

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

PRELIMINARY DECISION
PROPOSED CONVEYANCE OF STATE LAND UNDER AS 29.65.010

NORTH SLOPE BOROUGH
MUNICIPAL LAND ENTITLEMENT SELECTION
ADL 414827

PUBLIC COMMENT PERIOD ENDS 4:30 PM, FRIDAY, MARCH 15, 2024

I. PROPOSED ACTION

Preliminary Decision: North Slope Borough Municipal Land Entitlement Selection – ADL 414827

Attachment A: Point Thomson Site

Attachment B: PAAD Navigable and Public Waters

Attachment C: Public Notice

Primary Proposed Action: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining Land and Water (DMLW), Land Conveyance Section (LCS) proposes to convey in part and reject in part, lands selected by the North Slope Borough (NSB) in partial fulfillment of their general grant land entitlement under AS 29.65.010 *Determination of Entitlement of Boroughs and Unified Municipalities*. See *Attachment A: Point Thomson Site* for the depiction of the project area.

NSB has selected a parcel contained in the Arctic Coast Region (East Planning Units) as identified in the North Slope Area Plan¹ (NSAP). Approximately 320 acres will be adjudicated in this decision.

LCS proposes to convey approximately 207 acres of state-owned vacant, unappropriated, unreserved² (VUU) general grant land. DNR has determined that no overriding state interests merit retaining this selection in state ownership.

LCS proposes to reject the conveyance of approximately 113 acres of NSB's selection because LCS has determined it is not in the State's best interest to convey those lands out of state ownership.

Public Notice of Proposal: In accordance with AS 38.05.945 *Notice*, during a period of at least 30 consecutive days, the public is invited to submit written comments on this Preliminary Decision (PD).

See **Section VII. Submittal of Public Comments** at the end of this document and *Attachment C: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. AUTHORITY

The proposed actions in this PD are authorized pursuant to Alaska Statute (AS) and Alaska Administrative Code (AAC), particularly AS 29.65 *General Grant Land*, AS 38.05.035(e) *Power and*

¹ The North Slope Area Plan (NSAP) adopted March 2021 determines the management intent, land-use designations, and management guidelines that apply to all state lands in the applicable planning area. This plan forms the basis for the land use classifications that constitute vacant, unappropriated, unreserved land for purposes of determining the eligibility of state land for potential conveyance to a municipality under AS 29.65 *General Grant Land*.

² *Vacant, unappropriated, unreserved (VUU)* land is general grant land patented or tentatively approved to the State from the United States, excluding minerals as required by 6(i) of the Alaska Statehood Act, and is conveyable under the Municipal Entitlement Act (AS 29.65).

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Duties of the Director, AS 38.05.125 Reservations, AS 38.05.127 Access to Navigable or Public Water, AS 19.10.010 Dedication of Land for Public Highways, and 11 AAC 51 Public Easements.

III. ADMINISTRATIVE RECORD

The administrative record for this proposed action consists of case file Alaska Division of Lands (ADL) 414827. Also incorporated by reference are:

- North Slope Area Plan (NSAP, adopted March 2021) and associated land classification files;
- Alaska Department of Fish and Game (ADF&G) Alaska Anadromous Waters Catalog & Atlas to the Catalog
- Alaska Department of Environmental Conservation (DEC) Contaminated Sites Database; and
- DNR case files: GS 1350, ADL 28381, ADL 28382, ADL 422020, and ADL 421296.

IV. SCOPE OF DECISION

The scope of this proposal, under the statutes described in the preceding **Section II. Authority** is limited and specific to determine whether it is appropriate to convey the subject parcel to NSB. This decision includes a review of third-party interests, stipulations necessary to effectuate this decision, and an evaluation of whether the public interest in retaining state ownership of the land outweighs NSB's interest in obtaining the selected land as provided in *AS 29.65.050 Fulfillment of Land Entitlement*. In this decision, LCS will also determine whether NSB's municipal entitlement land selection meets the requirements under *AS 29.65.070(c) Selection and Conveyance Procedure* and whether it is appropriate to allow NSB to exercise immediate management authority for conditional sales and leases on land approved for conveyance.

V. DESCRIPTION

A. Location and Geographical Features

NSB was incorporated as a Home Rule Borough in 1974. The area is characterized by treeless undulating hills north of the Brooks Range blending into vast tundra plains. Numerous ponds, lakes, and marsh areas dot the landscape. Vegetation consists of small scrubby alders and lichens.

The selected parcel is located approximately 5 miles west of the Staines River and approximately 2 miles south of the Beaufort Sea. The land is relatively flat with some marshy areas and several small ponds and ephemeral creeks.

Borough/Municipality: North Slope Borough
Meridian: Umiat Meridian (U)
Regional Corporation: Arctic Slope Regional Corporation
Federally Recognized Tribe: None
Village Corporation: None
USGS Map Coverage: Flaxman Island Quadrangle (1:250,000)
Flaxman Island A-4 (1:63,360)

B. Legal Description, Land Status, and Third-Party Interests

Table 1 below identifies the NSB land selection adjudicated in this decision by location name, Meridian (M), Township (T), Range (R), Section (S), and includes state case file, title status, date, and any third-party interest affecting those state-owned. The State holds fee title to the land and mineral estates through Patent (PA) received from the U.S. Department of Interior, Bureau of Land Management (BLM). The State will only convey the land estate on lands approved for conveyance to NSB. *AS 38.05.125* requires the State to retain the mineral estate. Pursuant to *AS 29.65.070(b)*, the State may not issue patent to a municipality until the land has been first patented to the State. Information from Title Report No. 22819, current as of October 26, 2023, indicated the State of Alaska received title to the land and mineral estate under Patent 50-74-0092 (*Table 1*).

Table 1

Map Name	MTRS	State Case File	Title/Date	Third-Party Interests
Point Thomson Site	U009N023E14	GS 1350	PA 50-74-0092 03-27-1974	ADL 28382, Oil & Gas Lease Issued ADL 422020 Potential Hazard, Verified LAS 27254, Permit, Misc Land Use, Issued LAS 30623, Permit, Misc Land Use, Issued LAS 29976, Water Right, Issued LAS 17245, Potential Hazard, Landfill, Unverified RST 1043 Bullen-Staines River Trail, ROW 100'
	U009N023E15			ADL 28381, Oil & Gas Lease, Issued ADL 421296, Pipeline ROW, Issued LAS 27254, Permit, Misc Land Use, Issued RST 1043 Bullen-Staines River Trail, ROW 100'

VI. PRELIMINARY DECISION

A. Background

In 1972, NSB was certified as an incorporated home rule borough and was granted 89,850 acres of municipal entitlement under AS 29.65.010. Approximately 24,605 acres have been patented or approved for conveyance to NSB. Approximately 65,245 acres remain in their entitlement, of which about 13,121 acres have been selected. This decision covers approximately 320 acres near the Point Thomson Airstrip.

The NSAP was adopted in March 2021, and NSB resumed submitting their selections under AS 29.65.050(d) *Fulfillment of Land Entitlements*. The NSAP supersedes any previous classifications and reclassifies all state lands within the planning area.

B. Planning, Classification, and Mineral Orders

1. Planning

The land selection falls within the Arctic Coast Region within the NSAP. The management intent and area plan designation for each management unit are described in the NSAP. These plan designations convert to land use classifications, which establish what land the State may convey under the Municipal Entitlement Act (*see AS 29.65.010 et seq.*). NSB's land selection falls within the planning boundary of the NSAP and is governed by the management intent and classifications found in the plan.

2. Land Use Classification

The land selection proposed for conveyance in this decision is classified as Resource Management Land (RMG) which is a conveyable classification as municipal entitlement general grant land under AS 29.65.130 *Definitions*.

The NSAP states that the plan's management intent for Unit A-11 is as follows:

Management Intent:

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

Also stated "[...] Lands with infrastructure that is critical for oil and gas development, maintenance, or operations not approved for conveyance shall be retained in state ownership. [...]"

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This parcel falls within Unit A-11 of the Arctic Coast Region of the NSAP. The assigned designation is Resource management (Rm) which converts to the classification of Resource Management Land (RMG). This is a conveyable classification for AS 29.65 adjudication.

3. Mineral Orders

The mineral estate is reserved to the State pursuant to AS 38.05.125 *Reservation*. MO 1162A03 within the Umiat Meridian, Township 9 North, Range 23 East, Section 15 is closed. There are no other mineral orders affecting this parcel.

4. Special Use Lands

The NSB land selection adjudicated in this decision is part of the North Slope Special Use Lands (ADL 50666) defined under 11 AAC 96.014. This Special Use Land encompasses all land within the Umiat Meridian.

C. Traditional Use Finding

In an unorganized borough, disposal of state land with traditional uses is to be reviewed under AS 38.05.830 *Land Disposal in the Unorganized Borough*. NSB is an organized borough under AS 29.05.031 *Incorporation of a Borough or Unified Municipality* and eligible for municipal entitlement. Therefore, a determination for traditional uses is not required. The entirety of NSB's municipal entitlement land selection in this decision is located within NSB's legal boundary.

D. Access

Public access will be reserved in accordance with AS 19.10.010, AS 19.30.400 *Identification and Acceptance to Rights-of-Way*, AS 38.05.125, AS 38.05.127, and 11 AAC 51.

The Dalton Highway terminating in Deadhorse is the only major public road in the North Slope area and lies approximately 52 miles west of the selection. An RS 2477 trail, the Bullen-Stains River Trail, runs through the southeast part of the selection. The Point Thomson Airstrip, which has restricted use, lies just west of the selection (*Attachment A*).

1. Section Line Easements

As required under AS 19.10.010, and in accordance with 11 AAC 51.025 *Section Line Easements*, a public access easement 100 feet wide will be reserved along each section line on lands approved for conveyance. If a section line forms a boundary of a selection being conveyed, then the easement will be 50 feet wide measured from the section line. If a section line runs through a selection being conveyed, then the easement will be 50 feet wide measured on each side of the section line, for a total width of 100 feet.

A section line borders the north side of the parcel within Section 14, and another separates Sections 14 and 15 in the middle of the parcel (*Attachment A*).

2. Trails, Rights-of-way, RS 2477, and Easements

A review of state records verifies that there are rights-of-way (ROW) running through NSB's land selection. RST 1043, the Bullen-Staines River Trail, will have a ROW of 100 feet. A 100-foot pipeline ROW (ADL 421296) issued to Alaska Gasline Development Corporation – AKLNG in 2021, runs through Section 15 of the selection (*Attachment A*). This is a non-exclusive Conditional Right-of-Way Lease (AS 38.35.100(b)) and the lessee has 10 years to convert it into an AS 38.35.100(a) lease. The ROW will be reduced to 80 feet once the project is completed.

3. Navigable and Public Water

Throughout most of the State, the State of Alaska retains ownership of the beds of navigable water bodies, including all gravel bars and islands, and conveys the beds of

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public waters through municipal entitlement when public waters are included in a municipal entitlement selection. A survey determines the Ordinary High Water Mark (OHWM) of the navigable and public waters, the Mean High Water Mark (MHWM) on marine meandering shorelines, identifies islands, and determines the specific areas to be retained by the State. At the time of survey, fieldwork may find that a body of water or a waterway is different than identified in the decision. If this occurs, the results of the survey work will be reviewed further within DNR. If the fieldwork is determined to be accurate, then the survey results will supersede the recommendation in the adjudication decision. However, navigable and public waters on the North Slope are different.

Per Public Land Order (PLO) 82 of 1943 and Original 84 (Original: United States V. Alaska, 521 U.S. 1 - Docket number 84, June 19, 1997), there are no inland navigable waters (including tidally influenced waterbodies) on the North Slope; other than the Colville River, which had been determined navigable by the courts to the community of Umiat³. The Equal Footing Doctrine and Submerged Lands Act do not apply to the North Slope because the waters were withdrawn at statehood. However, the State, through the Riparian Rights afforded by the Federal government, owns the beds of the meanderable waters where it holds title to the uplands next to those waters.

The North Slope is generally defined (per the PLO 82 and Original 84) as the watershed that drains north of the Brooks Range, including the marine lagoons and waters bounded by barrier islands less than 3 miles from shore within the National Petroleum Reserve-Alaska (NPR-A) and Arctic National Wildlife Reserve (ANWR). The boundaries for NPR-A and ANWR describe which offshore lands and waters were withdrawn at statehood, title to which did not vest with Alaska at statehood.

Meanderable Waters: Lakes greater than 50 acres and rivers averaging greater than three chains (198 feet) as measured OHWM to OHWM are considered meanderable. The waterbed belongs to the upland owner, also known as Riparian Rights, but they are not charged for the acreage. Riparian rights extend from the shoreland to the center of the river or the very middle of a lake.

Navigable Waters: Pursuant to 11 AAC 51.035 *Determination of Navigable or Public Water*, a water body is navigable if it is at least 50 acres in size or a waterway at least 50 feet wide from OHWM to OHWM. A water body will also be considered navigable if it is found navigable for a useful public purpose in accordance with AS 38.05.965 *Definitions*; otherwise, it will be considered public water in accordance with 11 AAC 51.035. With state-owned navigable beds, ownership of land adjacent to navigable water does not create any right of title to land below the OHWM of the navigable water.

All tidal waters are considered navigable under the Submerged Lands Act (67 Stat 29, PL 31, 5/22/1953). The MHWM is established at the time of survey. There are no tidal or tidal-influenced waters in this land selection. And per PLO 82, inland tidal-influenced waters are not considered navigable for title purposes.

Public Waters: Pursuant to 11 AAC 51.035, a water body is considered public water if it is at least ten but less than 50 acres in size or at least ten feet but less than 50 feet wide from OHWM to OHWM. Ownership of the land under or adjacent to public

³ The State used Statehood Entitlement acreage to secure ownership of the bed of the Colville River since title did not transfer to the State at statehood. A court-negotiated settlement with the Arctic Slope Regional Corporation provides public access easement along the river since it is considered navigable.

water does not grant an exclusive right to use the water (*AS 38.05.126 Navigable and Public Water*).

4. Easements To and Along Navigable and Public Water

A public access easement on the bed and 50 feet in width upland of the OHWM will be reserved on all water bodies and waterways determined to be public, and 50 feet in width upland of the MHWM of navigable waters, in accordance with *AS 38.05.127* and *11 AAC 51*. This easement is referred to as the 'along' easement. The 'to' easement is to be established approximately once each mile and is often provided on section line easements of 50 feet in width adjacent to the section line on each side (*AS 19.10.010* and *11 AAC 51.025*). The 'along' easement applies to these water bodies and the 'to' easement is intended to provide access to the 'along' easements.

An alternative upland access route may be reserved if LCS finds that access along an easement reserved under *11 AAC 51.045(d)(1) Easements To and Along Navigable and Public Water* is difficult because of topography or obstructions.

A public waterbody spans the section line of Sections 14 and 15. It will have a public access easement (to & along) on its bed and upland for 50 feet. The section line easement for Sections 14 and 15 will provide access to the public access easement for the water body. The other ponds within the selection are less than ten acres in size, and therefore are considered ancillary waters. Two streams cross the parcel and are not anadromous or considered public water per their size.

E. Reservation of Mineral Estate

A conveyance of VUU general grant land to a municipality under *AS 29.65* conveys no interest in the mineral estate. All mineral-related permits, licenses, claims, and leases affecting the land for conveyance, if any, will remain under the authority of the State.

In accordance with Section 6(j) of the Alaska Statehood Act and *AS 38.05.125*, the State, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing, and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with *AS 38.05.130 Damages and Posting of Bond* and other applicable statutes and regulations.

There are two active oil and gas leases covering this area, ADL 28381 and ADL 28382. Both are currently issued to Hilcorp Alaska, LLC.

F. Hazardous Materials and Potential Contaminants

It is the responsibility of the State to protect the overall public interest if there is a reasonable expectation that hazardous contamination may exist on land being proposed for disposal. Based on a review of DEC's list of contaminated sites and comments received, there is a reserved pit (LAS 17245) and a potential hazard site (ADL 422020, DEC ID 26356) within Section 14, both associated with ExxonMobil Alaska Production Inc. Any DEC closure decisions will place conditions and long-term monitoring requirements on the sites. See DEC and SAIL's comments below in subsection **M. DMLW and Agency Review** for details.

NSB is expected to inspect this selection and familiarize itself with regards to the condition and quality of the land. The State of Alaska makes no representations and no warranties, expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State assumes no liability for removal of hazardous substances, hazardous wastes, contaminants, or

pollutants, nor any liability for the remediation of the site should such substances ever be identified. NSB, by selecting these lands and requesting their conveyance through this PD, recognizes the surrounding areas of identified contaminated sites and will take the land "as is."

G. Survey

A state-approved survey is required prior to the issuance of a conveyance document. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under the direction of the DNR DMLW Survey Section. NSB is responsible for the expense of any survey. NSB may request a survey determination at any time subsequent to the FFD. There is no requirement under AS 29.65.070 to appraise the land prior to conveyance.

H. Conditional Leases and Sales

NSB will receive management authority and equitable title to all land approved for conveyance in this decision once the FFD is effective. This will allow NSB to approve conditional leases and make conditional sales pursuant to AS 29.65.070(b), but not to dispose of land approved for conveyance until the land has been surveyed and ownership transferred to NSB.

I. Unauthorized Use

LCS has not physically inspected all areas of the selected lands for the presence of unauthorized use but has reviewed department records and is unaware of any existing unauthorized use within the land selection.

NSB is expected to inspect all of its land selections to familiarize itself with the condition and quality of the land.

J. Disposition of Leases, Permits, and Applications

Administration of any active leases, permits, and easements for the surface estate issued by the State on land to be conveyed will be transferred to NSB when the FFD becomes effective unless such authorizations are specifically excluded from the conveyance. Any pending applications that have not been adjudicated and issued will be closed.

Currently, there are two Miscellaneous Land Use permits (LAS 27254 and LAS 30623) and one Water Right Permit (LAS 29976) all issued to Hilcorp Alaska, LLC.

K. Cultural Resources

The Alaska Office of History and Archaeology (OHA) maintains the Alaska Heritage Resources Survey (AHRS), which is an inventory of all reported historic, prehistoric, and archaeological sites in the State. At this point, no historical cultural resources have been found in the selected area.

However, it should be noted that only a very small portion of the State has been surveyed for cultural resources. Therefore, the possibility remains that previously unidentified cultural resources may be located within the selected land. While the conveyance of this parcel will have no direct effects on cultural resources, future projects that NSB may propose on selected lands could affect unidentified cultural resources. Should any cultural resources be encountered, NSB will need to take those actions required by law to protect such resources in accordance with AS 41.35.070(d) *Preservation of Historic, Prehistoric, and Archeological Resources Threatened by Public Construction*.

L. Form and Width Requirement

Each municipal entitlement land selection is required to be compact in form with its length not exceeding approximately four times its width pursuant to AS 29.65.070(c). A review of the

NSB's land selection proposed for conveyance in this decision indicates that the selection is consistent with this statute.

M. DMLW and Agency Review

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD. Agency review was conducted between September 2, 2022, through September 23, 2022. The intent of an agency review is to request comments from agencies that may be affected by a municipal entitlement land conveyance decision. Agencies are given the opportunity to evaluate and comment on the municipality's land selection to determine if the State should retain all or a portion of the selected lands, and, if so, provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the land is to be conveyed out of state ownership.

DNR DMLW LCS received brief comments of non-objection from the following agencies: DNR Division of Parks and Outdoor Recreation (DPOR) and the Alaska Mental Health Trust Land Office (MHTLO).

DNR DMLW LCS Response: LCS appreciates your review.

Comments from the Alaska Department of Environmental Conservation (DEC):

DEC has reviewed the figures provided showing the municipal land selection and has found that the contaminated site (Site Name: Exxon Point Thompson State C1 Pad, file no. 300.38.315) is within the boundaries of the proposed parcel. The contaminated site is located on the C1-Pad. Additional contaminated site information specific 300.38.315 can be found at <https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/26356>. The records say that the site was still being used to stockpile supplies in 2018, so no work could be done in terms of remediation.

DNR DMLW LCS Response to DEC: LCS appreciates DEC's review. The portion of the selection within Section 14 that contains the potential hazard site will be retained by the State.

Comments from DNR DMLW Statewide Abatement of Impaired Lands (SAIL):

SAIL has completed their desktop review of readily available information to identify contamination and solid waste concerns that could impact the conveyance serialized as ADL 414827 referred to as the Point Thomson Site. This review does not include authorizations and/or a file review outside of the Division of Mining, Land & Water.

Because of the property's history, use, and proximity to other industrial sites, it is a candidate for a detailed environmental site assessment, prior to conveyance, ideally in August or September when seasonal thaw is deepest. An environmental assessment could document the current environmental condition of the property in a field report which can be disclosed to the prospective purchaser prior to conveyance of the land.

SAIL recommends disclosure of past site use, known environmental concerns and assessment and clean-up activities that have taken place on the subject properties. SAIL prepared a summary of the DMLW site history and known environmental concerns and liabilities associated with the properties for the purpose of disclosure.

Furthermore, SAIL recommends communicating to the prospective purchaser (in this case the North Slope Borough) that DMLW "makes no warranties as to the 'nonexistence' of

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contamination not now identified” and that “state records are not a warranty as to all potential contamination.”

DNR DMLW LCS Response to SAIL: Thank you for your review. As the portion of the selection within Section 14 that contains the potential hazard site will be retained by the State, an environmental site assessment or disclosure of past site use will not be necessary. For the lands proposed for conveyance, NSB, by selecting these lands and requesting their conveyance through this PD, recognizes the surrounding areas of identified contaminated sites and will take the land “as is” as stated in **F. Hazardous Materials and Potential Contaminants**.

Comments from DNR DMLW Northern Regional Office (NRO):

The DMLW NRO has reviewed the municipal land selection for the parcel within the Point Thomson Unit. The selection boundaries encompass the Alaska State C-1 Pad that contains a reserve pit, I believe SAIL has already provided comments regarding the potentially hazardous issues on site. Additionally, the gravel pad may be underlain with foam that may easily disperse if exposed should the gravel pad be allowed to degrade. The inactive material site just southwest of Alaska State C-1 Pad has been used as a water source in the past for ice road construction activities and may be used again in the future for the same purpose.

The selection encompasses a portion of the Point Thomson Unit airstrip; it may be beneficial for the state to retain the entirety of the airstrip (and access to it from the Point Thomson Unit Central Pad) in light of ongoing oilfield operations and potential future users.

DNR DMLW LCS Response to NRO: Thank you for your review. The portion of the selection that contains the airstrip will be retained by the State. Access to the public pond via the local road, which is authorized under ROW ADL 421296, will be maintained by retaining that portion of ADL 421296 that falls within the land to be conveyed.

Comments from DNR DMLW Water Resources Section (Water):

The DNR DMLW Water Resources Section has no objection to the proposed conveyance of ADL 414827-Point Thomson Site. As discussed, a certificate of water rights has been issued to Hilcorp Alaska LLC under LAS 29976 for the Alaska State C-1 Pit (former gravel pit) and we understand all conveyances are issued subject to such existing rights.

DNR DMLW LCS Response to Water: Thank you for your review. Management of the certificate of water rights would be transferred to NSB once the FFD becomes effective.

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

Thank you for the opportunity to review and comment on the proposed Municipal Land Entitlement conveyance to the North Slope Borough (NSB). 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:

The NSB has selected the subject lands for potential conveyance in partial fulfillment of its municipal entitlement under AS 29.65.010. The lands selected under ADL 414827, totaling approximately 320 acres, are located approximately 5 miles west of the Staines River and approximately 2 miles south of the Beaufort Sea, in an area used in support of oil and gas operations at the Point Thomson development.

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The selected parcel is located entirely within Management Unit A-11 of the NSAP, which was adopted in 2021. The lands in this management unit are designated resource management (Rm) which converts to a land classification of Resource Management Land. This land classification is appropriate for potential conveyance to a municipality, as defined under AS 29.65.130(10). The management intent in unit A-11 states that these lands may be appropriate for conveyance to the NSB and stipulates that those lands with infrastructure that is critical for oil and gas development, maintenance, or operations not approved for conveyance shall be retained in state ownership.

Recommendation:

Based on RADS review and taking the above area plan recommendations into account, the proposed conveyance of the selected lands in ADL 414827, located within U009N023E, is a viable application that should move forward. Thank you for the opportunity to review.

DNR DMLW LCS Response to RADS: Thank you for your review.

Comments from DNR Division of Oil and Gas Leasing & Permitting (DOG):

Leasing and Permitting object to the land selection for the following reasons:

This selection is located within an active DOG Unit, Point Thomson Unit (PTU), formerly operated by ExxonMobil Alaska Production Inc. (EMAP), currently operated by Hilcorp Alaska, LLC (HAK). The selection is located within oil and gas leases ADLs 28381 and 28382, both assigned to EMAP. HAK is continuing to operate and produce from PTU for the foreseeable future and the selection could cause unreasonable interference.

There is multiple permitted surface infrastructure located adjacent or within ADL 414827. The Point Thomson Airstrip, a critical infrastructure, is adjacent and within the selection. Alaska State C-1 Pad is within the selection. Alaska State C-1 Pad (LONS 80-042) was originally permitted to support drilling and future production activities. The C-1 pad was partially rehabilitated in 2013-2014 winter season with tundra sod and is still considered to be an active contaminated and rehab site. In addition, Point Thomson Mine Site is located immediately north, and support infrastructure including the Gravel Stockpile and Water Access Pads and associated service roads are located within the selection.

According to the North Slope Area Plan (NSAP), the selection is wholly within Planning Unit A-11, which is designated/classified as Resource Management Land. We understand that this is a conveyable classification. However, these lands contain critical infrastructure for oil and gas development, maintenance and operations. DOG maintains oversight authority of the surface infrastructure and activities on the selected lands, which fulfills the mission and serves the interest of the State of Alaska. Conveying these lands could potentially undermine that authority in this case.

As such, DOG respectfully requests that DMLW rejects the NSB's application for land selection related to ADL 414827. DOG also requests that if whole or partial conveyance of this selection is found to be in the State's interest, that it be subject to oil and gas leases ADL 28381 and ADL 28382, and all of the above-stated infrastructure and operations.

We look forward to providing any other information you may seek regarding oil and gas interests associated with the selected lands.

DNR DMLW LCS Response to DOG: Thank you for your review. Any current Oil and Gas leases issued will be considered a subject to in the conveyance. The portions of the selection containing the airstrip, the C-1 pad with potential contamination, and the 100-

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foot pipeline ROW (ADL 421296) will be retained in state ownership. The proposed conveyance should not affect the infrastructure used by DOG and its lessees.

Comments from DNR DMLW Public Access Assertion and Defense (PAAD):

The Land Conveyance Section submitted Agency Review Notice for PAAD Section review.

There are no waters on the North Slope that are considered navigable for title purposes under AS 38.04.062 as the court decisions in Original 84 and Kukpowruk River made clear the North Slope was a valid withdrawal for military purposes at the date of statehood.

Please find attached a map [Attachment B] I created identifying the waters in the area by size. This map was created for determining navigable and public waters per AS 38.05.126, 127 for the reservation of to and along easements. The attached map shows the one lake 10 - 50 acres that appears to be a water source based on the visible pipes in imagery and the water right LAS 29976. It is recommended that a to and along be placed along this lake.

It also appears RST 1043 Bullen-Staines River trail crosses the parcel. And an unidentified North/South trail is visible in the imagery.

Regarding the RS 2477, the conveyance should be subject to RST 1043, the Bullen-Staines River Trail RS 2477.

DNR DMLW LCS Response to PAAD: Thank you for your review. Any conveyance will be subject to a ROW for the RS 2477 trail. A 'to & along' public access easement will be required on the public water identified by PAAD.

The unidentified north/south trail in Section 14 appears to meet up with the Bullen-Staines River Trail. However, it is not apparent on all satellite and aerial imagery and may be a remnant of occasional past use.

Comments from DNR Division of Geological & Geophysical Surveys (DGGS):

The land selection in the above referenced document is in an area with significant oil and gas potential. If this selection is granted, the State of Alaska should retain all subsurface rights, including the right to hold oil and gas lease sales in the future.

DNR DMLW LCS Response to DGGS: Thank you for your review. Per AS 38.05.125 all subsurface estates will be reserved to the State.

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

Thank you for the opportunity to review the proposal. The Alaska Department of Transportation & Public Facilities notes that any DOT&PF-managed right of ways, material sites, airports, and public facilities within the proposed disposal area shall be retained in State ownership.

DNR DMLW LCS Response to DOT&PF: Thank you for your review. The portion of the airstrip within the selected area will be retained in state ownership.

Comments from the DNR State Pipeline Coordinator Section (SPCS):

The State Pipeline Coordinator's Section (SPCS) reviewed the North Slope Borough Municipal Land Entitlement Selection, ADL 414827. The SPCS found that an existing AS 38.35 pipeline right-of-way (ROW) would be impacted by the North Slope Borough Municipal Entitlement selections. These lands are part of the AS 38.35 pipeline Alaska LNG-Point Thomson Transmission Line Pipeline (AKLNG-PTTL), ADL 421296. As stated in the North Slope Area Plan, the management intent is for lands within the proposed AKLNG right-of-way and other lands with infrastructure that is critical for oil and gas development, maintenance, or operations shall be retained in state ownership.

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North Slope Borough, ADL 414827

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The SPCS requests that DNR reject, in part, the land the North Slope Borough requests for Municipality Entitlement in which AS 38.35 pipeline ROW Leases exist for the purposes of retaining the rental revenue to the State of Alaska and for DNR/SPCS oversight authority of these lands to safely operate and maintain the pipeline and related facilities for the interest of the people of the State.

This is consistent with the Management Intent of the North Slope Area Plan for the SPCS to maintain and enforce a systems-wide approach for its oversight of integrity, maintenance, and operations of oil and gas infrastructure directly related to common and contract carrier pipelines. For these reasons mentioned above, the SPCS does not believe it is in the public's interest for the North Slope Borough to obtain lands containing AS 38.35 ROW leases and retaining state ownership of the land outweighs the municipality's interest in obtaining the land.

DNR DMLW LCS Response to SPCS: Thank you for your review. The ROW crosses Section 15 and appears to follow the path of a local access road. The State will retain the AKLNG ROW (ADL 421296). ADL 421296 is a ROW 100 feet in width with a planned reduction to 80 feet in width upon project completion. The State will retain the current ROW of 100 feet in width.

The following agencies or groups were included in the agency review, but no comment was received:

- Department of Commerce, Community & Economic Development
- Alaska Department of Fish & Game
- Department of Natural Resources
 - Division of Forestry
 - DPOR, Office of History and Archaeology

VII. SUBMITTAL OF PUBLIC COMMENTS

See Attachment C: Public Notice for specific date and conditions

Pursuant to AS 38.05.945 Notice, LCS is issuing public notice inviting comment on this Preliminary Decision.

In accordance with AS 38.05.946(a), a municipality or corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision without further notice.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at <http://landsales.alaska.gov/> and <http://dnr.alaska.gov/mlw/muni/> and sent with an explanation of the appeal process to any party who provides timely written comment.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information refer to the attached Public Notice.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, FRIDAY, MARCH 15, 2024**

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This PD for NSB's municipal entitlement land selection covers approximately 320 acres of state land. LCS proposes to approve for conveyance and transfer equitable title and management authority on approximately 207 acres of state land, identified in *Table 2* below.

This decision determines that the municipal selection adjudicated in this decision for which the State currently has title is appropriate for conveyance to NSB.

This decision further determines that certain conditions and restrictions are appropriate and necessary to ensure the protection of critical resources and public access for those lands to be conveyed to NSB. Therefore, this decision imposes restrictions and reservations to be part of the conveyance document, to ensure adherence to state statutes and administrative code. Restrictions and reservations are listed in **Section IX. Recommendation and Preliminary Decision.**

The portion of the selected parcel proposed for rejection (*Table 3*) is classified appropriately for conveyance; however, the associated management intent of Unit A-11 states that the "[...] *Lands with infrastructure that is critical for oil and gas development, maintenance, or operations not approved for conveyance shall be retained in state ownership.[...]*. DOG and SPCS have expressed concern about the potential conveyance of the parcel out-of-state ownership. DOG Permitting stated in their agency review comment that "these lands contain critical infrastructure for oil and gas development, maintenance and operations. DOG maintains oversight authority of the surface infrastructure and activities on the selected lands, which fulfills the mission and serves the interest of the State of Alaska." SPCS requested "that DNR reject, in part, the lands the North Slope Municipality proposes for Entitlement in which AS 38.35 pipeline ROW Leases exist for the purposes of retaining the rental revenue to the State of Alaska and for DNR/SPCS oversight authority of these lands to safely operate and maintain these pipelines and their related facilities for the interest of the people of the State." Based on input received during agency review, continued state ownership of the surface estate best facilitates the orderly management and development of oil and gas facilities and mineral leases, consistent with the classification and management intent of the NSAP.

The State will retain the ROW for the AKLNG pipeline (ADL 421296). A 100-foot ROW will be needed for the pipeline's development and will be reduced to 80 feet once the project is completed. However, the State will retain the ROW at a width of 100 feet. The local road access to the public pond is authorized under ADL 421296 and will be retained.

The area identified as C-1 pad by DOG and NRO will stay in state ownership since DOG lessees still use it. It may contain potentially hazardous areas and contaminants, and it is considered critical to the oil and gas infrastructure and uses.

A small portion of the Point Thomson Airstrip falls in the selected area. Because this is a restricted-use airfield, it will remain in state ownership.

B. Alternatives

The following alternatives exist:

1. Take no action to approve or reject NSB's land selection. This alternative would, in effect, preclude NSB's ownership of lands considered to be important to their land base. This action would be inconsistent with the purpose of the Municipal Entitlement Act and inconsistent with the basis for the disapproval of a municipal entitlement selection. Such selections can only be rejected when the State's interests outweigh the interest of the borough, and there is no basis for such a determination.
2. Reject NSB's selection in its entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the statutory basis for rejection of a municipal selection.
3. Approve in part with management authority transferred and reject in part retaining in state ownership, for the reason described in this PD. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to NSB and to protect the state interests.

IX. RECOMMENDATION AND PRELIMINARY DECISION

A. Recommended Alternative

This decision determines that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. NSB's land selection, in part, is approved for conveyance, subject to the conditions, restrictions, and reservations listed below.

B. Recommended Conditions, Restrictions, and Reservations

Conditions

1. As required under *AS 38.05.127* and *11 AAC 51*, the location of the OHWM of public waters will be determined at the time of survey.
2. Management authority will transfer to NSB on those lands approved for conveyance once the FFD becomes effective.
3. Management authority for public access easements is transferred to NSB once the FFD becomes effective. No such easements may be vacated, abandoned, or otherwise extinguished or rendered incapable of reasonable use by the public without the approval of the State of Alaska unless an alternative means for reasonable public access is provided and approved by the State.
4. Administration of state leases and permits pertinent to the surface estate will be transferred to NSB once the FFD becomes effective. Administration of issued state leases and permits on the mineral estate will remain with the State.
5. Once the FFD is effective, NSB may execute conditional leases and make conditional sales on lands approved for conveyance, prior to issuance of a state patent in accordance with *AS 29.65.070(b)*.
6. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of NSB's municipal land entitlement pursuant to *AS 29.65.010*.

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- 7. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains, or objects.

Restrictions and Reservations

Conveyance document will be issued subject to the following restrictions and reservations:

- 1. Valid existing rights, including reservations, easements, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.
- 2. Reservation of a 50-foot wide easement on each side of all surveyed and unsurveyed section lines in accordance with AS 19.10.010 and 11 AAC 51.025.
- 3. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the OHWM of all public waters from on the bed and 50 feet upland pursuant to AS 38.05.127 and 11 AAC 51.
- 4. Subject to a 100-foot right-of-way for RST 1043, the Bullen–Staines River Trail.
- 5. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and AS 38.05.125; and reservation of reasonably necessary access to the mineral estate in accordance with AS 38.05.130.
- 6. Subject to Oil and Gas Leases ADL 28381 and ADL 28382.

C. Recommended Action on Municipal Selections

This decision recommends conveyance of certain state-owned vacant, unappropriated, unreserved general grant land to North Slope Borough located in the Umiat Meridian of Northern Alaska.

LANDS PROPOSED FOR CONVEYANCE

Table 2 lists those lands proposed to be approved for conveyance in this decision. The estimated acreages for conveyance do not account for any exclusions, and exact acreages will be determined by survey. The final acreage amount will be credited towards partial fulfillment of the North Slope Borough’s municipal land entitlement.

Table 2

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.) Sec. 15: S1/2NE1/4 (80 ac.) excluding AKLNG ROW, ADL 421296 (3.37 ac)	130 77
PROPOSED CONVEYANCE: TOTAL APPROXIMATE ACRES			207

LANDS PROPOSED FOR REJECTION

Table 3 lists those lands proposed to be rejected for conveyance in this decision. These include lands to be retained by the State because the interest of the State outweighs that of the North Slope Borough and the NSAP states the land will be retained by the State.

Table 3

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
PROPOSED REJECTION: TOTAL APPROXIMATE ACRES			113

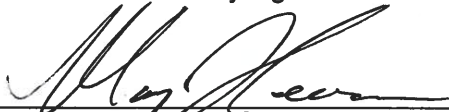
D. Preliminary Decision

The following are the findings for this Preliminary Decision:

1. It is appropriate to convey approximately 207 acres of state-owned land to the North Slope Borough. This decision determines that the interest of the State to retain this land does not outweigh the interests of the borough to obtain it.
2. It is appropriate to reject 113 acres because the State's interests outweigh the 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.

This Preliminary Decision, described above, represents the preferred alternative that has been reviewed and considered. After review and consideration of materials in this PD, LCS finds that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

After public notice, the subsequent review process may result in changes to the preferred alternative(s) or disapproval of the proposed action altogether. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.



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

2-8-2024

Date



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

February 8, 2024

Date

North Slope Borough

Municipal Selections

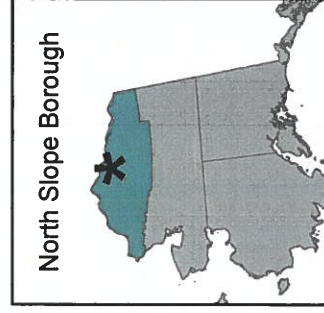
Preliminary Decision

ADL 414827

Point Thomson Site

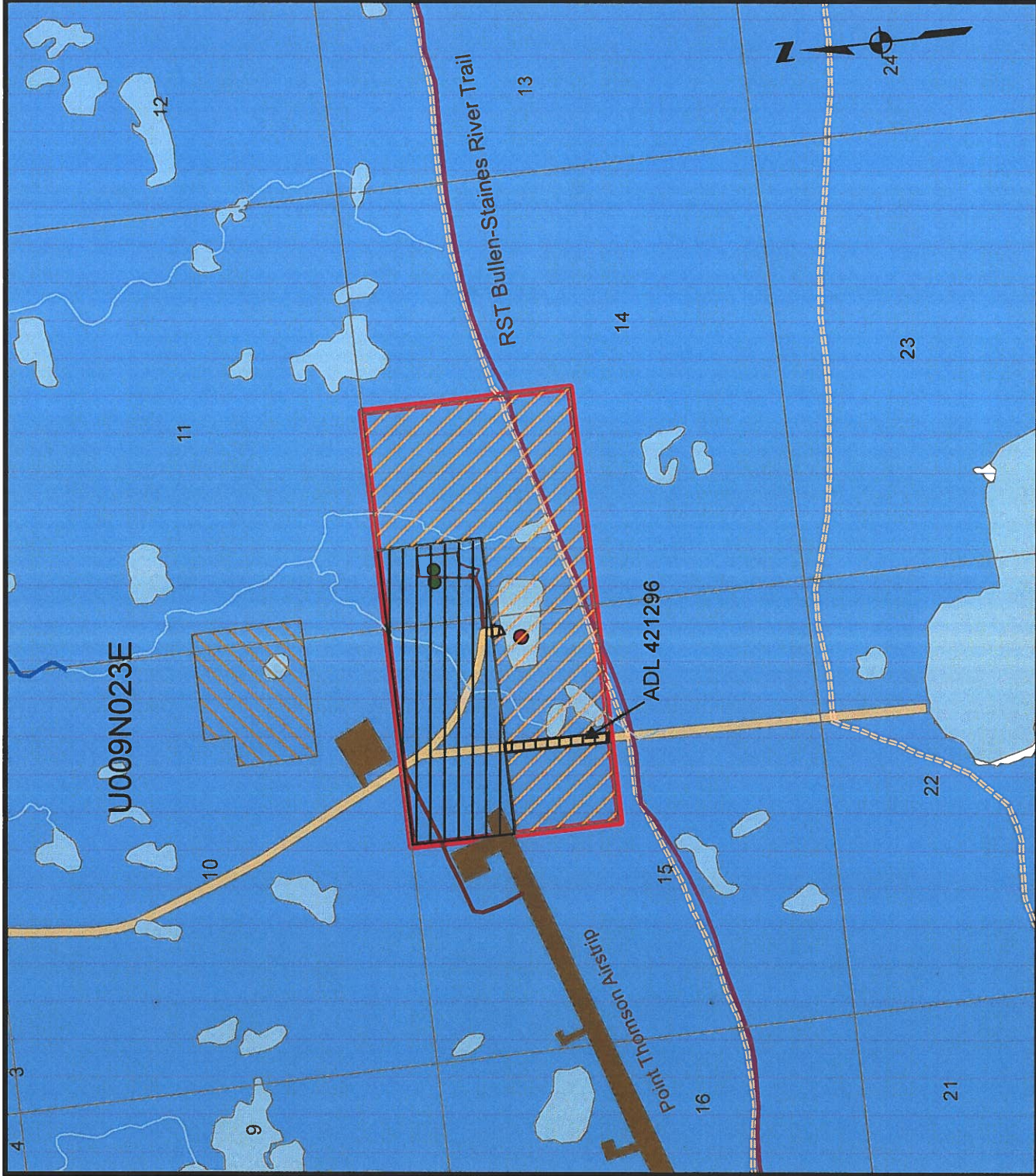
Legend

- Anadromous Stream
- RS 2477 Route
- Trail
- Water Right
- Potential Hazard Site
- Selected by NSB
- Proposed Conveyance
- Proposed Rejection
- State Land - TA or Patent
- Material Site
- Mineral Leases
- Land Estate Lease (ROW)
- NSAP Unit A-11



Created by DNR-DMLW-LCS-ME

February 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.



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

Attachment C: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 29.65
North Slope Borough Municipal Land Entitlement Selection – ADL 414827

COMMENT PERIOD ENDS: 4:30 PM, FRIDAY, MARCH 15, 2024

The Department of Natural Resource (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has prepared a Preliminary Decision (PD) for a proposal to convey approximately 207 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land to North Slope Borough (NSB) in order to partially fulfill their municipal land entitlement under AS 29.65.010. Located within DNR's Northern Region, this land selection falls within the Arctic Coast Region (the Eastern Planning area) as identified in the North Slope Area Plan. LCS finds that the proposed conveyance is consistent with the requirements of AS 29.65, and that NSB's interest in obtaining these state lands outweigh the State's interest in retaining them.

Pursuant to AS 38.05.945 Notice, the public is invited to comment on this PD which proposes to transfer ownership of state land to the North Slope Borough. **The deadline for submitting public comment is 4:30 PM, Friday, March 15, 2024.** Only persons from whom LCS receives timely written comment during the identified comment period will be eligible to file and appeal of the Final Finding and Decision (FFD). Comments must be received in writing to the Division of Mining, Land and Water, Attention: Mary Hermon, at 550 West 7th Avenue, Suite 640, Anchorage, Alaska 99501, by fax at (907) 269-8916, or by email at mary.hermon@alaska.gov. If you have questions, call Mary Hermon at (907) 269-6546.

The public notice is available on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>. The Preliminary Decision is available on the DMLW Municipal Entitlement web site at: <http://dnr.alaska.gov/mlw/muni/> and on the DMLW Land Sales website at: <http://landsales.alaska.gov>.

Following the comment deadline, those written responses received will be considered and the decision may be modified to incorporate public comments in the FFD. Only persons who comment during this public comment period will be eligible to file an administrative appeal of the FFD. A copy of the FFD will be sent to any person who comments on the PD. The FFD will include the appeal instructions. Please direct all inquiries or questions to Mary Hermon, at the above address, electronic mail, phone or by fax.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to this decision by telephone may call the DNR, Public Information Center in Anchorage between the hours of operation: 10:00 AM to 5:00 PM, Monday through Friday at TTY: 711 for Alaska relay or 800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/>

If no significant change is required, the PD, including any minor changes and a summary of comments and responses, will be issued as the FFD, without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

DNR reserves the right to waive technical defects in this notice.