

## **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 from June 7, 2012 to July 10, 2012.

The DNR Division of Mining, Land and Water (DMLW), Coal Regulatory Program received a total of 98 comment submittals (letters, comment forms, e-mails and other transcripts). Of the 98 comments submitted, 5 comments were received past the July 10, 2012 deadline to submit comments.

Of the 98 comments submitted, 92 comments came from private individuals, four were from Non-Government Organizations, one was from State and Local Government Agencies and one was from Community and Tribal Councils. There were no comments from Federal Agencies. The table below breaks down comments based where the comments originated.

Wasilla Area	11
Sutton Area	6
Chickaloon Area	2
Mat-Su Area	24
Municipality of Anchorage	21
Fairbanks-Healy	3
State Wide	18
Out of State	7
Non-Government Organizations	4
Community and Tribal Councils	1
Borough Government	0
State Agencies	1
Federal Agencies	0
<b>Total</b>	<b>98</b>

## Responses to Comments:

### Environmental, Resource and Habitat Issues

**Comment (C):** Comments were received regarding incomplete information on fish and aquatic resources. Commenter's would like to add information related to the presence of salmon in Moose Creek. Commenter's stated that after recent creek restoration efforts salmon began returning to their historical spawning grounds after being impacted by past coal mining operations.

**Response (R):** The Alaska Dept. of Fish and Game (ADF&G) reviewed the application and provided the following comment regarding fish bearing waters: As proposed, coal exploration activities set forth in the referenced lease renewal will not impact fish bearing waters; therefore, no Fish Habitat Permit is required from the Habitat Division.

**C:** A comment was received that Usibelli noted that peregrine falcons are "seasonal visitors in the region" that are area to date "occasionally found in the area." 2012 renewal Application at 24, UCM states that peregrine falcon nests have not been reported in the exploration area . Also, the permit application states that endangered peregrine falcons may be found in the area and that specially protected bald eagles may be present in surrounding areas.

**R:** UCM has been directed to provide and update the application to include a map showing where potential habitat may occur for endangered peregrine falcons and bald eagles.

**C:** A concern was raised that the proposed revegetation of disturbed areas by re-seeding and commercial grass mixtures was inadequate given the Moose Range policy of "improving and enhancing moose populations through reclamation of coal mined lands to productive habitat, primarily beneficial to moose."

**R:** Companies that do exploration work are required to consult with the state's plant material center do determine the correct seed mix for reclamation activities. As part of the revised application UCM will be required to update its reclamation seed mix after consultation with the Alaska Plant Materials Center.

**C:** One comment was submitted that Usibelli's baseline data is stale and does not take into account mining technology options for 2012 or up-to-date information on the environment in which the exploration is to occur.

**R:** Based on this comment DNR required Usibelli to update baseline information per 11 AAC 90.165 to reflect updated publicly available environmental information. Usibelli has complied with this request and has submitted updated information.

### Temporary Water Use Permit

**C:** A comment was received that UCM is planning to draw 4,500 gallons per day, but does not specify the number of days so there is no indication of the total amount of water used. Without the total amount and the time period of the withdrawals, this information is too incomplete for

DNR to adequately evaluate this permit.

**R:** The requirement for obtaining water use permits is outside the authority of 11 AAC 90 and under the authority of the Water Section of DMLW. However, approximately 4,500 gallons per day of water will be required for the drilling activities. This relatively small quantity of water will be obtained under Temporary Water Use Permit (TWUPs) issued by the Water Section. The primary water take points are listed in the TWUP application on file with the DMLW Water Section (TWUP A 2012-31).

**C:** Water use is another problematic issue in this permit application. The water will be drawn from the abandoned mining pits that have a connection to an aquifer.

**R:** The requirement for obtaining water use permits is outside the authority of 11 AAC 90. This does not relieve UCM 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 Department of Fish & Game.

### **Locations of Mine Pits as a Water Source**

**C:** A comment was received asking for the specific location of abandoned mine pits in which Usibelli plans to draw water. Where does UCM intend to draw water should those pits prove to be inadequate?

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

### **Hydrology Effects**

**C:** Comments were received concerning a possible disruption of water wells due to dewatering, blasting, and drawing water from abandoned mining pits and Moose Creek.

**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.

### **Time Frame for Drilling Activities**

**C:** The time frame for drilling activities (Page 33) vaguely describes an eight-month operation season, but lacks specifics about how many days will be taken up by drilling and trail construction. Daily hours of operation are not even mentioned. The people in the area all have a right to know when these activities will be disrupted or their access cut off.

**R:** The proposed drill schedule includes a drill plan for the first two seasons, which coincides

with the two-year length of the exploration permit and meets the requirements of 11 AAC 165. UCM has been directed to revise the current schedule to reflect changes in the proposed start date.

### **Drill Waste Management**

**C:** A comment was made that fueling should not occur within 100 ft of a water body or wetland. A fuel spill response should be provided with the application and posted on site.

**R:** The fueling and spill prevention plan states that fuel will be purchased off-site on a daily basis and delivered to the site. Before a piece of equipment is refueled, a 4'x4'x8'' high poly liner will be laid on the ground to catch any spills or drips that may occur. The liner will contain oil/fuel absorbent pads that will be collected and discarded off-site if fuel is spilled. Poly liners will also be placed under the drilling equipment to catch any oil that may potentially leak from the equipment during operations. UCM is required to keep a copy of the Exploration application and any permits on site during exploration activities.

### **Location of Drill Holes**

**C:** A comment was made that the permit application includes exploratory drilling outside the exploratory permit area.

**R:** UCM is updating the application to state that there is private property within the exploration permit and lease area. At this time, there is no planned activity on the private parcels within the permit area.

**C:** Commentors raised concerns that one of the MSDS sheets specifically states that the fluid is "not for use in the United States."

**R:** Division policy requires that a company conducting exploration drilling in the state submit Material Safety Data Sheets (MSDS) for all drilling fluids. DNR has raised this issue with UCM. UCM will be using Dextrid NT which does not contain the presence (1-5%) of paraformaldehyde (the fluid in question) used in this product as a preservative.

### **Exploratory Road Must Be Reclaimed**

**C:** Comments were made that the exploratory road should be reclaimed, and that a haul road would require improvements, and additional permits.

**R:** All new exploration trails and drill pads will be reclaimed at the end of exploration activities. The pioneer trail from the Glenn Highway was approved under the Wishbone Hill mine permits and is beyond the scope of review of this decision

### **Heavy Equipment on Trails**

**C:** Concerns were raised regarding accessing exploration areas via existing roads and trails, with trail extensions to be built 8 to 10' wide. UCM will use low ground pressure tracked vehicles and/or heavy equipment to bring drill rigs to the sites. Commenter requested more specific

information on the types of vehicles proposed for use and whether unimproved dirt trails will accommodate them. ADF&G commented that project plans indicate that relatively heavy equipment will be used to conduct on-site exploration activities and that the work plan is unclear how 10 to 12 foot wide trail and similar extensions to existing trails will accommodate the movement of such heavy equipment without the construction of the more durable roads and the introduction of more advanced road construction techniques. ADF&G required additional detail before it can fully evaluate potential impacts to fish and game resources.

**R:** The equipment proposed for exploration is similar to the equipment used during the 2010 and 2011 exploration season. Except during heavy rains this equipment had minimal impacts to the existing trail system. During wet conditions, travel along trails was minimized to protect the trail surface. In some places along the trail some brushing had to occur to allow the drill rigs to pass. DNR does not expect any change in the scope and degree of impact due to the proposed exploration.

### **Increased Traffic**

**C:** Comments were received 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. Once the vehicle reaches a public road, the regulatory authority is the Department of Transportation and Public Facilities and the Mat-Su Borough.

### **Health Impact Assessment**

**C:** No new permit should be issued until the Health Impact Assessment is completed.

**R:** A draft HIA has been completed for the Wishbone Hill Mine permit renewal. HIA's are not required under 11 AAC 90. For the Wishbone Hill Mine permit renewal, the HIA Program gathered public health data, conducted an intensive scientific literature review, informally solicited potential health benefits and health concerns from local residents and stakeholders and carefully reviewed all available technical information available on the project. The purpose of the HIA is to inform decision makers about the most important potential health benefits and health risks of the proposed action. During the development of the Draft Health Impact Assessment for Wishbone Hill DNR worked with the HIA program to identify areas of concerns and stipulate that the permit renewal address these concerns.

### **Cultural and Historical Resources**

**C:** DNR and the UCM must comply with Section 106 of the National Historic Preservation Act (NHPA) and consult with CVTC prior to undertaking any exploration activity. The Alaska's State Historic Preservation Office (SHPO) provided the MHT with information on compliance with both the NHPA and the Alaska Historic Preservation Act (AHPA). The commenter does not feel that UCM is properly complying with the acts, including the requirements of Section 106 of the NHPA.

**R:** The proposed application has been reviewed by SHPO. In March 1989, a cultural resources survey and inventory report was completed on the permit areas associated with surface coal

mining permit Numbers 01-89-796 and 02-89-796. This study did not identify any previously unknown culture resource sites and further determined that three known historic sites (Buffalo, Premier, and Baxter Mines) within the current exploration area no longer possessed any significant data. SHPO agreed with the findings of the study and granted clearance to proceed with development work. Concerning those portions of the Exploration area that are outside the approved culture resource survey area, no activities are planned that would require clearance from the SHPO.

MHTs interactions with SHPO are beyond DNR's scope of review of the proposed exploration application under 11 AAC 90.

### **Completeness of Application and Deficient DNR Review**

**C:** Concerns were raised 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 DNR requested additional information on operation and reclamation plans in response to comments received by the public and state agencies. The revisions with the additional information 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.

### **Review like a Mining Permit**

**C:** Several comments were received stating that although this permit application is only for exploration; the application should undergo the same critical review as an actual mining permit.

**R:** The exploration permit application has been reviewed in accordance with 11 AAC 90.165 through 11 AAC 90.167 Administrative Processing of Coal Exploration Notices and Applications. The review requirements under ASMCRA are based on the anticipated surface disturbance for exploration activities. The proposed activities are consistent with exploration as defined under ASMCRA. The exploration permit application was reviewed to ensure that it meets the requirements of 11 AAC 90.163- 11 AAC 90.167. Prior to development and mining, UCM must meet the requirements for surface or underground mining under 11 AAC 90 including the collection of site specific baseline environmental data.

### **Incompatible Land Use within the Mat-Su Moose Range**

**C:** Concerns were raised 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.

**C:** The coal exploration permit application should be rejected as it does not meet the stated mission of the Alaska Department of Natural Resources Mining Division to “maximize use consistent with public interest”.

**R:** The authorities, under which the DNR operate, were approved and ratified by the legislature upon the founding of Statehood in 1959. The DNR was selected as the regulatory agency assigned to administer the ASCMCRA Act of 1983. In Article VIII, Section 12 of the Alaska State Constitution, the leasing of State lands for the location and extraction of minerals is provided for: “The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.” The Alaska legislature passed legislation that governs how coal is leased and regulated in the state. The land on which the leases have been issued is open to multiple uses and any development must minimize impacts to other uses in the area. The DNR mission statement is “To responsibly develop Alaska’s resources by making them available for maximum use and benefit consistent with the public interest.” The permitting decision for a potential mine would consider mitigation of conflicting uses.

**Alaska Statute – Title 44. State Government. Chapter 99. Miscellaneous Provision and Policies. Article 2. General State Policies. Section 44.99.110. Declaration of state mineral policy.**

The legislature, acting under Article VIII, Section 1 of the Constitution of the State of Alaska, in an effort to further the economic development of the state, to maintain a sound economy and stable employment, and to encourage responsible economic development within the state for the benefit of present and future generations through the proper conservation and development of the abundant mineral resources within the state, including metals, industrial minerals, and coal, declares as the mineral policy of the state that

1. Mineral exploration and development be given fair and equitable consideration with other resource uses in the multiple use management of state land;
2. Mineral development is encouraged through reasonable and consistent non-duplicative regulations and administrative stipulations;
3. Mineral development and the entry into the market place of mineral products be considered in developing a statewide transportation system;
4. Mineral development is encouraged through appropriate public information and education, scientific research, technical studies, and University of Alaska program involvement;
5. Economic development with respect to the state mineral industry is encouraged with Pacific Rim nations. (§ 1 ch 138 SLA 1988)

## **Bond Amount**

**C:** Concerns were raised about the adequacy of the proposed bond amount. Comparisons were made between the Montana Department of Environmental Quality's financial assurance recommendations and the reclamation costs in the permit area are not adequate.

**R:** The Department has determined that reclamation bond amount for the project is adequate to cover the activities proposed in the exploration application. The cost given for fertilizing and seeding is direct cost for that one line item. It is based on the cost of acquiring the seed from a local supplier. It does not include site preparation (regarding, topsoil replacement). In addition to the direct cost of reclamation, the department requires that indirect cost be included in the final bond calculation. This indirect cost ranges from 30 to 40 percent of the base direct cost and covers unknowns that may affect reclamation cost, such as fluctuation in fuel cost equipment rental. Throughout the life of the permit, Department also monitors reclamation cost and market conditions and requires periodic review of the bond to ensure that it reflects changing conditions.

**C:** UCM's calculation entirely omits costs of plugging drill holes and the costs of backfilling and grading the trails. Another comment is mentioned that bonding should include the cost of reclaiming drill waste sites and the costs to cleanup fuel spills, including the cost of labor, equipment, and revegetation

**R:** The subtotal of the equipment and personnel cost for drill holes is \$11,886.00 shown on page 33 of the application. The 40.5% for contingency and indirect costs calculated was \$13,774.00 on page 35 and covers the cost of reclaiming drill waste sites along with the costs to cleanup fuel spills (including the cost of labor, equipment, and revegetation).

**C:** One comment was made that costs to reclaim 37 former monitoring wells are listed as \$400/well, while the cost to reclaim new exploratory holes is listed at \$700/hole. There is no evidence provided for drill hole price change.

**R:** Bond release procedure and criteria requires that the permittee shall include in each request for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of 11 AAC 90 221(a). The department has not received a certification statement from UCM to release the 37 monitoring wells at \$400/well. The department still holds the bond for the 37 monitoring wells. The price of \$700/hole was not used for reclamation cost. The detailed bond calculation can be found from page 33 to page 35 of the application.

**C:** 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 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.

**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.

**C:** The DNR received one comment stating that property values would decline as a result of impaired view 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 Area Is No Longer a Coal Mining Area**

**C:** Concerns were raised that 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 corporations have paid rent and royalties on since active production stopped in 1971. 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".

**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 explore for and develop these resources. This comment is beyond DNR's scope of review of the proposed exploration renewal under 11 AAC 90.

**C:** There were two comments asserting that Alaska should be investing in renewable, clean energy or alternative energy sources.

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

**C:** 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.

**C:** 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 the comments 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.

**C:** The preliminary finding did not consider potential costs the exploration program would have

on the state as a whole, and did not take into account the impacts of climate change related to the combustion of coal mined.

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

**C:** Comments were received that supported issuance of the permit on the basis that it would increase local jobs and have beneficial effects to the local economy.

**R:** The comments are acknowledged and appear to be consistent with the DNR's mission statement.