



**Oil Search (Alaska), LLC  
Seawater Treatment Plant and Make-up Water and Gas Pipelines  
ADL 421488 and 421526  
Final Director's Determination  
December 16, 2021**

**Purpose**

The purpose of this Final Director's Determination is to determine if it is in the State's best interest to issue Oil Search Alaska, LLC (OSA) a Notice to Proceed (NTP) for two 35-year private easements under AS 38.05.850 – an exclusive easement for ADL 421488 Seawater Treatment Plant (STP) and a non-exclusive easement for ADL 421526 STP Pipeline Infrastructure. Considerations for this determination include OSA's application and supporting documents, the administrative record, the analysis in the proposed Director's Determination issued on July 20, 2021, comments received during the public notice period following the proposed Director's Determination, OSA's compliance with requirements from related decisions<sup>1</sup> prior to this Final Director's Determination, and the Commissioner's Decision on Appeal No. 21-043 dated December 2, 2021.

**Authority**

The Department of Natural Resources' (DNR) authority to issue an easement is established under AS 38.05.850. This authority was delegated to the Division of Oil and Gas (Division) by the DNR commissioner in an August 17, 2006, memorandum. This authority is implemented, in part, through regulations at 11 AAC 96.

**Location**

The Pikka Unit (PKU) is located approximately seven miles northeast of the community of Nuiqsut. The Colville River Unit borders the west side of the PKU and the Oooguruk and Placer Units border the east side.

***STP***

**Geographic:** The proposed easement for the STP is located on the eastern shore of Oliktok Point in Simpson Lagoon in the KRU.

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<sup>1</sup> Decision documents for conditional easements and entry authorizations dated December 18, 2020, January 28, 2021, and April 5, 2021; and the proposed Director's Determination dated July 20, 2021.

**Borough:** The project area is within the North Slope Borough.

**Regional/Village Corporation:** Arctic Slope Regional Corporation

**U.S.G.S. Map:** Beechey Point C-5

**Legal Description:**

Umiat Meridian

Township 13N, Range 9E, Section 5

***STP Pipelines and Fiber Optic Cable***

**Geographic:** The proposed easement for the make-up water and gas pipelines project is located within the KRU on the North Slope of Alaska. The pipelines and cable will connect OSA's proposed STP at Oliktok Point to OSA's planned Nanushuk Project Tie-in Pad (TIP), located just northwest of Kuparuk Central Processing Facility 2.

**Borough:** The project area is within the North Slope Borough.

**Regional/Village Corporation:** Arctic Slope Regional Corporation

**U.S.G.S. Map:** Beechey Point C-5 and B-5

**Legal Description:**

Umiat Meridian

Township 11 N, Range 9 E, Sections: 1, 11, 12, 14, 15, 16, and 21

Township 12 N, Range 9 E, Sections: 3, 10, 11, 15, 22, 23, 25, 26, and 36

Township 13 N, Range 9 E, Sections: 4, 5, 9, 16, 21, 28 and 33

**Procedural History**

**Applications**

On June 23, 2020, OSA, operator of the PKU, submitted an easement application pursuant to AS 38.05.850 to construct and operate an STP at Oliktok Point. On August 18, 2020, OSA submitted a second easement application to construct and operate the portion of pipeline infrastructure (Pipeline Infrastructure) extending from the STP to the TIP approximately 18 miles south of Oliktok Point. OSA is planning to build the STP and the Pipeline Infrastructure (STP Project) to advance the development of the PKU. The purpose of the STP Project is to provide a reliable and predictable supply of make-up water of sufficient quantity and quality for improved hydrocarbon extraction efficiency from the PKU reservoirs.

**Conditional Easement Decisions**

On December 18, 2020, the Division issued a conditional easement for the STP and subsequently issued a revised easement on January 28, 2021. On April 5, 2021, the Division issued a conditional easement for the Pipeline Infrastructure. The STP and Pipeline Infrastructure conditional easement decisions shall be collectively referred to as the Easement Decisions. The Easement Decisions stipulated that OSA would submit the following documents prior to

commencing construction activities: a Cumulative Impact Study, Front-End Engineering Design (FEED) documents, and Alaska Department of Environmental Conservation (ADEC) Air and Water Quality Permits. Additionally, OSA was required to negotiate in good faith for an Equitable Use Agreement (EUA) with existing Oliktok Point operators.

### **Proposed Director's Determination**

On July 20, 2021, the Division issued a proposed Director's Determination that summarized the Division's analysis of the additional information previously requested of OSA in the Easement Decisions. This information consisted of a cumulative impact assessment (CIA), a schedule for the Pikka Development, a fabrication and construction execution plan, a conceptual design basis, equipment lists and arrangements, process descriptions, and a process hazard analysis (PHA). The Director proposed to approve the construction of the STP Project and made two recommendations:

1. The Division shall solicit written comments and provide for public notice regarding this Director's Determination. To solicit public comments, the Division will place public notices in newspapers of general circulation (Anchorage Daily News and Arctic Sounder). The public notices will be posted in the State of Alaska Online Notice System and the Division Newsroom, and in post offices located in Barrow, Deadhorse, and Nuiqsut.
2. Following completion of the public comment period, and consideration of all comments received, the Director will make a final determination on whether the construction of the STP and Pipeline Infrastructure projects are in the State's best interest. As part of this forthcoming decision, the Director will analyze whether OSA is in compliance with all requirements from the Division's December 18, 2020, decision as modified by the January 28, 2021, decision. Assuming the Director concludes the project is in the State's best interest, the Director will issue to OSA a Notice to Proceed containing specific terms and conditions necessary to protect the State's interest.

### **Public Review**

Public notice and solicitation of comments for the proposed Director's Determination was published in the Anchorage Daily News on July 20 and July 27, 2021, and the Arctic Sounder on July 29 and August 5, 2021. Additionally, a copy of the public notice was posted in the Alaska Online Public Notice System, the Division website, and the Utquiagvik, Nuiqsut, and Deadhorse Post Offices on July 20, 2021, with a deadline for comments of August 20, 2021.

ConocoPhillips Alaska, Inc., and OSA submitted comments during the public notice period. Below is a summary of comments and Division responses.

## **CPAI Comments:**

1. CPAI reiterates concern regarding air permitting impacts of the OSA STP. An EUA is essential to understand how OSA will reduce its air increment consumption to allow for replacement and upgrade of existing KRU STP equipment.

### **Division Response:**

The Easement Decisions required OSA to submit more detailed information including reasonably foreseeable cumulative impacts on the area. OSA revised its cumulative impact analysis following comments from state agencies. The proposed Director's Determination considered these impacts. OSA must demonstrate compliance with the Alaska Ambient Air Quality Standards (AAAQS) as permitted and regulated through the ADEC. Stipulation 13 of the Easement Decisions states "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."

Moreover, each of the oil and gas leases at issue contains a reservation of rights to the State to grant additional authorizations to third parties for compatible uses on or adjacent to the land. Furthermore, the State cannot give preference to speculative projects that are not on record by submittal of an application. DNR requires OSA to negotiate in good faith with the current KRU operator for an EUA.

2. CPAI requires an EUA.

### **Division Response:**

As stated in the Commissioner's Decision on Appeal 21-043 (see Appeal and Resolution section below), "the material in the record, particularly the number and regularity of meetings to discuss an EUA, and the iterative exchange of drafts and documents related to the EUA, indicate that negotiations are in process, are expected to continue, and are headed to resolution."

3. CPAI requests a written report from OSA and CPAI, jointly submitted to the Division prior to NTP regarding the status of the EUA.

### **Division Response:**

A written report outlining the description and finalization of the EUA between OSA and CPAI may be within the best interests of the parties involved and may be considered by the State; however, the State makes no requirement regarding any such report. CPAI's comment was provided in response to the proposed Director's Determination. Subsequent to those comments, the Commissioner's Decision on Appeal 21-043 was issued. The Commissioner's Decision considered the status of the EUA negotiations and determined that an EUA was not required to be in place prior to this Determination.

## **OSA Comments:**

1. The STP Project is in the State's best interest.

### **Division Response:**

Article VIII, Section 1 of the Alaska Constitution states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

Alaska depends on revenues generated by oil and gas development for its economic well-being. The proposed easements will facilitate development of the State's resources in an area that is largely industrial. The proposed Director's Determination and this Determination considered the project and its impacts. It is solely in State's discretion to determine what is in State's best interest.

2. The STP Project has undergone rigorous regulatory review with seven opportunities for public comment.

### **Division Response:**

The public comment opportunities were part of a normal permitting process for a project of this magnitude. Four of the seven mentioned public comment periods were through other state, local, or federal agencies, and the Division has no authority over these processes. The Division believes the public process was warranted here and consideration of public comments aided in the decision making process. The Division acknowledges that OSA was willing to be transparent throughout the process and to adjust project plans and details to avoid unreasonable interference to concurrent users in the Olightok area.

3. OSA has met the Project Specific Stipulations on the conditional easements.

### **Division Response:**

The Division contends that the Project Specific Stipulations in the conditional easements have either been satisfied or are in the process of being completed.

4. DNR should issue an NTP for the STP Project.

### **Division Response:**

This document constitutes the Final Determination and NTP for the STP Project.

## **Appeal and Resolution**

After issuance of the Easement Decisions, the proposed Director's Determination, and the public review of the proposed Director's Determination for the STP Project, on October 4, 2021, the Division's Director sent separate letters to OSA and CPAI regarding the EUA for OSA's STP Project. In the letters, the Division Director stated that "[t]he State would like both parties to resolve all aspects of an EUA and reach a final agreement by December 31, 2021." On October 8, 2021, the Division Director followed up via email to OSA stating "[t]he Division will require an EUA before a Determination & Notice to Proceed on the STP easement is issued."

On October 28, 2021, an appeal was timely filed to the Commissioner’s Office by OSA. On December 2, 2021, the Commissioner’s Office issued a Decision on Appeal No. 21-043 related to the casefiles ADL 421488 and 421526. Based on factual and procedural history of ADLs 421488 and 421526 and an analysis of applicable law, the Commissioner’s Office determined that “the good faith negotiations required by the Easement Decisions do not require execution prior to issuance of a final determination or a NTP,” thereby vacating the requirement set forth in the October 4 letters.

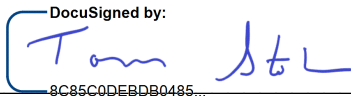
The Commissioner’s Decision stated that “nothing in the appeal decision changes or alters the requirements... that OSA’s newly authorized uses not unreasonably interfere with existing uses at Oliktok Point or within KRU,” and “a promptly negotiated and fully executed EUA remains a practical method to achieve this requirement.”

The Commissioner’s Decision also determined that, “upon review of the materials submitted in the appeal, the responsive materials submitted by CPAI, and the administrative record, the appropriate standard for the issuance of a final determination and NTP is that good faith negotiations have been pursued by OSA, not that a final agreement has been reached or even necessarily is imminent or will occur on a date certain, as required by the Director’s Decisions and Determination.” The matter was remanded to the Division for final review to issue the final determination and NTP.

### **Final Determination and Notice to Proceed**

This Final Determination is intended to update and complement the Proposed Director’s Determination dated July 20, 2021, for the Easement Decisions. The Proposed and Final Director’s Determination together constitute the final agency decision for the pre-construction and construction phase of the STP Project.

Based on the foregoing and supported by all information contained in and considered by the Proposed and Final Determinations and in accordance with AS 38.05.850, the Division has determined that the STP Project is in the State’s best interest and OSA is in compliance with all requirements from the Easement Decisions. This Final Determination shall constitute the Notice to Proceed and hereby gives notice that proposed construction activities as described in the Easement Decisions may commence.

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12/16/2021

Tom Stokes  
Director, Division of Oil and Gas  
Department of Natural Resources

Date

**Appeal Provision**

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of “issuance” of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-(907) 269-8918, or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a) and (b).

If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31<sup>st</sup> calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.