

STATE OF ALASKA
ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

FINAL FINDING AND DECISION
CONVEYANCE OF STATE LAND UNDER AS 29.65, AS 38.05.035(e)

NORTH SLOPE BOROUGH MUNICIPAL LAND ENTITLEMENT SELECTION ADL 414827
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I. SUPPLEMENTAL STATEMENT

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated February 08, 2024. The attached map (Attachment A) depicts the selection that is the focus of this decision. The PD (Attachment B) has received the required public review.

II. RECOMMENDED ACTION

The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends that Alternative 3, as described in the PD, is the preferred action which best fits the intent and requirements of the Municipal Entitlement Act. This decision covers approximately 320 acres, approving 207 acres, more or less, for conveyance and transfer of management authority, and rejecting 113 acres, more or less.

III. AUTHORITY

The authority for conveyance of state land is pursuant to AS 29.65 General Grant Land, and the authority for the Final Finding and Decision is pursuant to AS 38.05.035(e) Power and Duties of the Director.

IV. PUBLIC PARTICIPATION AND INPUT

Pursuant to AS 38.05.945 Notice, public notice inviting comment on the PD for the proposed conveyance of municipal entitlement selections was published and distributed in the following manner:

- Posted on the State of Alaska Online Public Notice website from February 8, 2024, to March 15, 2024.
- Posted on the Public Notices page of the DNR Alaska State Land Sales website from February 8, 2024, to March 15, 2024.
- Posted on the DNR Municipal Entitlement website from February 8, 2024, to March 15, 2024.
- Mailed with a request to post for 30 days to the Utqiagvik and Prudhoe Bay postmasters and Utqiagvik Public Library per AS 38.05.945(c)(4).
- Mailed to the Arctic Slope Regional Corporation per AS 38.05.945(c)(2)-(3).
- Mailed and emailed to the North Slope Borough per AS 38.05.945(c)(1).
- Emailed notice to all other State agencies who received the agency review notice.
- Emailed notice to permittees and lessees that hold contracts on the proposed approved parcel.

The public notice stated that written comments must be received by 4:30 PM, Friday, March 15, 2024, in order to ensure consideration and eligibility to appeal. For more information, refer to the attached PD.

V. SUMMARY OF COMMENTS

DNR DMLW LCS received comments from the Department of Transportation and Public Facilities, DNR DMLW Water Resources Section, and DNR DMLW Resource Assessment and Development Section. All comments received during the public comment period are transcribed and addressed below.

Comments from Department of Transportation and Public Facilities (DOT&PF):

“Thank you for the opportunity to review the proposal. The Alaska Department of Transportation & Public Facilities has no comment at this time. Though unlikely, if you received comment from any other DOT&PF personnel on this matter, I defer to them.”

DNR DMLW LCS Response to DOT&PF: LCS appreciates your review. No additional comments were received from other DOT&PF personnel.

Comments from DNR DMLW Resource Assessment and Development Section (RADS):

“Thank you for the opportunity to review and comment on the proposed municipal entitlement land conveyance to the North Slope Borough. The Resource Assessment & Development Section (RADS) has reviewed the available data, satellite imagery, and the applicable regional land use plan – North Slope Area Plan (NSAP) and provides the following comments.

Background & Discussion:

This proposed state land conveyance, if approved, would partially fulfill North Slope Borough’s municipal land entitlement as provided under AS 29.65.010(a)(12). The parcel under consideration for this conveyance is located within:

TOWNSHIP 9 NORTH, RANGE 23 EAST, UMIAT MERIDIAN Sec 13 & 14

Unit A-11 of the NSAP (East Planning Unit) is approximately 320 acres. The Land Conveyance Section (LCS) is proposing to convey approximately 207 acres of this unit and reject approximately 113 acres (see ADL 414287 Preliminary Decision Attachment A). Unit A-11 is designated Resource Management which converts to Resource Management Land. The management intent for Unit A-11 includes the following language:

“These lands have been identified for potential future selection by the NSB and may be appropriate for conveyance based on a future decision.”

Recommendation:

Taking the above area plan recommendations into account, the proposed municipal conveyance is a viable application that should move forward. The NSB will be responsible for and bear the cost of surveying the parcel described in ADL 414287 Preliminary Decision Attachment A.

Thank you for the opportunity to review.”

DNR DMLW LCS Response to RADS: LCS appreciates your review.

Comments from DNR DMLW Water Resources Section (WRS):

“On page 9 of the Preliminary Decision ADL 414827, in your response to the comments from Water Resources Section, you stated that “Management of the certificate of water rights would be transferred to NSB once the FFD becomes effective.”

There are some issues regarding this transfer that need to be clarified in order to avoid future misunderstandings. Because this is not something that is intuitive to anyone working consistently on land permitting, I am going to go a little into the weeds in order that others can also become aware of these issues.

LAS 29976 was issued to support the oil and gas development on Point Thomson. The respective O&G Operators of Point Thomson have state oil and gas leases for said development, which is the possessory interest needed to acquire the water right. While NSB may acquire the surface estate, unless the subsurface estate is conveyed to NSB, the water right remains under Hilcorp until their Oil and Gas lease is closed. In that case, the water right will actually return to the State and the owner of the surface estate does not acquire any water rights thru transfer of ownership of the surface land.

It is set out in statute that water rights run with the land and transfer automatically as long as the water is used for the same purpose it was issued on. However, that is primarily about private land. Water Rights on State land are a little different. I have attached some key citations below for your information. Please note the citation regarding water rights on state-leased lands.

Sec. 46.15.160. Transfer and change of appropriations. (a) The right to use water under an appropriation or permit shall be appurtenant to the land or place where it has been or is to be beneficially used, provided, that water supplied by one person to another person's property is not appurtenant to the property unless the parties so intend. An appurtenant water right shall pass with a conveyance of the land, or transfer, or by operation of law unless specifically exempted from the conveyance.

11 AAC 93.040. Application for a water right

(a) A person may not lawfully appropriate a significant amount of water of the state without first obtaining a permit to appropriate, a certificate of appropriation, or a temporary water use authorization under this chapter.

(c) An application must include the following items:

- (1) the applicable application fee prescribed in 11 AAC 05.010;
- (2) evidence that the applicant has a present possessory interest in the property where the water is to be beneficially used, as shown by a copy of the deed, patent, license, leasehold agreement, mining location certificate, or other instrument, or a copy of a completed application that has been filed with the appropriate agency to acquire permission for the use of federal, state, or municipal property;

11 AAC 93.060. Water rights on state-leased land

When a lessee of state land applies for a water right, water required for the use and enjoyment of the leasehold may be appropriated for the lessee's use. The lessee shall comply with the provisions of 11 AAC 93.040 - 11 AAC 93.140 in securing the appropriation. If the commissioner approves the appropriation, the appropriation will be granted to the lessee and will be for the benefit of the leased land. Upon an assignment of the lease, the water right remains for the benefit of the leased land. Upon termination of the lease or upon the expiration of the permit issued under 11 AAC 93.120, the water right is considered intentionally abandoned, unless the lessee exercises a preference right to purchase the land, or unless the commissioner grants an extension of the water right beyond the lease term for good cause shown or assigns the water right to a state agency. The water right thus granted must be consistent with the provisions of the lease itself, this chapter, and AS 46.15.

Please let me know if you have any questions.”

DNR DMLW LCS Response to WRS: LCS appreciates your review. The correction will be noted below in **Section VI. Modifications to Decision.**

VI. MODIFICATIONS TO DECISION

Pursuant to a comment received from WRS during the public notice period, one correction or clarification must be made between the PD and FFD. This clarification does not change the acreages approved for conveyance or rejected.

Per AS 46.15.160 Transfer and Change of Appropriations and 11 AAC 93.060 Water Rights on State-leased Land, as referred to by WRS, the water right interest (LAS 29976), which is permitted to Hilcorp Alaska, LLC., was issued appurtenant to the oil and gas lease (ADL 28381) to support the oil and gas industry and is considered part of the infrastructure usages. As the oil and gas lease and therefore the water right permit are part of the mineral estate, which is not being conveyed to NSB, ADL 29976 will

not be transferred to the NSB upon the effective date of the FFD and will return to the State once the associated oil and gas lease is closed.

VII. DISCUSSION AND FINAL FINDING AND DECISION

Through this Final Finding and Decision, DNR determines that it is in the best interest of the State to convey 207 acres, more or less, of state land with management authority transferred to NSB upon the effective date of this decision. There are no overriding state interests in retaining this selection, and the conveyance to NSB is consistent with the requirements for conveyance under AS 29.65 General Grant Land, and the management intent requirements of the North Slope Area Plan.

Lands Approved for Conveyance

Table 1 below lists those lands approved for conveyance in this decision by location/map name, Meridian (M), Township (T), Range (R), Section and legal description, and approximate acreage. The estimated acreages for conveyance do not account for any exclusions, and exact acreages would be determined by survey, if one is needed. The final acreage amount will be credited towards partial fulfillment of North Slope Borough’s municipal land entitlement.

Table 1

Map Name	MTR	Section and Legal Description	Acres
Point Thomson Site	U009N023E	Sec. 14: NE1/4NW1/4 (40 ac.), E1/2E1/2NW1/4NW1/4 (10 ac.), S1/2NW1/4 (80 ac.)	130
		Sec. 15: S1/2NE1/4 (80 ac.) excluding AKLNG ROW, ADL 421296 (3.37 ac)	77
APPROVED CONVEYANCE: Total Approximate Acres			207

LANDS PROPOSED FOR REJECTION

Table 2 lists those lands proposed to be rejected for conveyance in this decision. These portions include lands that the DNR Division of Oil and Gas (DOG), DNR DMLW Northern Regional Office (NRO), and SPCS stress are areas and infrastructure critical to the organization and maintenance of the oil and gas industry. Input from DOG, NRO, and SPCS, and the associated management intent indicate that the interest of the State outweighs that of the North Slope Borough. These are the reasons for retention by the State.

Table 2

Map Name	MTR	Section and Legal Description	Acres
Point Thomson Site	U009N023E	Sec. 14: W1/2NW1/4NW1/4 (20 ac.), W1/2E1/2NW1/4NW1/4 (10 ac.)	30
		Sec. 15: N1/2NE1/4 (80 ac.), AKLNG ROW ADL 421296, 100' wide (3.37 ac)	83
REJECTION: Total Approximate Acres			113

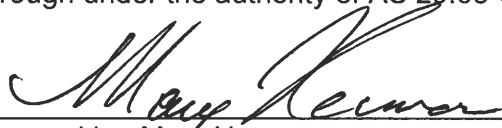
Recommendation and approval of the Final Finding and Decision follow.

Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken pursuant to relevant authorities.

1. It is appropriate to approve conveyance of 207 acres, more or less, of state-owned land to NSB. This decision determines that the interest of the State to retain this land does not outweigh the interests of NSB to obtain it.
2. It is appropriate to reject conveyance of 113 acres, more or less, of state-owned land to NSB because the State's interests outweigh NSB's interest in obtaining them and the NSAP states the land will be retained by the State. The rejected portions of the selection are critical to oil and gas operations.

The findings presented above have been reviewed and considered. The Public Notice has been accomplished in accordance with AS 38.05.945 Notice. The case file has been found to be complete, and the requirements of all applicable statutes have been satisfied. It has been determined that it is in the best interest of the State to proceed with the conveyances identified in this FFD to the North Slope Borough under the authority of AS 29.65 General Grant Land.



Prepared by: Mary Hermon
Natural Resource Specialist 2
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

May 29, 2024
Date

Under the authority of the applicable statutes, it is in the best interest of the State to proceed with the recommended action as described in this Final Finding and Decision.



Approved by: Hannah Uher-Koch
Section Chief
Land Conveyance Section
Division of Land, Mining and Water
Department of Natural Resources
State of Alaska

5-29-2024
Date

Attachments

- Attachment A - Vicinity Map
- Attachment B – Preliminary Decision

APPEAL PROVISION

A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received in writing within 20 calendar days after the date of the issuance of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 West 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$250 under the provisions of 11 AAC 05.160(a) and (b).

If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the department on the 31st day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court (11 AAC 02.020(a) and (b)). A copy of 11 AAC 02 may be obtained from any regional office of the Department of Natural Resources or at: <http://www.akleg.gov/basis/aac.asp>.

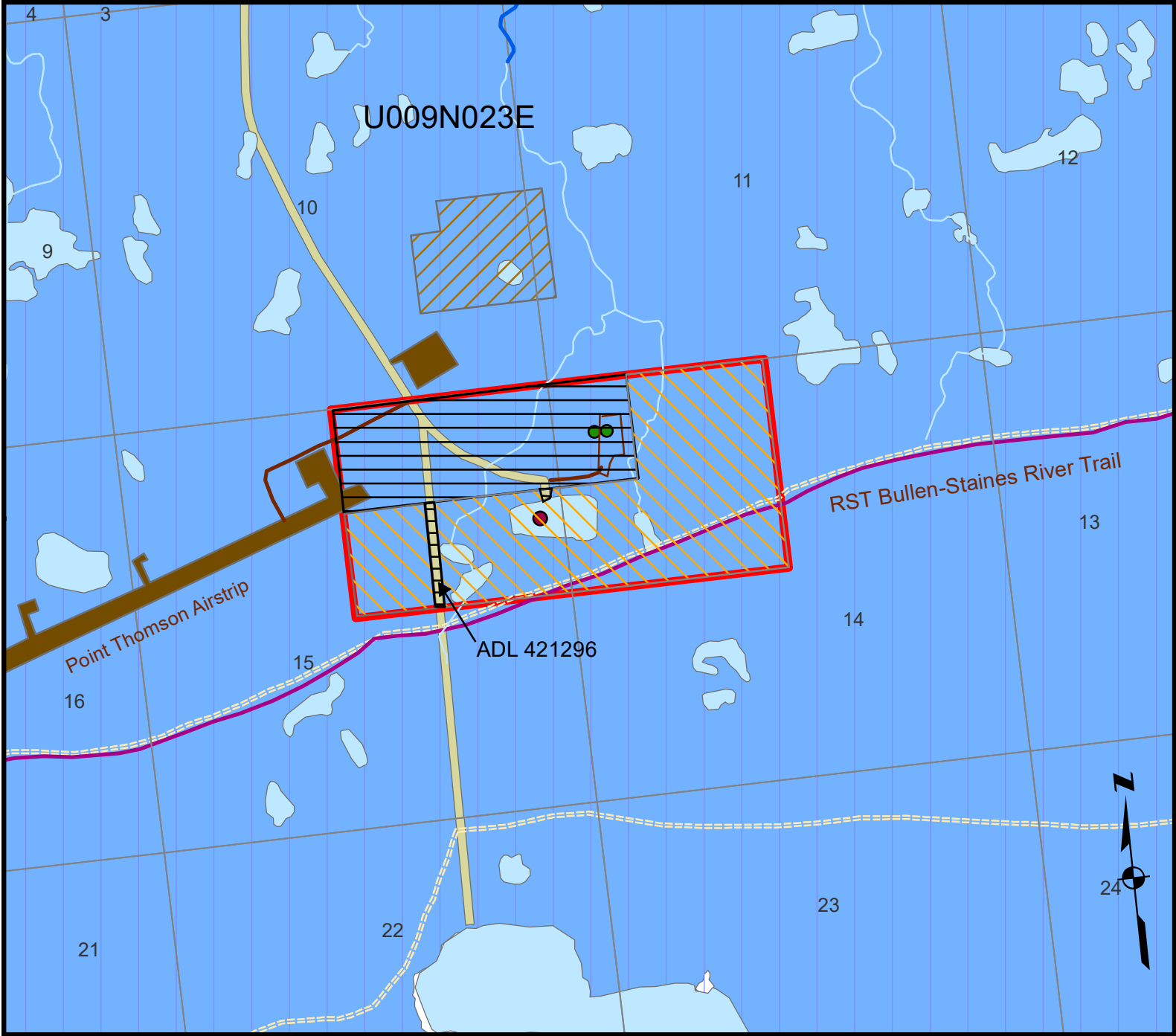
North Slope Borough

Municipal Selections

Final Finding & Decision

ADL 414827

Point Thomson Site



Legend

- Anadromous Stream
- RS 2477 Route
- Trail
- Water Right
- Potential Hazard Site
- Selected by NSB
- Approved for Conveyance
- Rejected
- State Land - TA or Patent
- Material Site
- Mineral Leases
- Land Estate Lease (ROW)

NSAP Unit A-11



Created by DNR-DMLW-LCS-ME

May 2024



This map is for representation only. It is intended to be used as a guide only and may not show exact location or existing surveyed parcels or show all easements and reservations. Source documents remain the official record.

