



February 9, 2022

Derek Nottingham, Director
Division of Oil & Gas
Alaska Department of Natural Resources
550 W. 7th Avenue, Suite 1100
Anchorage, Alaska 99501-3563
Sent Via Email to Derek.Nottingham@Alaska.Gov

RE: Oil Search (Alaska), LLC Miscellaneous Land Use Permit Application for Access Corridors within Kuparuk River Unit

Dear Mr. Nottingham:

Oil Search (Alaska), LLC (OSA), a subsidiary of Santos Limited, requests approval of the attached Miscellaneous Land Use Permit (MLUP) from the Alaska Department of Natural Resources (DNR), Division of Oil and Gas (DOG) for non-exclusive access and use of certain corridors within the boundary of the Kuparuk River Unit (KRU) leases. The relevant corridors (the "Access Corridors") are shown on Figure 1 of the attached application. As envisioned in applicable DNR regulations, OSA is applying for the MLUP because it is unable to reach an agreement with ConocoPhillips Alaska, Inc. (CPAI) on what constitutes "reasonable concurrent use" of Access Corridors within KRU.¹ In addition to the circumstances addressed in the permit application, the land use permit provisions in 11 AAC Part 96 provide a well-used process to obtain timely authorization to conduct activities on the surface of state lands, including lands within oil and gas units and leases.

OSA currently has terms in place with CPAI that address access and use within the relevant Access Corridors ("Current Agreement"). The terms of the Current Agreement are similar to arrangements OSA has with other North Slope operators to coordinate use of existing access corridors and any gravel roads located therein within other North Slope units. This type of arrangement has been used for years to coordinate access over the network of roads that start at the Dalton Highway and extend year-round access to state and federal resources across the North Slope. These arrangements do not include access fees because State oil and gas leases do not entitle the holder to exclusive use of associated surface lands

¹ 11 AAC 96.010 (a)(3) provides that a permit is required for "an activity on land subject to a mineral or land estate property interest by a person other than the holder of a property interest, or the holder's authorized representative, if the parties cannot agree on what constitutes reasonable concurrent use."

and include significant reservations to the State.² State leases limit a lessee's rights to use the surface and subsurface; the state's grant under the leases is for "the sole and exclusive purpose of exploration, development, production, processing, and marketing of oil, gas, and associated substances[.]"³ Assessing an access fee for access and use of gravel roads on state lands does not promote exploration or development. Concurrent use of road corridors is also consistent with unit agreement requirements for surface operating rights⁴ and minimization of environmental impacts and the footprint of development. The Kuparuk River Unit Agreement explicitly provides "[t]he Working Interest Owners and the Unit Operator will, to the extent possible, minimize and consolidate surface facilities in order to minimize surface impacts."⁵

Since entering into the Current Agreement with CPAI in 2018, OSA has successfully coordinated with CPAI for use of the Access Corridors during its construction and exploration drilling seasons. OSA has similar terms in place with the PBU operator. However, unlike the PBU operator, CPAI has threatened to prevent future access by OSA to roads within KRU, even going as far as to state to DNR that it has "practical physical measures and legal remedies to prevent and remedy unauthorized use of KRU roads[.]"⁶ The timing of CPAI's escalated position with respect to OSA use of roads within the KRU coincided with OSA's decision to construct its own seawater treatment plant, rather than acquiring make-up water from CPAI's legacy facility.

At CPAI's urging, and at the request of former DOG Director Tom Stokes, OSA proposed an agreement for access and use within the Access Corridors with commercially reasonable use and compensation terms to CPAI on May 26, 2021. OSA's proposed new agreement offers to compensate CPAI approximately \$60 million for O&M and future capital expenses, neither of which CPAI is entitled to under the State's surface use allowance.⁷ Rather than provide feedback on the agreement proposed by OSA, CPAI proposed its own road use agreement on July 23, 2021. On its face CPAI's proposal attempts

² The State of Alaska Competitive Oil and Gas Lease, Form No. DL-1 (October 1963 revision) provides that "Lessor reserves the right to dispose of the surface of said land to others subject to this lease, and the right to authorize others by grant, lease, or permit subject to this lease and under such conditions as will prevent unnecessary or unreasonable interference with the rights of Lessee and operations under this lease, to enter upon and use said land."

³ State of Alaska Department of Natural Resources "Competitive Oil and Gas Lease" Form No. DL-1 (Revised May, 1973) Article 1. GRANT. For and in consideration of a cash bonus and the first year's rental, the receipt of which is hereby acknowledged, and of the rentals, royalties, covenants, and conditions herein contained on the part of the Lessee to be paid, kept and performed, and subject to the conditions and the reservations herein contained, Lessor does hereby grant and lease unto the Lessee, exclusively, without warranty, for the sole and exclusive purpose of exploration, development, production, processing, and marketing of oil, gas, and associated substances produced therewith, and of installing pipe lines and structures thereon to find, produce, save, store, treat, process, transport, take care of and market all such substances, and for housing and boarding employees in its operations thereon.

⁴ Kuparuk River Unit Agreement, Section 3.6 provides "[T]he State of Alaska retains all rights reserved it to explore, use, dispose of, or otherwise act upon or with respect to the surface and subsurface to the same extent as those rights are reserved in the oil and gas leases."

⁵ Kuparuk River Unit Agreement, Section 3.6.

⁶ CPAI Response to October 28 OSA Appeal, pg. 6.

⁷ See "OSA Appeal of October 4, 2021 Letter and October 8, 2021 Email Amending the January 28 and April 5, 2021 Director's Decisions Granting Conditional Easements," Exhibit K.

to extract exorbitant value from OSA, but it also so severely burdens Pikka project economics to favor processing at CPAI facilities.⁸ Under the CPAI agreement, OSA assesses that it could pay CPAI more than \$600 million over the life of the agreement (estimated between 2021 and 2051) for only the Pikka Unit and possibly more than three times that to develop all the leases it currently operates west and south of the KRU, including an annual \$15 million “Access Fee”. Beyond these amounts, CPAI’s proposal required that OSA accept unlimited exposure to pay for any future KRU road improvement costs for projects that CPAI deems, in its sole discretion, to be necessary due to OSA use of roads within KRU. Further, the proposal only applies to OSA use of roads within KRU associated with development of the Pikka Unit, not OSA use of roads within KRU for access to non-Pikka Unit leases. Despite the agreement’s patently unreasonable terms, OSA provided substantive feedback to CPAI’s proposed road use agreement in July and August and, at the Division’s suggestion, submitted a redline of the agreement to CPAI on September 14, 2021.⁹ CPAI responded with a “new” proposed road use agreement to OSA in November of 2021, but it was not changed in substance from its July 2021 draft and CPAI has not wavered in its approach since November. CPAI’s proposed terms would raise the cost of exploration and development of state resources that rely on the indicated corridors by hundreds of millions of dollars for any party other than CPAI.

The gap between CPAI’s negotiating posture and its legal situation is significant. CPAI claims that DNR allowing OSA use of KRU roads constitutes a “textbook taking.”¹⁰ However, the nature of CPAI interest in the surface estate within the KRU area is non-exclusive, and there is no basis upon which to find that this interest will be damaged by OSA’s intermittent and preemptable use of the Access Corridors, a use which CPAI itself has acknowledged in the Current Agreement since 2018 and for other users in similar circumstances. By regulation, the MLUP is not a disposal of land¹¹ and OSA’s MLUP application falls within the concept of “reasonable concurrent use” as set forth in the Alaska constitution, the Alaska Lands Act, DNR regulations, and the DL-1 leases that compose the majority of the leases within the KRU. OSA’s use of the requested access corridors will neither “take” nor damage any CPAI or other KRU owner interests in roads within the KRU, nor will it unnecessarily or unreasonably interfere with KRU operations. Rather, timely issuance of the MLUP for non-exclusive access and use of the defined Access Corridors is an appropriate tool in this instance, is squarely within the State’s authority as discussed above, and will resolve uncertainty that is impeding progress on the Pikka Project.

Assurance of reasonable and concurrent use of the Access Corridors is necessary for OSA to access and develop the Pikka Unit and other lands on which OSA holds mineral lease interest. Assured access, consistent with historical precedent over the past forty years by multiple concurrent users, is necessary

⁸ OSA Appeal of October 4, 2021 Letter and October 8, 2021 Email Amending the January 28 and April 5, 2021 Director’s Decisions Granting Conditional Easements,” Exhibit L.

⁹ “OSA Appeal of October 4, 2021 Letter and October 8, 2021 Email Amending the January 28 and April 5, 2021 Director’s Decisions Granting Conditional Easements,” Exhibit M.

¹⁰ CPAI Response to OSA October 28 Appeal, page 5.

¹¹ 11 AAC 96.040(a)

for OSA as lessee and unit operator and the DNR as lessor and lease administrator to ensure activities can be undertaken as set forth in the lease terms, Pikka Unit Agreement and Pikka Unit Plan of Development approved by DNR and Arctic Slope Regional Corporation. Without surety of access, OSA cannot proceed with significant investment decisions, including immediate procurement of long lead items and then a Final Investment Decision (FID) for the Pikka Phase 1 project to maintain a first oil date for the Pikka Phase 1 project in 2025.

The MLUP provides a mechanism for DOG to manage the concurrent use of State lands by guarding against unnecessary and unreasonable interference with KRU activities, while ensuring development advances on other State lands. OSA encourages DOG to expeditiously issue the MLUP in order to avoid delay to the Pikka Project.

Payment for the permit application fee has been transmitted electronically to the State of Alaska. Should you have any question regarding the MLUP application, please contact Greg Horner at Greg.Horner@santos.com.

Sincerely,



Joe Balash
Senior Vice President, Government Affairs
Oil Search (Alaska), LLC

Attachments: MLUP Permit Application

CC: Graham Smith, DNR, Division of Oil and Gas
Haley Paine, DNR, Division of Oil and Gas
Justin Black, DNR, Division of Oil and Gas
Rex Rock, Arctic Slope Regional Corporation
Joe Nukapigak, Kuukpik Corporation