State of Alaska, Department of Natural Resources, State Pipeline Coordinator's Office, via letter, email or facsimile before 5:00 p.m. on July 30, 2012:**

**State Pipeline Coordinator's Office  
411 West 4<sup>th</sup> Avenue, Suite 2  
Anchorage, AK 99501-2343  
Phone: (907) 269-6403 Fax: (907) 269-6880  
E-Mail: [spco.records@alaska.gov](mailto:spco.records@alaska.gov)**

**The State of Alaska, Department of Natural Resources, State Pipeline Coordinator's Office, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may call 269-8411 TTY/TTD. Please provide sufficient notice in order for the Department to accommodate your needs.**

**The State Pipeline Coordinator's Office reserves the right to waive technical defects in this publication.**

**/s/ Frederick M. Thompson  
State Pipeline Coordinator**

**Publish May 31, 2012**

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
STATE PIPELINE COORDINATOR'S OFFICE**

**ANALYSIS OF AMENDMENT APPLICATION  
AND  
PROPOSED DECISION**

**ADL 63574  
TRANS-ALASKA PIPELINE SYSTEM  
FUEL GAS LINE MANUAL GATE VALVE REPLACEMENTS**

**Proposed Action:** Alyeska Pipeline Service Company (APSC), agent for the Trans-Alaska Pipeline System (TAPS) lessees, has requested an amendment to modify the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574. The purpose of the amendment is to add approximately 0.78 acres of land adjacent to the Dalton Highway to replace two existing below ground valve sets on the TAPS Fuel Gas Line (FGL) and make modifications to the Pump Station 3 Lateral Piping, as part of TAPS Project F802. FGL Manual Gate Valves (MGV) No. 5 and No. 7 will be replaced with above ground valve sets that will be set further from the highway on new gravel pads to ensure adequate distance from the highway to prevent vehicular damage. The project will increase the long term integrity of the new pipe and valve sets. Access workpads will be constructed from the Dalton Highway to the new valve sites and vehicle gates will be installed to control access.

The lands proposed to be added to the right-of-way are generally described as:

**FGL MGV No. 5**

Township 2 South, Range 14 East, Umiat Meridian, Alaska,  
Section 21, NW4, lands immediately adjacent to the existing TAPS right-of-way and  
the Dalton Highway at milepost 342.1, containing approximately 0.24 acres, and

**FGL MGV No. 7 and Pump Station 3 Lateral Piping**

Township 7 South, Range 14 East, Umiat Meridian, Alaska,  
Section 9, SW4, and Section 16, NW4, lands immediately adjacent to the existing  
TAPS right-of-way and the Dalton Highway at milepost 311.7, containing  
approximately 0.54 acres.

The lands needed to accommodate the new above ground valve sets and Pump Station 3 lateral piping after construction will be less than those described above. APSC will submit a post-construction as-built drawing showing precisely the new right-of-way boundary. This additional land will be necessary to support the existing pipeline system as defined in AS 38.35.230(7) and authorized by the existing RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574.

**Authority:** AS 38.35.015, the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, and the Right-of-Way Amendment case file are the authorities for this decision.

**Administrative Record:** The RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574 constitutes the administrative record used in making this decision.

**Background:** On May 31, 2012, the State Pipeline Coordinator's Office received an application from APSC to amend the lease to include the above-described lands for the purpose of replacing the FGL MGVs No. 5 and No. 7 with above ground valve sets and constructing the necessary gravel workpads for access, as well as make modifications to the Pump Station 3 Lateral line.

The work at FGL MGVs No. 5 and No. 7 is covered by APSC Project F802 and will include installation of above ground valve sets at two separate locations of the FGL at Dalton Highway mileposts 342.1 and 311.7. The work scope for Project F802 consists of:

1. Five Stopple Excavations
2. Excavation and removal of two below ground MGVs and one Pump Station 3 Lateral Valve
3. Development of gravel pads at the new valve sites
4. Development of a workpads for access from the Dalton Highway to valve sites
5. Installation of two above ground valve sets
6. Installation of a vehicle gates on the workpad to control access
7. Installation of a temporary carrier pipe to continue gas supply to Pump Station 3
8. Completion of an As-Built survey

Two lengths of trenching will be required for the installation of the off-setting pipe at both MGV No. 5 and No. 7 sites. There will be two excavation holes for stopple work at MGV No. 5 and three at the MGV No. 7 and Pump Station 3 Lateral Line site. Excavations along the pipe for stopple equipment will be approximately 30 feet long by 15 feet wide at the surface, sloping inward to a depth of six feet. Excavations will extend below the pipe for purposes of welding, and will remain open until recoating is complete. A two inch diameter carrier pipe inside a six inch casing pipe will be installed by on a temporary basis across the highway to maintain Pump Station 3 service.

Access workpads roads will be constructed at the extended MGV sites using clean gravel. The pads will be level with the highway elevation, which should correlate to three to four feet above the surrounding tundra grade. The chain-link fencing will be installed around the new above-ground valve sites and gates will be installed to control vehicle access.

The existing valve sets and its bypass piping will be removed from the ground prior to ground restorations activities, with the exception of the existing four inch lateral pipe that crosses the highway. Additionally, on June 22, 2012 APSC submitted a minor modification to the Project Narrative, dated May 2012, requesting to also leave in place two 100 foot segments of the out-of-service eight inch mainline piping at each valve site. Leaving the piping in place at these locations will minimize highway encroachment and surface disturbance. All piping left in place will be purged of gas and the ends welded closed. The left-in-place piping will be depicted on the As-Built survey along with the new piping and valves. APSC's underground marking process will also be used to identify all piping in the area for any third party needing location information. The updated plan

drawings are included as attachments to this proposed decision.

Approval to leave-in-place the retired segments of the buried pipe does not alleviate the lessee from Stipulation 1.10 of the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574. The retired segments of piping will continue to be located within the boundary of the Right-of-way. No portion of the Right-of-Way will be relinquished as part of the proposed amendment. The State Pipeline Coordinator's Office may determine in the future it is necessary to excavate and remove the retired piping.

Backhoes, pick-up trucks, boom-trucks/cranes, and ancillary equipment common to APSC excavations are expected to be used. Trenching activities will be performed by construction vehicles travelling on tundra mats only. A traffic control plan will be implemented using signs, flaggers, lane closures, barriers, and other contractor designed traffic controls.

**Title:** The State of Alaska received Tentative Approval to the land and mineral estate within Section 21, T. 2 S., R. 14 E., U.M. pursuant to general grant selection (GS-5308) on August 19, 1992.

The State of Alaska received Tentative Approval to the lands within Sections 9 and 16, T. 7 S., R. 14 E., U.M. pursuant to general grant selection (GS-5323) on August 19, 1992.

**Planning and Classification:** The lands encompassed by this application were classified as Transportation Corridor (TRC) under classification, NC-02-002; are subject to ADL 50666, North Slope Area Special Use Lands; and are within the Dalton Highway corridor (AS 19.40.010). These lands are closed to mineral entry by one or more of the following Mineral Closing Orders (MCO): MCO 529 dated October 2, 1987, MCO 790 dated October 16, 2002, and MCO 67 dated September 26, 1977. The lands are subject to Leasehold Location Order (LLO) 32, effective November 3, 2011.

A land classification establishes the apparent best use of an area, but all other uses are presumed as compatible unless otherwise prohibited. According to 11 AAC 55.205, land classified as a transportation corridor is land that is identified for the location of easements and rights-of-way under AS 38.04.065 (f), including transportation, pipeline, or utility corridor purposes, or is under consideration for a right-of-way lease. Classification NC-02-002 did not prohibit the proposed use for the lands in the subject area and the proposed use is compatible under the classification.

ADL 50666, North Slope Area Special Use Lands, under 11 AAC 96.014, designates all lands in the Umiat Meridian as "special use lands." This designation as special use lands requires that, in addition to permitting requirements under 11 AAC 96.010, a permit is required for motorized vehicle use, unless that use is for subsistence purposes or is on a graveled road. This requirement does not prohibit the development of lands within the Umiat Meridian and does not prohibit the installation of the below ground valve sets.

The designated area for the Dalton Highway corridor (AS 19.40) does not prohibit the installation of

the new pipe and valve sets. Pursuant to AS 19.40.200(a), the state may not dispose of state land under AS 38 that is within five miles of the highway right-of-way. However, AS 19.40.200(b)(4) states the prohibition on disposal of state land under (a) of this section does not apply to a disposal for lands necessary for exploration, development, production or transportation of oil or gas of this section. The proposed new pipe and above ground valve sets will provide improvements to the integrity of TAPS and is consistent with the management intent of the area for resource management. There is nothing in the classification, special use designation, or the Dalton Highway corridor designation that prohibits the issuance of this right-of-way amendment for these purposes.

**Third Party Interests:** The following third party interests that may be affected by the proposed activities were identified and will be provided a copy of the Public Notice of this Analysis and Proposed Decision.

Alaska Gasline Development Corporation  
ADL 418997 – Pipeline Right-of-Way Lease

The right-of-way lease for the planned Alaska Stand Alone Gas Pipeline/ASAP parallels the TAPS Fuel Gas Line right-of-way, within or adjacent to the Dalton Highway right-of-way.

Alaska Department of Transportation and Public Facilities  
ADL 414760 – Material Sale

The boundary of the Material Sale area encompasses the MGV No. 5 site. The proposed activities will not conflict with the existing mined area of the material site.

Alyeska Pipeline Service Company  
ADL 415102 – Transferred Federal Entry / Pipeline Right-of-Way

A right-of-way for 125 APL/AMS-3 access road is located just north of the MGV No. 5 site.

Alyeska Pipeline Service Company  
ADL 415089 – Transferred Federal Entry / Pipeline Right-of-Way

A right-of-way for 120 APS/AMS 3 access road is located at the MGV No. 7 site.

**Public/Agency Notice:** On June 15, 2012, the State Historic Preservation Office determined that no historic properties were affected by this proposed action and provided confirmation of their determination to the State Pipeline Coordinator's Office.

Notice of the Right-of-Way Amendment Application was published in the Anchorage Daily News, Fairbanks Daily News Miner, and on the State of Alaska, and State Pipeline Coordinator's Office On-Line Public Notice web pages on May 31, 2012. In accordance to AS 38.35.070(2), a copy of the application was filed on May 31, 2012 with the following coordinate agencies: Alaska Department of Environmental Conservation, Department of Labor and Workforce Development, Department of Transportation and Public Facilities, and the Regulatory Commission of Alaska. Notice of the application was advertised in the Anchorage Daily News and the Fairbanks Daily News-Miner and was sent for posting in the Coldfoot, Fairbanks Downtown, Prudhoe

**Bay/Deadhorse, and Nuiqsut Post Offices. It was also posted on the State of Alaska, and State Pipeline Coordinator's Office On-Line Public Notice web pages.**

**Public notice of this Analysis and Proposed Decision will be advertised in the Anchorage Daily News and the Fairbanks Daily News-Miner. It will be sent for posting in the Coldfoot, Fairbanks Downtown, Prudhoe Bay/Deadhorse, and Nuiqsut Post Offices and posted on the State of Alaska, and State Pipeline Coordinator's Office On-Line Public Notice web pages.**

**If public comment indicates the need for significant changes in the proposed decision, additional public notice will be given on or about August 1, 2012. If no significant change is required, the proposed decision, including any minor changes, will be issued as the final decision of the Department of Natural Resources after July 30, 2012, without further notice.**

**Analysis: AS 38.35, the Alaska Right-of-Way Leasing Act, sets forth the procedures by which certain right-of-way leases are granted by the State of Alaska and the conditions under which they can be amended. Pursuant to AS 38.35.015, the Commissioner has the power to grant leases of state land for pipeline right-of-way purposes.**

**AS 38.35.020(a) requires the applicant obtain a right-of-way lease of state land from the Commissioner. Although the request for authorization to develop this project is consistent with the original purpose of the lease, the proposed amendment requires a disposal of an interest in state land beyond what was included during the original adjudication. An amendment to the lease is required when there is a need for a disposal of an interest in state land or resources beyond what was reviewed and approved during the original adjudication.**

**The requested action proposes to construct and maintain on state land, new piping and above ground Fuel Gas Line Manual Gate Valves, which is defined by Stipulation 1.1.1.36(11) of the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, as a Related Facility, the substantial and continuous use of which is necessary for the operation or maintenance of the TAPS pipeline.**

**The terms, conditions, and stipulations contained in the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, will apply to these lands if added to the lease. APSC will be subject to the terms, conditions and reservations set forth in the Right-of-Way Lease.**

**Findings:** The removal of the below ground Manual Gate Valves and the installation of the new pipe and above ground valves is integral to the protection of the pipeline. Locating the valves further from the highway will reduce the risks of vehicular damage and will ensure the long term integrity of the new pipe and valve sets being installed.

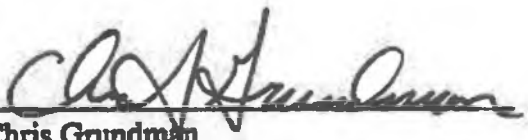
The installation of these above ground valve sets and development of a gravel workpad are activities governed by and administratively provided for in the lease. The proposed installation of the above ground valve sets will be a "Related Facility" as defined by the lease and it will be managed under the lease. The proposal to add the above-described lands to the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, is consistent with the lease.

The terms, conditions and stipulations contained in RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, adequately address and protect the interest of the State of Alaska. The lessee is required to secure all necessary permits or authorizations required by other state and federal agencies.

The exact locations have not yet been surveyed and the legal land descriptions are a necessary part of the lease amendment. The Right-of-Way Amendment will require an as-built survey that ties the new above ground gate sets and workpads to the pipeline centerline for review and acceptance by the State Pipeline Coordinator, pursuant to Section 1(e) of the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, as amended.

The addition of these lands to the lease does not constitute a significant amendment to the lease since the impact on State resources will be negligible; the project does not conflict with or significantly change existing use of the land; and, the environmental effect from the placement of the gravel material for the pads and the replacement of below ground valve sets is considered protective of a vital state resource. Approval of the request for the amendment for addition of the described lands is a function of the lease and is consistent with state statutes and terms of the lease.

**Proposed Decision:** I find that the application to amend the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574 to include the lands described in this proposed decision is in the best interest of the State and does not constitute a significant amendment to the lease. The applicant is not authorized to begin construction activities until a Commissioner's Decision and Final Decision is issued and a Lease Amendment is executed. The Lease Amendment adding the defined State land to ADL 63574 will be completed following construction, and the review and acceptance of the as-built survey.



Chris Grundman  
Natural Resource Specialist III

6-28-12

Date



Frederick M. Thompson  
State Pipeline Coordinator

6-28-12

Date

- Attachments:
- 1) Trans-Alaska Pipeline System Project F802 – 2012 Fuel Gas Line Manual Gate Valve Replacements Project Narrative (May, 2012) (1 Page)
  - 2) F802 TAPS Fuel Gas Line MGV-5 Replacement Location and Vicinity Map Plates 1 - 5, Updated 6/21/12 (5 Pages)
  - 3) F802 TAPS Fuel Gas Line MGV-7 Replacement Location and Vicinity Map Plates 1 - 5, dated 6/21/12 (5 pages)

## **TRANS ALASKA PIPELINE SYSTEM**

### **Project F802 – 2012 Fuel Gas Line Manual Gate Valve Replacements**

**Project Narrative (May, 2012)**

#### **Project Purpose**

Project F802 will replace three of the existing Alyeska Pipeline Service Company's fuel gas line (FGL) mainline gate valve (MGV) sets, as well as make modifications to the Pump Station 3 (PS03) Lateral line. The purpose of the project is to replace existing below ground valve sets with above ground valve sets and off-set them further from the highway to ensure adequate distance from the highway to prevent vehicular damage and the long term integrity of the new pipe and valve set being installed.

#### **Location**

The project sites are located immediately adjacent to the Dalton Highway a) 74.9 (MGV-5, Dalton Hwy MP 342.1), b) 106.1 (MGV-7 and PS03, Dalton Hwy MP 311.7), and c) 135.3 (MGV-9, Dalton Hwy MP 282.4) miles south of Pump Station 1 on the Trans Alaska Pipeline System.

#### **Work Description**

The MGV-5 and MGV-9 sites will require 2 lengths of trenching for installing the off-setting pipe and two excavation holes for stopple work. The MGV-7 and Pump Station 3 Lateral site will have three stopple excavations. The trenching will be performed by construction vehicles travelling only on tundra mats. Excavations for stopple equipment will be 30 feet long by 15 feet wide at the surface (orientation along the pipe), sloping inward to a depth of 6 feet (two for MGV-5 and MGV-9 each, and three for MGV-7 & PS03). At the Pump Station 3 Lateral, 2-inch-diameter carrier pipe inside a 6-in. casing pipe will be installed across the highway to maintain service to the pump station during the project on a temporary basis. The excavations will be typical TAPS fuel gas line excavations extending below the pipe for purposes of welding, and will remain open until recosting is completed.

Each relocated MGV will be supported by 2 vertical supports of 4" diameter, 20' long steel pipes filled with new slurry backfill. Concrete pad with steel platforms and stairs will provide personnel access for valve operations. Clean gravel materials will be used for the construction of the required access workpads. The pads will be level with the elevation of the highway which should correlate to 3 to 4 feet above the grade level of the surrounding tundra. Chain-link fencing will be moved to the new above-ground valve locations and vehicle gates will be installed to control site access.

With the exception of the existing lateral piping crossing the highway at Pump Station 3, the existing valve sets and piping being retired will be physically removed from the ground prior to ground restoration activities. At the highway crossing, the retired piping will be abandoned in-place after being purged of natural gas and capped.

Backhoes, pick-up trucks, boom-trucks/cranes, and ancillary equipment; welding skids, heaters, light plants and equipment common to Alyeska Pipeline excavations are expected to be used. Traffic control, comprising signs, flaggers, lane closures, barriers (Jersey Barricades) and other contractor designed traffic control plans, will be implemented.

#### **Environmental Considerations and Mitigation**

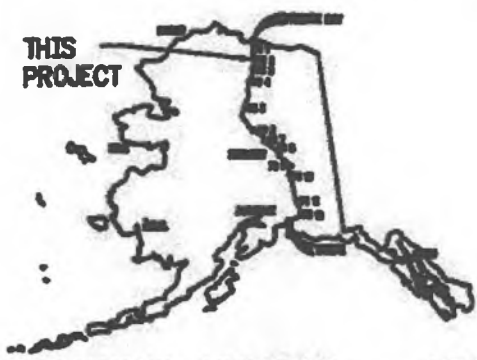
Adjacent to the highway and TAPS workpads, wetland plant communities predominate of the lowland tundra variety which includes mosses, lichens, herbs and low shrubs. The soils in this area consist of organic silt with some sand, gravel mixed with sand, numerous cobbles and scattered boulders.

The excavated material will be temporarily stockpiled on mats as needed to protect the natural ground surface, with the vegetation and organic soils stored separately from the gravel and silt, and then be used to backfill the excavations after the piping is installed and padding fill has been completed. The pad expansions are situated to utilize existing gravel embankments while maintaining vehicular access. When the project is complete, the disturbed areas will be restored to stable slopes approximating the original grade and drainage patterns in accordance with TAPS manual MR-48, section 23 (Erosion Control). Heavy equipment use will be confined to existing TAPS workpad, the new pad expansions and tundra mats. There is very minor loss in the area of waters of the U.S. in an area abundant in such, and no additional mitigation is planned.

#### **Schedule**

The field implementation is planned to begin after August 1, 2012, and be substantially complete by November 1, 2012.

THIS PROJECT



### PROJECT SITE INFORMATION

FGL STATION: 3954+86, MP 74.9, AL-15-G100 SH 14  
 DALTON HIGHWAY MP 342.1  
 LOCATION REFERENCE: 16.9 MILES SOUTH OF PUMP STATION 2



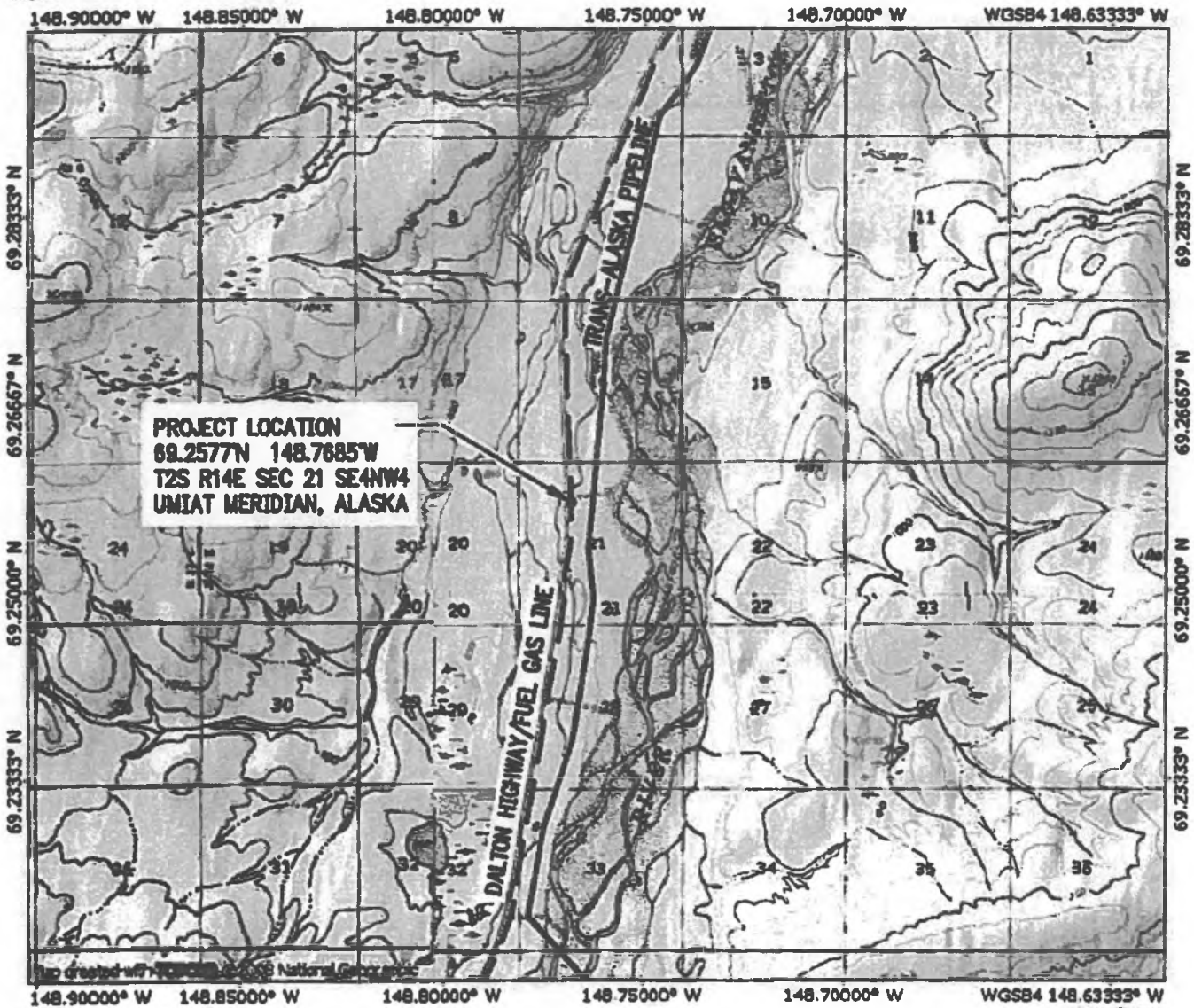
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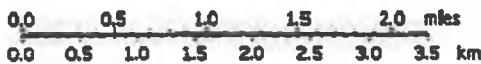
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**PROJECT LOCATION**  
 69.2577°N 148.7685°W  
 T2S R14E SEC 21 SE4NW4  
 UMIAT MERIDIAN, ALASKA



TN MN  
 21°  
 05/21/12

FILE DATE: -

FILE SCALE: -

FILE NAME: -

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
 TAPS FUEL GAS LINE MG5-5 REPLACEMENT  
 LOCATION AND VICINITY MAP

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 1

REV. A DWN. TAN CR

SHEET 1 OF 5

AFFECTED BY:

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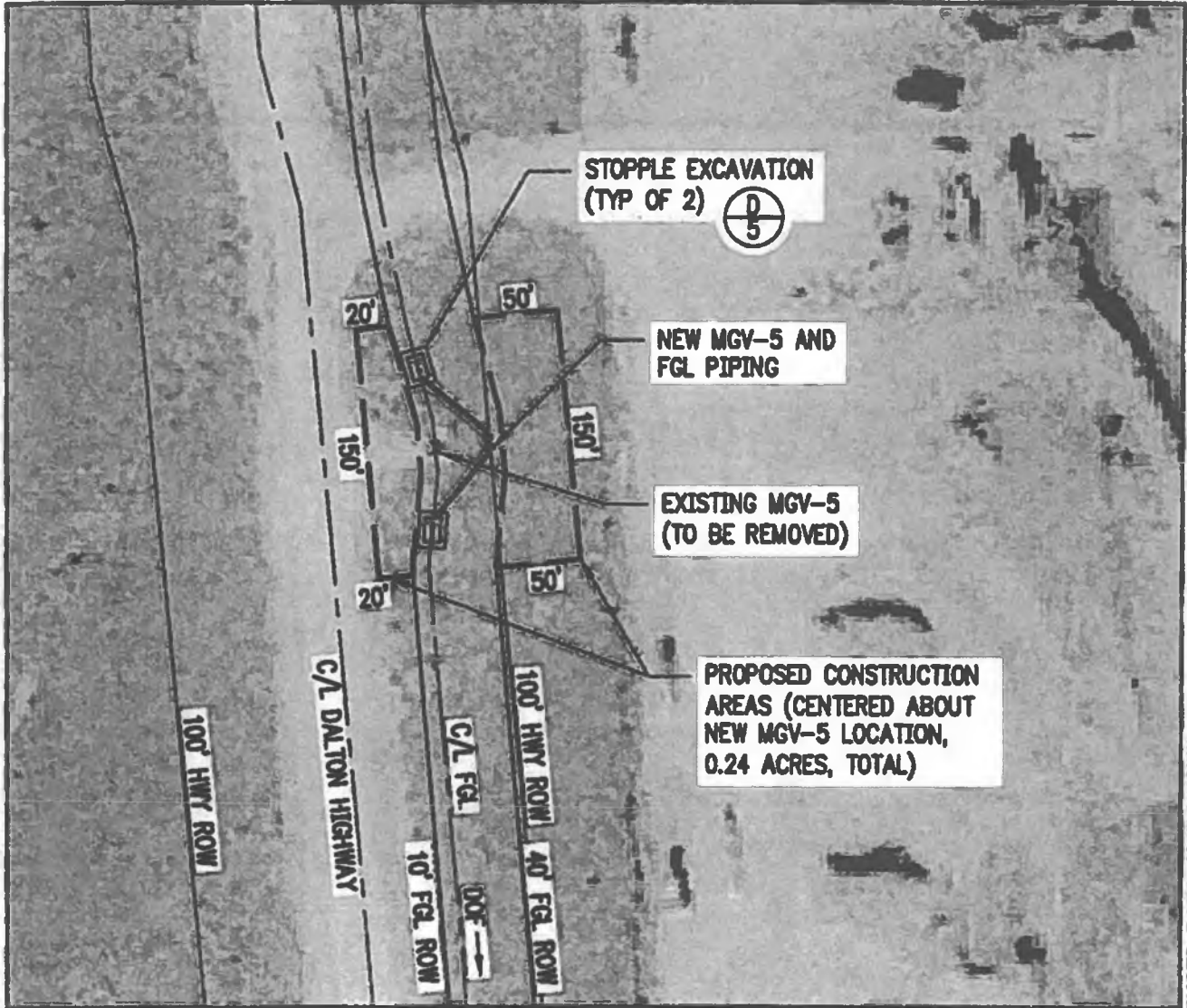
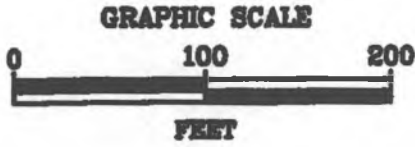


PHOTO DATE: NOT KNOWN

# PLAN

SCALE: 1" = 100'

NOTE: CONSTRUCTION AREAS ESTIMATED (IN ACRES) FOR LAND USE PERMITTING.

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGv-5 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 2

REV. A	DWL TAN	CKD. JAW	APPR. JPD
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SCALE: AS NOTED

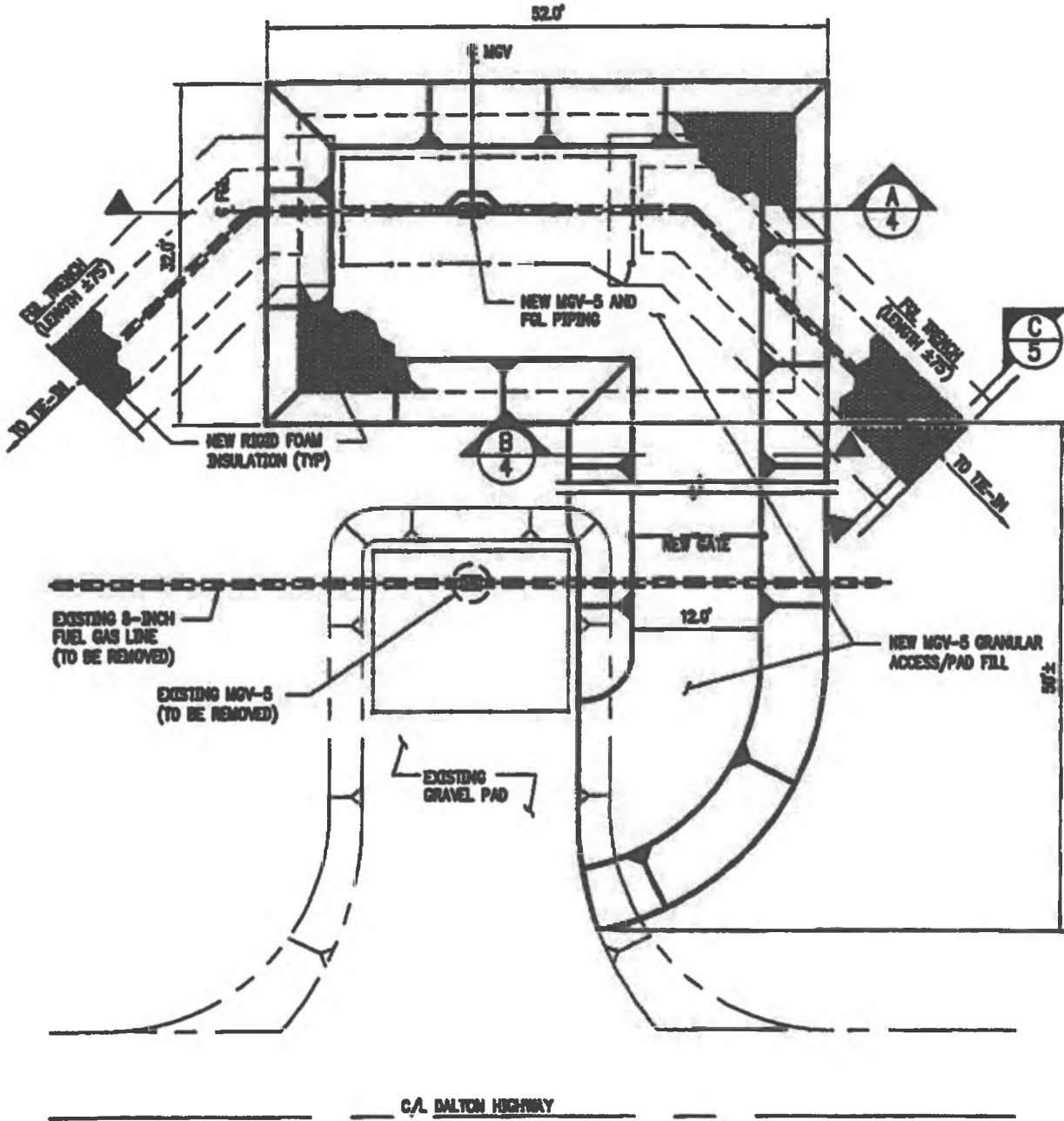
SHEET 2 OF 5

AUTOCAD DWG DO NOT REVISE MANUALLY

FILE DATE: -

PLOT SCALE: -

FILENAME: -



**PLAN**  
SCALE: 1" = 15'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 3

REV. A DWN. TAN CKD. JAW APPR. JPD

SCALE: AS NOTED

SHEET 3 OF 5

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AFFECTED BY:

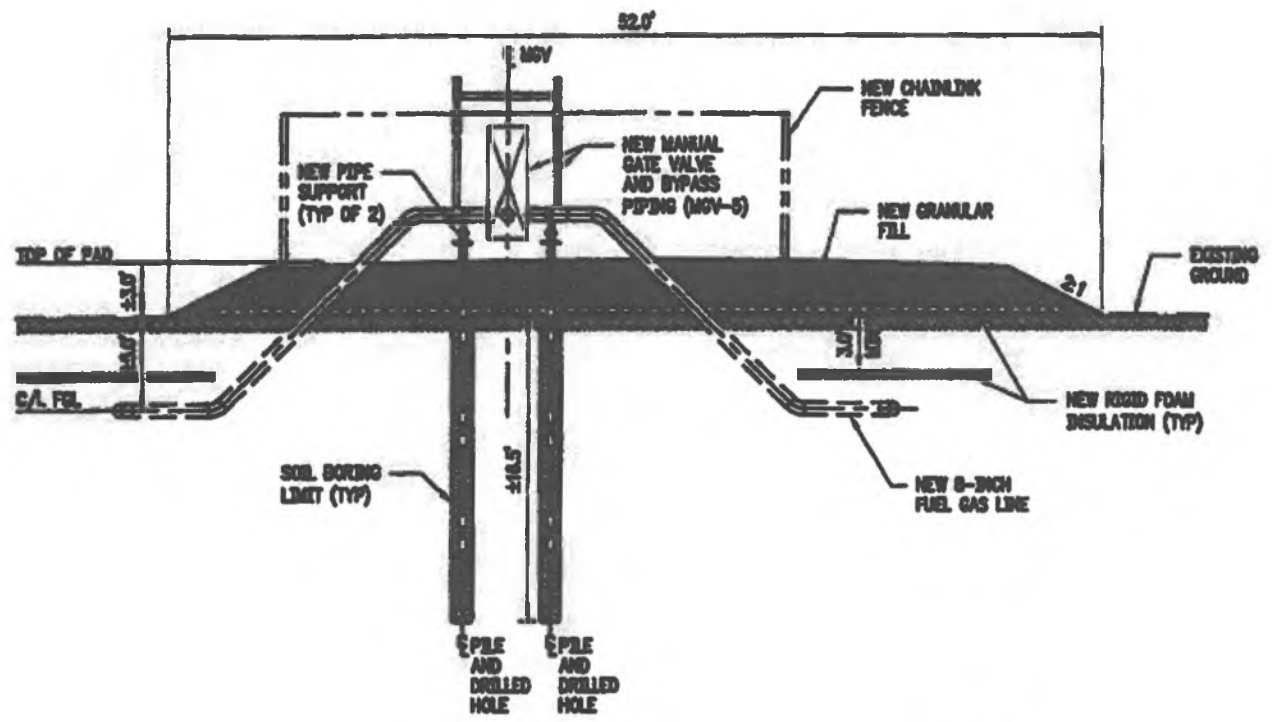
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FILE DATE: -

PLOT SCALE: -

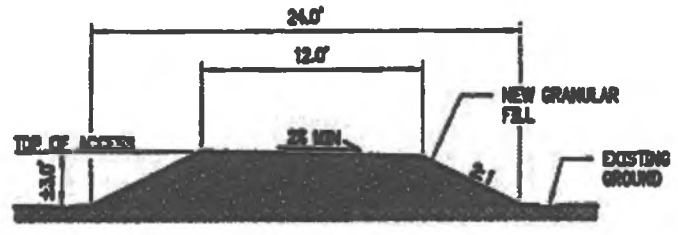
FILENAME: -



SECTION - MGV-5 PAD

SCALE: 1"=10'

A  
3



SECTION - MGV-5 ACCESS

SCALE: 1"=10'

B  
3

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 4

REV. A	DWN. TAN	CKD. JAW	APPR. JPD
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SCALE: AS NOTED	SHEET 4 OF 5
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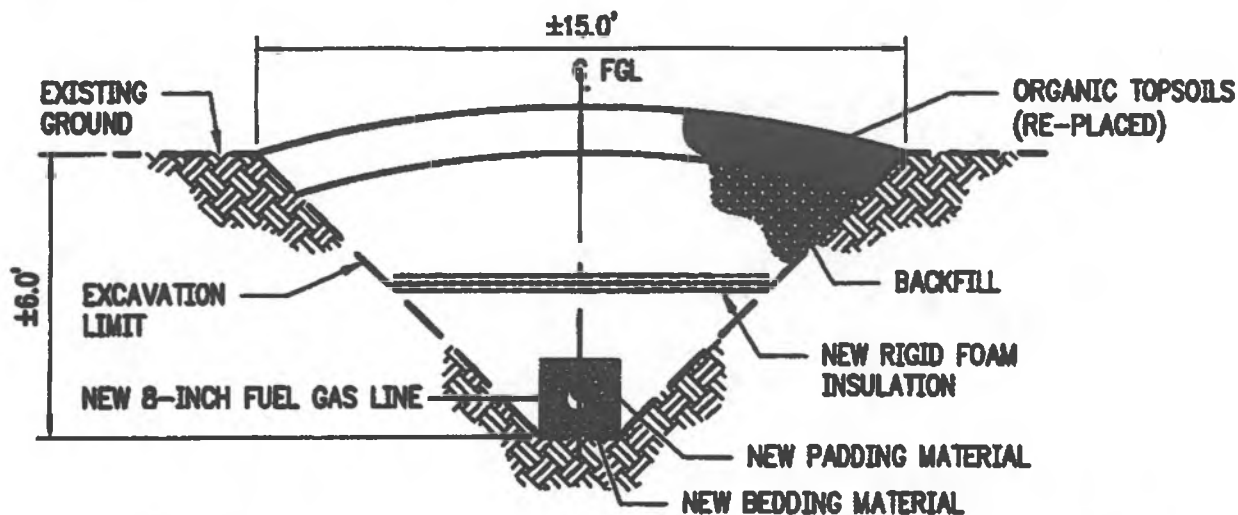
AUTOCAD DWG DO NOT REVISE MANUALLY

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PLOT SCALE: -  
FILE NAME: -

## ESTIMATED FILL QUANTITIES

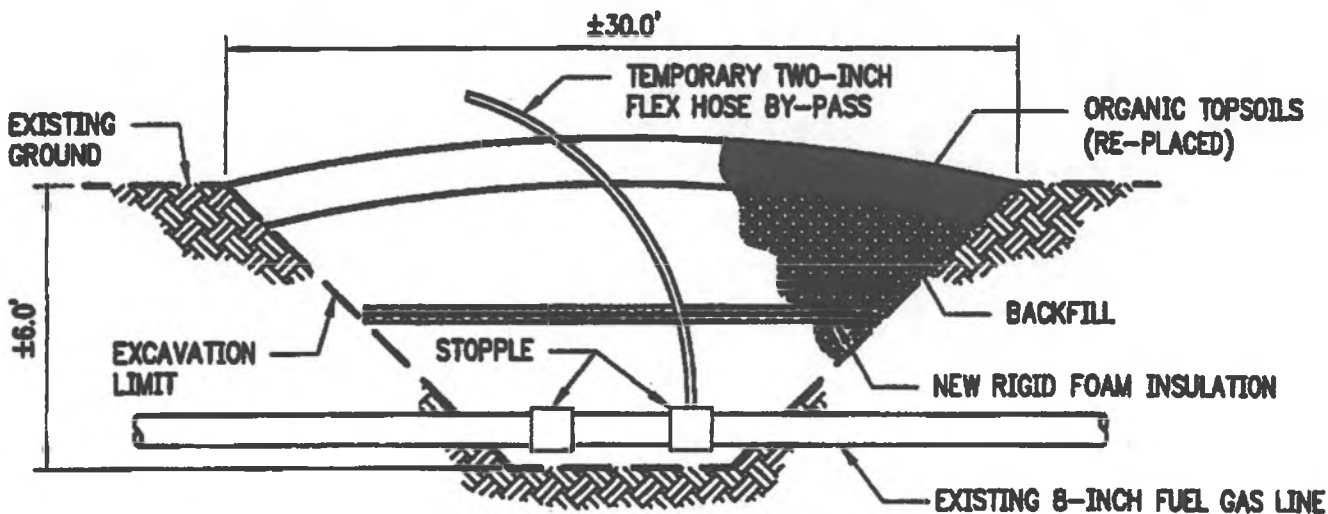
	AREA (SF)	VOLUME (CY)
FGL TRENCH EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	2,000	280
FGL STOPPLE EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	900	90
MGV-5 ACCESS/PAD (IMPORTED GRANULAR FILL)	3,100	300



### SECTION - FGL TRENCH EXCAVATION

SCALE: NTS

C  
3



### SECTION - FGL STOPPLE EXCAVATION

SCALE: NTS

D  
2

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-5 REPLACEMENT  
SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 5

REV.	A	DWN. TAN	CHKD. JAW	APPR. JPD
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SCALE: AS NOTED

SHEET 5 OF 5

AUTOCAD DWG DO NOT REVISE MANUALLY

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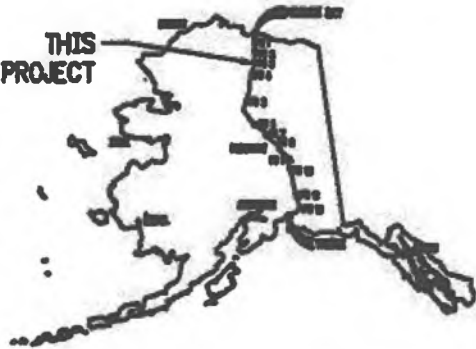
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FILE DATE: -

PLOT SCALE: -

FILENAME: -

THIS PROJECT



### PROJECT SITE INFORMATION

FGL STATION: 5802+23, MP 106.1, AL-15-G100 SH 20  
DALTON HIGHWAY MP 311.7  
LOCATION REFERENCE: AT ENTRANCE TO PUMP STATION 3 FROM DALTON HIGHWAY



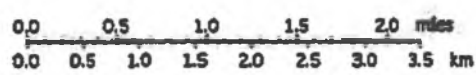
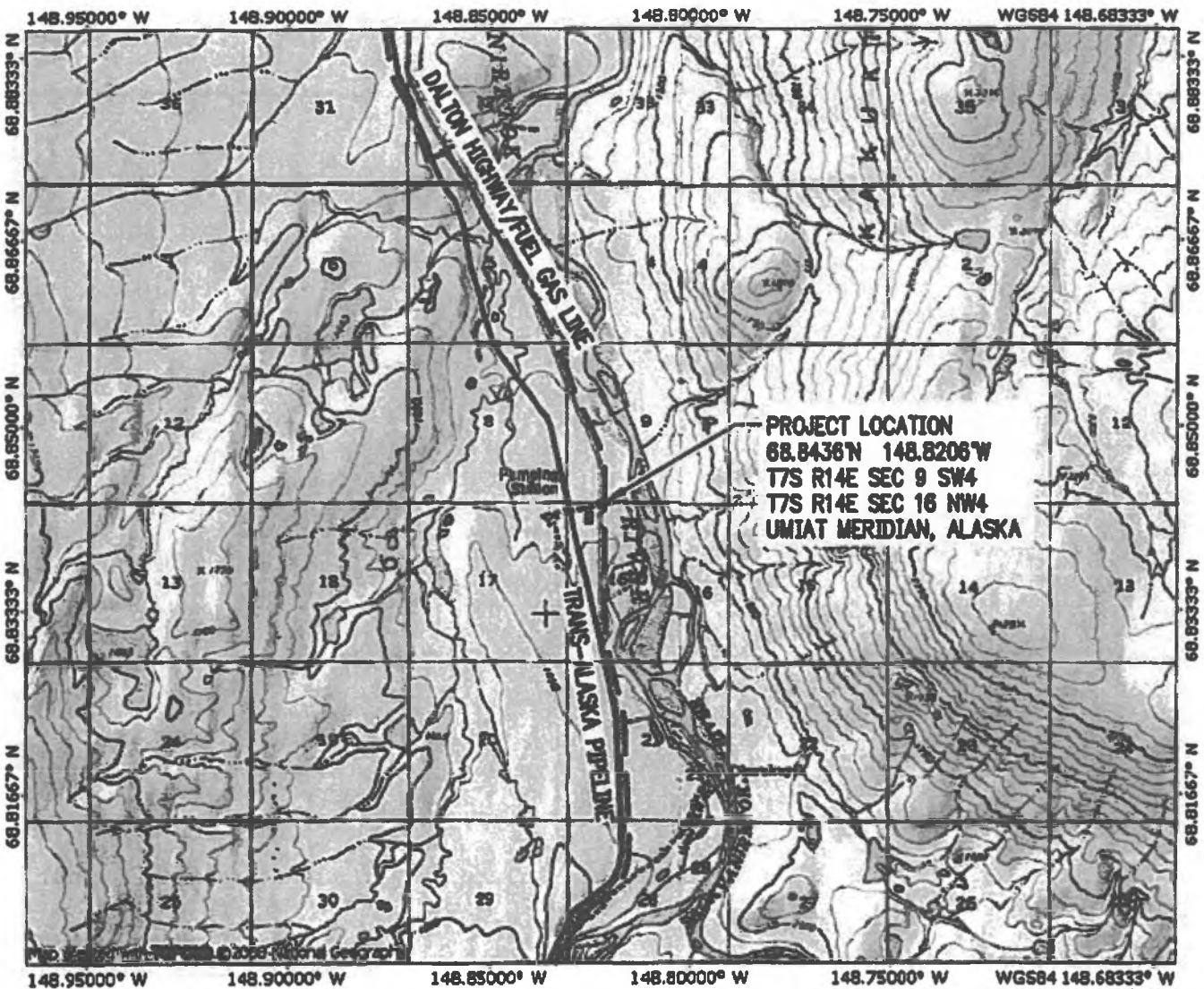
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TN MN  
21°  
05/21/12

FILE DATE: -  
PLOT SCALE: -

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MG-7 REPLACEMENT  
LOCATION AND VICINITY MAP

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 1

REV.	A	DWN. TAN	CK
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SHEET	1	OF	5
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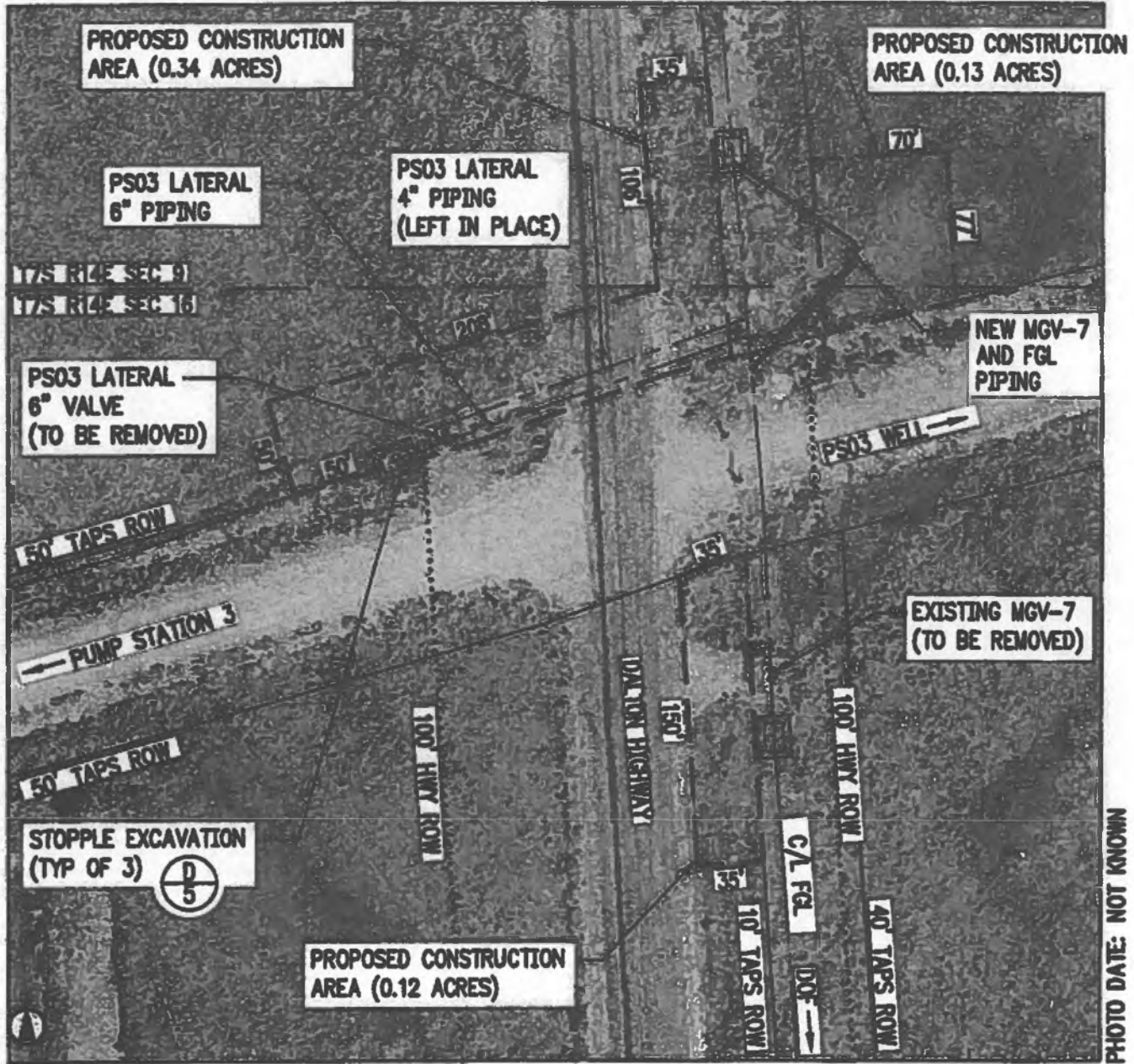
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FILE DATE: -

PLOT SCALE: -

FILENAME: -

**PLAN**

NOTE: CONSTRUCTION AREAS ESTIMATED (IN ACRES) FOR LAND USE PERMITTING.

SCALE: 1" = 80'

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-7 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 2

REV.	A	DWN. TAN	CHKD. JAW	APPR. JPD
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SCALE: AS NOTED

SHEET 2 OF 5



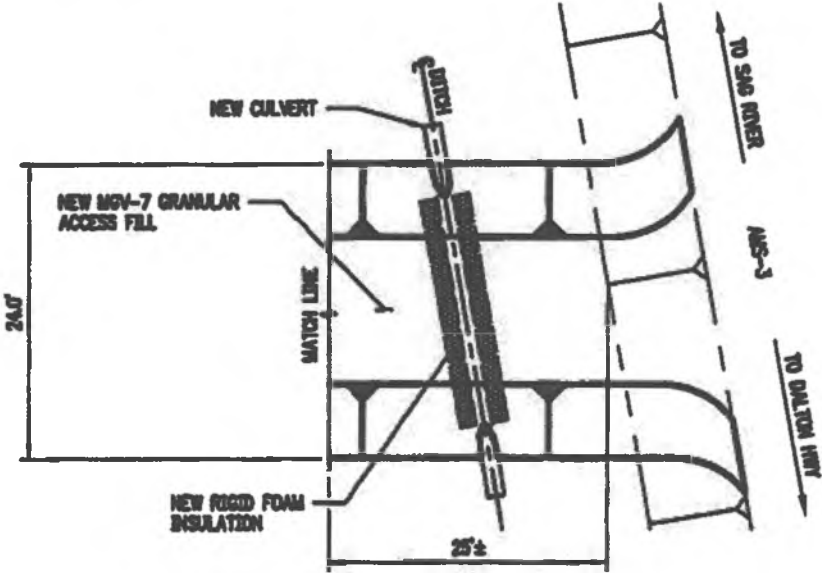
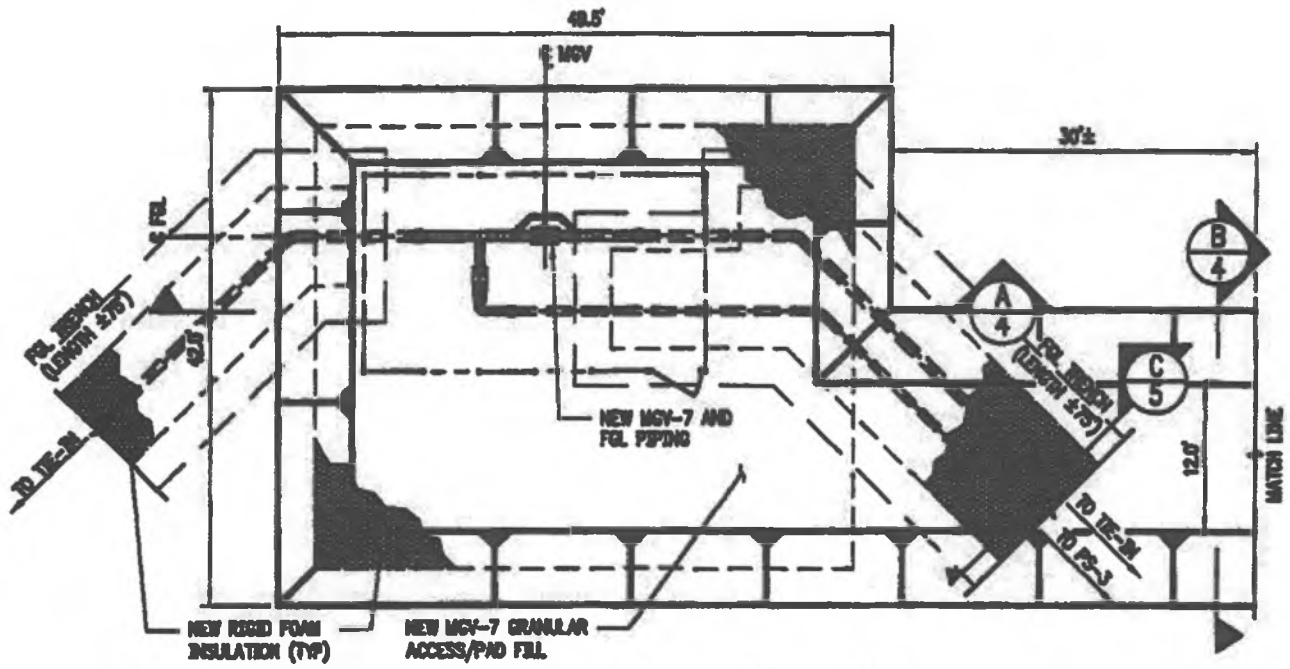
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**PLAN**  
SCALE: 1" = 15'

FILE DATE: -

PLOT SCALE: -

FILENAME: -

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-7 REPLACEMENT  
PLAN

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 3

REV.	A	DWN. TAN	CKD. JAW	APPR. JPD
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SCALE: AS NOTED

SHEET 3 OF 5

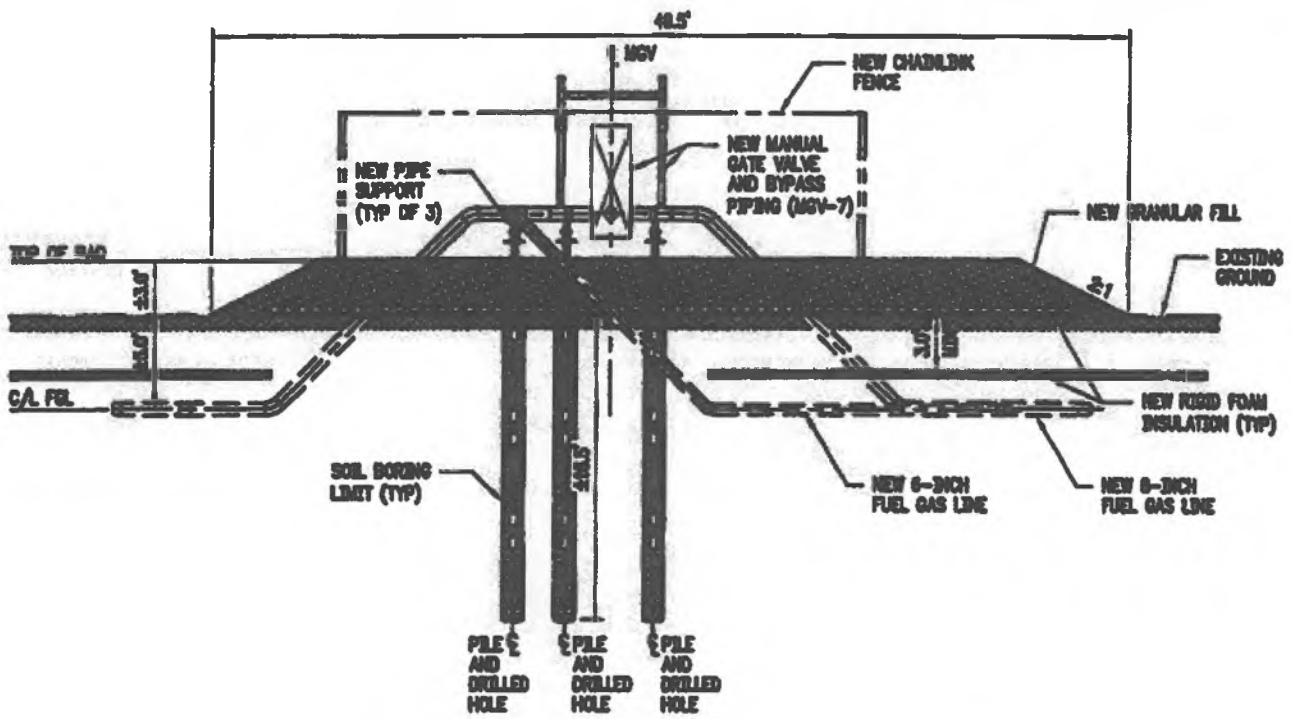
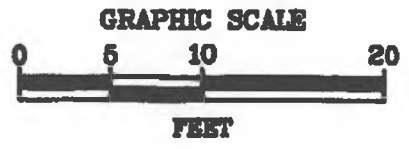
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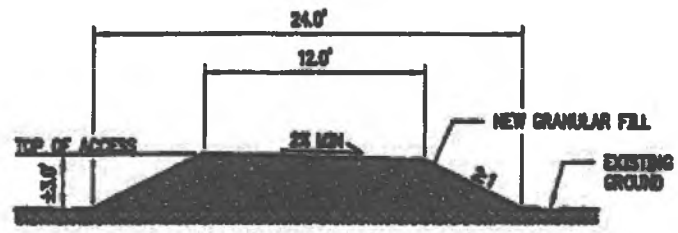
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SECTION - MGV-7 PAD

SCALE: 1"=10'

A  
3



SECTION - MGV-7 ACCESS

SCALE: 1"=10'

B  
3

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-7 REPLACEMENT  
SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 06/21/12

PLATE 4

REV.	A	OWN. TAN	CKD. JAW	APPR. JPD
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SCALE: AS NOTED	SHEET 4 OF 5
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FILE DATE -

PLOT SCALE -

FILENAME -

## ESTIMATED FILL QUANTITIES

	AREA (SF)	VOLUME (CY)
FGL TRENCH EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	2,500	330
FGL STOPPLE EXCAVATION (QTY 2, BACKFILLED WITH EXCAVATED SOIL)	1,350	135
MGV-7 ACCESS/PAD (IMPORTED GRANULAR FILL)	3,100	300

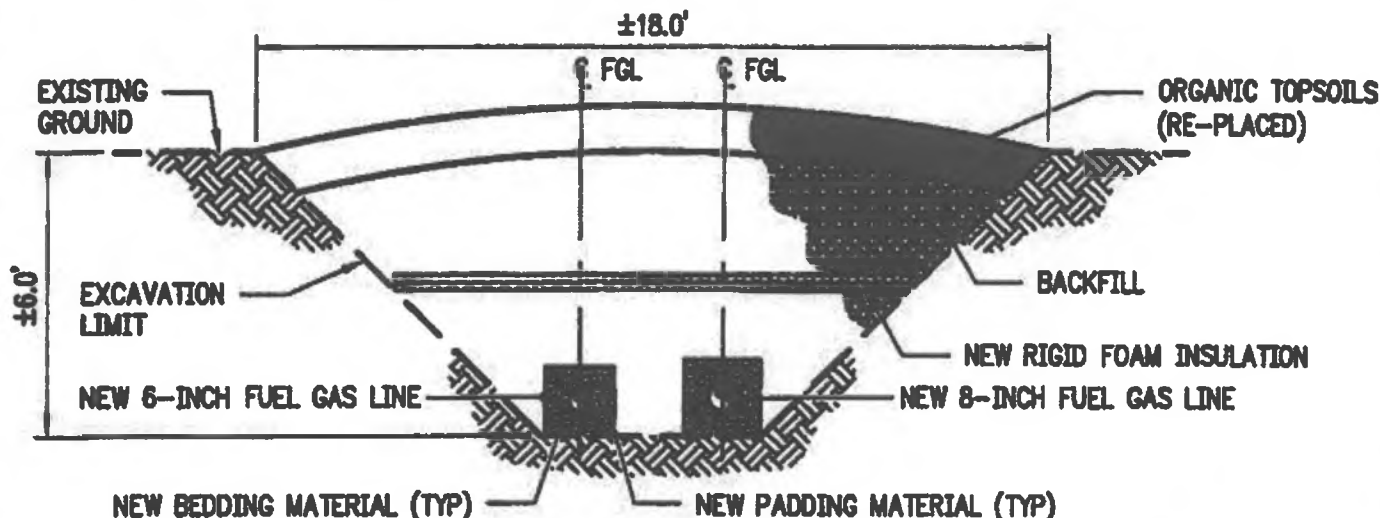
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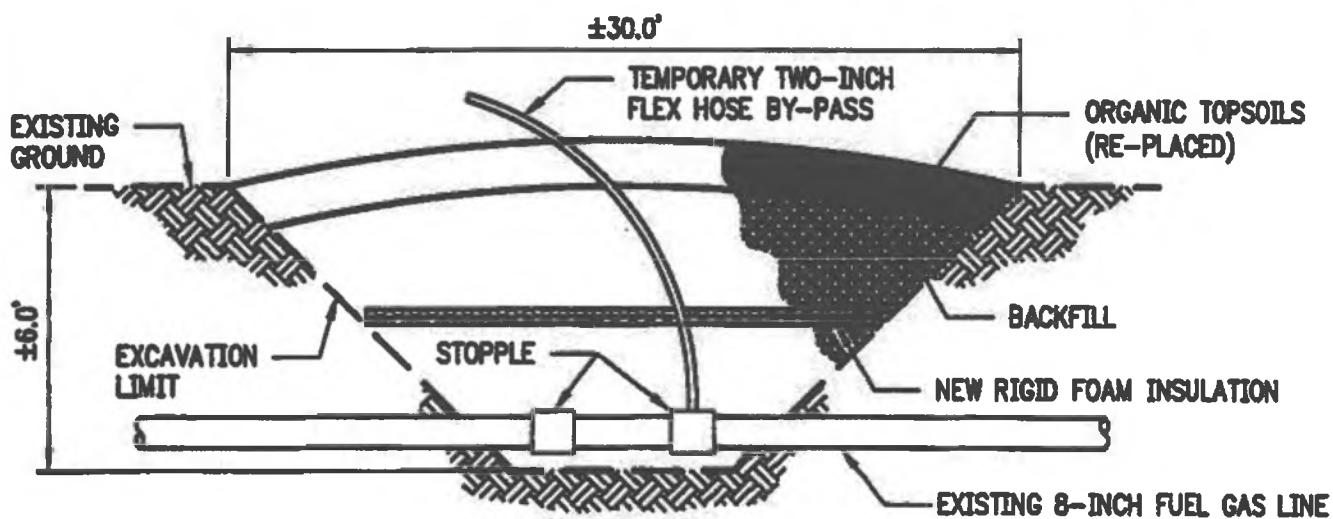
AFFECTED BY:



### SECTION - FGL TRENCH EXCAVATION

SCALE: NTS

C  
3



### SECTION - FGL STOPPLE EXCAVATION

SCALE: NTS

D  
2

ADJACENT PROPERTY OWNER: STATE OF ALASKA

ALYESKA PIPELINE SERVICE CO.

F802  
TAPS FUEL GAS LINE MGV-7 REPLACEMENT  
SECTION

TRANS ALASKA PIPELINE SYSTEM

DATE: 08/21/12

PLATE 5

REV. A    DWN. TAN    CKD. JAW    APPR. JPD

SCALE: AS NOTED

SHEET 5 OF 5

FILE DATE: -

PLOT SCALE: -

FILE NAME: -

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
STATE PIPELINE COORDINATOR'S OFFICE  
411 WEST 4TH AVENUE, SUITE 2  
ANCHORAGE, ALASKA 99501  
(907) 269-6403

NOTICE OF ANALYSIS OF AMENDMENT APPLICATION AND PROPOSED DECISION  
TRANS-ALASKA PIPELINE SYSTEM – ADL 63574  
FUEL GAS LINE MANUAL GATE VALVE REPLACEMENTS

In accordance with Alaska Statute (AS) 38.35.015, the State Pipeline Coordinator's Office received an application submitted by Alyeska Pipeline Service Company, agent for the Trans-Alaska Pipeline System (TAPS) lessees, to amend the Right-of-Way Lease for the Trans-Alaska Pipeline, ADL 63574. The amendment is to add approximately 0.78 acres of land adjacent to and across from the Dalton Highway to replace two existing below ground valve sets on the TAPS Fuel Gas Line (FGL) and make modifications to the Pump Station 3 Lateral Line as part of TAPS Project F802. FGL Manual Gate Valves (MGV) No. 5 and No. 7 will be replaced with above ground valve sets that will be set farther from the highway on new gravel pads to ensure adequate distance from the highway and prevent vehicular damage. The project will increase the long term integrity of the new pipe and valve sets. Access workpads will be constructed from the Dalton Highway to the new valve sites and vehicle gates will be installed to control access.

The lands are generally described as:

**FGL MGV No. 5**

Township 2 South, Range 14 East, Umiat Meridian, Alaska,  
Section 21, NW4, lands immediately adjacent to the existing TAPS right-of-way and the Dalton Highway at milepost 342.1, containing approximately 0.24 acres, and

**FGL MGV No. 7 and Pump Station 3 Lateral Line**

Township 7 South, Range 14 East, Umiat Meridian, Alaska,  
Section 9, SW4, and Section 16, NW4, lands immediately adjacent to the existing TAPS right-of-way and the Dalton Highway at milepost 311.7, containing approximately 0.54 acres.

Pursuant to AS 38.35.070, public notice of the application was published in the Anchorage Daily News and the Fairbanks Daily News-Miner on May 31, 2012. A copy of the application was filed with coordinate agencies.

In accordance with AS 38.35.080, the State Pipeline Coordinator has prepared an analysis of the application and Proposed Decision to approve the application. The proposed modification was determined not to be a substantial amendment of the existing lease. A copy of the Analysis of Amendment Application and Proposed Decision is available online at the State Pipeline Coordinator's website: <http://dnr.alaska.gov/commis/pco/>, or at cost by request. Any comment, objection, or expression of interest pertaining to the analysis and proposed decision must be submitted in writing to the State Pipeline Coordinator's Office by letter, e-mail or facsimile before 5:00 p.m. on July 30, 2012:

**State Pipeline Coordinator's Office**  
411 West 4<sup>th</sup> Avenue, Suite 2  
Anchorage, AK 99501-2343  
Phone: (907) 269-6403 Fax: (907) 269-6880  
E-Mail: [spco.records@alaska.gov](mailto:spco.records@alaska.gov)

If public comment indicates the need for significant changes in the proposed decision, then additional public notice will be given on or about August 1, 2012. If no significant change is required, then the proposed decision, including any minor changes, will be issued as the final decision of the Department of Natural Resources after July 30, 2012, without further notice.

The State of Alaska, Department of Natural Resources, State Pipeline Coordinator's Office, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may call 269-8411 TTY/TTD. Please provide sufficient notice in order for the Department to accommodate your needs.

The State Pipeline Coordinator's Office reserves the right to waive technical defects in this publication.

/s/ Frederick M. Thompson  
State Pipeline Coordinator

Publish June 29, 2012



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Natural Resources**

State Pipeline Coordinator's Office

411 West 4<sup>th</sup> Avenue, Suite 2C  
Anchorage, Alaska 99501-2343  
Main: 907.269.6403  
Fax: 907.269.6880

August 13, 2012

Letter No.: 12-305-AS  
Case File Serial No.: ADL 63574  
TAPS Amendment  
Fuel Gas Line  
Valve Replacements  
Section/Stipulation: 1.1.1.36(11)  
2.9.1  
File Code: (30) 1.3.5  
(51) 2.9.1  
Facility Code: F1180  
Due Date: N/A

Mr. Joseph Robertson  
Director of Regulatory Affairs  
Alyeska Pipeline Service Company  
P.O. Box 196660, MS 502  
Anchorage, AK 99519-6660

Re: Amendment to Right-of-Way Lease, ADL 63574  
Trans-Alaska Pipeline System (TAPS)  
Fuel Gas Line Manual Gate Valve (MGV) Replacements, and  
Off Right-of-Way Authorization under Stipulation 2.9.1

Dear Mr. Robertson:

Enclosed is a copy of the executed original Amendment to Exhibit D of the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574. The State Pipeline Coordinator's Office will record the amendment and send a recorded copy upon receipt. This amendment modifies the legal description of the aforementioned lease to include additional lands along the Right-of-Way for the TAPS Fuel Gas Line near Dalton Highway mileposts 342.1 and 311.7. The rental amount for this increased acreage will follow under separate cover.

A Notice to Proceed (NTP) request for this project was received in Alyeska Pipeline Service Company (APSC) Letter No. 25883. It has been determined that an NTP is not required for this project.

The following Special Stipulations apply to this amendment:

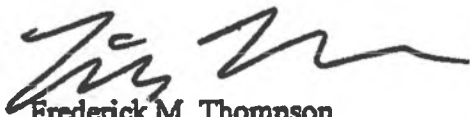
1. All terms and conditions of the Right-of-Way Lease for the Trans-Alaska Pipeline, dated May 3, 1974, which was renewed November 26, 2002 and effective May 3, 2004, are incorporated by reference and made part of this amendment.

2. This approval applies to all State lands within the project area in Township 2 South, Range 14 East, Section 21, NW4 and Township 7 South, Range 14 East, Section 9, SW4, and Section 16, NW4, Umiat Meridian, Alaska.
3. This approval does not abrogate the responsibility of APSC to obtain any and all authorizations necessary for construction of the project under applicable State or Federal law.
4. Prior to commencement of surface disturbing activities, the right-of-way limits shall be staked.
5. The monitoring station located near MGV No. 7 may not be removed, relocated, or disturbed without approval from the Department of Natural Resources, Division of Mining, Land and Water, Northern Region Office.
6. All cuts, slopes, fills, or other exposed earthwork attributable to this project shall be stabilized to prevent erosion which may occur both during and after construction.
7. The final lands encompassed by this project to be retained in the Lease will be depicted on as-built drawings tied to the Trans-Alaska Pipeline System centerline. The final as-built drawings shall be submitted for approval of the Commissioner.

This letter also grants APSC, pursuant to Stipulation 2.9.1 of the Lease, authorization to cross public lands outside the TAPS right-of-way via passenger vehicles and small, rubber tired or tracked vehicles to conduct various short term non-intrusive activities permitted for this project.

If you have questions or need additional assistance, please contact me at (907) 269-6451 or Chris Grundman at (907) 269-6427.

Sincerely,



Frederick M. Thompson  
State Pipeline Coordinator

- Enclosures:
- 1) Amendment of the Right-of-Way Lease for the Trans-Alaska Pipeline, ADL 63574, Fuel Gas Line Manual Gate Valve Replacements (3 Pages)
  - 2) Commissioner's Decision, ADL 63574, Trans-Alaska Pipeline System, Fuel Gas Line Manual Gate Valve Replacements (3 Pages)

ecc: Peter Nagel, APSC  
Lori Burroughs, APSC  
Ron Doyel, ADEC/JPO  
Lee McKinley, ADF&G/JPO  
Ray Elleven, DOLWD/JPO  
Chris Grundman, ADNRR/JPO

**COPY**

**AMENDMENT OF THE RIGHT-OF-WAY LEASE  
FOR THE  
TRANS-ALASKA PIPELINE  
ADL 63574**

**FUEL GAS LINE MANUAL GATE VALVE REPLACEMENTS**

This is an Amendment to Exhibit D, Description of the Right-of-Way for Related Facilities of the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, hereinafter referred to as AMENDMENT.

The RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE dated May 3, 1974, ADL 63574, was recorded in the Barrow Recording District as Document No. 1979-000309-0 in Book 24, Pages 001 through 107, on July 16, 1979. The RENEWAL AND AMENDMENT OF RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE AND ASSOCIATED RIGHTS, ADL 63574, which became effective May 2, 2004, was recorded in the Barrow Recording District as Document No. 2002-001065-0, Pages 001 through 030, on December 6, 2002.

This AMENDMENT is made and entered into and becomes effective this 9<sup>th</sup> day of August, 2012, by and between the STATE OF ALASKA located at 411 West 4th Avenue, Suite 2, Anchorage, Alaska 99501, acting through the Commissioner of Natural Resources, hereinafter referred to as COMMISSIONER, and Alyeska Pipeline Service Company as agent for the Trans-Alaska Pipeline System (TAPS) owner companies located at P.O. Box 196660, MS 502, Anchorage, Alaska 99519-6660, hereinafter referred to as LESSEE.

WHEREAS, the LESSEE has applied to amend the existing Right-of-Way Lease, ADL 63574, to include additional State of Alaska land to replace two existing below ground valve sets on the TAPS Fuel Gas Line (FGL) and make modifications to the Pump Station 3 Lateral Piping. The additional lands are located along the Dalton Highway and the Right-of-Way for the TAPS Fuel Gas Line. Construction of the above ground valve sets is necessary for the safe operation and protection of the pipeline.

NOW THEREFORE, the COMMISSIONER and LESSEE agree to amend the RIGHT-OF-WAY FOR THE TRANS-ALASKA PIPELINE, ADL 63574, to include the lands within the Barrow Recording District described as:

**FGL Manual Gate Valve No. 5  
Township 2 South, Range 14 East, Umiat Meridian, Alaska,  
Section 21, NW4, lands immediately adjacent to the existing TAPS right-of-way and  
the Dalton Highway at milepost 342.1, containing approximately 0.24 acres, and**

**FGL Manual Gate Valve No. 7 and Pump Station 3 Lateral Piping  
Township 7 South, Range 14 East, Umiat Meridian, Alaska,  
Section 9, SW4, and Section 16, NW4, lands immediately adjacent to the existing  
TAPS right-of-way and the Dalton Highway at milepost 311.7, containing  
approximately 0.54 acres.**


**The lands described above are incorporated into and made a part of the RIGHT-OF-WAY  
LEASE FOR THE TRANS-ALASKA PIPELINE dated May 3, 1974, ADL 63574, and the  
RENEWAL AND AMENDMENT OF RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA  
PIPELINE AND ASSOCIATED RIGHTS, ADL 63574, effective May 2, 2004.**


The lands needed to accommodate the above ground valve sets and modified piping after construction will be less than those described above. After construction, Alyeska Pipeline Service Company will submit an as-built drawing for the Commissioner's approval. The as-built drawing will show the right-of-way addition in relation to the boundaries of the existing TAPS right-of-way. Upon the Lessee's acceptance of the Commissioner's approval of the as-built, Exhibit D, Right-of-Way for Related Facilities of the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, will be amended to reflect the final, amended legal description.

**IN WITNESS WHEREOF, the COMMISSIONER and LESSEE have affixed their signatures to  
duplicate originals of this AMENDMENT.**

**STATE OF ALASKA**

**LESSEE**

  
**Daniel S Sullivan  
Commissioner  
Department of Natural Resources**

  
**Peter C. Nagel /Sr. Land Manager  
Alyeska Pipeline Service Company, Agent  
for the Trans-Alaska Pipeline System owner  
companies**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 10<sup>th</sup> day of August, 2012, before me, personally appeared Peter C. Nagel, who stated that he executed the foregoing document as authorized representing Alyeska Pipeline Service Company as agent for the Trans-Alaska Pipeline System owner companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal, the day and year in this certificate first above written.



Lorie Burroughs  
Notary Public in and for the State of Alaska  
My Commission expires 08-31-2014

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 9<sup>th</sup> day of August, 2012, before me, personally appeared Daniel S. Sullivan, the Commissioner of the Department of Natural Resources of the State of Alaska, who executed the foregoing Amendment and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal, the day and year in this certificate first above written.



Joseph Blight  
Notary Public in and for the State of Alaska  
My Commission expires w/ office

**COPY**

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
STATE PIPELINE COORDINATOR'S OFFICE**

**COMMISSIONER'S DECISION**

**ADL 63574  
TRANS-ALASKA PIPELINE SYSTEM  
FUEL GAS LINE MANUAL GATE VALVE REPLACEMENTS**

This final decision is intended to complement and update the Analysis of Amendment Application and Proposed Decision dated June 28, 2012.

**Proposed Action:** Alyeska Pipeline Service Company (APSC), agent for the Trans-Alaska Pipeline System (TAPS) owner companies, has requested an amendment to modify the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574. The purpose of the amendment is to add approximately 0.78 acres of land adjacent to the Dalton Highway to replace two existing below ground valve sets on the TAPS Fuel Gas Line (FGL) and make modifications to the Pump Station 3 lateral piping, as part of TAPS Project F802. FGL Manual Gate Valves (MGV) No. 5 and No. 7 will be replaced with above ground valve sets that will be set farther from the highway on new gravel pads to prevent vehicular damage. The project will increase the long term integrity of the new pipe and valve sets. Access workpads will be constructed from the Dalton Highway to the new valve sites and vehicle gates will be installed to control access.

The lands proposed to be added to the right-of-way are generally described as:

**FGL MGV No. 5**

Township 2 South, Range 14 East, Umist Meridian, Alaska,  
Section 21, NW4, lands immediately adjacent to the existing TAPS right-of-way and  
the Dalton Highway at milepost 342.1, containing approximately 0.24 acres, and

**FGL MGV No. 7 and Pump Station 3 lateral piping**

Township 7 South, Range 14 East, Umist Meridian, Alaska,  
Section 9, SW4, and Section 16, NW4, lands immediately adjacent to the existing  
TAPS right-of-way and the Dalton Highway at milepost 311.7, containing  
approximately 0.54 acres.

**Authority:** AS 38.35.015 and the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, are the authorities for this decision.

**Public/Agency Notice:** Coordinate agency notice of the application was sent to the Alaska Departments of Environmental Conservation, Labor and Workforce Development, and Transportation and Public Facilities. Notice was also provided to the Regulatory Commission of Alaska, the Bureau of Land Management, and the northern region offices of the Alaska Departments of Fish and Game and Natural Resources. Notice of the amendment application was published in the Anchorage Daily News, the Fairbanks Daily News Miner, and on the State of Alaska public notice website and the State Pipeline Coordinator's Office (SPCO) website on May 31, 2012.

Public Notice of the Analysis of Amendment Application and Proposed Decision, ADL 63574, Trans-Alaska Pipeline System, Fuel Gas Line Manual Gate Valve Replacements, was published in the Anchorage Daily News, the Fairbanks Daily News Miner, and on the State of Alaska public notice website and the State Pipeline Coordinator's Office website on June 29, 2012. Notice of the application was also sent to post offices in Nuiqsut, Prudhoe Bay/Deadhorse, Coldfoot, and Fairbanks.

This public notice provided interested parties the opportunity to comment on the application. No objections were received from the agencies or the public.

A copy of the Analysis of Amendment Application and Proposed Decision was distributed to the North Slope Borough Mayor, Nuiqsut Mayor, Arctic Slope Regional Corporation Kuukpik Corporation, and each of the agencies listed above.

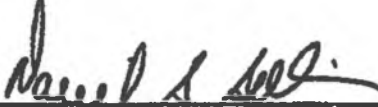
**Agency Comment Received:** The Department of Natural Resources, Division of Mining, Land, and Water, Northern Region Office (NRO) provided information that there is a long-term monitoring station installed in the vicinity of the proposed work to be done at the FGL MGV No. 7. The site consists of three (3) thermistors installed in the ground at 10 cm, 20 cm, and 30 cm depths, and are contained within an above ground black PVC housing. The site also has an approximately 25 meter transect delineated by five (5) reflective driveway markers. This monitoring station, in conjunction with 19 other monitoring sites, is used to collect ground temperatures, snow depth, and snow density to provide the NRO information to determine the winter off-road travel season on the tundra. The NRO requests the project at the FGL MGV No. 7 be revised and/or relocated if possible to prevent disturbance of the monitoring station site.

**Response:** APSC was immediately informed of the NRO comment received and was provided information about the approximate location of the monitoring site. The SPCO requested APSC to determine the distance from the monitoring station to the proposed location of the gravel pad and to the nearest extent of any planned excavation. From field photos provided by APSC, it appears the monitoring station may be located an adequate distance from the proposed project as to not impact future data recorded by the monitoring station. Actual distances will be measured in the field by APSC and will be provided to the SPCO. APSC will work with the SPCO and the NRO to determine if the proposed work will have an impact on the monitoring station and what actions to take to minimize any disturbance. APSC may not remove, relocate, or disturb the monitoring station without approval from the NRO.

**Discussion:** The request for the authorization to install the above ground MGV and to modify Pump Station 3 lateral piping is consistent with the original purpose of the lease. The interest in additional state lands requires an amendment to the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, and will be subject to all terms, conditions, and stipulations contained in the lease, as discussed in the Analysis of Amendment Application and Proposed Decision dated June 28, 2012.

**Final Finding and Decision:** The proposed amendment to facilitate the MGV replacements and piping modification is consistent with the original intent of the RIGHT-OF-WAY LEASE FOR THE TRANS-ALASKA PIPELINE, ADL 63574, and serves to protect the TAPS pipeline and state resources. It is in the best interest of the State of Alaska to approve the amendment request.

The amendment to Exhibit D, the Description of Right-of-Way for Related Facilities of the Right-of-Way Lease for the Trans-Alaska Pipeline, ADL 63574, will be completed following construction, the Commissioner's approval of the as-built drawing, and acceptance of the Commissioner's approval by the Lessee.

  
\_\_\_\_\_  
Daniel S. Sullivan  
Commissioner  
Alaska Department of Natural Resources

  
\_\_\_\_\_  
Date

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
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State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 12, 2013

**SUBJECT:** Limiting judicial review (SSHB 4; Work Order No. 28-LS0021\O)

**TO:** Representative Mike Hawker  
Attn: Rena Delbridge

**FROM:**   
Donald M. Bullock  
Legislative Counsel

You asked whether the legislature has the power to limit judicial review as offered in sec. 13 of the above-referenced bill. Although the legislature has the power to establish jurisdiction for the courts under art. IV, sec. 1, Constitution of the State of Alaska,<sup>1</sup> what the legislature categorizes as an issue of jurisdiction may be found by the courts to be a violation under the separation of powers doctrine.

Section 13 of SSHB 4 adds two new subsections to AS 38.35.200 -- AS 38.35.200(c) and (d).<sup>2</sup> New subsection AS 38.35.200(d) describes appeals that are not subject to the

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<sup>1</sup> Article IV, sec. 1: **Judicial Power and Jurisdiction.** The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. *The jurisdiction of courts shall be prescribed by law.* The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law. (Emphasis added.)

<sup>2</sup> Section 13, SSHB 4:

\* **Sec. 13.** AS 38.35.200 is amended by adding new subsections to read:

(c) Except as provided for an applicant in (a) of this section and notwithstanding any contrary provision of law, an action or decision of the commissioner or other state officer or agency concerning the issuance or approval of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation under AS 31.25 that uses a right-of-way subject to this chapter may not be subject to judicial review, except that a claim alleging the invalidity of this subsection must be brought within 60 days after the effective date of this Act, and a claim alleging that an action will deny rights under the Constitution of the State of Alaska must be brought within 60 days following the date of that

limitations in AS 38.35.200(c), therefore this analysis addresses only AS 38.35.200(c) (subsection (c)). Subsection (c) limits appeals and provides for an accelerated process for judicial appeals from administrative actions related to the natural gas pipeline project. Subsection (c) is similar to AS 43.90.420<sup>3</sup> in the Alaska Gasline Inducement Act (AGIA) and 15 U.S.C. 720e in the Alaska Natural Gas Pipeline Act (ANGPA), both of which also provide for expedited resolution of disputes that would otherwise delay a natural gas pipeline project to transport North Slope natural gas to market. So far as I am aware, the ANGPA statutes have not been challenged in court.

Subsection (c) bars or limits access to the courts in two situations. First, the subsection bars or limits appeals from certain administrative actions, and second, the subsection sets a time period in which a person may make a challenge to the statute itself. Once in court, subsection (c) also restricts the authority of the superior court to grant injunctive relief.

#### **Limiting appeals from administrative actions**

Generally, administrative decisions are presumed to be judicially reviewable, unless the legislature provides otherwise. The bill provides otherwise in subsection (c) by denying a judicial appeal except where a constitutional right is affected.

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action. A claim that is not filed within the limitations established in this subsection is barred. A complaint under this subsection must be filed in superior court, and the superior court has exclusive jurisdiction. Notwithstanding AS 22.10.020(c), except in conjunction with a final judgment on a claim filed under this subsection, the superior court may not grant injunctive relief, including a temporary restraining order, preliminary injunction, permanent injunction, or stay, against the issuance of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation. In this subsection, "natural gas pipeline" has the meaning given in AS 38.34.099.

(d) An appeal of a permitting decision or authorization by the Department of Environmental Conservation under AS 46.03 or AS 46.14 that is made under a program approved or delegated by the United States Environmental Protection Agency is not

- (1) subject to the limitation in (a) of this section;
- (2) included in the actions or decisions described in (c) of this section.

<sup>3</sup> **Sec. 43.90.420. Statute of limitations.** A person may not bring a judicial action challenging the constitutionality of this chapter or the constitutionality of a license issued under this chapter unless the action is commenced in a court of the state of competent jurisdiction within 90 days after the date that a license is issued.

In *Bethel Utilities, Corp. v. City of Bethel*,<sup>4</sup> the Alaska Supreme Court considered the issue of whether the superior court had jurisdiction to consider an appeal from an administrative decision made by the City of Bethel. The Court described the presumption that an appeal from an administrative decision was appealable to the superior court:

Unless the legislature provides otherwise, administrative decisions are presumed to be judicially reviewable. 5 K. Davis, *Administrative Law* §§ 28.1; 28.4 (2d ed. 1984). Here, the Bethel City Council has not precluded judicial review. Therefore, the law does provide for appeals from the city council's administrative decisions. Thus, the appellate rules apply . . . .<sup>[5]</sup>

The case seems to make the point that, because of the general jurisdiction of the superior court, a specific grant of superior court jurisdiction for an administrative appeal is not necessary.<sup>6</sup> Subsection (c) affirmatively bars an appeal to court from an administrative action described in the subsection, but could face the same fate as AS 22.10.020(d), to which the court did not defer in *Bethel*.

The part of subsection (c) that addresses the type of action from which a judicial review is prohibited is as follows:

[A]n action or decision of the commissioner or other state officer or agency concerning the issuance or approval of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development

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<sup>4</sup> 780 P.2d 1018 (Alaska 1989).

<sup>5</sup> *Id.* at 1022 (footnotes omitted).

<sup>6</sup> The holding seems to conflict with AS 22.10.020(d), which states that the superior court has jurisdiction in all matters appealed to it from an administrative hearing when the appeal is provided by law. AS 22.10.020(d) states:

The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency *when appeal is provided by law*, and has jurisdiction over petitions for relief in administrative matters under AS 44.62.305. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency, except an appeal under AS 43.05.242, shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part. The hearings on appeal from a final order or judgment under AS 43.05.242 shall be on the record. (Emphasis added.)

Corporation under AS 31.25 that uses a right-of-way subject to this chapter [AS 38.35] may not be subject to judicial review[.]

The limitation in this subsection only applies to administrative approval of actions that are typically within the authority of state, including authority for land use and leasing, environmental permits not addressed in the next subsection, and business regulation. The bar of a judicial appeal is limited to necessary authorizations for single project -- a natural gas pipeline that uses a right-of-way subject to AS 38.35 that is being developed by the Alaska Gasline Development Corporation (AGDC), a state corporation. In other words, the limitation does not apply to a natural gas pipeline developed by any other person, does not apply to a pipeline that does not use a state right-of-way subject to AS 38.35, and does not apply to a permit issued by a federal agency that is outside of the state's authority.<sup>7</sup>

Subsection (c) includes an exception to the bar against a judicial appeal -- the allowance for the filing of "a claim alleging that an action will deny rights under the Constitution of the State of Alaska." A common issue in administrative actions is the right to due process, which is presumably a right that may be the basis for an allowable appeal. The right to due process in art. I, sec. 7, Constitution of the State of Alaska, is as follows:

**Due Process.** No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

A person claiming that a state action violates due process or affects another a constitutional right must file an appeal from the action within 60 days. The 60-day period in subsection (c) is twice as long as the 30-day period for filing a judicial review of a final administrative order under AS 44.62.560(a) (Administrative Procedure Act). The period for making an appeal seems adequate.

#### **Limiting the period for challenging the statute**

The second of the two situations relating to a court appeal is a challenge to the validity of subsection (c). A challenge to the validity of statute must be filed within 60 days after the effective date of the subsection.

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<sup>7</sup> AS 38.35.200(d) specifically exempts "[an] appeal of a permitting decision or authorization by the Department of Environmental Conservation under AS 46.03 or AS 46.14 that is made under a program approved or delegated by the United States Environmental Protection Agency." The failure to comply with requirements imposed by the federal government may result in the withdrawal of federal approval or delegation and the return of certain environmental regulation from the state to the federal government.

The legislature has enacted a number of statutes that requires a person bring an action within a limited time period, including the statutes of limitation in AS 09.10 and the period for filing from an administrative order as mentioned above. This limited period is similar to the limitations for appeals under AGIA and ANGPA and is based on the intent to expedite appeals that would cause unreasonable or unnecessary delays in bringing North Slope natural gas to market.

One problem with limiting the period for challenging the statute (or AGIA for that matter) is that the failure to bring a constitutional challenge within a limited period does not make an unconstitutional statute constitutional. Ultimately, it will be up to the court to decide whether a late-filed constitutional challenge will be allowed. Although the legislature may limit the period for bringing the appeal, a superior court might nevertheless exercise what it interprets to be its general jurisdiction under AS 22.10.020(a) and consider the challenge.

#### **Limiting the court's injunction powers**

Subsection (c) limits the powers of the superior court with regard to injunctions, stays, and restraining orders. That part of subsection (c) reads as follows:

Notwithstanding AS 22.10.020(c), except in conjunction with a final judgment on a claim filed under this subsection, the superior court may not grant injunctive relief, including a temporary restraining order, preliminary injunction, permanent injunction, or stay, against the issuance of a necessary right-of-way, permit, lease, certificate, license, or other authorization for the planning, financing, acquisition, maintenance, development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation.

If AS 22.10.020(c)<sup>8</sup> is strictly jurisdictional under art. IV, sec. 2, Constitution of the State of Alaska, the prohibition against injunctions, stays, and restraining orders could be upheld. On the other hand, the Alaska Supreme Court could find that injunctions, stays, and restraining orders are necessary tools of the superior court in the exercise of its constitutional powers, and find that the prohibitions in subsection (c) are not binding.

The Alaska constitution provides for the separation of powers by allocating powers between the legislature (art. II, sec. 1), the governor and the executive branch (art. III, sec. 1), and the judiciary (art. IV, sec. 1). The legislature may change court rules governing the administration of the courts or those governing practice and procedure by a

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<sup>8</sup> AS 22.10.020(c): "The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court."

vote of two thirds of the members elected to each of the two houses,<sup>9</sup> but the legislature cannot reallocate constitutional powers. So long as Supreme Court finds that what the legislature considers a jurisdictional issue is actually one of judicial power, the Supreme Court may reject the limitations.

As discussed above, the Supreme Court has already rejected a jurisdictional limitation in AS 22.10.020 in favor of court power in *Bethel, supra*. In that case, the Alaska Supreme Court rejected limiting the language in AS 22.10.020(d) (that the superior court could only consider an appeal from an administrative agency "when provided by law") and ruled that "unless the legislature provides otherwise, administrative decisions are presumed to be judicially reviewable."<sup>10</sup> It is possible that a limitation by the legislature that prohibits an injunction, stay, or restraining order as provided in subsection (c) similarly could be set aside by the court if in conflict with the court's constitutional powers.

The resolution of the seeming conflict between the judicial power in art. IV, sec. 1, Constitution of the State of Alaska, and the jurisdiction of the courts prescribed by the legislature under the same constitutional provision and AS 22.10.020 cannot be predicted with certainty. The *Bethel* decision found authority for an administrative appeal when not specifically authorized by law; the Supreme Court could find authority for injunctions, stays, and restraining orders despite the enactment of subsection (c), which removes the authority, except in conjunction with a final order.

### **Conclusion**

Subsection (c) limits appeals, injunctions, stays, and restraining orders that could slow or stop progress in the development of an in-state natural gas pipeline by AGDC. The restrictions raise issues of legislative and judicial power and the separation of those powers. While the limitations provide protection for rights under the Alaska constitution, the resolution of the power conflict between the legislative and judicial branches may need to be settled by an action in court.

DMB:ljw:med  
13-040.med

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<sup>9</sup> Article IV, sec. 15, Constitution of the State of Alaska.

<sup>10</sup> 780 P.2d at 1022.