



## PERMITTING COUNCIL

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### Executive Director Determination on the Record regarding Extending a FAST-41 Final Completion Date by More Than 30 Days

January 13, 2022

#### Alaska LNG Project; Supplemental Environmental Impact Statement (SEIS)

##### I. Summary

The Alaska LNG Project (Project), sponsored by Alaska Gasline Development Corporation (Project Sponsor), is a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.* The Department of Energy (DOE) has principal responsibility for a supplemental environmental review for the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, which makes DOE the NEPA lead agency and also the lead agency for FAST-41.

DOE has submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council (Executive Director) to modify the Project’s permitting timetable on the Federal Permitting Dashboard. DOE requests an extension of the final completion date for its Supplemental Environmental Impact Statement (SEIS) action, reflected on the Permitting Dashboard as “Supplemental EIS process concluded.” DOE seeks to extend the SEIS final completion date from February 13, 2023, to March 30, 2023, to allow adequate time to complete additional technical review in response to public comments received on the draft SEIS. For the following reasons, the extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

##### II. Legal Standard

A lead agency may modify a permitting timetable only after: (1) consulting with the Executive Director regarding the potential modification; (2) reaching agreement on a different completion date with the affected cooperating agencies, after consulting with the participating agencies, the Executive Director, and the project sponsor; and (3) providing a written justification for the modification. 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(I-III).

If the proposed modification entails extending a final completion date by more than 30 days beyond the original final completion date, the lead agency additionally must submit a request to the Executive Director. The Executive Director then must consult with the project sponsor and make a determination on the record, based on consideration of relevant factors, whether to grant the modification. 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The “relevant factors”

that the Executive Director considers include, but are not limited to:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

42 U.S.C. § 4370m-2(c)(2)(B). Executive Director determinations to extend permitting timetables by more than 30 days beyond an original final completion date are not subject to judicial review. 42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).

### III. Background

On June 24, 2022, DOE issued the Notice of Availability for the Draft SEIS for the Project, opening a 45-day public comment period, which ended on August 15, 2022.<sup>1</sup> DOE received more than 200 comments on the draft SEIS. Due to both the complexity of the comments and the range of issues addressed by the commenters, DOE found it necessary to consider additional technical analysis before issuing the final SEIS.

On October 28, 2022, DOE issued a Second Notice of Amended Schedule for the SEIS, which contained changes to DOE's then-existing schedule.<sup>2</sup> Consistent with that Notice, DOE is requesting an extension of the "Supplemental EIS process concluded" date to March 30, 2023. This final completion date includes (i) issuance of DOE's decision to modify, set aside, or affirm the Alaska LNG Order under the Natural Gas Act, and (ii) a Record of Decision under NEPA.

DOE's regulations prohibit off-the-record communications in any contested proceeding involving an application for the export of natural gas under the Natural Gas Act (10 CFR §§ 590.102, 590.108). Because these regulations apply to this proceeding, DOE was not able to

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<sup>1</sup> This is DOE's second extension request for the SEIS for this Project, and additional background information is found in the Executive Director's Determination on the Record on DOE's first request, which is available here: [https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-04/2022-04-01%20Alaska%20LNG%20ED%20Memorandum%20on%20the%20Record\\_FINAL%20signed.pdf](https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-04/2022-04-01%20Alaska%20LNG%20ED%20Memorandum%20on%20the%20Record_FINAL%20signed.pdf).

<sup>2</sup> See *Alaska LNG Project LLC*, Second Notice of Amended Schedule for Supplemental Environmental Impact Statement, Docket 14-96-LNG (Oct. 28, 2022).

consult with the Project Sponsor about the schedule change in advance of issuing the Second Notice of Amended Schedule in the docket for the Alaska LNG proceeding.<sup>3</sup>

The Executive Director consulted with the Project Sponsor as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). While the Project Sponsor did not state that it objected to the requested date change, the Project Sponsor did express that they believe the Final SEIS, which was placed in the Alaska LNG docket on January 6, 2023, fully addressed all comments on the Draft SEIS. The Project Sponsor additionally expressed their feeling that the Project is highly important to Alaskans and U.S. allies, and given that and the status of investor discussions, the Project Sponsor urged DOE to reissue or reaffirm authorization for the Project as soon as possible.

#### IV. Discussion

The Executive Director appreciates that DOE is taking the time the agency feels is necessary to appropriately consider and respond to comments received on the Project. Given the facts as described above, the Executive Director concludes that the requested extension is warranted.

#### V. Determination

For the reasons identified above, DOE's extension request is **GRANTED**, and the permitting timetable is revised as requested.



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Christine Harada  
Executive Director  
Federal Permitting Improvement Steering Council

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<sup>3</sup> In this instance, the FAST-41 requirement to consult with the project sponsor prior to modifying a permitting timetable completion date is superseded by DOE's regulations that prohibit off-the-record communication with the interested party project sponsor. *See* 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV) (FAST-41 consultation requirement); 42 U.S.C. § 4370m-6(d)(1) (FAST-41 savings clause); 42 U.S.C. § 4370m-6(e) (FAST-41 limitations provision). For additional discussion of how the FAST-41 savings clause and limitations provision apply here, see the Executive Director's Determination on the Record on DOE's first extension request for this Project, which is available here: [https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-04/2022-04-01%20Alaska%20LNG%20ED%20Memorandum%20on%20the%20Record\\_FINAL%20signed.pdf](https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-04/2022-04-01%20Alaska%20LNG%20ED%20Memorandum%20on%20the%20Record_FINAL%20signed.pdf).