

April 27, 2015

The Honorable Bill Walker
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: SB 70: HCS CSSB 70(RES): Natural gas
pipeline right-of-way
Our file: JU2015200282

Dear Governor Walker:

At the request of your legislative director, we have reviewed HCS CSSB 70(RES), relating to exceptions from designation as a special purpose site, under art. VIII, sec. 7 of the Constitution of the State of Alaska, for portions of Denali State Park, Captain Cook State Recreation Area, Nancy Lake State Recreation Area, and Willow Creek State Recreation Area to allow leasing a right-of-way for a natural gas pipeline.

The bill would open a portion of four state parks and recreation areas to leasing under AS 38.35, the Alaska Right-of-Way Leasing Act, to make possible a natural gas pipeline from the North Slope. For practical reasons, any North Slope gas pipeline route to Southcentral Alaska would pass through Denali State Park. Denali State Park, like the other state recreation areas included in the bill, has been reserved by the legislature and removed from the public domain under art. VIII, sec. 7 of the Alaska Constitution. Article VIII, sec. 8 of the Alaska Constitution only permits leasing of land in the public domain. As a result, it would be necessary to modify the statutes creating these parks and recreation areas so right-of-way leasing would be permitted. The bill would allow the right-of-way leasing and would impose three kinds of limits on the opened land.

First, the bill would have geographical limits permitting land leasing only in a defined corridor through the Denali State Park. The Alaska Gasline Development Corporation and the Alaska liquefied natural gas (AKLNG) project partners were consulted to ensure that the corridor opened to leasing was sufficiently broad to accommodate the study areas for both the Alaska Stand Alone Pipeline (ASAP) project and the AKLNG export line.

Second, the bill would limit the scope of the permissible use. The leased land would be not open for general disposal or subject to management as part of the public domain; it may only be leased under AS 38.35 for a natural gas pipeline from the North Slope. Under AS 38.35.200, a pipeline means:

“all the facilities of a total system of pipe, whether owned or operated under a contract, agreement, or lease, used by a carrier for transportation of crude oil, natural gas, or products for delivery, for storage, or for further transportation, and includes all pipe, pump or compressor stations, station equipment, tanks, valves, access roads, bridges, airfields, terminals and terminal facilities, including docks and tanker loading facilities, operations control center for both the upstream part of the pipeline and the terminal, tanker ballast treatment facilities, and fire protection system, communication system, and all other facilities used or necessary for an integral line of pipe, taken as a whole, to effectuate transportation, including an extension or enlargement of the line.”

As a result, limiting use of the land to leasing for a natural gas pipeline from the North Slope would suffice to allow all incidental facilities necessary to the operation of the pipeline and the successful development of Alaska’s natural gas resources on the North Slope. The authorization provided by the bill would not be so broad that the integrity of the parks and recreation areas would be threatened.

Third, there are limits on the time the land would be available for leasing. A lease must be issued, if at all, before January 1, 2025. Once issued, construction must begin on the pipeline within 10 years.

The bill would include further provisions designed to protect the park and recreation value of the land opened for leasing. The bill would require any right-of-way lease issued through the parks to reserve to the state the interests necessary to provide for public access across the leased corridor, it would require (1) the lease to preserve, to the maximum extent practicable, the recreational, scenic, cultural, historical, and habitat values consistent with the location of the lease within the parks; (2) the land to be managed as park land until it is leased; and (3) that the land be returned to the park once it is no longer needed for pipeline purposes.

While both of the currently contemplated pipeline projects from the North Slope would pass through Denali State Park, the ASAP project, but not the AKLNG project may pass through Nancy Lake State Recreation Area and Willow Creek Recreation Area. To ensure all contingencies are provided for, a corridor of land would be opened by the bill through each of these state recreation areas under restrictions identical to those

imposed on land leasing in the Denali State Park corridor. Similarly, the AKLNG project, as currently contemplated, would pass through Captain Cook State Recreation Area while the ASAP project may not. Portions of Captain Cook State Recreation Area, therefore, would be opened to accommodate a line again under restrictions identical to those established for Denali State Park.

As legal descriptions were refined for the corridors through the parks, it became apparent that some of the land to be included in the corridors had been officially surveyed. To simplify land descriptions and ensure their accuracy, and to make it easier for the public to read and understand the land descriptions, those descriptions were stated using the Meridian, Township, Range, Section system of the U.S. Public Land Survey System. There was, however, some concern that, due to land description conventions sometimes used by surveyors and landmen, the descriptions could be interpreted to exclude surveyed land. As a result, language was included in the bill to clarify that the legislature's intent was that all land within the described section or quarter section boundaries is to be opened to leasing by this bill.

This bill presents no legal problems or other concerns.

Sincerely,

Craig W. Richards
Attorney General

CWR/JCH/pav