



John F. Schell, Jr.
Vice President
Strategy, Commercial, BD & Land
P.O. Box 100360
Anchorage, AK 99510-0360
(907) 265-6022
John.Schell@conocophillips.com

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Corri Feige
Commissioner
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, AK 99501
corri.feige@alaska.gov

Dr. Sara Longan
Deputy Commissioner
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, AK 99501
sara.longan@alaska.gov

Tom Stokes
Director, Division of Oil and Gas
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1100
Anchorage, AK 99501
tom.stokes@alaska.gov

Erik A. Fossum
Director of Appeals and Policy Implementation
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 99501
erik.fossum@alaska.gov

Via Hand Delivery and Email

Re: Response to October 28, 2021 Oil Search (Alaska), LLC Appeal

Dear Commissioner Feige, Deputy Commissioner Longan, Director Stokes, and Director Fossum:

ConocoPhillips Alaska, Inc. ("CPAI") appreciates the opportunity to respond to the October 28, 2021 Oil Search (Alaska), LLC ("OSA") appeal ("OSA Appeal") described in the November 2, 2021 letter from Director Fossum. CPAI understands from Director Fossum's letter that the Commissioner has not determined whether the OSA Appeal is valid or that the issues presented in the OSA Appeal have merit.

The OSA Appeal seeks to challenge two emails from Director Stokes dated October 4 and October 8, 2021 ("Emails").¹ OSA characterizes the Emails as amending January 28, 2021 and April 5, 2021 Director's decisions ("Decisions") on OSA conditional easement applications.² OSA asks the Commissioner to vacate the Emails and to issue OSA a notice to proceed ("NTP") with construction of its proposed seawater treatment plant ("OSA STP") and related facilities within the Kuparuk River Unit ("KRU").³

OSA requests that the Commissioner find that OSA has complied with all conditions under the Decisions, specifically that "OSA has fully satisfied the requirement . . . to 'negotiate in good faith'

¹ OSA Appeal at 2.

² *Id.* at 3-4.

³ *Id.*

for an equitable use agreement⁴ with CPAI as KRU operator,⁵ and to issue the NTP “as expediently as possible” and “within one week.”⁶ OSA’s request, essentially for emergency relief, is premised on OSA’s assertion that failure to grant such relief “will prevent OSA from progressing the [OSA] STP according to the schedule that has been shared with the Division and could ultimately delay OSA’s development of the State’s natural resources.”⁷

Assuming the Commissioner finds that the OSA Appeal is timely and valid, CPAI submits the following comments and responses regarding the OSA Appeal.

1. OSA has long been aware that a long-term KRU road use agreement will be required for it to begin construction.

OSA is well aware, based on direct communications with CPAI and based on statements in CPAI’s public correspondence on the OSA STP project, that it must secure a long-term agreement for use of KRU roads for its construction and operation of the OSA STP within KRU:

- September 3, 2020 CPAI comments: “There is no agreement in place between OSA and the KRU for [transporting fill to the proposed OSA STP site] The current ad hoc road use agreement between OSA and KRU provides only for occasional ad hoc use of KRU roads. A separate agreement would be required for heavy or continuing OSA road use associated with Pikka development and/or the OSA Project.”⁸
- October 19, 2020 CPAI comments: “OSA does not have current rights to use KRU roads for its proposed project OSA cannot assume that unrestricted use of KRU roads or use that will impact existing uses will be automatically granted, or that any use perceived as unsafe (such as the use of the larger trucks) would be granted.”⁹
- December 4, 2020 CPAI comments: “OSA does not have current rights to use KRU roads for construction or other heavy use.”¹⁰

Notwithstanding the above clear CPAI statements and numerous similar private communications to OSA, in the OSA Appeal, OSA suggests that its existing Ad Hoc Road Use Agreement¹¹ fully suffices for its future activities and operations within the KRU.¹² OSA has been on notice since

⁴ *Id.* at 12.

⁵ In the communications shown in OSA Appeal Exhibits C and D, the Division language appears to include KRU road access and use within the scope of the “equitable use agreement”. The KRU road use agreement and the equitable use agreement could be consolidated into one, but to date, the parties have been discussing two separate agreements: one for the use of private property (KRU roads) and one for accommodating OSA surface activities and operations within the KRU so that they do not unnecessarily or unreasonably interfere with or endanger KRU activities and operations.

⁶ *Id.* at 2, 12.

⁷ *Id.* at 12.

⁸ September 3, 2020 CPAI comment letter re OSA application re ADL 421488 STP, at 3 and note 7.

⁹ October 19, 2020 CPAI Supplemental Comments on OSA Application re ADL 421488 STP, at 6.

¹⁰ December 4, 2020 CPAI Comments on Second OSA Application re ADL 421526, at 5.

¹¹ March 2, 2018 KRU Ad Hoc Road Access and Use Agreement, transmitted by OSA to DNR on November 3, 2021 (Ad Hoc Road Use Agreement).

¹² OSA Appeal at 7 and note 22.

the Ad Hoc Road Use Agreement was executed that it is for ad hoc¹³ use only, and should it be used for any other purpose or used in a way that interferes in any way at odds with KRU activities or operations, it is terminable in CPAI's discretion.¹⁴ Hence, OSA has been on notice for more than a year that the agreement would not be continued for heavy, regular use during construction. To intentionally rely on a terminable ad hoc road use agreement for the kind of out of scope construction work and continuous use OSA proposes does not reflect the kind of planning anyone reasonably expects for a project such as the OSA STP and associated pipelines.

2. The long-term KRU road use agreement is required before construction, regardless of whether or when the Division issues the NTP.

As stated in CPAI's September 16, 2021 letter to DNR, CPAI is not requesting that execution of the equitable use agreement or a KRU road use agreement be express conditions precedent to the Division's issuance of an NTP. However, that does not mean that third party construction within the KRU could begin without execution of those agreements.

So far as CPAI is aware, OSA plans to use KRU roads to access its proposed site for the OSA STP and related pipelines and facilities.¹⁵ Because KRU roads are private property, the only means for OSA to access those roads is by commercial agreement with CPAI, as KRU Operator.

The two Decisions (neither of which were appealed on this point) include the following provision:

13. Other Authorizations. The issuance of this authorization does not alleviate the necessity of the Grantee to obtain authorizations required by other persons or agencies for this project. Failure to obtain said authorizations shall constitute a violation of this authorization, subject to action as described herein.¹⁶

CPAI is an "other person" from whom OSA must obtain authorization for access to and use of the KRU private property that OSA proposes to use in the projects that are the subject of the Decisions.

¹³ "Ad hoc" is generally understood and defined as meaning "for this specific purpose; for a specific case only, without general application." New World Dictionary of the American Language (William Collins Publishers, Inc.; 1979) at p. 17. The Ad Hoc Road Use Agreement executed in 2018 did not (as expressed in the scope description) and could not have contemplated authorizing the type of road use and the specifics of the road use OSA is now proposing for the OSA STP and associated facilities within the KRU.

¹⁴ See Section 3 of the Ad Hoc Road Use Agreement.

¹⁵ OSA could in theory construct its own roads across KRU, subject to DNR authorization and compliance with the KRU leases that require that such activities not unnecessarily or unreasonably interfere with or endanger KRU operations. It is also theoretically possible that DNR could authorize OSA to construct new roads that would comply with KRU lease terms, depending on the route selected and the new roads' proximity to existing KRU infrastructure. However, CPAI's understanding is that OSA does not intend to construct new roads, and instead proposes to use KRU roads. This DNR may not authorize, as the KRU roads are the private property of the KRU working interest owners.

¹⁶ OSA Appeal, Exhibit A at page 28, section 13; Exhibit B at page 29.

a. There is no dispute that KRU roads are the private property of the KRU working interest owners.

The Kuparuk River Unit Agreement, to which the Department of Natural Resources (DNR) is a party, states at Section 3.7:

All lease and well equipment, materials, and other facilities placed by any of the Working Interest Owners in the Unit Area shall be deemed to be and shall remain personal property belonging to and may be removed by the Working Interest Owners.

Further, as DNR is aware, every agreement for ad hoc use of KRU roads, including the Ad Hoc Road Use Agreement executed by OSA, and provided to DNR by OSA,¹⁷ provides as follows:¹⁸

2.2 Title and Nature of Roads. Except as provided in this Agreement, Contracting Party agrees that Contractor Group shall not make any claim of title, right of use, or right to occupy for any purpose whatsoever, whether by transfer, prescription, easement, right-of-way or otherwise, to any part of the KRU Road System. Contracting Party agrees to ensure that Contractor Group shall not assert or make any claim that the KRU Road System, or any part thereof, is a public road because of this Agreement.

12.8 Operator Not A Public Utility. Operator is not a public utility and nothing contained herein will be deemed as a dedication to the public of the KRU Road System or any part thereof.

In recent correspondence to CPAI on November 11, 2021, OSA re-affirmed its compliance with the above Ad Hoc Road Use Agreement sections:

- “[W]ith respect to your inquiries regarding the KRU Ad Hoc Road Access and Use Agreement between Oil Search Alaska and ConocoPhillips Alaska, OSA actions and statements are fully compliant with that Agreement and the various sections [2.2 and 12.8 above] set forth in your communication.”
- “OSA has not indicated nor asserted that any roads within the Kuparuk River Unit are public roads or that the Kuparuk Unit Operator is a public utility.”¹⁹

By affirming that it is fully compliant with Section 2.2 of the Ad Hoc Road Use Agreement, OSA affirmed that it is not asserting any right of use or right to occupy any part of the KRU road system except as allowed, and to the extent allowed by, the Ad Hoc Road Use Agreement. The Ad Hoc Road Use Agreement does not and was never intended to encompass road use for projects such as those that are the subject of the Decisions. By also affirming that OSA is not asserting that any KRU roads are public roads or that the KRU operator is a public utility, OSA has again

¹⁷ See letter dated November 3, 2021, from C. Stephen Luna at OSA to Erik A. Fossum at DNR, transmitting a copy of the Ad Hoc Road Use Agreement between CPAI and OSA.

¹⁸ Note in these sections, “Contracting Party” refers to the ad hoc road user, in this case, OSA, and “Contractor Group” generally refers to OSA’s affiliates, contractors, and subcontractors. “Operator” refers to CPAI. Each user of KRU roads is required to execute an agreement with substantially identical terms.

¹⁹ See Attachment 1.

recognized the private property status of the KRU structures and facilities it wishes to use and rely upon.

- b. To the extent that OSA is requesting that DNR order CPAI to make KRU roads available to OSA without compensation or with compensation determined by DNR, that requested relief is not available.**

OSA asserts in its appeal:

The October 4, 2021 letter states: “The Division also understands that the parties cannot reach agreement on the amount that Oil Search should compensate CPAI under the equitable use agreement which includes road access to Oliktok Point.” This sentence indicates both that the EUA must address road use and that the Division expects OSA to agree to compensate CPAI for road use as a condition to issuing the Director’s Final Determination and NTP.²⁰

Separately, OSA asserts that CPAI is “not entitled” to compensation for use of KRU road maintenance and capital expenses, and that CPAI has “no authority to obtain” compensation for use of KRU roads.²¹ OSA also cites a prior case where roads predominantly owned by another state entity and creditor were made available for OSA use without a long-term agreement with the road owner.²² Taken together, these statements indicate that, notwithstanding its agreement that KRU roads are the private property of the KRU working interest owners, OSA somehow believes that it may use KRU roads without KRU consent or compensation to the KRU working interest owners.

It is difficult both to understand the basis for these OSA assertions, and also to understand what specific actions OSA is requesting that DNR take. One possible interpretation is that OSA is requesting that DNR order CPAI to make KRU roads available for OSA use without compensation. This would be unlawful.

A non-consensual appropriation of KRU roads or other facilities would be a textbook taking.²³ On this basis alone, OSA’s request must be denied, as DNR simply lacks the legal power to do what OSA requests. Unlike the Alaska Department of Transportation (“AKDOT”),²⁴ the Alaska Legislature has not delegated eminent domain authority to DNR.

²⁰ OSA Appeal at 6.

²¹ *Id.* at 7, note 23, and 10.

²² OSA Appeal, Exhibit N at 1. The BRPC Mustang Project near the Pikka Unit and KRU has long been a venture with the State-owned Alaska Industrial Development and Export Authority (“AIDEA”). AIDEA owned 80 percent of the gravel road and pad that OSA sought to use (see <https://www.alaskajournal.com/2021-01-20/aidea-forecloses-mustang-assets-after-70m-investment>)²² and for unknown reasons, as a State entity investor/creditor of the Mustang Project, does not appear to have required that OSA execute a road use agreement or an equitable use agreement. As noted above, there is no basis for OSA to assume that it could use KRU roads on the same basis. Further, as the Mustang Project did not appear to be actively progressing due to financial difficulties, it is our understanding that there were no ongoing or planned activities or operations on the Mustang leases that would have to be considered for potential interference by OSA; that is not the case here.

²³ See *Department of Highways v. Crosby*, 410 P.2d 724, 728 (Alaska 1966) (“[N]either the failure to institute a condemnation action nor appellees’ assertion of a claim based on the theory of trespass changed the essential nature of the state’s action in appropriating appellees’ property. Such action was still the exercise of the power of eminent domain . . .”).

²⁴ See AS 19.05.080.

Further, even an agency like AKDOT – with eminent domain authority expressly delegated by statute – could not condemn KRU roads for the purpose of allowing OSA to construct and operate the OSA STP and associated pipelines within the KRU, as that would fall within the prohibition of AS 09.55.240(d)²⁵: “The power of eminent domain may not be exercised to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development purposes.”²⁶

Accordingly, OSA’s implicit request that DNR order CPAI to make KRU roads available to OSA must be rejected. Should OSA determine to initiate use of KRU roads without an agreement for such use, CPAI has practical physical measures and legal remedies to prevent and remedy unauthorized use of KRU roads, which would be implemented as necessary. Having to invoke those measures to protect KRU property constitutes unnecessary and unreasonable interference with the KRU working interest owners’ activities and operations (discussed below in section 3).

3. The Division’s requirement for an equitable use agreement is not unprecedented or unreasonable.

OSA should have been well aware – consistent with the Division’s prior orders and long-standing practice for all operators across the North Slope for activities within other leases or units – that an equitable use agreement also would be required for any OSA operations within KRU.

In DL-1 leases (which comprise the core of the KRU on which the roads OSA proposes to use are located), the Division is obligated to the KRU lessees to only grant rights within the KRU to third parties “under such conditions as will prevent unnecessary or unreasonable interference with the rights of Lessee and operations under this lease”.²⁷ In more recent lease forms, the rights reserved by the Division and granted to third parties “may be exercised . . . in any manner that does not unreasonably interfere or endanger the lessee’s operations under this lease.”²⁸ Hence, DNR’s approvals and grants to third parties must ensure that such third parties eliminate any such interference or danger.

The two Decisions the Division initially issued to OSA in this matter include standard provisions regarding the agreements OSA complains of:

- b. The Division shall require Grantee to negotiate in good faith with existing Oliktok Point operators for an equitable agreement regarding concurrent use of state land.

²⁵ Under AS 09.55.240(d)(3), AKDOT has statutory authority to condemn a private road for “for a private way of necessity to permit essential access for extraction or use of resources.” Here, that would not be appropriate, as KRU currently allows OSA to use KRU roads to access the Pikka Unit under the Ad Hoc Road Use Agreement. And access to OSA’s STP at Oliktok Point would not qualify. See *Northern Mining & Trading Co. v. Alaska Gold Recovery Co.*, 20 F.2d 5 (9th Cir. Alaska 1927) (eminent domain statute did not allow the taking of property for a plant and equipment to operate a mine, where it was not possible to site the plant and equipment on the mine site itself)

²⁶ Disregarding all of these legal limitations, even if Alaska statutes authorized DNR to condemn KRU roads for OSA’s economic development, it is DNR, not OSA, that would be required under the State and U.S. Constitutions to pay fair compensation to the KRU working interest owners for the taking, and it is DNR, not OSA, that would assume responsibility for public road maintenance. Accordingly, OSA’s request would not only take private property from the KRU working interest owners but also would impose other obligations on the State.

²⁷ DL-1 lease form, paragraph 27.

²⁸ See, e.g., DMEM—A lease form, at paragraph I.B. For subsequent DMEM and DO&G lease forms, see lease paragraph 2.

c. The AO reserves the right to modify these stipulations or use additional stipulations as deemed necessary. Grantee will be notified in writing prior to the implementation of any change in the terms or conditions exercised by the AO under this provision. Grantee will be afforded the opportunity to review and comment regarding the effect of any proposed change to this authorization.²⁹

The Decisions also include the following provision:

13. Other Authorizations. The issuance of this authorization does not alleviate the necessity of the Grantee to obtain authorizations required by other persons or agencies for this project. Failure to obtain said authorizations shall constitute a violation of this authorization, subject to action as described herein.³⁰

OSA now objects when DNR invokes those stipulations³¹ and more explicitly requires such an agreement for multiple use on state lands subject to the prior existing rights in those state lands. But this requirement is far from unprecedented and should not be surprising to OSA, given the clear terms in every state oil and gas lease.

While it might be true that DNR has not always invoked the express requirement that parties enter into equitable use or road use agreements, it is a standard practice to have such agreements when an operator is seeking to conduct operations on oil and gas leases owned by other parties.³² While CPAI has not attempted to site an entire facility or project within another unit or on third party leases, CPAI routinely enters into non-interference equitable use-type agreements for temporary operations such as exploration (commonly called “letters of non-objection”) with other operators for activities within other units or leases. One would expect different terms in

²⁹ See, e.g., Exhibit A to OSA Appeal, Attachment D, 4.b and c.

³⁰ See note 14.

³¹ OSA did not appeal the Decisions’ requirements to “negotiate” equitable use agreements. “Negotiate” is generally understood and defined as “to make arrangements for, settle or conclude (a business transaction, treaty, etc.).” New World Dictionary of the English Language (William Collins Publishers, Inc.; 1979) at p. 952. OSA has not made arrangements for, settled or concluded an equitable use agreement.

³² In Exhibit N to its OSA Appeal, OSA cites DNR’s prior permission for OSA activities within the Southern Miluveach Unit (Mustang Project). OSA cites a Division statement related to an OSA easement across the Mustang Project: “The Division does not have a policy to condition the grant of a non-exclusive private easement on the applicant first entering into an agreement with other easement holders.” *Id.* OSA then suggests that the Division is departing from that policy statement here and that because DNR does not have such a policy statement, DNR is restrained from exercising authority to issue specific stipulations in response to an application and aligned with its authority under the KRU leases in granting the application. However, the OSA conditional easements within KRU already have been issued without an equitable use agreement having been negotiated or executed, which is consistent with the “policy” statement OSA cites. In fact, contrary to that “policy” statement, what OSA now seeks is authorization to begin construction within KRU; it is that activity that DNR appropriately deems to require an equitable use agreement to prevent unnecessary or unreasonable interference with or endangerment of KRU operations. See, e.g., page 21 in Exhibit A to OSA Appeal (“DNR will have an opportunity to review OSA’s project execution plan and schedule and FEED information and will review any new concerns raised during a subsequent notice and comment period pursuant to Article VIII of the Alaska Constitution prior to the construction phase.”) Unlike the Mustang Project, in the KRU, there is significant State oil production, long existing daily operations and numerous projects with which OSA’s activities or operations predictably may unnecessarily or unreasonably interfere. It is reasonable and prudent that OSA should negotiate (including execution of) an agreement to avoid unnecessary or unreasonable interference before those conflicts potentially halt or adversely impact KRU activities and operations, which would violate the KRU leases’ requirements for the Division to be able to grant subsequent third-party rights.

agreements for long term projects that involve sites that already include other facilities and existing activities and operations. For a project of the size and duration of OSA's proposed project, CPAI would fully expect to execute agreements tailored to the specifics of the proposed project and the lands on which it was being proposed to be sited for any activities within the Pikka Unit or for any use of Pikka Unit roads.

4. OSA has not completed the requirement to negotiate in good faith for an equitable use agreement.

In the OSA Appeal, OSA correctly points to the productive engagement between OSA and CPAI, particularly over the last several months, on technical information sharing required for simops planning and incorporation into the equitable use agreement.³³ However, OSA's conclusion that it has therefore "fully satisfied the requirement . . . to 'negotiate in good faith'³⁴ for an equitable use agreement"³⁵ is premature. Although much of the technical work is complete, significant commercial work remains.

5. The equitable use agreement is required as a practical matter before construction, regardless of whether or when the Division issues the NTP.

For all of the reasons set forth above, whether the Division formally requires an equitable use agreement or a long-term KRU road use agreement before issuing an NTP for the OSA STP project is irrelevant, as OSA cannot practically proceed with construction without these agreements, and hence OSA's request for the Commissioner to determine that such agreements are not legally required is moot.

The equitable use agreement ultimately is required, not by the Director or the Commissioner, but by OSA's election to site its project within the KRU, an active unit with ongoing activities and operations and other pre-existing facilities within the relatively small area that OSA wishes to construct its STP.

Because OSA proposed to site its STP project where it does, OSA is obligated to ensure that its presence, activities, and operations within the KRU fit within the bounds of the rights DNR reserved out of the underlying oil and gas leases. That is, and has historically been, most efficiently and reasonably accomplished by having an equitable use agreement in place before construction commences.

6. OSA should not be allowed to proceed with activities or operations in the KRU because other NTP preconditions have not been met.

OSA asserts in its appeal that an equitable use agreement is not required, and suggests that a long-term KRU road use agreement is not required, for OSA to begin construction of the OSA STP.³⁶ These assumptions are incorrect: OSA may not simply and unilaterally ignore the state restriction of not unnecessarily or unreasonably interfering with the underlying oil and gas lessees'

³³ OSA Appeal at 11.

³⁴ See note 33.

³⁵ OSA Appeal at 12.

³⁶ In the OSA Appeal, OSA states that "an [equitable use agreement] is not necessary for construction" of its project within KRU. OSA Appeal at 12 note 40. OSA further states that it "currently has a road use agreement with CPAI" and suggests that this agreement would be used for construction, as "[t]he terms of the current road use agreement do not prohibit or indicate any adverse consequences of its use during construction and operation of the [OSA] STP." OSA Appeal at 7 and note 22. As noted above, both of these assumptions are incorrect.

activities and operations (especially in a long developed area with multiple facilities already existing in a relatively small area), and OSA may not use private property without agreement from the property owner.

If OSA's detailed project execution plan and schedule – a precondition for issuance of the NTP under the Decisions – incorporates the assumption that OSA may proceed with any activity or operation within the KRU without commercial agreements for use of private property and for ensuring that OSA's presence, activities, and operations do not unnecessarily or unreasonably interfere with or endanger KRU activities and operations, then the OSA plan and schedule are incomplete, and that NTP precondition has not been met.

7. The required commercial agreements are possible without adverse impact to OSA's construction schedule.

OSA has deferred its Pikka final investment decision ("FID"), according to recent investor presentations³⁷ and its 2022 Pikka Unit plan of development recently filed with DNR.³⁸ Furthermore, recent statements regarding OSA's parent entity's proposed merger with Santos Limited indicate uncertainty regarding the timeline for the proposed STP project.³⁹ Accordingly, even if OSA were to receive the emergency relief it requests and the Division immediately issued an NTP, the NTP would have no effect, as OSA's public statements indicate that it has no present intention to proceed with construction in the near future.

Although OSA's public statements indicate that it does not plan to sanction its Pikka project until at least 2022,⁴⁰ CPAI appreciates that finalization of the equitable use and long-term road agreements would resolve important scheduling uncertainty for OSA, and CPAI is committed to continued commercial engagement to facilitate this resolution.

CPAI transmitted drafts of both agreements to OSA on November 18. CPAI expects the parties will meet soon to discuss and advance those drafts. Based on OSA public statements and the Pikka development uncertainty described in the Scheme Booklet⁴¹ in relation to the proposed merger of OSA's parent entity and Santos Limited, CPAI is optimistic that equitable use and long-term road use agreements could be timely agreed before OSA is otherwise ready to sanction and commence construction of the Pikka project.

³⁷ See Oil Search Third Quarter Report for Period Ended 30 September 2021 – 26 Oct 2021 at 4, available at https://www.oilsearch.com/data/assets/pdf_file/0003/55074/Oil-Search-3Q21-Production-Report_25102021-CLEAN_v4.pdf. In this presentation Oil Search reported to its investors that 2021 Pikka development expenditures were "reduced for the impact of Alaska Pikka Phase 1 FID, with FID subject to the project satisfying the appropriate pre-conditions." See also August 2021 investor presentation, Oil Search August 24, 2021 Half-Year Results Investor Presentation at 22, available at https://www.oilsearch.com/data/assets/pdf_file/0008/54926/OSH-2021-Half-Year-Presentation_24-Aug-21.pdf.

³⁸ See 2022 OSA Pikka plan of development at 3, available at https://dog.dnr.alaska.gov/Document/F6E3A5EBB2744592A71F2FB22130AA93/2021-11-02_Pikka_Unit_Plan_of_Development_-_2022. See also Elwood Brehmer, *North Slope explorers prep for winter work as Oil Search waits a little longer on Pikka*, Alaska Journal of Commerce, November 17, 2021, available at <https://www.alaskajournal.com/2021-11-17/north-slope-explorers-prep-winter-work-oil-search-waits-little-longer-pikka>.

³⁹ See https://www.oilsearch.com/data/assets/pdf_file/0017/55106/Court-Approves-distribution-of-Scheme-Booklet-and-convening-of-Scheme-Meeting.pdf; e.g., at p. 6 and 14.

⁴⁰ See notes 37, 38, and 39 above.

⁴¹ See note 39 above

8. OSA is not being treated differently from any other North Slope operator.

OSA claims that the requirement to enter into an equitable use agreement (as opposed to the “may require” language cited in OSA Appeal Exhibit N) and a road use agreement violate OSA’s equal protection rights because OSA is being singled out and treated differently than other “similarly situated” applicants. OSA never describes any other parties on the North Slope that are similarly situated to OSA’s proposal to construct a large facility in an actively producing unit near other pre-existing facilities without working out non-interference terms and private party property use terms. Its claim is unfounded and misleading.

OSA’s “equal protection” claim ignores the fact, as discussed above in section 3, that it is a common practice on the North Slope to use such agreements to avoid unnecessary and unreasonable interference with underlying oil and gas lease rights. Furthermore, OSA’s proposal to locate a large new facility in an already developed and somewhat congested area on third party oil and gas leases is not common on the North Slope, clearly raises risks of potential interference and, as proposed, requires use of private property. OSA is not being treated differently from other North Slope operators; OSA is expecting different treatment than other North Slope operators.

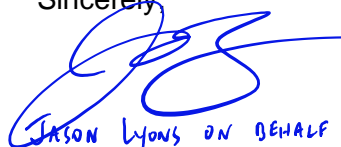
9. CPAI requests that DNR keep KRU commercial information confidential under AS 38.05.035(a)(8).

Finally, CPAI requests that the Commissioner classify as confidential under AS 38.05.035(a)(8) the following materials:

- The KRU road use commercial terms on page 3 of the August 26, 2021 OSA letter to the Division of Oil and Gas, Permitting Section, re ADL 421488 and ADL 421526;
- The KRU road use commercial terms on page 7 of the OSA Appeal;
- OSA Appeal Exhibits L and M;
- The March 2, 2018 KRU Ad Hoc Road Access and Use Agreement, transmitted by OSA to DNR on November 3, 2021 and Attachment 1 to this letter, which discusses terms in that agreement;⁴² and
- Similar documents or disclosures by OSA regarding commercial terms for KRU road use.

Thank you for the opportunity to respond to the OSA Appeal and for DNR’s consideration of these issues and requests.

Sincerely,



JASON LYONS ON BEHALF OF JOHN F. SCHELL, JR.
John F. Schell, Jr.

⁴² As is clearly stated in the Ad Hoc Road Use Agreement at section 10, the Ad Hoc Road Use Agreement is to be held confidential. CPAI does not see any request from OSA to hold the Ad Hoc Agreement as confidential. If the Division has already disclosed the Ad Hoc Agreement to any persons under the Alaska Public Records Act, CPAI requests that the Division notify CPAI of the names and addresses of such persons.

cc by email:

Graham Smith, DNR, Division of Oil and Gas (graham.smith@alaska.gov)
Melissa Head, DNR, Division of Mining, Land and Water (melissa.head@alaska.gov)
James Hyun, DNR, Division of Oil and Gas (james.hyun@alaska.gov)
Ashley Etheridge, DNR, Division of Oil and Gas (ashley.etheridge@alaska.gov)
Alice Edwards, ADEC (alice.edwards@alaska.gov)
Robert Province, Eni US Operating Co. Inc. (robert.province@eni.com)
Pat Flood, Oil Search (Alaska), LLC (Pat.Flood@oilsearch.com)
Tim Jones, Oil Search (Alaska), LLC (Tim.Jones@oilsearch.com)
Steven Luna, Oil Search (Alaska), LLC (Stephen.Luna@oilsearch.com)
Eric Fjelstad, Perkins Coie LLP (EFjelstad@perkinscoie.com)

CPAI also requested Attachment 1 to this letter be held confidential under AS 38.05.035(a)(8)(d), 11 AAC 82.810, AS 45.50.910 et seq. (trade secret), and other applicable law. Those two pages have been withheld.