

**PERMIT TO CONDUCT SURFACE COAL
EXPLORATION ACTIVITIES**

Final Decision
And
Findings of Compliance

July 7, 2010

Usibelli Coal Mine, Inc.

**Wishbone Hill Exploration
Renewal**

Surface Coal Exploration Permit

01-86-795

STATE OF ALASKA/

SEAN PARNELL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

550 West 7th Ave., Suite 920
Anchorage, AK 99501-3577
Telephone: (907) 269-8634

RE: ERRATUM:

In the following Exploration Permit Renewal, Final finding of Facts and Response to comment documents, Buffalo Creek has been incorrectly identified as Caribou Creek. All stipulations and findings in this document that refer to Caribou Creek apply to Buffalo Creek.

COAL EXPLORATION PERMIT (RENEWAL)

Permit Name: Wishbone Hill Exploration

Permit Number: 01-86-795

Date Issued: July 7, 2010

DECISION

The Alaska Department of Natural Resources, Division of Mining, Land and Water in accordance with AS 27.21 and 11 AAC 90, hereby grants a revision of Coal Exploration Permit No. 01-86-795 to Usibelli Coal Mine, Inc. This revision is subject to the requirements of AS 27.21 and 11 AAC 90 for coal exploration activities.

CONDITIONS OF PERMIT (RENEWAL)

1. **TERM:** The term of the permit is to July 7, 2012.
2. **CONFORMANCE WITH APPLICATION:**

The proposed exploration activities would consist of drilling up to 20 exploration holes and excavating three additional trenches. In order to acquire data on the groundwater resources within the exploration area, some of these drill holes will be retained as groundwater monitoring wells. All drill sites would be reclaimed and all drill holes not retained as monitoring wells would be sealed immediately upon completion of work at the site. All equipment and supplies used on site would be removed upon completion of the exploration program.

All exploration and reclamation activities are to be conducted as described in the exploration application and permit, as revised, and in compliance with 11 AAC 90.167. Any variation from the plan presented in the application must be discussed with the Division and may require further revision of the permit.

3. **BOND:** The reclamation bond in the amount of \$39,293.00 is adequate to cover the activities proposed in the revision.
4. **COMPLIANCE WITH LAW:** Operations under this permit shall be conducted in compliance with applicable federal, state, and local laws and regulations now or hereafter in effect during the life of the permits.
5. **REPORTS:** Upon completion of operations and at other times, an annual report will be submitted to the Director on matters relevant to the character and progress of operations under this permit by January 31st each year. The completion report shall include a detailed statement of the work that was accomplished. Reports shall be filed with the Division of

Mining, Land and Water, 550 W. 7th Ave., Suite 920, Anchorage, AK 99501 (fax: (907) 269-8930).

6. **OTHER OPERATIONS ON STATE LAND:** The granting of this renewal does not preclude the issuance of other permits or leases on the same land. Valid existing prior rights acquired on the lands described herein will not be adversely affected by this renewal. Where these permits grant the right to enter land owned, leased, or otherwise lawfully occupied by another, the permittee shall make provisions before entering the land to pay for all damages sustained by said owner, lessee, or lawful occupant, by reason of entering upon said land.
7. **CHANGE OF ADDRESS:** The permittee shall immediately notify the Commissioner of the Division, in writing, of any change in the address of the permittee or the representative conducting surface coal mining and reclamation operations on site.
8. **FAILURE TO COMPLY:** If the permittee fails to comply with the conditions and stipulations contained in the permits or applicable laws or regulations, depending on the circumstances, the Commissioner may issue a notice of violation, issue a cessation order, assess a civil penalty, seize the reclamation bond, or take other action.
9. **APPLICATION AND PERMITS TO BE MAINTAINED ON SITE:** The permittee shall maintain and have available on site a copy of the exploration permit and any approved revisions, while exploration activities are taking place. Equipment operators are to be advised of permit conditions and stipulations.
10. **SPECIAL STIPULATIONS:** In accordance with AS 27.21 and 11 AAC 90, approval of the application is granted subject to all the existing general and special stipulations of the original permits.
 - a. Unless approved by DNR, drill holes must be sealed and the drill sites must be reclaimed and reseeded before disturbing a new location.
 - b. In order to encourage native vegetation, Usibelli will minimize the use of seeding and fertilizer on reclaimed topsoil.
 - c. Usibelli will not conduct exploration activities that substantially disturb the environment within 100 feet of surface waters of Moose Creek or Caribou Creek.
 - d. No blasting is authorized under this exploration permit until a blasting plan is submitted and is noticed under 11 AAC 90.375.

11. **APPROVAL:**



Russell Kirkham, Manager
DNR/MLW/Coal Regulatory Program

July 7, 2010

FINAL FINDINGS OF FACT AND DECISION

Renewal of Coal Exploration Permit Wishbone Hill Exploration, Permit Number 01-86-795

The Division of Mining, Land and Water has reviewed the permit renewal request submitted by Usibelli Coal Mine, Inc (Usibelli). for the Wishbone Hill Coal Exploration Permit (01-86-795) and makes the following Final Findings of Fact and Decision in accordance with 11 AAC 90.165.

1. An application to renew Coal Exploration Permit No. 01-86-795 was filed with the Division of Mining, Land and Water on March 1, 2010..
2. Under this renewal, Usibelli requested approval to drill up to 20 exploratory drill holes, and excavate 3 trenches. The renewal application contains all the information required by 11 AAC 90.163 and is sufficient for this office to make a decision.
3. The exploration permit application was sent out to the ADF&G, Office of Habitat Management & Permitting (OHMP), Department of Environmental Conservation and the U.S Fish and Wildlife Service. A preliminary review by MLW staff determined that an adjusted bond and further information on the project was necessary. This additional information included more detailed information about the drilling program, updates to background information and additional information on how the drill sites would be reclaimed. The application was deemed complete on April 12, 2010.
4. Public notice of this application began on April 14, 2010 and was scheduled to end on May 14, 2010. On May 10th; at the request of the general public the comment period was extended to June 2, 2010.
3. On April 14, 2010, Legal notices were placed in the Anchorage Daily News and in the Frontiersman.. Legal notices extending the comment period were placed in the Anchorage Daily News and in the Frontiersman on May 10, 2010. The notice and the comment period extension notice were mailed directly to the Division's mailing list of affected persons and agencies and placed on the Department of Natural Resources Public Notice Website. .
4. The announcement for the informal conference was included in the initial legal ad placed in local papers, posted in local post offices, and mailed to the division's mailing list. This conference was held on April 28, 2010. The meeting was attended by approximately 120 members of the public and local and state government. During the meeting public testimony was received from 31 attendees.
5. During the public notice period and informal meeting the department received comments from 143 individuals. Responses to comments concerning the proposed exploration program are located in an attached document titled "Appendix A: DNR Responses to Public Comments Concerning The Wishbone Hill Exploration Permit Renewal Application".

6. The activities proposed in the renewal meet the requirements of AS 27.21.200 and 11 AAC 90.163 through 11 AAC 90.167, subject to the stipulations of the permit, which ensure that the exploration and reclamation will comply with these requirements.
7. Blasting under this renewal is not authorized unless the applicant submits a detailed blasting plan and complies with 11 AAC 90.371 through 11 AAC 90.377
8. The approved permit area is not within an area designated unsuitable for mining under AS 27.21.260.
9. The proposed coal exploration activities will not affect threatened or endangered species or their critical habitat.
10. Pursuant to 11 AAC 90.167(b) the Division has determined that the posted reclamation bond in the amount of \$39,293.00 is sufficient to cover the associated reclamation costs.
11. The application does not propose any activities within the Alaska Coastal Zone boundary.
12. Appropriate water use authorization must be acquired prior to the withdraw of any protected water within or adjacent to the exploration area.
13. A copy of the Permit, Renewal Request, and Final Findings of Fact and Decision are available for review at the Alaska Department of Natural Resources, Division of Mining, Land, and Water, 550 W. 7th Avenue, Suite 920, Anchorage, AK 99501-3577. Any person having an interest, which may be adversely affected by this decision, may appeal this decision in writing within 30 days of the date of this decision. Appeals regarding this renewal should be sent to: Joe Joyner, Alaska Department of Natural Resources, Division of Mining, Land and Water, 550 W 7th Avenue, Suite 1070, Anchorage, AK 99501-3577 or by fax: (907) 269-8904.

Appendix A: DNR Responses to Public Comments Concerning The Wishbone Hill Exploration Permit renewal application

Following are the responses to the comments received from the public by phone, e-mail, in writing and by public testimony during the public comment period (April 14, 2010 to June 2, 2010), and from the informal conference held on Wednesday April 28, 2010.

The DNR received a total of 143 comment submittals (letters, comment forms, e-mails and other transcripts) containing 308 individual comments.

Of the 143 comments submitted, 134 comments came from private individuals, three were from Non-Government Organizations, three were from State and Local Government Agencies and three were from Community and Tribal Councils. There were no comments from Federal Agencies. The table below breaks down comments based where the comments originated.

General Area*	18
Sutton Area	11
Chickaloon Area	4
Mat-Su Area	43
Municipality of Anchorage	25
Fairbanks-Healy	30
State Wide	1
Out of State	1
Non-Government Organizations	3
Community and Tribal Councils	3
Borough Government	1
State Agencies	3
Federal Agencies	0
Total	143

*No Return Address provided

Responses to Comments:

Proximity to Residential Area:

Comment (C): The division received 66 comments opposed to coal exploration and development in the area because coal mining is not compatible with the residential nature of the area. Mining should not be allowed due to potential exposure of local families to mining “disruptions”, should a mine be found feasible. Some of the impacts cited were global warming, mercury, acid forming material, wind-borne coal dust and blasting effects.

Response (R): This comment is beyond DNR's scope of review for the proposed exploration renewal under 11 AAC 90. DNR has carefully reviewed the proposed plan of operations and has determined that the impacts are within the scope allowed by 11 AAC 90.301-501. Any increase in vehicular traffic on public roads is outside the authority under AS 27.21.

Increased Traffic:

C: There were five comments opposed to the impacts that large trucks and increased vehicular traffic would have on area roads.

R: The DMLW will regulate vehicle operations only within the mine site or exploration area to a public road. Once the vehicle reaches a public road the regulatory authority is transferred to the Department of Transportation and Public Facilities, and the Mat-Su Borough. If there are significant impacts to the community from mine traffic, the Division can use the permitting process to help address these impacts (i.e., mandate the use of alternate access and timing to the site for when trucks can use the roads). At present, the only likely impact to occur is on the Glenn Highway. Buffalo Mine Road will not be involved in exploration operations.

Hydrology Effects:

C: Two comments were received concerning a possible disruption of water wells due to dewatering, blasting, and excavation of pits due to potential mining.

R: Protection of subsurface water is addressed in 11 AAC 90.325. This regulation addresses the requirement to prevent acid or other toxic drainage from entering ground and surface water, and to minimize disturbance to the hydrologic balance. Each aquifer will be isolated to prevent vertical movement of water between water bearing zones, should mining occur. Since the application addresses exploration, as part of operating procedure drill holes will be sealed to keep surface waters from entering the drill hole, and to minimize disturbance to the prevailing hydrologic balance. The only exception is the establishment of water monitoring holes, which will record any changes to the water table.

Incompatibility with Moose Creek Reclamation and Enhancement Work:

C: There were 62 comments describing fish habitat reconstruction and stream restoration on Moose Creek; commenter's were concerned that exploration activities would adversely affect Moose Creek.

R: All subsurface and surface water in a disturbed area must be handled in accordance with 11 AAC 90.323 (Water Quality Standards) and 11 AAC 90.325 (Diversion of Conveyance of Flow). Drainage and sediment control measures are required to prevent

any sediment from leaving the site. DMLW will be conducting regular monitoring inspections of the activities to make sure sediment and erosion control measures are working properly. 11 AAC 90.423 outlines the Standards for the Protection of Fish and Wildlife.

Environmental Concerns about Mining in General:

C: The Division received 62 comments opposed to coal exploration and development in the area because of perceived negative impacts to the environment and that coal mining is not compatible with the residential nature of the area. Some of these cited were global warming, mercury, and acid forming material.

R: The Division has carefully reviewed the proposed plan of operations and has determined that the impact to the environment from the proposed activity is within the scope allowed by 11 AAC 90.301 – 501 This comment is beyond DNR’s scope of review of the proposed exploration renewal under 11 AAC 90..

Extension of Time Allowed for Public Comment:

C: The Division received four comments requesting a 60 day extension of the public comment period. This extension was requested because the petitioners claim that due process has not occurred. Because Usibelli Coal Mine, Inc. (Usibelli), at the request of the Division, submitted a revised application containing MSDS sheets of drilling fluids, a claim was made that the public did not have the time to consider the implications posed by this revised application.

R: On May 7th, 2010, the division decided to extend the comment period from May 15, 2010, to June 2, 2010. According to 11 AAC 90.165(a), the commissioner will make the application available in accordance with 11 AAC 90.907(b) and provide notice as provided in 11 AAC 90.907(c), including a newspaper advertisements. The commissioner will also provide notice to the persons identified as per 11 AAC 90.023(a) (2) and (3). In addition notice was provided online on the state public notice website located at <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>.

Coal Dust/Air Quality Impacts:

C: There were nine comments about the impacts to air quality as a result of creating coal dust. The comments addressed mining, transportation, and stockpiling coal in an area where glacio-fluvial winds are a common occurrence. The chief concern is that coal dust is a suspected carcinogen. It has also been cited as contributing to kidney disease, heart failure, and respiratory illness.

R: If air quality problems are encountered, either by residents or Division Staff during our regularly scheduled inspections, Department of Environmental Conservation (DEC)

will be notified and appropriate measures will be taken to mitigate the impacts. An air pollution control plan is required for the mining permit and must comply with all Federal and State quality air standards and regulations. In addition, as part of DNR review of these potential health impacts related to mining, DNR has contracted Dr Gary Krieger with New Fields, LLC, to review current literature on the effects of coal mining on human health and provide comments. Where authority under 11 AAC 90 exists, these concerns will be addressed under the next mine permit renewal. Generation of coal dust from mining is not germane to the renewal of the exploration permit.

Applicant Has Outstanding and Unpaid Violations:

C: The Dept. of Natural Resources received one comment that the applicant had a history of outstanding and unpaid violations.

R: Usibelli Coal Mine, Inc. has had past violations. These occurrences have been documented, and are a matter of public record. Usibelli has made amends or otherwise rectified issued violations in accordance with the Articles laid out in 11 AAC 90.601 – 641. These efforts have been documented by DNR Inspectors, and are also a matter of public record. There are currently no outstanding violations issued under the 11 AAC 90.

Bond Amount:

C: The Dept. of Natural Resources received three comments concerning the adequacy of the proposed bond amount. Comparisons made between the 1998 application and the 2010 reclamation costs do not allow for inflation of fuel and labor costs.

R: DNR agrees that the original proposed bond did not account for inflation. These calculations have been revised upward.

Mercury and Arsenic Contamination of Fish and Shellfish:

C: The Dept. of Natural Resources received four comments concerning the ingestion of mercury and arsenic by aquatic life as a result of Coal Combustion and general mining operations.

R: The regulation regarding the burning of coal is outside the scope of the DNR, whose statutory jurisdiction ends when the coal leaves the mine site. Performance standards are in place (11 AAC. 90.301 – 501) to ensure that toxic materials are not distributed outside the exploration permit area. This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

Acid Forming Material/Toxic Material:

C: The Dept. of Natural resources received three comments concerning acid forming materials and toxic materials. Concerns included the chemical and physical properties of

drill fluid additives as identified in the revised exploration application (MSDS Sheets). The addition of these sheets to the permit application was requested by DNR. It was felt by these same individuals that an extension of time should be given for the public to respond to the use of these drill additives.

R: Division policy requires that a company exploration drilling in the state submit Material Safety Data Sheets (MSDS) for all drilling fluids. Performance Standards enforced by the DNR require the sealing and reclamation of drill holes and trenches and are covered under 11 AAC.90.301 – 501. They include standards for the protection of water during exploration activities. These require that siltation structures, topsoil replacement, confinement and isolation of subsurface water bodies (plugging and sealing of drill holes to that end), are implemented by the applicant as part of the operations plan, and as a part of reclamation. Unless noted otherwise, MSDS address potential risk of occupational exposure. The primary hazard outlined in the MSDS sheets concerning the drilling material is inhalation while in a dry state during handling. The MSDS do identify potential toxic effects to fish at elevated concentration of these drilling fluids. Under the current exploration application, no drilling is authorized within 100 feet of Moose or Caribou Creeks.

ACMP Review:

C: There was one comment concerning the possibility of the exploration renewal coming under the jurisdiction of the Alaska Coastal Management Program.

R: The Department consulted with the Division of Coastal and Ocean Management and determined that the proposed exploration area is not within the Coastal Zone Boundary and did not require a consistency review under the Alaska Coastal Management Program.

Incompatible Land Use within the Mat-Su Moose Range:

C: The DNR received one comment concerned that the proposed exploration activity is incompatible with the current uses in the Moose Range, and its purpose.

R: The Matanuska Susitna Valley Moose Range was established by the legislature (AS 16.20.340-360) in 1984. The plan provides for multiple uses as required by the legislature. The objectives identified in the plan include the enhancement of moose populations and habitat, and of other wildlife resources of the area; preserve, maintain, and provide opportunities for coal and mineral development; and to perpetuate public use of the area, including fishing, grazing, forest management, hunting, trapping, and other public use of public land not incompatible with the purposes stated. A complete list of objectives is found in the Moose Range Management plan starting on page 65. Coal exploration and mining is an acceptable land use in the Moose Range.

Light and Noise Pollution:

C: The DNR received one comment concerning noise and light pollution affecting the commenter's quality of life.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90. The Mat-Su Borough has its own ordinances and policies that it enforces on a community by community basis that reflects the values of the community. Usibelli may require local or additional permits from the Mat-Su Borough, which is beyond the DNR's scope and jurisdiction.

Locations of Mine Pits as a Water Source:

C: The DNR received one comment asking for the specific location of abandoned mine pits in which Usibelli plans to draw water. The comment's intent is to also ask where Usibelli plans to draw water should those pits prove to be inadequate.

R: The requirement for obtaining water use permits is outside the authority under 11 AAC 90. This does not relieve Usibelli from the obligation to obtain Temporary Water Use permits from the Water Section with the Division of Mining Land and Water or a Habitat Permit from the Division of Fish & Game.

Location of Water Monitoring Site in Reference to Permit Boundary:

C: Based on Township and Range Coordinates, a comment was made concerning the location of a specific water monitoring well, located in NE1/4, SE ¼ of section 28 T19N R2E. It was perceived as being too close to the permit boundary, so the comment was concerned about possibility of straying outside the exploration permit boundary.

R: Under the current plan, all drilling will be within the exploration area well away from exploration permit boundary and outside of the 100 foot buffer around Moose and Caribou Creek.

Domestic Companies vs. Foreign Companies:

C: There were five comments cited at the public meeting in favor of a domestic company, such as Usibelli, developing the project, because it would take better operational and reclamation responsibility for the Permit area, than a foreign owned company.

R: ASMCRA (AS 27.21) regulations apply to all companies conducting coal mining within the State of Alaska. A mining or exploration permit cannot be denied to a business entity of a foreign nation unless that entity fails to meet the condition of the permit or fails to meet the qualifications of a business to conduct such operations in Alaska.

Sale of a Natural Resource to a Foreign Market:

C: There were three comments claiming that the permit should not be granted if it meant the coal was to be bought and shipped to China or Japan.

R: Usibelli has a valid coal lease from the State of Alaska and is allowed to develop these resources as meets their business plan. This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

Maintaining Coal Resources for Future Use:

C: There was one comment asserting that Alaskan coal should be preserved for future domestic use, should the need arise. It should not be shipped elsewhere.

R: Usibelli has a valid coal lease from the State of Alaska and is allowed to develop these resources as meets their business plan. This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

Alternate Energy/Renewable "Clean" Energy:

C: There were two comments asserting that Alaska should be investing in renewable, clean energy or alternative energy sources like wind and solar power.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

Coal is Dirty Fuel:

C: The DNR received three comments that coal burning is dirty and should not be used as a fuel source.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

View Shed:

C: The DNR received two comments from land owners and realtors claiming that property values would decline as a result of impaired view shed caused by the presence of a mine.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90. There are no regulatory provisions concerning view shed or loss of property values as a result of proximity to a proposed mine. The Matanuska Susitna Valley Moose Range was established by the legislature (AS 16.20.340-360) in 1984. The plan provides for multiple uses as required by the legislature. The objectives identified in the plan include the enhancement of moose populations and habitat, and of other wildlife resources of the area; preserve, maintain, and provide opportunities for coal and mineral

development; and to perpetuate public use of the area, including fishing, grazing, forest management, hunting, trapping, and other public use of public land not incompatible with the purposes stated. A complete list of objectives is found in the Moose Range Management plan starting on page 65. Coal exploration and mining is an acceptable land use in the Moose Range.

Support for the Project:

C: The DNR received fifty-two comments that supported issuance of the permit on the basis that it would increase local jobs and have beneficial effects to the local economy.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

Location of Drill Holes:

C: One comment was received from the Department of Fish & Game (ADF&G) requesting the precise locations of drill holes and trenches (old and new) which will allow the assessment of potential impacts to fish habitat within the exploration area.

R: The Department requested this additional information from Usibelli. The revised information was posted on the DNR's website and email directly to ADF&G. ADF&G had no additional concerns relating to the location of the drill sites.

Heavy Equipment on existing trails

C: One comment was received from ADF&G commenting that the work plan does not show how existing trails will accommodate heavy equipment without major improvement to those trails.

R: The Department requested this additional information from Usibelli. The revised information was posted on the DNR's website and emailed directly to ADF&G. ADF&G had no additional concerns relating to the location of the drill sites.

Use of Grasses within the exploration area

C: One comment was received from ADF&G commenting that the revegetation with grasses is not consistent with Moose Range Enhancement policy.

R: To meet the requirements of 11 AAC 90.453, Usibelli is required to use temporary cover, in this case grass, to stabilize the disturbed area. The use of grass and fertilizer on reclaimed mine spoil and topsoil has been reviewed by Dr Dot Helm. From her recommendations, the DNR encourages companies to minimize the use of native and non native grasses and fertilizer on reclaimed topsoil in order to encourage the establishment of native plant species.

Matanuska-Susitna Borough/Planning and Land Use Dept:

C: The Mat-Su borough Agency made several comments as follows:

- Part of the permit area is within an area under the ordinance known as the Sutton Special Land Use District Ordinance. This special district was adopted to protect public health, safety, and the general welfare of Sutton residents, and to implement the Sutton Comprehensive Plan. The intent of the plan is to preserve environmental and scenic quality, community and outdoor recreation opportunities, and it seeks to maintain that balance amongst private property rights, and natural resource use.
- Twelve sections of the Wishbone Hill Exploration Permit Area lie within the Sutton Special Land District.
- Usibelli has been issued a Certification of Nonconforming Uses and Structures for the Wishbone Hill Project for the following uses and structures: natural resource extraction and processing; and man-made structures exceeding 50 feet in height. This includes towers, and tower line routes and tower service area grids containing two or more towers to be used for electrical power requirements for the mining operation.
- The Mat-Su Borough advises that the DNR should recognize, through the auspices of public meetings, that area residents have expressed concerns about environmental, health, traffic, noise blasting, wildlife, and water quality issues.

R: 11 AAC.90.031 requires the applicant to obtain any and all relevant Borough and municipal permits in addition to those required by the state or federal agencies.

Completeness of Application and Deficient DNR Review:

C: A comment was made that the application submitted by Usibelli was incomplete, and erroneously claimed by the DNR to be complete. On this basis, the renewal request should be denied.

R: The department found that the application was administratively complete, in accordance with 11 AAC 90.111. During the comment period, the Department requested additional information on operation and reclamation plans in response to comments received by the public and state agencies. These revisions were immediately posted on the departmental website for the Wishbone Hill Project (<http://dnr.alaska.gov/mlw/mining/coal/wishbone/index.htm>). These revisions have made the proposed operation and reclamation plan more protective of the environment.

Inadequate Public Response Time Concerning Revised Application:

C: Three comments were received by the DNR claiming that because Usibelli issued a revised application, the public comment period should be given a longer period of time to

submit commentary on the revised application. Failure to do this is justification for a denial of the permit.

R: During the comment period, the Department requested additional information on operation and reclamation plans in response to comments received by the public and state agencies. These revisions were immediately posted on the departmental website for the Wishbone Hill Project (<http://dnr.alaska.gov/mlw/mining/coal/wishbone/index.htm>). These revisions have made the proposed operation and reclamation plan more protective of the environment. On May 7th, 2010, the division decided to extend the comment period from May 15, 2010, to June 2, 2010. According to 11 AAC 90.165; the commissioner will make the application available in accordance with 11 AAC 90.907(b) and provide notice as provided in 11 AAC 90.907(c), including a newspaper advertisements. The commissioner will also provide notice to the persons identified as per 11 AAC 90. 023(a) (2) and (3). In addition notice was provided online on the state public notice website located at <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>.

Lack of Due Diligence:

C: One comment was made that the Exploration Permit Renewal should not granted to Usibelli on the basis that Usibelli has not consistently developed the property leases, in accordance with State statutes, since acquiring them from Idemitsu in the late 1990's.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.Usibelli has a valid coal lease from the State of Alaska and is allowed to develop these resources as meets their business plan. Since acquiring the leases, Usibelli has conducted exploration and baseline studies within the lease area to further understand the resource potential and environmental impacts.

Archaeological and Historical Artifact Preservation:

C: The DNR received two comments concerning the loss of historic and archaeological artifacts as a result of mining.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.The exploration activities will have minimal impacts to historical and archaeological site within the exploration area.

Baseline Data is Stale, and on That Basis, the Permit should be Denied:

C: One comment was submitted that Usibelli's baseline data is stale and does not take into account mining technology options for 2010, or up-to-date information on the environment in which the exploration is to occur.

R: Based on these comments, the department has required Usibelli to update baseline information required under 11 AAC 90.165 to reflect updated publicly available

environmental information. Usibelli has complied with this request and has submitted updated information.

Usibelli's Permit Has Expired and Should not Be Treated as a Renewal Application:

C: One comment was submitted stating that Usibelli's exploration permit has expired, and should not be reviewed with any deference owed thereto on account of it being a permit renewal application.

R: The applicant has a right to renewal under 11 AAC 90 165(e) and 11 AAC 90.129.

The Area Is No Longer A Coal Mining Area:

C: There were two comments made that claim the area is no longer a coal mining area, and is strictly residential.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90. The State has maintained and leased a number of coal leases which several/various corporations have paid rent and royalties on since active production stopped in 1971. The intent of these leases is for the State to collect revenue from operating companies in this manner. According to the Susitna Area Plan, Glenn Highway Sub-region, (1985, page 335) "no State land has been offered for disposal in areas with high coal value. All public land within this sub-region is open to exploration and development of oil and gas. All land is open to mineral location except for planned settlement areas, the Jim-Swan Lakes area, and the land surrounding several sheep mineral licks".

The State Encouraged Residential Use of the Area by Paving Roads and Bringing in Utilities:

C: There were two comments claiming that the State encouraged residential development of the area by bringing in utilities and paving roads.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

DNR Management of this Area Will Be as Bad as DNR Management of the Knik River Public Use Area, So It Shouldn't Be Allowed.

C: One comment was received indicating problems with vandalism such as that seen in Knik River Public Use Area, which is managed by the DNR.

R: The mine and exploration permit while active will be secured by Usibelli personnel. DNR personnel are required to do at a minimum, monthly inspections of the active exploration and mining area to insure that Usibelli is complying with all conditions of the permit and of the performance standards located at 11 AAC 90.301 to 11 AAC 90.501.

Blasting Effects:

C: One comment was received that blasting in proximity to residential community would cause structural damage to property.

R: 11 AAC.90.379 allows for the control of the adverse effects of blasting. It is a regulation enforced rigidly by the DNR. In accordance with 11 AAC.90.373, a property owner can request a pre-blasting survey at no cost to the property owner to determine if blasting effects will be harmful to that owner's property. Blasting which may damage property will not be allowed.

Carbon Credits:

C: One comment indicated that the carbon credits derived from a potential non-use of the coal on the property would yield the lease holder \$35 million.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

Exploratory Road Must Be Reclaimed:

C: A comment was made that the exploratory road should be reclaimed, and that a haul road would require improvements, and additional permits.

R: In accordance with 11 AAC.90.491, the operator must maintain or restore roads. A DNR permit does not absolve the operator from obtaining additional required permits, as required by 11 AAC.90.031.

Railroad Is Being Sued for Coal Dust:

C: One comment asserted that because the Alaska Railroad is being sued over a dust issue in Seward, the permit should be denied.

R: This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.