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The author worked with permitting agencies to provide the most accurate descriptions of their permitting processes, but please recognize that regulations and permits change over time. The author cannot guarantee that the information within is complete or accurate to date.

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WHY A CITIZEN'S GUIDE



Because this program may bring exploration and development and their impacts closer to towns..., citizens need to understand this process in order to affect it.



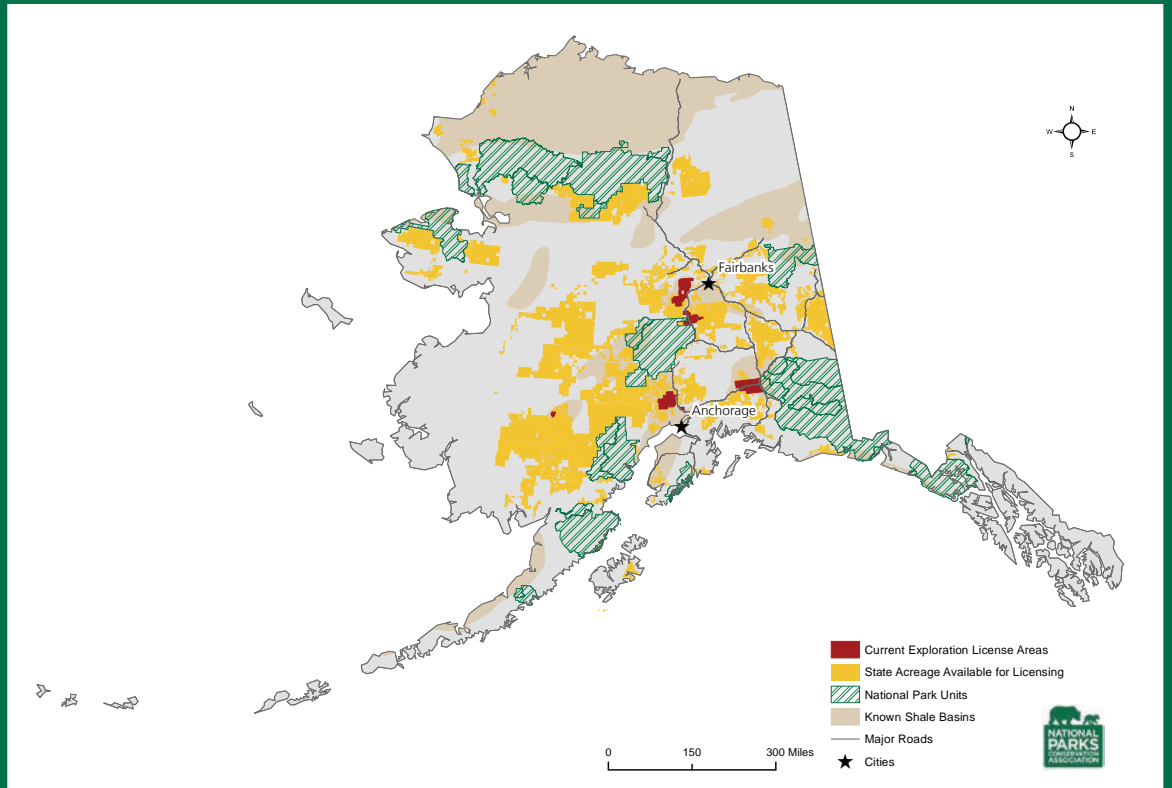
This *Guide* highlights opportunities where citizens can influence agency decisions that affect the impacts and conditions of natural gas development. It encourages Alaskans to take an active role in preserving our public lands and to better ensure a **well-informed, site-specific and historically-aware use of natural resources**. Individuals and groups can play a crucial role in balancing state and collective interests with best local land use practices. This *Guide* aims to answer the question, “How do I stay informed and involved?” at each stage of the process, from understanding the status of a project application to contacting specific departments for more information, to submitting appeals once agencies make decisions.

Alaska’s Department of Natural Resources’ exploration licensing program has introduced potential gas development to populated, developed regions of Alaska. This program increases the risk for conflicts among private property owners, gas exploration entities, communities, and municipal and regional land use agencies. Because this program may bring exploration and development and their impacts closer to towns and residents than ever before in state history, citizens need to understand this process in order to affect it.

This *Guide* helps citizens and conservation groups understand and navigate the complex process of natural gas licensing, exploration and development in Alaska. Oil and gas resources are often found together, however, so it is important to consider the risks associated with oil exploration and production even when gas potential motivates an operator to explore an area. In 1994, DNR established a licensing program to encourage exploration outside of the large, known gas and oil-rich basins such as the North Slope, the North Slope Foothills, the Beaufort Sea, Cook Inlet and the Alaska Peninsula regions. As of Fall 2012, the state had issued six exploration licenses totaling approximately 1.25 million acres under this program.

Existing state natural gas laws and regulations were crafted to regulate big developers in areas like the North Slope. It is within the existing, big-producer framework, however, that smaller, more experimental developers currently seek licenses. When it comes to this new arena of gas development, Alaska faces regulatory gaps.

Gas Licensing in Alaska



Created by: Kristen Dunphy 11/30/2012

Data Provided by: USGS, NPS, US Census Bureau

ABOVE: Gas licensing may bring gas development and its impacts closer to towns and residents than ever before in Alaska's history.

HOW TO USE THIS GUIDE

© Linda F. Baker/Upper Green River Alliance Society



This *Guide* compiles important steps in a “typical” gas licensing, exploration and development process on lands in Alaska. In roughly chronological order, it begins with the process for issuing a license, moves on to the Plan of Operations, and then describes the specific types of permits required for gas exploration and development activities.

Once the Department of Natural Resources (DNR) issues an exploration license, there is no one-size-fits-all formula - each project varies slightly in terms and conditions. Licensees prepare a Plan of Operations that outlines proposed activities. These activities often change when exploration reveals more about an area’s hydrocarbon potential, and licenses are converted to leases. Licensees may seek numerous permits from agencies simultaneously, or obtain them individually before starting a specific activity. Different agencies require separate permits and approvals that allow projects to move forward. Speak to anyone at DNR and you’ll learn that, “It all depends!”

If you think this seems complicated, you’re right. We think so, too. To simplify matters, take a look at the graphic on page 6. The numbers to the top or right of illustrations indicate the page that elaborates on that step. Acronyms (page 5) and the Glossary (page 32) also define terms used throughout the *Guide*. In the text there are two types of notations. The lettered notations refer to footnotes, located at the bottom of the page, that give additional resources. The numbered notations refer to endnotes, located on page 48, that list Alaska statutes pertinent to the topic at hand.

This basic *Guide* is your first tool to understanding and engaging in the licensing and permitting process. We selected only key permits and descriptions vital to landowners and Alaska residents. Appendix C lists several permits we did not discuss in detail. Check out Appendix B if you’re interested in information relevant to gas development on private land. For general recommendations on how to make the most of public comment opportunities, see, “You Have a Say: Speak Up and Take Effective Action!” on page 10.

ACRONYMS

ADEC (or DEC): Alaska Department of Environmental Conservation

ADF&G: Alaska Department of Fish and Game

ADNR (or DNR) : Alaska Department of Natural Resources

AOGCC : Alaska Oil and Gas Conservation Commission

APDES: Alaska Pollutant Discharge Elimination System

BIF: Best Interest Finding

BLM: Bureau of Land Management (federal agency)

BMP: Best Management Practice

DMLW: Division of Mining, Land and Water (Division within DNR)

DOG: Division of Oil and Gas (Division within DNR)

MLUP (or LUP): Miscellaneous Land Use Permit, or Land Use Permit

NPS: National Park Service

PBIF: Preliminary Best Interest Finding

ROW: Right of Way

SPAR: Spill Prevention and Response (Division within DEC)

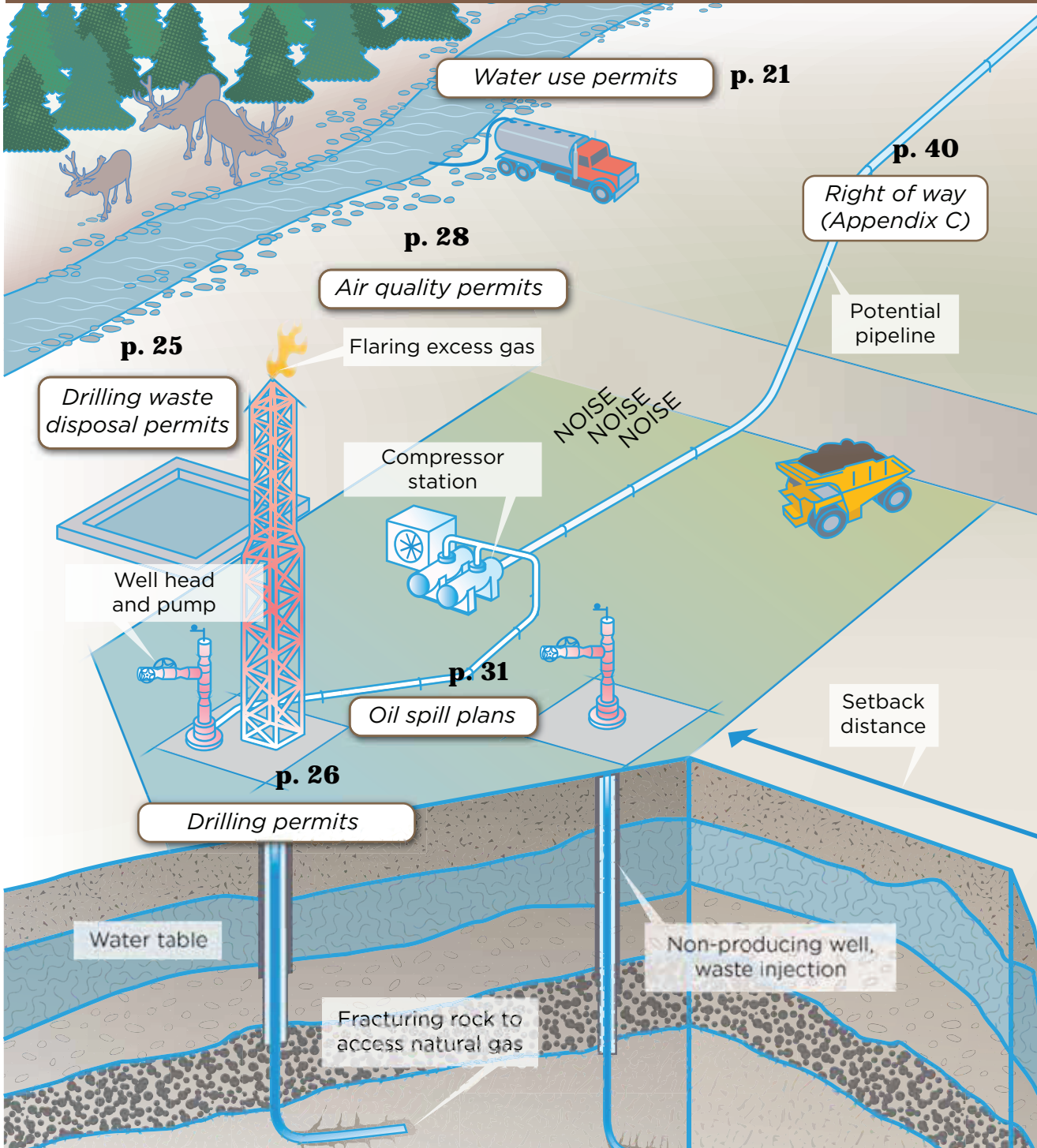
SUA: Surface Use Agreement

USACE: United States Army Corps of Engineers

USEPA or EPA: United States Environmental Protection Agency

USFWS: United States Fish and Wildlife Service

VISUAL BREAKDOWN OF GAS

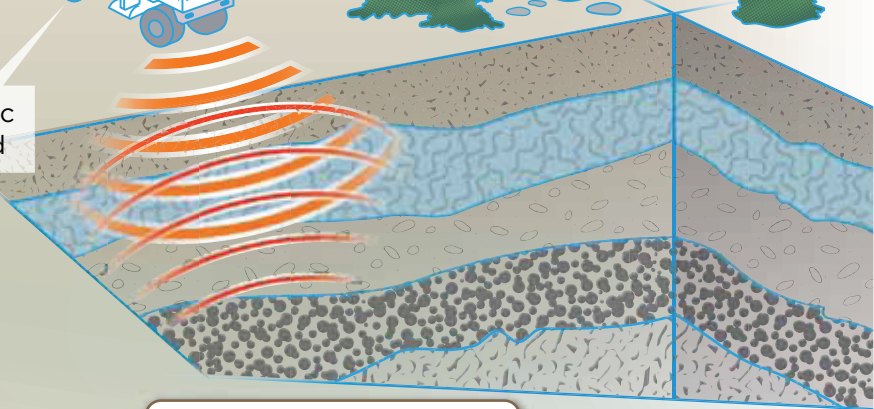
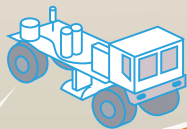


EXPLORATION AND RELATED PERMITS

Seismic surveying permits

p. 20

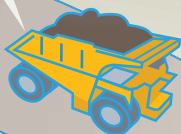
Company X's seismic testing on new land



Trucking waste offsite

Surface use agreements (Appendix B)

p. 37

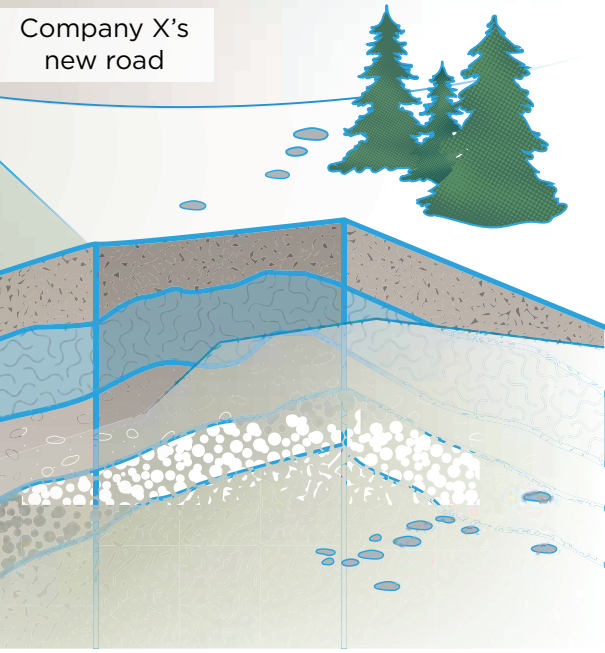


Company X's new road



Landowner

Water well



Community Impacts of Gas Exploration and Development

Gas exploration and development introduces new roads, pipelines, well pads, compressors, trucks, helicopters, people and pollution. Countless tragic stories about towns splintered and damaged by gas development in other states should teach Alaska to proceed with caution and knowledge of the involved risks.

Traffic and Noise. When heavy industry mixes with residential areas or village life, citizens could experience unwelcome levels of noise and traffic from increased road traffic, drilling rigs, and compressor stations. For perspective, gas drilling sites in Texas have required as many as 592 one-way truck trips per well.

Habitat disturbance and fragmentation.

Roads, power lines, pads and rigs disrupt wildlife and migration patterns, while clear-cut forest, filled wetlands and altered vegetation may never fully recover. Noise and light pollution detrimentally affect nesting, feeding and migratory behavior for birds, and drill-site runoff and other waste threaten sensitive and productive fish habitats.

Water withdrawals. Millions of gallons of water are used for fracking, drilling wells, remote camp operations, and ice roads (if suitable for the regional climate). Such withdrawals can harm overwintering fish habitat, spawning and feeding grounds, and wetland function.



“It’s like living in the middle of the wilderness and having a big industrial zone move in next door...they’re changing the whole feeling of this place. This has always been old Alaska, where things are free and open and clear...To have them there next door, to have that noise during Sunday dinners, we ask ourselves, ‘Why are we here if we can’t have the peace and quiet and beauty of this place?’ ”

– Kenai Peninsula resident whose family cabin is 1/2 mile from a gas well pad, October 2012.

© Peter Aengst, Wyoming, The Wilderness Society

Water pollution. Chemical contamination of local aquifers has been attributed to hydraulic fracturing operations in the Lower 48. Fracking fluids used to increase gas-flow efficiency pose serious risks to human health.^a The acids, biocides and corrosion inhibitors used in drilling may leach into the water you drink. Nevertheless, the 2005 Energy Policy Act prevented the EPA from regulating hydraulic fracturing under the Safe Drinking Water Act.



Some communities, like Pinedale, Wyoming... experience worse wintertime smog than Los Angeles due to natural gas production.

Air pollution. The weakly regulated fracking boom for natural gas has degraded air quality in some areas in the Lower 48 states, releasing nitrogen oxide and volatile compounds during drilling. Some communities, like Pinedale, Wyoming, and Vernal, Utah, experience worse wintertime smog than Los Angeles due to natural gas production.^b

Companies drilling on your property. Alaskan landowners are often surprised to learn that the state owns the rights to what is below the surface, or the mineral or sub-surface estate rights. This condition is referred to as the split-estate. Mineral rights take precedence over surface rights, a condition that drives much of the permitting process. Gas licensees may enter surface estates for exploration purposes once they've reached an agreement with the surface owner to settle for damages that may occur. If surface owners and a licensee cannot reach an agreement, the licensee posts a bond amount that DNR determines to cover these damages.



Lack of oversight. The state fails to provide adequate funding and personnel to ensure comprehensive compliance through field visits and monitoring. Alaska Oil and Gas Conservation Commission (AOGCC), responsible for well integrity, employs only 6 inspectors who ensure on-site compliance with regulations for the entire state of Alaska. This paucity reflects a nationwide trend. Sufficient oversight is impossible with so few inspectors.

-
- a. In several cases, contamination has been attributed to surface operations associated with hydraulic fracturing.
- b. Mead Gruver, "Wyoming Air Pollution Worse than Los Angeles Due to Gas Drilling," Associated Press, March 8, 2011.

YOU HAVE A SAY: SPEAK UP AND TAKE EFFECTIVE ACTION!

Get involved as early as possible to shape exploration and development outcomes. Early involvement ensures the opportunity to participate in public review and comment periods for decisions that control how development unfolds. Learn as much as you can early in the exploration license phase, never assuming that a project is inevitable. Organize and collaborate with other local stakeholders. Focus your efforts with others to make your message go farther in strengthening mitigation measures and stipulations contained in permit approvals. Prioritize and identify the most important issues and suggested changes in your comments at each project stage.



Get involved as early as possible to shape exploration and development outcomes.



Remember these key points:

1. Make the most of public participation opportunities.

- Submit the same message as others in a different way. Decision makers pay attention to repeated concerns.
- Follow up with face-to-face interaction with agency staff. Appear at a hearing, and call if you can't be there in person.

2. Simplify things for the decision maker.

- If you criticize provisions, propose alternative actions whenever possible.
- Introduce practical additions or modifications that agencies can incorporate into permits and plans without difficulty.
- Make your comments specific, rather than a general statement for or against development. Do not let this concept prevent you from commenting, however, if you are simply objecting!

3. Know the requirements.

- Gear your comments toward criteria that DNR uses to evaluate permit applications, as described in statutes and permit forms online.
- Strengthen comments by tying them closely to statutory and regulatory requirements.
- Address the application's and resulting permit's capacities to meet statutory and regulatory requirements. Suggest new or changed permit conditions to better meet those requirements.

4. Insist on Best Management Practices (BMPs).

- Apply pressure to the land manager (DNR in many cases) to adopt BMPs to guide industry's actions.
- For issue-specific BMPs, see the Intermountain Oil and Gas BMP Project or check out *The Gold Book* from the Bureau of Land Management (BLM). Stronger standards may be necessary in your area to protect unique values not addressed in the lower 48.

5. Consider pursuing borough-level ordinances. That's public power!

- Look to local government, which has long-term vision for the health of the community. With enough public concern about a project, borough, village, or city-level bodies may be willing to champion the interests of local residents.
- See Appendix E for more information about Alaska's Borough-level codes. These regulations can guide land use decisions related to development.

6. Make your voice heard.

- Report misconduct. If agency staff or industry representatives have mistreated you, your legislators and the media should know.
- Consider forming a local review committee to evaluate the exploration license and early proposals and mitigation standards, as well as mediate disputes over wells, pipelines, truck traffic, and pollution.

7. Speak truthfully.

- Assert facts that you can prove. Whether you're writing your legislator, a state agency representative or speaking on an issue of public importance, your comments will carry more weight if they are factual. False statements discredit your testimony.

"For those of us who fear our health is being affected by this industry, disclosure of the chemicals and constituents used during development is extremely important... It is a human right to know what toxic materials are being stored and used where we live and work."

– Deb Thomas,
Organizer, Powder
River Basin Council
(PRBC),
Clark, Wyoming





Document exploration and development. Stay in touch with agency regulators.



8. Watch and Report.

- Document exploration and development. Take pictures of the land and any development nearby. Before, after, and in-between.
- Be the squeaky wheel. Stay in touch with agency regulators, and request monitoring visits from them.
- Monitor independently. If you live near well pads, remind workers that you live near the site and their activities may impact you. If you encounter conflicts, contact the company after direct contact with workers.
- Report sloppy procedures to the company with emails, letters and photos for documentation. Notify responsible agencies.
- Test your water. If you can afford it, hire a company to conduct water quality testing before drilling begins. In Alaska, contact the Analytica Group at <http://www.analyticagroup.com/> or a national company, such as Nat Labs at <http://www.ntllabs.com/> for inquiries about well-water testing.

Make sure that water is tested by an independent, Environmental Protection Agency (EPA) approved lab. Find more testing info from EPA online. Test for:

- Standard water quality and geochemistry
- Stable isotopes
- Dissolved gases
- Hydrocarbon concentration and composition
- Chemicals used in hydraulic fracturing or drilling
- Radioactive materials

9. Help Change Inadequate Laws.

- Push for legislative reforms if you are unsatisfied with state or federal oversight and regulation of gas development.
- Advocate laws that require zero wastewater discharges to surface waters. Alaska has sufficient land injection opportunities for drilling wastes.
- Measuring impacts on health and the environment remains complicated, and many landowners feel inadequately protected from impacts, especially when they lack hard data, environmental baselines, and information about project plans, waste characteristics and chemicals. Check out other states' chemical disclosure regulations for comparison with Alaska: <http://www.nrdc.org/energy/fracking-disclosure.asp>

THE BEGINNING: BEST INTEREST FINDINGS

Companies interested in natural gas exploration may seek a license from the Alaska Division of Oil and Gas by either a) submitting a proposal each year in April, or b) responding to the DNR Commissioner's invitation for proposals in a designated area. These proposals describe the proposed area of interest, a minimum work commitment in dollars, the proposed length of the license, and verification that prospective licensees meet minimum qualifications. When a company submits a proposal to explore for gas, DNR is required to accept or reject it within 30 days.³

Agencies: DNR, Division of Oil and Gas (DOG).

Best Interest Finding of the Director (BIF)

After considering public comments on an exploration license proposal, the Division of Oil and Gas prepares a written preliminary finding as to whether issuing a license is in the state's best interest. If the finding concludes the state's best interest would be served, the finding must describe the limitations, stipulations, conditions or changes from the proposal that are required to conform the license to the state's best interest.⁴

Public Involvement Opportunities:

- Agencies must notify the public about BIFs via newspapers in statewide circulation, public service announcements in the affected area, and at least one other method that will reach affected parties.⁵
- The public has (at a minimum) 60 days to review the preliminary finding and submit written comment,⁶ during which DNR may hold open houses, hearings, or meetings in affected communities.⁷

Comment Topics to Consider:

Direct your comments toward the following issues that the state agency must consider and discuss in the BIF for an exploration license proposal:⁸

- **Property descriptions, locations:** What is special or unique about your land's environment that a company may not know? Is there good reason to modify the extent of an area of interest? If so, consider sensitive resources or conflicting human activities and suggest a change.
- **Petroleum potential** of license area: How likely is a significant discovery? If likely, how does this relate to potential social and environmental impacts?
- **Fish and wildlife species and nearby habitats:** How could the state best protect wildlife (address specific species)? What seasonal operation restrictions should DNR consider? If you hunt, do you have local knowledge that an agency or company may not possess? For example, are there calving, wintering, or migrating caribou and moose habitats? Key wetlands or streams that could be affected by erosion, sedimentation, diversion, or spills?
- **Current and projected uses in the area, including uses and value of fish and wildlife:** Is there an exceptionally high value for particular uses such as recreation or subsistence in the area? How would gas exploration change these patterns of use?
- **Governmental powers** to regulate oil and gas exploration, development, production and transportation: What is the state's capacity to successfully permit and oversee development?

THINGS TO KNOW

The Preliminary BIF is important because it must address a broad range of issues and establishes “Mitigation Measures,” which guide those included in the Plan of Operations once a license is issued (see page 18). These measures guide the licensee’s actions, including those during the development phase.

Commenting on the issues covered in the BIF Mitigation Measures and the licensee advisories offers an important opportunity to weigh in on impacts to residential, commercial and recreational areas. Because statutes do not dictate specific actions designed to protect resources in a specific area, mitigation measures serve to address those gaps.

Agency contact: Division of Oil and Gas, Permitting Section, 907.269.8800.

- **Reasonably foreseeable cumulative effects of oil and gas exploration, development, production and transportation phases and effects on subsistence uses, fish and wildlife habitat values, and historic and cultural resources:** Does the best interest finding address the full range of foreseeable effects of different development phases? Would a Health Impact Analysis be appropriate?^a
- **Stipulations and mitigation measures that prevent and mitigate releases of oil and hazardous substances:** Are measures for fuel storage and waste disposal adequate to protect drinking water and sensitive areas? What provisions exist to prevent and respond to fuel and waste spills?
- **Methods to transport oil or gas from the license area:** What are the risks of different options? Will pipelines be built to transport oil or gas? If so, will they cross wetlands or other habitats?
- **Reasonably foreseeable effects on municipalities and communities within or adjacent to license area:** What sorts of impacts will activity have on public services and local infrastructure if there is a sudden population increase caused by resource development? Will local residents be prevented from accessing areas they currently use?
- Often DNR will modify **Mitigation Measures** to be consistent with other projects around the state. If you know of an important change to recommend, focus your comment accordingly.
- **Licensee advisories** alert licensees to possible additional restrictions that DNR may impose at a later permitting stage. DOG does not enforce licensee advisories. If you think a licensee advisory needs to be enforceable, include this in your comments as a recommended stipulation.

a. For more on Alaska’s Health Impact Assessment Program, involved in development projects including Wishbone Hill coal mine and Point Thomson oil and gas field, see: <http://www.epi.alaska.gov/hia/>

FINAL BEST INTEREST FINDING

The DOG issues a written final finding that determines if an exploration license is in the state's best interest after processing comments received on the preliminary finding. The final written findings must summarize agency and public comments received and the department's response to those comments. This document includes the enforceable Mitigation Measures. Familiarize yourself with these measures so you can hold the exploration company and DNR accountable during exploration and beyond.

APPEALS

While BIFs are the responsibility of the director of the Division of Oil and Gas, the DNR Commissioner often concurs with the Director's decision. Consequently, aggrieved parties request the Commissioner to reconsider the final written finding. This request must be filed within 20 days after the issuance of the DNR final finding.

To be eligible to request reconsideration, you must have meaningfully participated in the process by submitting written comments during the prescribed comment period for the preliminary finding or by testifying at a public hearing (if one was held); and you must be affected by the final finding.¹⁰

A request for reconsideration must include the basis upon which the decision is challenged, any material facts that you dispute, and the remedy you seek.¹¹

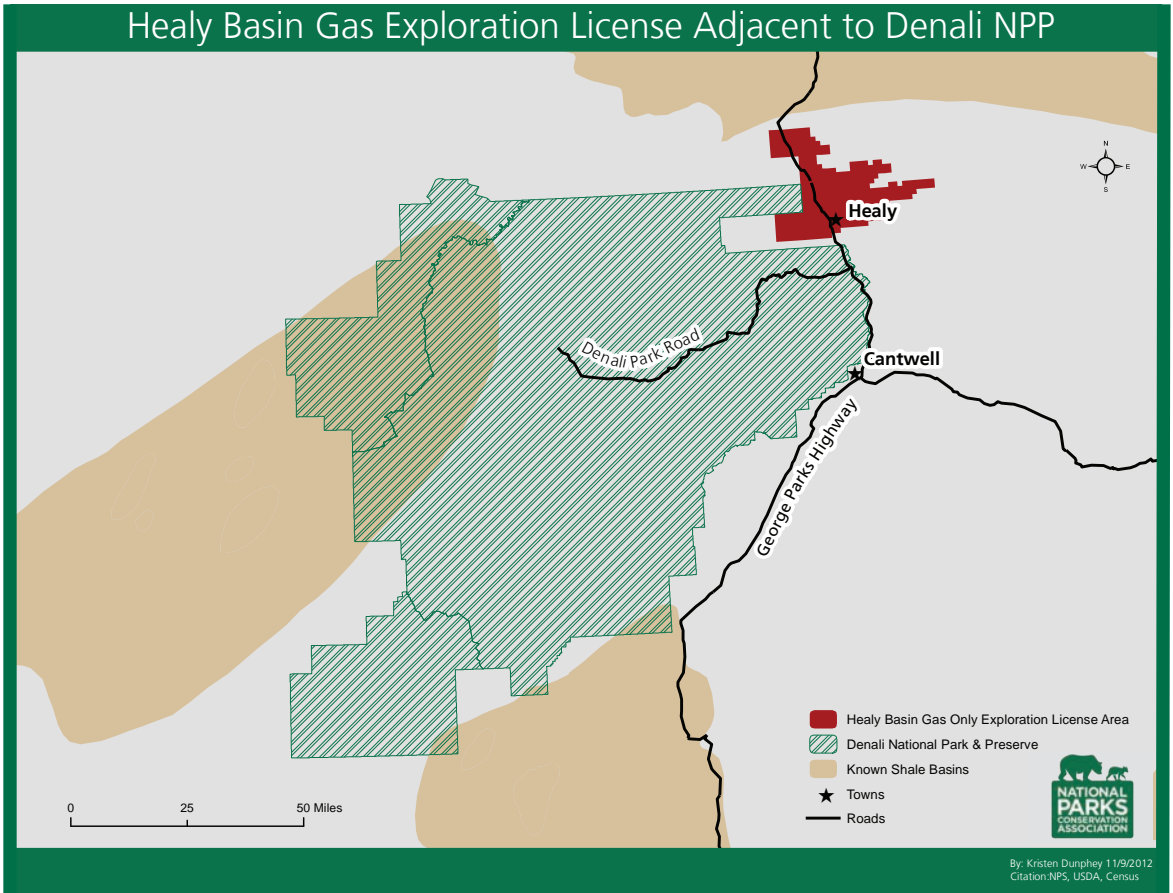
The DNR Commissioner will grant or deny a reconsideration request within 30 days after issuance of the final written finding. If the Commissioner fails to act on the request

for reconsideration within this period, the request is considered denied. If a request for reconsideration is granted, the Commissioner may order the DOG Director to issue a new final written finding as necessary.¹²

If your request for reconsideration is denied and you were eligible to make the request, you may appeal the final finding to Superior Court. If your request for reconsideration is granted, but you are still aggrieved once a final decision on reconsideration is issued, you may appeal that decision to Superior Court. The points on appeal are limited to those presented in the request for reconsideration.¹³

Appeals to dnr.appeals@alaska.gov

EXPLORATION LICENSE



ABOVE: License granted for exploration along national park boundary and nearby residential areas near Healy, Alaska.

The license contains the license term, work commitments, bond requirements and other provisions, and grants the licensee exclusive rights to subsurface mineral interests without authorizing any activities. Exploration activities require proper authorization from different permitting agencies and are subject to the mitigation measures identified in the Final Best Interest Finding. As soon as DNR's Commissioner and the DOG Director sign the license, the clock starts ticking on the work commitment. The Appendix of a Final Best Interest Finding includes a copy of the exploration license to be issued to the applicant.

Agencies Involved: DNR.

THINGS TO KNOW

- Exploration licenses undergo annual review and can be revoked if licensees have failed to provide or maintain their bonds.¹⁴
- Licensees lose their license if they do not perform 25% of their work commitment by the fourth anniversary of its issuance. If the licensee has only completed 25%-50% of the work commitment at this point, DNR reduces the size of the license area.¹⁵
- If a licensee commits to performing baseline monitoring before exploration, citizens should know what kind, and request that the company complete it as soon as possible. Baseline monitoring may include well testing, soundscape analysis, fish and wildlife habitat or cultural resource analyses.
- If the Commissioner determines that the licensee met its work commitment, the license may convert into a lease. Lessees pay annual rent fees by acre.
- If resources are developed and produced, Alaska earns a royalty share. This process does not dictate royalties to communities in which gas exploration occurs.

PLAN OF OPERATIONS

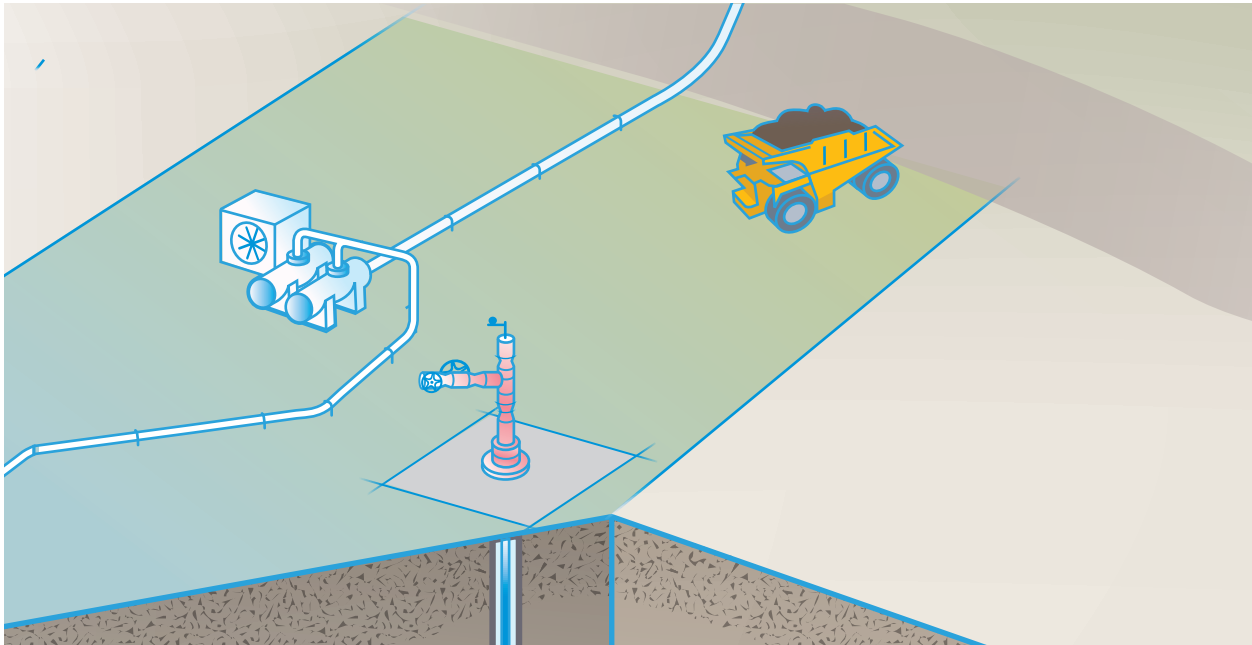
Licensees develop a Plan of Operations that describes any anticipated surface activities. These plans address noise, erosion, water quality, access, visual impacts and monitoring. Companies must prepare this Plan prior to engaging in any exploration or development activities within the licensed area, identifying specific measures, design criteria, construction methods, and standards that will be employed to meet the provisions of the license. The Plan describes dates of activity, materials to be used, locations and designs of wells, solid waste sites, water supplies, roads, buildings, utilities, airstrips, gravel mines, water withdrawals and other facilities.

The Plan of Operations addresses all use requirements associated with proposed operations, rehabilitation after operations are completed and descriptions of how site-specific operations will minimize impacts on wildlife, public use areas, and archaeological sites.

Agencies Involved: ADF&G, AOGCC, DEC, DNR, DMLW, USACE.

Public Involvement Opportunities:

- Opportunities to comment depend on the scope of the permitted activities identified in the Plan of Operations. Placement of pads, the desire to build roads that cross streams, or wetlands proximity—among other environmental conditions—determine which permits companies will seek.
- You may request that DNR send you public notices of exploration permit activities and review current public notices online.



THINGS TO KNOW

- The Plan of Operations isn't a permit itself; rather, it describes anticipated future activities that require companies to seek specific permits later on. When reviewing a Plan of Operations, ask yourself:
 - a. Do the Plan's described activities meet the requirements of the mitigation measures and advisories listed in the Final Best Interest Finding?
 - b. Do the proposed activities meet the requirements of local and regional land use plans? Ordinances?
 - c. Does the Plan carry forward any baseline monitoring or testing from the license? If not, point out the breach in stipulations.
- Before approving a Plan of Operations, DNR may require stipulations in addition to mitigation measures in the Final Best Interest Finding to address site-specific concerns. If DNR discovers that defaults have occurred (i.e. the applicant has not done what it said it would), it notifies operators and they typically have 60 days to correct the mistake. It is unlikely that the state would revoke a license or lease once it is granted, making this Plan a difficult tool to use as a deterrent for misconduct, although it allows for public pressure on the operator to live up to its promises.

Agency Contact: Division of Oil and Gas, Permitting and Compliance Unit: 907.269.8800.