

**Appendix A: Responses to Public Comments Concerning  
The Wishbone Hill Mine Permit Renewal  
October 1, 2014**

This document is the Response to Comments for the public comments submitted to the Alaska Department of Natural Resources (DNR), Division of Mining, Land and Water (Division), by letters, e-mails, and phone calls during the public comment period between August 24, 2011 and November 15, 2011 and by public testimony during the informal conference held on Tuesday, November 15, 2011.

The Division received a total of 1,588 comments submittals, which contained numerous individual comments. Of these comments 1,578 came from private individuals, seven were from Non-Government Organizations, two were from State and Local Governments or Agencies and one was from a Community or Tribal Council. Zero comments were received from Federal Agencies. The table below provides a summary of comments based on where the comments originated.

General Area*	41
Sutton Area	82
Chickaloon Area	17
Mat-Su Area	469
Municipality of Anchorage	592
Fairbanks-Healy	62
State-wide	281
Out of State	34
Non-Government Organizations	7
Community and Tribal Councils	1
Borough Government	1
State Agencies	1
Federal Agencies	0
<b>Total</b>	<b>1,588</b>

\*No Return Address provided

In addition, the Division received several petitions in favor of and against coal mining at the Wishbone Hill Project. A petition with approximately 2,600 printed names was received in the Governor's office along with approximately 710 flyers opposing coal development in the Matanuska Moose Range on November 14, 2011. A petition with approximately 609 signatures in support of the Wishbone Hill Mine was also received by the Division.

## Responses to Comments:

### Fish Habitat and Hydrogeology

1. **Supplemental Comment Received after the comment deadline:** The information received in the permitting materials is insufficient to draw conclusions about fish habitat and fish use. The data provided is not scientifically defensible and does not allow for future scientific comparisons. The analysis provided does not meet current hydrogeologic standards and fails to establish that groundwater will not be adversely impacted. Therefore mining activities are likely to have a negative impact on fish populations.
2. **Response:** The Division has reviewed the report regarding the results of a regulatory and data review of Wishbone Hill groundwater and surface water information, conducted by MWH for Usibelli Coal Mine Inc. (UCM). The report shows that impacts of future mine development to groundwater-surface water interaction, evaluated in a physical model by Golder Associates Inc. was also reviewed. Based on the model, mine excavations are not expected to induce groundwater flows from shallow alluvium, or cause losses of surface water from Moose Creek.  
  
Alaska Department of Fish and Game (ADFG) submitted comments on UCM Water Rights Application (LAS 28137) for a water withdrawal located about 500 feet below the outlet of Wishbone Lake on Buffalo Creek. ADFG has no objections provided that:
  - a. Adequate flow remains in the anadromous portion of Buffalo Creek to support any fish present; Additional stream discharge measurements should be collected to confirm that the lower section of Buffalo Creek is, in fact, a gaining reach and to determine if enough water is available from this source to meet Usibelli 's water needs; and
  - b. Usibelli install a stream gage to monitor the flow in the lower portion of the creek to ensure adequate flow to support aquatic life.

### Surface and Groundwater

3. **Comment:** There is too little site specific data to map aquifers and determine groundwater flows. This could result in a poor water balance for the site, resulting in un-identified impacts to Moose Creek and residential wells.  
  
**Response:** The ground water information has been reviewed by state agencies and has been found to meet the requirements of ASCMCRA. In addition, the Division has stipulated that additional monitoring wells be installed to detect potential impacts prior to any impacts to Moose Creek or local water supplies. The additional monitoring wells will provide for a larger coverage area in order to more quickly detect potential adverse impacts to Moose Creek. UCM's Permit Application Part D, Section 15.0, Protection of the Hydrologic Balance and Water Quality, provides an overview of surface water and groundwater protection. It outlines both goals and standards of the program and provides a description of each component involved in the hydrologic program of the mine. The monitoring program is outlined for each phase of the program from pre-mining, through mining, to post-mining. It also describes the restoration plan for aquifer restoration and recharge capacity. The operations at Wishbone Hill Mine will be required to comply with 11 AAC 90.345. Currently the

site operations and drainage controls have been designed to be non-discharging to the surface and will not require an Alaska Pollutant Discharge Elimination System (APDES) permit.

In the final findings for the renewal of the Wishbone Hill permit, the Division has stipulated the addition of new monitoring wells and increased frequency of monitoring. These new stipulations will be added to the permit at Conditions of the Permit, Number 14, Special Stipulations C and D, which outlines Monitoring Wells and Water Quality/Quantity Monitoring.

Stipulation C, states, “In addition to monitoring wells outlined in the permit the following additional wells shall be installed:

- Prior to start-up of the coal wash plant, one additional monitoring well must be installed in the plant area to monitor pond infiltration.
- Four additional down-gradient monitoring well clusters must be installed prior to mining between the mine areas and Moose Creek. The monitoring well clusters must consist of wells installed in both alluvium and bedrock. The monitoring wells must be positioned to detect early signs of changes in water quality during mining and reclamation for both Mine Area 1 and Mine Area 2.
- One additional monitoring well cluster must be installed immediately south of Mine Area 1 to monitor overburden and bedrock water quality.
- Prior to start-up of mining operations in Mine Area 2, two up-gradient piezometers should be installed in the overburden and bedrock to the east of Mine Area 2 to detect drawdown in the groundwater during mining.
- Prior to start-up of mining operations in Mine Area 2, two down gradient monitoring wells should be installed in the overburden and bedrock to the south of Mine Area 2.
- The proposed locations for the monitoring wells shall be approved by the Division before installation.”

Stipulation D states, “Monitoring for surface water quality of Moose Creek and Buffalo Creek will be conducted on at least a bi-monthly (every other month) interval. New monitoring wells will be sampled on the same interval as existing monitoring wells as outlined in Part D, Section 15.10.2.”

As part of this renewal, stipulation C has been revised to read:

- i. After consultation with Alaska Department of Environmental Conservation, the following new operation and post mining monitoring wells must be installed: DNR 1A, DNR 1b-1, DNR 1b-2, DNR 1b-3, DNR 1c, DNR 1 d-1, DNR 1d-2, and DNR 1b-4. Locations of these new monitoring wells are shown in Part D Section 15 figures 15-2, 15-3, of the revised operation and reclamation plan. These new wells must be installed prior to any additional surface coal mining activities.
- ii. In addition, the following eleven wells will act as the operational and post mining monitoring wells: H88 14A, H88-22, H88-27, DNR 1A, DNR 1b-1, DNR 1b-2, DNR 1b-3, DNR 1b-4, DNR 1c, DNR 1 d-1, and DNR 1d-2. UCM may add additional wells to this list but may not remove any of the listed monitoring wells without approval from the Division.

H88 14A will be completed in the stream alluvium below mining. H88-22, H88-27, DNR 1A

completed in the glacial sediment/overburden. DNR 1b-1, DNR 1b-2, DNR 1b-3, DNR 1b-4, DNR 1c, DNR 1 d-1, and DNR 1d-2 will be completed in both the glacial sediment/overburden and bedrock.

4. **Comment:** The permit renewal application is unacceptable because of insufficient characterization of subsurface hydrology and its relationship to surface hydrology, particularly with regards to Moose Creek, the surface expression of the watershed. Outdated modeling could lead to flooding, overtopping, and other releases of water during normal operations and extreme events.

**Response:** The Department has reviewed the operation and reclamation plan along with the supporting baseline data and finds that it reasonably predicts the groundwater regime within the permit boundary. Based on this information, sediment ponds and sumps have been designed with excess capacity to handle an event larger than a 100-year 24-hour storm event. The UCM's Permit application Part D Operation and Reclamation Plan, Section 11.0, Hydrologic Structures, Drainage Control and Impoundments, describes each sediment control structure and has been designed to contain inflows of both water and sediment generated from a 100-year 24-hour storm as well as annual sediment yield in accordance with the volume and capacity standards outlined in 11 AAC 90.331. In addition, an emergency spillway has been designed for each sediment pond, except the facilities' area sediment pond because of the topography. The overall sediment control plan has been conservatively designed to preserve and protect existing site water resources. Given these values the expected impact on surface water quantity during mining should be minimal. Best management practices are common methods that have proven effective in controlling sediment runoff from storm events. These practices include, but are not limited to, silt fences, hay bales, straw waddles, and vegetative berms.

UCM's Permit Application Part D, 13.7 Reclamation of Support Facilities describes the re-grading of Fresh Water Ponds No.1 and No. 2 and the Wash Down Water Pond as part of the support facilities' final grading. Once the site revegetation standards have been met and drainage into this area meets applicable state and federal water quality regulations, the slurry pond will also be backfilled with overburden, followed by topsoil replacement and revegetation. The Division has reviewed the report regarding the results of a regulatory and data review of Wishbone Hill groundwater and surface water information, conducted by MWH for UCM. The report shows impacts of future mine development to groundwater-surface water interaction. A physical model by Golder Associates Inc. was also reviewed. Based on the model, mine excavations are not expected to induce groundwater flows from shallow alluvium, or cause losses of surface water from Moose Creek. Based on a review of the available data, the potential impact a surface mining operation would have to the groundwater resources into Moose Creek is less than two percent of the total. Based on the groundwater flow in the coal formation this amount is considerably less. After review of the existing data and the revised data, the Division finds the characterization of subsurface hydrology sufficient.

5. **Comment:** The risk for contamination by arsenic, salts, TDS, and alkaline-mobilized elements has not been properly assessed. Poor coverage of core materials for geochemical characterization and inaccurate categorization of material as potentially acid generating could misrepresent chemical risks.

**Response:** At other active and abandoned coal mining locations in the Mat-Su Valley with similar geology and overburden characteristics contamination by arsenic, salts, TDS, alkaline-mobilized elements or acid mine drainage have not been an issue affecting local water quality. To address the possibility of changes in overburden chemistry missed during baseline analysis, the Division has reviewed the monitoring plan and has increased the number of groundwater monitoring wells and the monitoring frequency.

The suite of chemical parameters analyzed in groundwater samples during the pre-mining monitoring is listed in Table 15-5. The same pre-mining monitoring suite of chemical parameters will be done for the new monitoring wells required in Appendix A of the Division letter dated August 2, 2012.

6. **Comment:** The permit renewal application is insufficient in that it uses outdated models for sediment pond sizing, diversion channels, and to determine the stability of dams during seismic events. The water quality section is essentially a cut-and-paste of material from the 1990 application, and the tests for determining chemical risks from runoff, coal wash slurry, and backfill leaching are cursory or non-existent.

**Response:** The primary model used to design sediment ponds, diversion channels, and to determine site stability is SedCAD. This program has been an industry standard in the coal mining industry and state and federal agencies. This program, as well as others used to complete the permit, use well-established methodologies for hydrologic, hydraulic and stability analysis. They are both conservative in their approach and protective of the environment.

Throughout the permit period, Usibelli continued to collect baseline data. During 1999 through 2001, and again in 2008 and 2009, quarterly water quality samples were collected on Moose Creek. During 1998 through 2001, and again in 2007 through 2009, quarterly discharge/flow measurements were also collected on Moose Creek. Additionally, discharge/flow and stream morphology assessments were collected on Buffalo Creek during 2008. Water quality assessments for groundwater as well as piezometer readings were collected between 2008 and 2009. Aquatic biologic resource studies were conducted for Moose Creek and Buffalo Creek in 2008. Usibelli also completed an updated wetlands jurisdiction report in 2009.

7. **Comment:** The permit renewal application is unacceptable because not only are there significant concerns regarding water quality, water quantity, and stability issues that have not been addressed but the areas has undergone significant changes since the water quality and hydrology data were collected 30 years ago. This is the only coal mine in Alaska proposed essentially within a residential neighborhood. Risks to the neighborhood need to be realistically addressed.

**Response:** The Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA or The Act) was written to address concerns raised by coal mining operation near residential neighborhoods. The Act requires that adverse impacts to water quality and quantity be prevented outside the permit boundary. If there are adverse impacts to drinking water sources, these sources must be replaced by the operator. 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. Under 11 AAC 90.373, "A resident or owner of a structure that is located within one half mile of any part of the permit area may request a

pre-blasting survey. This request must be in writing and may be either to the Commissioner, who will promptly notify the operator, or to the operator. The operator shall promptly conduct a pre-blasting survey of the dwelling or structure and submit a signed, written report to the Commissioner and to the person requesting the survey. The operator shall perform an updated survey of any additions or modifications by the resident or owner.” All blasting operations must be conducted to meet the requirements of 11 AAC 90 371 (b), 11 AAC 90 373 and 375 in total, 11 AAC 90 379 (a), (b) and ((e) to (h)), 11 AAC 90 383, and 11 AAC 90 381.

In addition, Usibelli Coal Mine, Inc. has conducted activities required by the Division in order to maintain its permit and to address changes to the local community. It has maintained a groundwater monitoring network and collected surface water quality data. During 1999 through 2001, and again in 2008 and 2009, quarterly water quality samples were collected on Moose Creek. During 1998 through 2001, and again in 2007 through 2009, quarterly discharge/flow measurements were also collected on Moose Creek. Additionally, discharge/flow and stream morphology assessments were collected on Buffalo Creek during 2008. Water quality assessments for groundwater as well as piezometer readings were collected between 2008 and 2009. Aquatic biologic resource studies were conducted for Moose Creek and Buffalo Creek in 2008. Usibelli also completed an updated wetlands jurisdiction report in 2009.

The Division has stipulated that additional monitoring wells be installed to detect potential impacts prior to any effects to Moose Creek or local water supplies.

### **Public Health Impacts**

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

**Response:** A Health Impact Assessment is not a requirement under ASCMCRA or any other state regulatory requirements; however the Division requested that the Department of Health and Social Services develop a Health Impact Assessment (HIA) for the Wishbone Hill Mine. The HIA Program gathers public health data, conducts intensive scientific literature reviews, informally solicits potential health benefits and health concerns from local residents and stakeholders, and carefully reviews all available technical information on the project. The purpose of the HIA is to inform decision makers about the most important potential health benefits and potential health risks of the proposed action. During the development of the Draft Health Impact Assessment for Wishbone Hill, the Division worked with the HIA Program to identify areas of concern and include stipulations in the permit renewal. The Draft HIA was written by HSS on March 5, 2012 and the stipulations of the permit took the information from this assessment into account.

While working with HSS on the HIA the Division reviewed portions of the document that ranked health impacts. The proposed HIA provides a rating system of Low, Medium, High and Very High. Each rating has an accompanying suggested approach for *Action Steps* and *Monitoring*. For impacts listed as Low no *Action Steps* are needed and the *Monitoring* of health impacts can be completed by *Standard Public Health Surveillance* methods already in effect through the public health system. For impacts with an overall Medium rating, *Action Steps* are *Described*, and *Monitoring* steps can also be completed by *Standard Public Health Surveillance Systems*.

Three of the priorities were found to have an overall rating of Medium and five to have an overall rating of Low. The Low rated categories included: Food, Nutrition and Subsistence; Infectious Diseases; Chronic Non-Communicable Diseases; Water and Sanitation; and Health Infrastructure and

Capacity. The Medium rated categories included: Social Determinants of Health; Accidents and Injuries; and Exposure to Potentially Hazardous Materials.

9. **Comment:** 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:** The Division has carefully reviewed the proposed plan of operations and has determined that the impacts to the environment from the proposed activity are within the scope allowed by 11 AAC 90.301-501. Impacts such as global warming and mercury are outside the scope of the DMLW Coal Regulatory Program. Impacts from acid-forming material, wind-borne dust and blasting will be addressed as required by ASCMCRA. Any increase in vehicular traffic on public roads is outside the authority under AS 27.21 to regulate. However, the Division will work with the Mat-Su Borough and Usibelli to mitigate noise, light, and other disruptions. As stated in the prior comment response, the DHHS developed an HIA for the Wishbone Hill Mine. An HIA is not a requirement under ASCMCRA or any other state regulatory requirements.

The HIA Program gathers public health data, conducts intensive scientific literature reviews, informally solicits potential health benefits and health concerns from local residents and stakeholders, and carefully reviews all available technical information on the project. The purpose of this HIA is to inform decision makers about the most important potential health benefits and potential health risks of the proposed action.

HSS issued a final unsigned version of the HIA for the Wishbone Hill project on September 8, 2014 that listed eight priority Health Impact categories: Social Determinants of Health; Accidents and Injuries; Exposure to Potentially Hazardous Materials; Food, Nutrition and Subsistence; Infectious Diseases; Chronic Non-Communicable Diseases; Water and Sanitation; and Health Infrastructure and Capacity.

Although the Final HIA still requires a signature the Division is prepared to issue its Final Findings of Fact and Decision before final approval of the HIA. After reviewing the impact ratings from Chapter 7 of the HIA along with the Recommendations in Chapter 8 the Division finds that no change in its decision or the proposed stipulations is required.

10. **Comment:** The Division must evaluate the impacts to air quality as a result of creating coal dust. The comments addressed mining, transportation, and stockpiling coal in an area where glacial-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.

**Response:** An air pollution control plan is required for the mining permit and must comply with all Federal and State quality air standards and regulations. UCM is required to obtain an Air Quality Control Minor Permit from the Department of Environmental Conservation (DEC) for the Wishbone Hill Coal Mining and Processing Operation. The permit includes provisions for state emission control standards, ambient air quality protection standards, recordkeeping and reporting provisions, source testing and monitoring requirements as well and General Permit and Standard Permit Conditions.

If air quality problems are encountered, either by residents or Division staff during regularly scheduled inspections, DEC will be notified and appropriate measures will be taken to mitigate the impacts.

In addition, as part of the Division's review of these potential health impacts related to mining, DHHS has reviewed current literature on the effects of coal mining on human health and provided comments.

### **Permit Termination**

11. **Comment:** The surface coal mining operation did not meet the requirements of AS 27.21.070(b) for the initiation of mining operations within three years after the permit was issued. In addition no request for extension was received extending the permit beyond 1996. The commenter believes that the permit was terminated and that Usibelli Coal Mine must apply for a new permit.

**Response:** In response to a Ten-Day Notice from the federal Office of Surface Mining Reclamation and Enforcement (OSMRE), the Division reviewed the renewal history of the Wishbone Hill Mine and concluded that the permits are valid. The following is a brief summary of the permitting and renewal history for the Wishbone Hill Permits.

#### Issuance to Idemitsu

The Wishbone Hill surface coal mining permits (permits 01-89-796 and 02-89-796) were originally issued to Idemitsu Alaska Inc. on September 5, 1991. These permits were issued for a five-year permit term ending on September 4, 1996. The first request for an extension under AS 27.21.070(b) was submitted on August 24, 1994, by McKinley Mining Consultants on behalf of the permittee. This extension request included an explanation of ongoing litigation that had delayed the start of mining and requested that the deadline to begin surface coal mining operations be extended to September 4, 1996, which also coincided with the end of the first permit term. DNR granted the extension request, finding that the extension was warranted under AS 27.21.070(b) and that the time for the extension was reasonable.

#### Transfer to NPMC and First Renewal and Related Extension

On September 19, 1995, DNR approved the transfer of the Wishbone Hill permits from Idemitsu Alaska Inc. to North Pacific Mining Corporation ("NPMC").

Prior to the deadline of the first extension, on January 31, 1996, NPMC sent a letter to DNR stating that it would "like to extend the existing permits without any major revision." A contemporaneous DNR memorandum to the Director of the Division of Mining and Water Management (now the Division of Mining, Land and Water) indicated that a second extension of time to begin coal mining would be required with renewal, but that the January 31, 1996 letter did not contain the information necessary to meet the requirements of AS 27.21.070(b) to extend the time required to start surface mining operations. Under AS 27.21.070(b), the permittee must make a showing that an extension is necessary. In a letter dated February 7, 1996, DNR relayed this concern to NPMC. The concern was also noted in internal DNR memoranda dated May 13, 1996 and May 14, 1996. On July 9, 1996, a draft copy of a renewal cover letter was faxed to DNR. The letter explained why operations had not yet begun at Wishbone Hill, noting a "depressed international steaming coal price" and the Mental Health Trust Lands litigation. The letter also stated that both NPMC and operator UCM "recognize the importance of maintaining the existing SMCRA permits for the project," and also that the author, Thomas Crafford, "hop[ed] this letter and the accompanying forms satisfy the remaining



requirements for renewing the SMCRA permits.” The letter also explained that NPMC had signed a Letter of Intent with UCM to operate and develop the mine. Handwritten on the fax letter were the words “Looks ok to me, Jules, 7/10/96.” Mr. Jules Tileston was the Director of DNR’s Division of Mining and Water Management at the time.

The renewal application was submitted with a signed version of the cover letter dated July 11, 1996. On October 23, 1996, DNR approved the permit renewal and stated in the cover letter to the renewal decision that, “should mining not commence within this renewal term, then due to the length of time since the original permit application work was completed no further renewals will be considered without an extensive review of the original applications and the baseline information they were based on.” The public notice for the 1996 renewal contained a statement that an extension request had been received to allow for “continued marketing efforts.” This statement was followed by a statement that the permits were renewed for an additional five-year term.

Pursuant to the terms of 11 AAC 90.117(c), this decision was sent to OSMRERE (Glenn Waugh, OSMRERE, Olympia, WA).

#### Transfer to Usibelli Coal Mine, Inc.

A request to transfer the Wishbone Hill permits to UCM pursuant to 11 AAC 90.119 was received by DNR on July 22, 1997. The transfer request was noticed to the public on August 13, 1997. After review of the transfer request and posting of the required reclamation bond, DNR approved this transfer on December 1, 1997, stating in the transfer permit terms that, “due to the length of time since the original permit application work was completed, no further renewals will be considered without a review of the original applications and the baseline information they were based on.”

#### Subsequent Renewals

Requests to renew the permits for additional five-year terms were submitted by UCM on April 30, 2001 and April 14, 2006. Both renewals were public noticed and granted by DNR (background data was stated to be updated in the public notice for both renewal requests). Both renewals were also sent to OSMRE pursuant to 11 AAC 90.117(c). Further, contemporaneous OSMRE annual reports indicate that OSMRE was aware of the renewal process.

As stated in OSMRE’s annual reports, surface coal mining operations had not yet begun within the permit areas. The annual reports, as well as additional contemporaneous documentation, indicate that it was well known by UCM, OSMRE, DNR, and the public that coal mining had not begun because of market conditions.

Based on a review of the Wishbone Hill file, the DNR Coal Program concluded that, extensions of time to begin coal mining operations for both permit renewals were implicit prior to the commencement of surface coal mining operations in 2010.

#### Renewal Processes

From a review of the records, each renewal of the Wishbone Hill permits under 11 AAC 90.129 and transfer of permit under 11 AAC 90.119 met all requirements of ASCMCRA, including public notices, informal conferences, responses to agency and public comments, and the collection of an application fee.

#### Public Outreach for 2001 and 2006 Renewals

Participation in the public process and informal conferences included some of the same groups as those who filed citizens' complaints. The concern that UCM did not have a valid permit was not raised during these two previous renewal proceedings.

#### 2011 Renewal Application and Public Outreach and Input

UCM filed a request to renew the permits for an additional five years on May 9, 2011, pursuant to AS 27.21.080(d) and 11 AAC 90.129(b).

Public notice of this permit renewal application was given for the period starting on August 24, 2011 and ending on October 14, 2011. Legal ads were placed in the Anchorage Daily News on August 24, 2011, and were noticed for four consecutive weeks. On August 24, 2011, the notice was mailed directly to the DNR, Division of Mining, Land and Water mailing list of affected persons and agencies. An extension of the public comment period was publically noticed and given for the period beginning September 29, 2011 and ending November 15, 2011. An informal conference was held on November 15, 2011 in Sutton, Alaska, which was attended by 300 members of the public, as well as Mr. Ken Walker (manager of the Denver Field Division for OSMRE), a representative from the Alaska Department of Fish and Game, the Director of DNR's Division of Mining, Land and Water, the Mining Section Chief for the Division of Mining, Land and Water, and the Manager of Alaska's Coal Regulatory Program. DNR received a total of 1,588 comment submittals (letters, comment forms, e-mails and other transcripts) containing numerous individual comments.

In addition to the outreach listed above, on March 14, 2011, DNR Commissioner Dan Sullivan as well as DNR permitting staff traveled to Sutton, Alaska, at the invitation of the Chickaloon Village Traditional Council and members of the Sutton Community Council to discuss views and opinions of coal mining at Wishbone Hill.

Members of the Sutton Community Council spoke about the benefits that a coal mining operation at Wishbone Hill would bring to the area, including the creation of good jobs that would enable families to spend more time together and less time commuting, economic benefits for the region, and strengthening community connectivity.

Members of the Chickaloon Village Traditional Council and Castle Mountain Coalition shared their concerns that a coal mining operation in the Wishbone Hill area would negatively impact anadromous salmon, stream water quality, well water quality, trails and recreation, moose habitat, health of area residents, property values, traditional activities, families, and the sense of community.

While members of the Sutton Community Council urged DNR to support coal mining at Wishbone Hill, members of the Chickaloon Village Traditional Council and Castle Mountain Coalition requested that baseline water and air quality data be updated, tribal and archaeological studies be integrated into the permitting process, and that a health impact assessment, public interest determination and new best interest finding be completed before coal mining at Wishbone Hill be considered.

#### Renewal Processes

From a review of the records, each renewal of the Wishbone Hill permits under 11 AAC 90.129 and transfer of permit under 11 AAC 90.119 has met all requirements of The Act, including public notices, informal conferences on request, response to agency and public comments, and the collection of an application fee. Participation in the public process and informal conferences has included some of those represented by the groups listed in the Citizens Requests for a Federal

Inspection. The concern that Usibelli did not have a valid permit has not been raised during the previous renewal and transfer proceedings.

The DNR finding that the Wishbone Hill permits are valid is not inconsistent with the original purpose of the three-year deadline to commence mining operations in the Federal Surface Mining Control and Reclamation Act of 1977. The three-year deadline was intended to “assure that no one is locked into outdated reclamation requirements.” This concern is not warranted in this instance. The DNR was aware of the status of the project and there have been revisions to the permits to update the reclamation requirements (such as the 2011 revision to the performance standards for vegetation success and updates to the revegetation methodologies).

12. **Comment:** Usibelli’s mine permit has expired, and should not be reviewed with any deference owed thereto on account of it being a permit renewal application.

**Response:** As stated in comment number 10, DMLW has concluded that the permits are valid under AS 27.21 and 11 AAC 90. In addition, as part of ASCMCRA, the applicant has a right to renewal under AS 27.21.080. This statute states that a permit:

“includes the right of successive renewal upon expiration, for areas within the boundaries of the permit area.”

UCM submitted a request to renew the permit 202 days prior to expiration, well within the required 120 days.

13. **Comment: Several** pending citizen complaints regarding the validity of the permits have been filed to the Division and the Office of Surface Mining.

**Response:** Following the end of the public comment period and the Informal Conference, Trustees for Alaska (TFA), on behalf of several non-governmental organizations and groups, filed separate citizen complaints to the Division and the Office of Surface Mining Reclamation and Enforcement (OSMRE) under state and federal law regarding the Wishbone Hill Permits. The organization Earthjustice also filed a complaint with OSMRE. The complaints state that the permits are invalid. DNR corresponded with both TFA and OSMRE following the filing of the complaints. On December 20, 2011 OSMRE issued a Ten-Day Notice (TDN) to DMLW for the two Wishbone Hill Permits: 01-89-796 and 01-02-796. Subsequent correspondence between DMLW and OSMRE regarding the OSM TDN occurred in January, July and August 2012. As of September 29, 2014 the TDN is pending resolution, and has been for almost two years. As of the date of issuance of this renewal, there has been no determination that this permit is invalid by OSMRE. UCM has a valid Alaska state coal mining permit. Prior to issuing this decision, the Division informed OSMRE of its intent to renew UCMs permits for the Wishbone Hill Mine.

### **Truck Traffic**

14. **Comment:** Large trucks and an increase in vehicular traffic would have a negative impact on area roads.

**Response:** The Division’s authority to regulate vehicle operations is only within the mine site and along the haul road until it reaches the Glenn Highway. Once the vehicle reaches a public road the regulatory authority is transferred to the Department of Transportation and Public Facilities (DOT&PF) and the Mat-Su Borough (MSB). If there are significant impacts to the local community from mine traffic, the Division can use the permitting process to minimize these impacts. These include mandating the use of alternate access such as moving the access to the mine site from Buffalo

Mine Road to the construction of an alternate access connecting directly to the Glenn Highway. Additionally the Division may require the use of street sweepers and/or wheel and undercarriage wash to minimize offsite impacts where the haul road meets the Glenn Highway. The MSB provided the following suggestions for mitigating truck traffic in the area:

- A flashing light at appropriate intersections.
- An acceleration lane for trucks wherever extensive heavy truck traffic would enter the Glenn Highway.
- Upgrading the substandard roads to withstand heavy truck traffic.
- Providing some sort of acoustic buffer between heavy industrial uses including extensive heavy truck traffic and residential areas.
- Limiting heavy industrial uses and extensive heavy truck traffic to certain hours of operation, where it conflicts with existing residential uses and quality of life.

The Division will work with UCM to incorporate these suggestions where needed and practicable.

UCM is proposing to operate 12 trucks capable of hauling 45 tons each. They plan to operate at night six days a week to minimize impacts to the community. To reach the proposed production of approximately 500,000 tons a year, there would need to be around 36 round trips a day. According to DOT&PF, the portion of the Glenn highway where trucks would be entering and leaving the highway from the mine has an average daily traffic of around 2,500 vehicles. The addition of approximately 72 trucks per day would increase this amount by approximately three percent. Along the entire trucking route, the increase would only be around 0.05 percent.

### **Blasting**

15. **Comment:** Blasting in proximity to a residential community would cause structural damage to property.

**Response:** To address concerns raised concerning the impacts of the proposed blasting operations on the local population and to protect Moose Creek habitat the compliance point for blasting will be stipulated to be Moose Creek instead of the closest residential structure. In addition, Department of Fish and Game blasting requirements for the protection of anadromous fish and spawning areas were also stipulated. In addition to providing protection to Moose Creek habitat, these stipulations provide increased protection to local residents. This stipulation lowers the amount of explosives that can be used during any one period measured in milliseconds during a single blast lowering the amount of energy propagated off site. In addition local topography and the orientation of the pits limits the propagation of air blast and to a minor extent ground vibration in the direction of nearest residents located in the Buffalo/Soapstone Communities. In accordance with 11 AAC.90.373, a resident or owner of a structure can request a pre-blasting survey at no cost to set a pre mining condition of the structure and allow a point of reference to determine if there are impacts. Prior to start-up of mining and blasting operations, UCM will be required to offer these surveys to residents and owners of structures within a half mile of the permit boundary.

### **Baseline Studies/Monitoring**

16. **Comment:** The commenter stated that baseline studies were stale and out of date.

**Response:** UCM has conducted activities required by the Division in order to maintain its permits over the years. It has maintained a groundwater monitoring network, collected surface water quality data, studied and maintained vegetation and reclamation test plots, conducted wetland studies, and conducted fish and wildlife studies within the project area. The Division has reviewed the baseline data including the new data and finds that the data meets the requirements of ASCMCRA.

Throughout the permit period UCM continued to collect baseline data. During 1999 through 2001, and again in 2008 and 2009, quarterly water quality samples were collected on Moose Creek. During 1998 through 2001, and again in 2007 through 2009, quarterly discharge/flow measurements were also collected on Moose Creek. Additionally, discharge/flow and stream morphology assessments were collected on Buffalo Creek during 2008. Water quality assessments for groundwater as well as piezometer readings were collected between 2008 and 2009. Aquatic biologic resource studies were conducted for Moose Creek and Buffalo Creek in 2008. Usibelli also completed an updated wetlands jurisdiction report in 2009.

UCM's Chapter XIV contains a complete wetland evaluation completed in 1988. This evaluation was given a complete technical review by the US Army Corps of Engineers (USACE) in 1989 and it concluded that there were "no jurisdictional wetlands present within the study area." This chapter also contains a January 2009 office based preliminary jurisdictional determination (PJD), which showed only very small, isolated wetland areas that were not connected to any other wetland or regulated water areas. "It was concluded that the mapped wetlands identified in the study would most likely be classified as non-jurisdictional." This determination was also reviewed by USACE and was not found to be jurisdictional wetlands.

Throughout the life of a project the Division will continuously review the permit to determine if additional information is needed or if changes are needed to the Operation and Reclamation Plan. As UCM continues to develop the Wishbone Hill Mine, the Division will continue to review the Operation and Reclamation Plan in light of the current operation and changes to the local community to determine if additional baseline/monitoring data need to be collected or if additional stipulations should be introduced. As part of this renewal, the Division requested additional information in an initial August 2, 2012 letter and several subsequent requests. UCM's response to these requests provided updated information as requested or additional analysis of why the existing information meets the requirement of 11 AAC 90. The division conducted a thorough review of UCM's multiple submittals and found that it provided enough information to address the concerns in the August 2, 2014 letter and the additional requests.

17. **Comment:** Commenters described the fish habitat reconstruction and stream restoration on Moose Creek; they were concerned that the mine activities would adversely impact Moose Creek.

**Response:** The operation and reclamation plan was written and approved to prevent adverse impacts to Moose Creek. In addition, the regulations and permit conditions provide additional protections. The regulations require that 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. The Division 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. In addition to the requirements found in 11 AAC 90.379(e), a stipulation will be added to the renewal requiring that blasting will be designed to not produce an instantaneous pressure change greater than 2.7 pounds per square inch

(psi) in the swim bladder of anadromous fish and a peak particle velocity of no more than 0.5 inches per second.

### Department of Environmental Conservation Air/Water Permit

18. **Comment:** Don't renew the mining permit until all pertinent air and water quality permits have undergone public scrutiny and have been issued.

**Response:** UCM is required to obtain an Air Quality Control Minor Permit from DEC for the Wishbone Hill Coal Mining and Processing Operation. The permit includes provisions for state emission control standards, ambient air quality protection standards, recordkeeping and reporting provisions, source testing and monitoring requirements as well as General Permit and Standard Permit Conditions.

If air quality problems are encountered, either by residents or by the Division staff during our regular inspections, ADEC will be notified and appropriate measures will be taken to mitigate the impacts. In addition an air pollution control plan is required for the mining permit and must comply with all Federal and State air quality standards and regulations (11 AAC 90.079).

The Wishbone Hill mine is designed as a "zero-discharge" facility and therefore does not require an APDES discharge permit. ADEC is working with UCM to issue a Multi-Sector General Permit for the mining operation. Approval of the ASCMCRA permits does not relieve the applicant of the responsibility of securing and complying with other laws and regulations required by any Federal, State, or Local government agencies (11 AAC 90.031).

19. **Comment:** Concern about the potential impacts from fugitive dust.

**Response:** Fugitive dust is addressed in two different places in the permitting process: 1) UCM is required to obtain an Air Quality Control Minor Permit from DEC for the Wishbone Hill Coal Mining and Processing Operation; the DEC permit includes Section 14, Fugitive Dust Control Plan, and 2) ASCMCRA requires that an Air Pollution Control Plan be included in the UCM Wishbone Hill Surface Coal Mining Permit Application. The plan is located in Part D, Section 16.0 of the application and summarizes the active controls for fugitive emissions.

The DEC Fugitive Dust Control Plan includes best management practices and active fugitive dust control methods including DEC approved dust palliatives for all approved mine roads. The plan requires that all reasonable precautions shall be taken to prevent the release of airborne particulate matter and fugitive dust from aggregate piles, conveyors and elevators, loading locations, crushers and screens.

According to Section 16.0 of the Mine Permit Application the main source of fugitive dust emissions are related to wind erosion from the exposed mine area, topsoil removal operations and roads. To reduce the impacts of fugitive dust emissions UCM will limit the amount of pre-stripping and promote contemporaneous reclamation to reduce the size of the active disturbance area. "In addition to reducing fugitive dust emissions, early timing will facilitate revegetation work and the stabilization of the topsoil stockpiles and reclaimed areas."

Section 16.0 also states that to control dust emissions while hauling coal, all roads will be watered on a continuous basis. In addition, UCM proposes to use "enhanced techniques for the control of particulate matter emissions from the mine access road and all permanent mine roads. These

techniques may include the use of Alaska DEC approved dust palliatives such as calcium chloride, or a similar dust control agent, along with water.” To control coal dust coming from haul trucks, all haul trucks loads will be covered.

The following fugitive dust control measures outlined in the air pollution control plan are in accordance with the requirements of 11 AAC 90.079 and 11 AAC 90.421.

- Limit pre-stripping and promote early timing of reclamation and revegetation
- Control particulate emissions from roads with water or other approved dust palliatives
- Utilize clean haul trucks and cover their loads to prevent the release of dust both in the mine and on the Glenn Highway.

As part of the renewal, the Division required UCM to revise the Air Pollution control plan to reflect changes and mitigation suggested by the DEC minor air permit. These changes were submitted to the Division on June 5, 2014. These plans require ICM to monitor visible emission from the Coal preparation plant and fuel burning equipment. During operation the Division will review this monitoring regime and may require UCM to revise the monitoring plan for the ASCMCRA permit if offsite impacts are observed during inspections or other site visits.

### **Light and Noise Pollution**

20. **Comment:** Concerns were raised regarding noise and light pollution affecting the community’s quality of life.

**Response:** The ASCMCRA regulations do not contain specific provisions dealing with noise and light. To address these issues, additional stipulations (listed below) have been added as part of the permit renewal.

- a. **GEOMORPHIC APPROACH.** The permittee shall apply geomorphic principles to create channels and landforms that are appropriate to create a stable final grading and surface drainage for the post-mining topography to the extent technically feasible. Examples of available practices include scalloped complex slopes, sinuous drainage channels with concave longitudinal profiles, appropriate drainage density, and slopes with the bottom half concave in shape.
- b. **ALASKA POLLUTANT ELIMINATION SYSTEM (APDES) PERMIT.** Water may not be directly discharged from ponds or disturbed areas into Moose Creek unless in compliance with an APDES permit issued by the Alaska Department of Environmental Conservation (DEC).
- c. **MONITORING WELLS.**
  - i. After consultation with DEC, the following new operation and post mining monitoring wells must be installed: DNR 1A, DNR 1b-1, DNR 1b-2, DNR

1b-3, DNR 1b-4, DNR 1c, DNR 1 d-1, and DNR 1d-2. Locations of these new monitoring wells are shown in in Part D Section 15 figures 15-2, 15-3, of the revised operation and reclamation plan. These new wells must be installed prior to any additional surface coal mining activities.

- ii. In addition, the following 11 wells will act as the operational and post mining monitoring wells: H88 14A, H88-22, H88-27, DNR 1A, DNR 1b-1, DNR 1b-2, DNR 1b-3, DNR 1c, DNR 1 d-1, DNR 1d-2, and DNR 1b-4. UCM may add additional wells to this list but may not remove or fail to install any of the listed monitoring wells without approval from DMLW.
- d. **PRE-DEVELOPMENT WATER QUALITY MONITORING.** At least 6 months prior to the development of the Washplant Pond and related facilities or the Phase I or II mining areas UCM must collect 10 unique water quality samples from the list of operational and post mining monitoring wells in Stipulation “c. ii.” These samples must be tested for the full suite of total recoverable inorganics and nitrates as described and listed in Part D, Operation and Reclamation Plan, 15.10 Monitoring of Groundwater Quality and Quantity.
- e. **WATER QUALITY/QUANTITY MONITORING.** Monitoring for surface water quality of Moose Creek and Buffalo Creek will be conducted on at least a bi-monthly (every other month) interval. New monitoring wells will be sampled on the same interval as existing monitoring wells as outlined in Part D, Section 15.10.2.
- f. **BLASTING.** In addition to the requirements found in 11 AAC 90.379(e) all blasting operations for the Wishbone Hill Mine will be designed to not produce an instantaneous pressure rise in the water column of Moose Creek of no more than 7.3 psi where fish are present and a peak particle velocity in spawning gravels of no more than 1.25 inches per second. This requirement may be waived or a different pressure change value set upon prior written approval from the Department of Fish and Game and the Department of Natural Resources, Division of Mining Land and Water. Unless approved by the Department, the compliance point for meeting the blasting requirements of 11 AAC 90 will be Moose Creek.
- g. **CULTURAL/HISTORIC ARTIFACTS.** The Alaska Historic Preservation Act (AS41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any State-owned historic, prehistoric (paleontological) or archaeological site without a permit from the Commissioner. If cultural or paleontological resources are inadvertently discovered as a result of, or during, the activities authorized by this renewal, all activities which would disturb such resources shall be stopped and measures taken to protect the site. The State Historic Preservation Officer (907-269-8722) shall be contacted immediately so that compliance with state laws may begin.



If burials or human remains are found, in addition to the State Historical Preservation Officer, the State Troopers (907-745-2131) are to be notified immediately.

- h. **NOISE.** Usibelli will work with the Mat-Su Borough and the local community to minimize the impacts of noise to the local community. Surface mining operations will, to the furthest extent possible, limit the noise level of surface mining operations at the permit boundary to 70 dB between 7:00 AM and 6:00 PM and 60 dB between 6:00 PM and 7:00AM.
- i. **LIGHT.** Usibelli will communicate and work with appropriate Mat-Su Borough officials and the local community to minimize the impacts of light from surface mining operations to the local community.

The MSB has governing ordinances and policies that it enforces on a community by community basis, which reflects the values of the community. Usibelli may be required to obtain local or additional permits from the MSB, which is beyond the Division's scope and jurisdiction. In addition, the Permit Renewal will stipulate that UCM will work with the MSB and the local community to minimize impacts to the local community associated with noise and light from the surface mining operation. Suggestions included creating acoustic buffers between the mining operation and the local community, limiting truck traffic to certain hours, limiting hours when blasting may occur, shielding light sources and finding alternate types of alarms.

### **Compliance History**

21. **Comment:** The applicant has a history of violations.

**Response:** The Division has reviewed UCM's compliance history and finds that it does not demonstrate a pattern of willful violations of AS 27.21 or 11 AAC 90 of such nature and duration with resulting irreparable damage to the environment to indicate an intent not to comply with statutes and regulations. 11 AAC 90 requires that an applicant for a surface coal mining permit include a list of all cited violations of this chapter and all cited violations of a law, rule, or regulation of the United States, or the State, pertaining to air or water environmental protection received by the applicant in connection with a surface coal mining operation during the previous three years. Part B, Section 2.0 of the application lists four violations under 11 AAC 90 and eleven violations of the Clean Water Act. The first two violations were issued on August 25, 2009. Both violations were abated in a timely fashion. The eleven violations of the Clean Water Act were issued in 2011 covering a period between 2007 and 2009. These violations were self-reported to the EPA. In a consent agreement, UCM agreed to pay a fine and take corrective action.

A review of State and Federal records shows that the applicant has never had a Federal or State mining permit suspended or revoked. The applicant has not forfeited a mining bond or similar security deposited in lieu of a bond. As of September 29, 2014, UCM has one outstanding violation for its operations in the Healy area that is within the allowable abatement period. This outstanding violation does not impact the renewal of the Wishbone Hill Permits.

The Division will be requiring a revision to Part B of the permit to show all violations issued by EPA for three years prior to the submittal of the renewal request.

## Other Comments

22. **Comment:** Commenters requested a 60-day extension of the public comment period. This extension was requested to allow the requestors more time to review the permit and related documents.

**Response:**

During the comment period the Division received several requests to extend the public comment period. Based on this request and the reasoning provided, on September 29, 2011, the Division extended the comment period an additional 32 days from October 14, 2011 to November 15, 2011. In addition, notice was provided online on the state's public notice website. 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 newspaper advertisements. The commissioner will also provide notice to the persons identified as per 11 AAC 90.023(a) (2) and (3). A Public Notice of the extension of the public comment period and the announcement of an informal conference was given for the period beginning September 29, 2011 and ending November 15, 2011. The informal conference was held on November 15, 2011 at the Sutton Elementary School in Sutton, Alaska. Approximately 306 people attended the conference and 91 people gave public testimony.

23. **Comment:** There is opposition to coal mining and exploration 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 reasons cited were global warming, mercury, and acid forming material.

**Response:** 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.

24. **Comment:** There is concern regarding the adequacy of the proposed bond amount.

**Response:** The Division determined that the proposed bond amount is sufficient to conduct the required reclamation for disturbance during each phase of the Wishbone Hill Mine. This review included an analysis of the maximum amount of material that would need to be moved during each phase of operation. The review updated the cost of each major piece of equipment needed to complete the reclamation plan and the cost of fuel. In addition to adding contingencies to the direct cost to cover changes in cost, the Division reviews the bond at a minimum of every two and half years and adjusts the amount as needed. In accordance with AS 27.21.160 and 11 AAC 90.120 (a), before a permit, major revision, or renewal may be issued, the applicant shall file a surety, collateral, escrow account bond, or a combination of these bonds.

25. **Comment:** There is concern regarding the ingestion of mercury and arsenic by aquatic life as a result of coal combustion.

**Response:** The regulation regarding the burning of coal is outside the scope of the issuance or renewal of a coal mining permit under ASCMCRA, 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 mining permit area. The ASCMCRA regulations do not contain provisions dealing with offsite coal combustion.

26. **Comment:** The proposed mining activity is incompatible with the current uses in the Moose Range and its purpose.

**Response:** 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. Based on these objectives, coal mining and related exploration activities are an acceptable land use in the Moose Range.

27. **Comment: Concerns** were raised about public access and trails in the Wishbone Hill area.

**Response:** For health and safety reasons, the provisions of ASCMCRA, the surface lease and coal leases allow for temporary access restrictions to be placed on easements in the area. According to the mine application there are four issued public easements located in or within 100 feet of the permit area. ADL 57529 is for Buffalo Mine Road and is 100 feet in width. Buffalo Mine Road was originally built to provide access to the underground mines along Moose Creek and was later upgraded and used to haul coal from the Buffalo Mine.

The second easement, ADL 56975, is a public access road that extends from the end of the Buffalo Mine Road right-of-way. This easement is 60 feet in width and parallels a portion of Moose Creek.

Neither ADL 57529 nor 57975 will be used for mining operations.

ADL 52715 is the third easement and covers an access trail that extends from the Buffalo Mine Road eastward to the abandoned Jonesville Mine. This trail is 60 feet in width and traverses portions of the active permitted mining area.

The fourth easement was originally acquired for logging operations under ADL 218234. This easement is for an 80 foot wide logging trail and includes public use.

UCM is proposing to relocate portions of public easement ADL 52715 out of the active mining area. Where it crosses the mine access road south of the facilities area a set of gates will be placed on each side of the crossing prohibiting public access to the mine access road. Controlled access at the crossing will be maintained with either four-way stop signs or a large diameter culvert under the access road. Where terrain and vegetation are not sufficiently restrictive to prevent public access along the relocated portion of ADL 52715 near the western permit boundary, fencing will be installed.

For the relocation of portions of ADL 52715 an easement application amendment will need to be submitted to the Division's Easement Management Unit within the Southcentral Regional Office.

28. **Comment:** Statements were received at the informal conference 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.

**Response:** ASCMCRA (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.

29. **Comment:** There were statements claiming that the permit should not be granted if it meant the coal was to be bought and shipped to China or Japan.

**Response:** Usibelli has a valid coal lease from the State of Alaska and is allowed to develop these resources in order to meet their business plan. This comment is beyond the Division's scope of review of the proposed mining renewal under 11 AAC 90.

30. **Comment:** There were statements asserting that Alaskan coal should be preserved for future domestic use, should the need arise. It should not be shipped elsewhere.

**Response:** Usibelli has a valid coal lease from the State of Alaska and is allowed to develop these resources in order to meet their business plan. This comment is beyond the Division's scope of review of the proposed mining renewal under 11 AAC 90.

31. **Comment:** There were statements asserting that Alaska should be investing in renewable, clean energy or alternative energy sources like wind and solar power.

**Response:** This is beyond the Division's scope of review of the proposed mining renewal under 11 AAC 90.

32. **Comment:** Coal burning is dirty and should not be used as a fuel source.

**Response:** This is beyond the Division's scope of review of the proposed mining renewal under 11 AAC 90.

33. **Comment:** The Division received statements 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. The commenter asserts that the Division must protect the view shed and that it is legally indefensible to not do so.

**Response:** This comment is beyond the Division's scope of review of the proposed mining renewal under 11 AAC 90. The Division also received comments from land owners and realtors claiming that there would not be a decrease in property values. There are no regulatory provisions in ASCMCRA concerning view shed or loss of property values as a result of proximity to a proposed mine. However, additional stipulations have been added as part of the renewal to add protection to the environment and minimize the impact to the local community.

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

**Response:** Comment acknowledged. This is beyond DMLW's scope of review of the proposed mining renewal under 11 AAC 90

35. **Comment:** Coal mining is inconsistent with public interest and therefore unconstitutional. The commenter states that the "nature of the land has changed" and that the area should be developed for other uses such as tourism and recreation. Also, the Division must maximize benefits for all people, with wildlife being a priority concern.

**Response:** This comment is beyond the Division's scope of review of the proposed mining renewal under 11 AAC 90. The authorities under which the Division operates were approved and ratified by the legislature upon the founding of Statehood in 1959. The Division 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 address potential impacts to other uses in the area. Balancing decisions affecting potentially conflicting land and resource uses for the state's benefit is one of the Division's primary missions and specifically the permitting decision for a potential mine would consider mitigation of potentially 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 are 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)

36. **Comment:** The Permit Renewal should not be 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.

**Response:** This comment is beyond the Division's scope of review of the proposed mining renewal under 11 AAC 90. Since acquiring the leases, Usibelli has conducted exploration and baseline studies within the lease area to further understand the resource potential and environmental impacts. In addition, UCM has actively pursued a market for the coal resource. UCM commenced mining operations on the coal leases in 2010. Additional development work is on hold pending the renewal of the coal mining permit.

37. **Comment:** There are concerns regarding the loss of historic and archaeological artifacts as a result of mining. The commenter wants a new and updated Cultural Resource Survey.

**Response:** From the 1991 decision authorizing the Wishbone Hill permits the Division stated: "In July 1988 personnel of the Northern Anthropology Consortium conducted a cultural resources survey of the permit and adjacent area. The survey did not identify any previously unknown prehistoric or historic cultural resources. The three known historic sites associated with previous mining within or adjacent to the area no longer possess data that is significant." At that time, the State Historic Preservation Officer (Alaska Department of Natural Resources, Division of Parks) concurred with this conclusion concerning cultural resources. No new information has been submitted by the commenter that would lead the Division to require new cultural services. The permit is also stipulated that if during operations, cultural or paleontological resources are inadvertently discovered, all activities which would disturb such resources shall be stopped and measures taken to protect the site and that the State Historic Preservation Officer shall be contacted immediately so that compliance with state laws may begin.

38. **Comment:** There are concerns that the State of Alaska did not have government to government meetings with Chickaloon Village Traditional Council (CVTC).

**Response:** DNR has met on numerous occasions with representatives of CVTC and other groups concerned about coal development in the Wishbone Hill Area. Meetings included:

- March 2010 Outreach meeting with Buffalo Soapstone Community Council and CVTC.
- October 2010 Informal Conference for the Jonesville Underground Mine
- April 2011 Outreach meeting with the DNR Commissioner and CVTC
- September 2011 Site Visit for Jonesville Underground Mine
- September and October 2011 Multiple meetings with local communities on the Health Impact Assessment
- November 2011 Informal Conference for the Wishbone Hill Mine Project

The Division believes we have adequately met with the local community and CVTC to understand their concerns with this permit renewal request.

39. **Comment:** The area is no longer a coal mining area, and is strictly residential.

**Response:** Coal leases have been maintained in the Wishbone Hill Area since before statehood. Since active production stopped in 1971, the state maintained a number of coal leases to various corporations who have paid rent and maintained these leases in good standing with the state. According to the Susitna Area Plan, Glenn Highway Sub-region, (2010, page 3-107), “The PUA is open to coal exploration and development under the coal leasing procedures, it is also open to locatable and leasable minerals, except for Mental Health Trust Lands, which follow specific procedures for mineral and coal exploration and development. The management of the surface and subsurface is the responsibility of the Division. ADF&G is responsible for the management of fish and game resources and public use of fish and wildlife. The requirements of this plan do not apply to the Moose Range.”

40. **Comment:** The State encouraged residential development of the area by bringing in utilities and paving roads.

**Response:** The Division 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. However, the Division will work with the Matanuska-Susitna Borough, Usibelli and the local community to mitigate noise, light, dust, blasting and other disruptions.

41. **Comment:** The public asserted that because the Alaska Railroad is being sued over a dust issue in Seward, the permit should be denied.

**Response:** This comment is beyond the Division’s scope of review of the proposed mining renewal. Operations at the Seward Terminal are not regulated under ASCMCRA. Concerns related to dust in and around the permit area have been addressed in an earlier response. If air quality problems are encountered, either by residents or Division staff during 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. The air pollution control plan requires that dust from hauling coal be controlled by covering loads and by controlling dust originating from the haul roads.