

**ATTACHMENT A**  
**Public Comments and Responses**  
**for**  
**Red Dog Millsite Lease Application**  
**(ADL 233521)**  
**and**  
**Plan of Operations Approval**  
**(F20209958POOA)**

Following are responses to the public comments that were submitted in e-mail to the Department of Natural Resources (Department), Division of Mining, Land & Water (Division) concerning the proposed Millsite Lease to support mining activities at Red Dog Mine and the Plan of Operations Approval on State of Alaska land adjacent to the Tailings Storage Facility.

**Comment Overview**

In rendering a decision on the Millsite Lease and Plan of Operations Approval (POOA), the Division considered comments submitted during the comment period which ran from February 4, 2020 to March 5, 2020. The public notice was posted on the State’s Online Public Notice System, and was e-mailed to the following: three resource development groups-Alaska Miners Association, Council of Alaska Producers, and Resource Development Council; one Alaska Native Regional Corporation-NANA Regional Corporation, Inc.; two tribal organizations-Noatak IRA Council and Kivalina City Council; three non-governmental organizations-Citizens for Science in Public Participation, Northern Environmental Center, and Trustees for Alaska; and one engineering firm-Kuipers and Associates LLC.

“The Division received three comments during the public notice period, one from a State agency, one from a trade organization, and one from a tribal organization. In order to more easily respond to the comments received, the comments were broken down into 15 topics/issues and then further broken down into 40 individual comments that will be addressed separately.” Comments are addressed in the order received.

**Comment Summaries and Responses**

1. **Issue:** Differing Environmental Audit language in the Proposed Millsite Lease (ADL 233521) and the Proposed Plan of Operations Approval (No. F20209958POOA).

**Comment Summary:** The language contained in Section 13 Environmental Audit of the Proposed Millsite Lease (ADL 233521) differs from the general stipulation for an environmental audit found in Proposed Plan of Operations Approval (No. F20209958POOA). The commenters stated that the language contained in the Millsite Lease should match that found in the POOA

and the Red Dog Reclamation Plan Approval. The requirements listed in the Millsite Lease far exceeds the scope of the language currently approved in the Reclamation Plan Approval (No. F20169958), Waste Management Permit (No. 2016DB0002), and the Proposed POOA.

**Response:** The Division concurs with the comment and has changed the Millsite Lease's Environment Audit requirement to match those of the POOA and Reclamation Plan Approval.

2. **Issue:** The Millsite Lease and the Plan of Operations Approval are needed for the continued successful operations at the Red Dog Mine.

**Comment Summary:** A resource development group that encourages a strong, diversified private sector in Alaska, supports the issuance of the Millsite Lease and the Plan of Operations which would continue to support the economy of the Northwest Arctic region and Alaska. The mine provides hundreds of jobs and funds the entire tax base for the area.

**Response:** No action required.

3. **Issue:** The 2020 Plan of Operations (PoO) is missing information essential to the review of the Millsite Lease.

a. **Comment Summary:** TAK's 2020 PoO did not provide an updated Reclamation Plan to address the tailings disposal site and Reclamation Plan is not anticipated to be submitted until September 2020.

**Response:** TAK has proposed a minor change to the outline of the Tailings Storage Facility (TSF). The Division has reviewed the proposed change and determined that it will not result in a material change to the estimated TSF closure cost and is adequately addressed in the submitted PoO. Any associated change to the TSF closure cost will be addressed during the next Red Dog Mine Reclamation Plan renewal process, in September 2020, as is common for minor plan changes during the permit cycle.

b. **Comment Summary:** TAK's 2020 PoO did not provide the proposed change to the DD-2 material site. There is no boundary map or diagram of the current DD-2 material site, which is important to see how the site will change to accommodate the tailings disposal.

**Response:** Figure 2 of the PoO contains the revised DD-2 material site boundary. A map depicting the modified boundary is attached hereto as Exhibit A.

c. **Comment Summary:** The proposed "engineered cover" for the tailings disposal area has not been designed and that is a crucial element of safeguarding the area from acid mine drainage.

**Response:** The cover for the tailings disposal area will be above the final water elevation. The design of the cover is provided in Figure 5 of the PoO.

d. **Comment Summary:** There is a reference to the possible construction of an emergency spillway for the TSF to be addressed in a future update to this PoO. Draft plans for an

emergency spillway should be circulated now even if the detailed engineering and construction plans are not available.

**Response:** Detailed or draft plans for any possible spillway are not necessary for adjudication of this approval or the Millsite lease. This is only referenced in the documents as one of the potential reasons the Millsite lease is requested and why it includes that particular area. Any spillway proposal will be required to go through an entirely independent permitting process that would include the Dam Safety and Construction Unit.

e. **Comment Summary:** The Dam Safety Division of DNR stated that the TSF emergency spillway had to remain in its current configuration due to topography.

**Response:** The spillway location for the currently approved Reclamation Plan will remain in the same location. Alternatives are under consideration for an emergency spillway for the remaining operational life of the TSF. Any spillway proposal will have to go through an entirely independent permitting process that would include the Dam Safety and Construction Unit.

f. **Comment Summary:** A request was made that DNR suspend the review of this permit until these essential elements can be provided for review.

**Response:** All pertinent documents were provided in the Public Notice. The Division has determined that the submitted Plan of Operations is complete and provides necessary information regarding the proposed activity on the Millsite Lease.

#### 4. **Issue:** Impact of the Stage XII Dam Raise.

**Comment Summary:** The PoO indicates that the “final” Stage XII tailings dam raise is scheduled for 2028 and that “a small portion of the TSF is close to impinging on State land”. There was no indication by TAK that a portion of the TSF was, or is close to, impinging on the DD-2 area of State land where TAK has been excavating, as the PoO now states. However, the attached diagram from the TSF expansion in 2018, depicts the Stage XII tailings dam approved to be raised to 1006 feet in 2018 and does not show the impingement onto State land. Please provide a diagram or figure that shows where the impingement is taking place and explain how the Stage XII dam raise is resulting in the impingement.

**Response:** The Stage IV Tailings Back Dam is what will impinge on the DD-2 material site area. The spillway impinges on State lands further north as shown in Exhibit C. The Stage XII Tailings Main Dam, which is shown in Exhibit B, is not near the DD-2 material site.

The Stage XII is for 1,006 ft conceptual design. The Stage XI is what is currently being built for the Tailings Main Dam to 996 ft. The application referenced in the commenter’s statement did include the conceptual Stage XII configuration to 1,006 ft, as was required by DNR Dam Safety and Construction Unit. The wetlands permit TAK obtained for filling the TSF basin was up to 1,006 ft for the final elevation, and TAK is using the final TSF configuration (back dam, main dam, spillway, and potential filling) for this application.

5. **Issue:** Proposed New Tailings Disposal Area.

a. **Comment Summary:** The new tailings disposal area has no provision for a liner to be placed under the tailings and there is no indication of how seepage from the tailings pond will be controlled. Any seepage may be toward Bons Creek, which the Alaska Department of Fish and Game (ADF&G) has confirmed contains a stable population of Arctic Grayling.

**Response:** The proposed tailings disposal area is an extension of the existing TSF and is not a new tailings disposal facility. The area is connected to the current TSF, which was permitted as an unlined facility, and all surface flow will flow into the existing TSF.

b. **Comment Summary:** There is no plan identified for handling snow or rain which could cause acid drainage to overflow or seep from the new tailings disposal area. TAK should have identified how it will mitigate acid drainage at the site before the issuance of the Millsite Lease.

**Response:** The DD-2 material site along with the remainder of the Millsite Lease is unmineralized and does not generate acid rock drainage (ARD). Undisturbed areas within the DD-2 material site are naturally vegetated for stability, and disturbed areas including the tailings disposal area will drain naturally into the TSF.

c. **Comment Summary:** The PoO does not explain why it is necessary to create this new tailings storage facility, and why the existing TSF cannot accommodate these tailings.

**Response:** As previously stated, the proposed tailings disposal area is an expansion of the existing TSF and is not a new tailings disposal facility. The need for an expansion of the TSF is addressed in the Section 1.0 of the PoO, which states "The Red Dog Mine is located nearly entirely on NANA lands. However, the boundary between State and NANA lands is being encroached upon as the mine tailings storage facility (TSF) expands as a result of rising tailings and water levels. The permits for the TSF expansion are in hand for all of the activities that will occur on NANA land. However, a Millsite Lease is required to authorize the use of State surface lands for the purpose of tailings management."

d. **Comment Summary:** The proposal to later divert excess tailings slurry water toward the existing TSF and through the coarse road causeway fill or the existing culvert is not explained, and it is unclear that this acid-bearing slurry will be properly monitored and contained.

**Response:** As depicted in Figure 4 of the PoO, as the expanded tailings facility fills with tailings, the slurry water will drain to the low point. This water will flow through the existing culvert and road fill maintaining the same water elevation as the TSF. By starting at the highwall and working toward the road, a slight slope will be created allowing the surface of the tailings to naturally drain to the TSF as explained in Section 2.1 of the PoO.

e. **Comment Summary:** There is no cross-section of the road causeway fill and the existing culvert is not depicted on the figures.

**Response:** Gravity drainage of water and tails will continue toward and into the main TSF as described in Section 2.1 of the PoO. A cross section of the road is provided in Figure 4 of the PoO. The culvert mentioned in the PoO is outside of the tailings deposition area. The road will be flooded as the main TSF level rises following the permitted dam raises and will eventually no longer exist; therefore, ensuring the long-term structural integrity of the road is not required.

f. **Comment Summary:** There is no explanation of how fine sediments will be handled or what will prevent acid-bearing water or slurry from escaping and flowing outside these areas.

**Response:** Fine sediments will settle out (as is the purpose of these facilities) and/or flow toward the main TSF. The DD-2 material site is unmineralized and does not generate ARD.

g. **Comment Summary:** There is no analysis of the impact of the flow of the slurry and water will have on the integrity of the TSF at this location.

**Response:** There is no impact to the dams by storing tailings in the expanded tailings facility. The tailings are fully contained and pose no threat of impact to the dams due to the location of the tailings disposal. Any "failure" of the tailings in this area would be fully contained within the TSF.

h. **Comment Summary:** It is unclear whether there will be a pumping system to move the slurry water from the new disposal pond at the initial stage, since the tailings slurry water will begin at a base level of 970 feet and the culvert into which the slurry water will be disposed is at 981 feet.

**Response:** Any overflow will gravity-drain to the main TSF as described in Section 2.1 of the PoO. The tailings slurry is composed of about 22% solids and 78% water. As the area begins to fill and tailings solids settle, excess water will flow toward the existing TSF and through the coarse road causeway fill and eventually the existing culvert; therefore, no pumping system will be required.

i. **Comment Summary:** The nature of the highwall at the west end of the site is unclear. The dimensions of the highwall and its porosity and permeability should be provided.

**Response:** The highwall was created as the result of material being removed from the DD-2 material site. The hillside material was reviewed as a component of a study of the permeability of the TSF in the late 1990s under the oversight of the State and the Environmental Protection Agency (EPA). Additionally, any water that may seep toward the Bons Creek drainage would be intercepted by the Tailings Back Dam.

j. **Comment Summary:** The structural integrity of the road dividing the new location and the TSF should be analyzed, including a contingency for raising the level in the TSF in the future. The depth of the tailings at the highwall appears to be as high to the existing road, which can cause stability problems.

**Response:** The tailings deposition is not expected to affect the structural integrity of the road as the slurry water will be slowly flowing through the coarse fill material. Access to the DD-2

material site is via new roads on the north and south end of the material site providing access to operational areas of the material site. Consistent with normal operational procedures, the area will be visually monitored during the tailings deposition, and the road would be closed if any structural issues are identified. Tailings deposition will be managed so that tailings depths decrease toward the road (deepest at highwall) so that they do not create any threat to the integrity of the road.

6. **Issue:** Approval date and duration of approval not provided.

a. **Comment Summary:** There is no date on the Draft POOA document but states it will be in effect until September 28, 2021.

**Response:** The Draft POOA has not been issued; therefore, no issuance date is noted. Upon issuance of the Final POOA, a date will be published.

b. **Comment Summary:** The end date on the POOA is not explained and is unclear whether it is expected that the proposed tailings disposal area will be entirely filled at that time, or whether it is expected to continue into the future.

**Response:** The expiration date noted in the POOA corresponds with the current September 28, 2021 expiration date of the Reclamation Plan Approval. This will allow for the Division to ensure that future versions of these authorizations would be synchronized for Public Notice, Approval and Expiration.

c. **Comment Summary:** The Material Sales contract does not expire until 2023, the timing is inconsistent with the POOA.

**Response:** Material Sales are not covered by the Plan of Operations approval and are approved by a separate section of the Division. No changes to the POOA are required.

7. **Issue:** Bond

a. **Comment Summary:** No available copy of the March 20, 2019 bond or the basis of the bond calculation.

**Response:** Documents and details for the Red Dog Bond are available to the public on the Large Mine Permitting website. TAK has agreed to provide additional details related to reclamation of the Millsite area in the next update to the bond.

b. **Comment Summary:** There is a difference of \$25,256,936 between the March 20, 2019 bond and the August 7, 2018 bond amount. An identification of the aspects of the Red Dog Mine to which the bond increase is attributable, is requested.

**Response:** The difference between the bond values shown in the Plan of Operations Approval and the Reclamation Plan Approval reflect the annual adjustments for the Anchorage Consumer Price Index (CPI) which is required.

c. **Comment Summary:** It is not evident that the activities contemplated in the proposed Millsite Lease or material sale contract have been included in this bond amount because the Millsite Lease states that the bond is the same as required in 2016.

**Response:** The Division requested that TAK include a cost estimate for reclamation of the area within the Millsite Lease to be covered with tailings in the scheduled August 2021 update to the overall Red Dog bond. This is expected to be a small addition relative to the overall bond amount. The Millsite Lease has been modified to allow for changes to the bond. The material sales contract is a separate contract and not part of the Millsite Lease.

8. **Issue:** Site Plans are not provided.

a. **Comment Summary:** Neither the POOA nor the Millsite Lease provide any plans, diagrams, or construction schedule for developing the site. The POOA refers to an “annual set of maps illustrating the current development of all facilities within the Millsite boundary” but the initial plans have not been provided.

**Response:** Plans, maps and documents are provided in the Plan of Operations submitted by TAK in January 2020. The POOA is simply the Division’s approval of those plans and the actual PoO is referenced. There is no requirement to provide plans, maps, and documents as part of the Millsite Lease. The Millsite Lease only authorizes the use of the surface of State land to support mining operations which are conditioned upon separate permits to be sought and approved before those activities can proceed.

b. **Comment Summary:** The environmental audit is set for the final year of the permit term, which, under this permit would begin on September 28, 2020. The council request notice of the commencement and result of the audit.

**Response:** The State and TAK are in the process of setting up the next Environmental Audit to meet the terms of the Reclamation Plan Approval. Upon completion of the Environmental Audit, the final report is published to the Large Mine Permitting website.

9. **Issue:** Temporary Closure definition not consistent.

**Comment Summary:** The POOA identifies the period of Temporary Closure as any planned closure of 90 days or longer. This is inconsistent with the Millsite Lease provision which identifies temporary closure as a closure of both Mining Operations and Millsite Operations on the Millsite area for a period not exceeding three years in duration.

**Response:** Both the POOA and the Millsite Lease Section 15(a) define a Temporary Closure as any planned or unanticipated closure expected to last 90 days or more, and both specify that a temporary closure cannot extend beyond three years. If the closure extends beyond three years the Millsite Operations and the POOA provides for DNR to deem the operations permanently abandoned or ceased, whereupon final reclamation must commence unless otherwise agreed by the Department. DNR has updated the definition of Temporary Closure in Section 2(u) of the Millsite Lease to align with the requirements of Section 15(a).

10. **Issue:** Erosion standards not discussed.

**Comment Summary:** There is no identification as part of the POOA of who is responsible to inspect for erosion to ensure there is stabilization, minimal disturbance to adjacent area, and the elimination of rills and gullies.

**Response:** The Department, as the approving agency of the POOA and the Reclamation Plan is responsible for performing the site inspections of the Red Dog Mine Site as a part of the Reclamation Plan Approval and would continue to conduct similar site inspections under the Plan of Operations Approval until after site closure.

11. **Issue:** Surface liner is not required.

**Comment Summary:** The POOA does not require the entire tailings disposal area to be lined. Geomembrane liners have been required on the TSF and there is no reason they cannot be similarly be required at the Millsite tailings storage area.

**Response:** The existing TSF is not a lined facility. Therefore, requiring the lining of the portion of the TSF where it is located on State Lands is not reasonable nor necessary.

12. **Issue:** Millsite Lease ADL 233521 deficiencies.

a. **Comment Summary:** DNR should incorporate into the Millsite Lease the requirements of TAK's Waste Management Permit 2016DB0002.

**Response:** Section 11(b) of Millsite Lease ADL 233521 requires the lessee to conduct all Millsite Operations in compliance with the Plan of Operations or other plans approved by the Division for lands within the Millsite area, the Reclamation Plan, and all other permits or authorizations issued by local, state, and federal agencies, and all laws, statutes, regulations and ordinances including but not limited to environmental statutes and regulations. Based on the requirements of Section 11(b), there is no benefit to incorporating TAK's Waste Management Permit into the Millsite Lease as it is updated and approved independently from the Millsite Lease.

b. **Comment Summary:** Red Dog's Waste Management Permit 2016DB0002 is four years old, outdated, has incorrect height of the TSF and does not address the proposed Millsite Lease Tailings.

**Response:** Waste Management Permit No. 2016DB0002 is not part of the public notice. The millsite lease tailings disposal area is within the 1006 ft contour that is approved in the current Department of Environmental Conservation (DEC) Waste Management Permit, which will be renewed again for possible renewal in 2021.

c. **Comment Summary:** One commenter requests the ability to review that aspect of the Waste Management Permit once the Millsite Lease area activities are incorporated into it.



**Response:** As stated in Response 12(a) above, DNR does not recognize the need to incorporate the Waste Management Plan requirements into the Millsite Lease. The approved Waste Management Permit is available for review on the Large Mine Permitting website.

d. **Comment Summary:** The Millsite Lease defines “Reclamation Plan” as the Red Dog Reclamation Plan for the Millsite Area submitted by (TAK) and approved by the Division. It also refers to the approved Reclamation Plan in the Millsite Lease provision addressing Removal and Reclamation. One commenter requests the opportunity to review and comment on that Reclamation Plan before the Millsite Lease is approved.

**Response:** DNR has updated the definition of Reclamation Plan in Section 2(a) of the Millsite Lease to reference the Red Dog Mine Reclamation Plan. The current Red Dog Mine Reclamation Plan was approved in 2016 and has been available to the public on the Large Mine Permitting website for four years. The same commenter requesting this review was engaged during the development of that Plan. The Plan will be updated and renewed in 2021, and the same commenter has been engaged with TAK's Community Outreach Team about that Plan update.

13. **Issue:** Improper Permitting of Material Sales in DD-2.

**Comment Summary:** The nine material sale contracts that DNR entered into with TAK for the DD-2 material site reveal that TAK has not adhered to the contract terms, there has been inadequate public notice, and that the safeguards of the Material statutes, AS 38.05.550 *et. seq.* have not been followed. DNR’s issuance of multiple “10 year” and “5 year” material sale contracts for the same material source at DD-2, and for overlapping years, has obscured the ability to calculate how much material TAK has withdrawn from the DD-2 site and there is no description of where that material has been utilized.

**Response:** See Exhibit D for the response.

14. **Issue:** The Proposed Action Jeopardizes Cultural and Historic Resources.

**Comment Summary:** One commenter, a recognized Native Village, requests under Administrative Order No. 186, the SOA, through DNR, should consult with the Native Village concerning the issuance of this lease application on a government-to-government basis.

**Response:** The Department recognizes that some of the stakeholders are federally recognized Tribes, and further respects the existence and governmental status of those Tribes. As a matter of good practice and in fulfillment of legal requirements, the Department routinely engages with stakeholders and interested parties when evaluating projects in Alaska. In addition to Tribes, interested parties can include private persons, state and federal agencies, industry-specific interest groups, and other organizations such as environmental groups. Like any other interested party, the Department has recognized, reviewed, and responded to all comments; including those from Tribes that are stakeholders or interest parties. Adequate opportunities exist for meaningful engagement through the existing and robust public notice and comment periods for state authorizations where appropriate. This is consistent with the current process for review of applications and permits prior to authorization or denial. As such, the Division/Department

respectfully declines the request for government-to-government consultation specific to this request.

15. **Issue:** Cultural Resource Survey Requirements and Overlapping Jurisdiction.

a. **Comment Summary:** The proposed Millsite Lease and TAK's Plan of Operations demonstrates there is potential for this public improvement and its construction to adversely affect historic, prehistoric, or archeological sites, locations, or remains. One commenter that is a Native Tribe requests an adequate archaeological survey of the area to determine whether the area contains historic, prehistoric, or archeological data which should be preserved in the public interest.

**Response:** A cultural resource survey of the area was completed in 2017 and submitted to SHPO and the U.S. Army Corps of Engineers (USACE) for review prior to the USACE approving the Section 404 permit for the TSF expansion to 1,006 ft elevation.

b. **Comment Summary:** Based on the 2016 and 2017 cultural resources reports for this area, it seems TAK's consultant limited archeological fieldwork to the 2016 proposed expansion of the DD-2 material site and conducted no subsurface testing. This is problematic. To our knowledge subsurface testing has yet to occur. It is ill advised to approve TAK's Plan of Operations without adequately addressing what has happened to these sites and ensure this does not happen again.

**Response:** See response to comment 15.a above. None of the sites identified in the 2016 and 2017 survey are in the area covered by the POOA. Furthermore, SHPO consulted with the Division on the DD-2 material site expansion, ADL 419715, in 2017 and the site within the DD-2 material site, DEL-00292, should be avoided per the enforceable permit conditions. In addition, The Millsite Lease, the Millsite Lease Record of Decision, and the POOA contains enforceable stipulation that requires compliance with the Alaska Historic Preservation Act.

c. **Comment Summary:** Although this is a state permit application, we remind DNR that the activities TAK proposes require compliance with the National Historic Preservation Act because TAK's activities appear to be within the jurisdiction of the USACE.

**Response:** Compliance with the National Historic Preservation Act and Section 106 consultation are not required for this authorization because the proposed Millsite Lease area is located on State land and has been reviewed under the Alaska Historic Preservation Act (AHPA) (AS 41.35). A review of a map of Red Dog Mine Proposed TSF, dated May 12, 2018 provided by TAK, and the requested Plan of Operations indicate that no wetlands have been identified within the boundary of the requested Plan of Operations and therefore does not fall under the jurisdiction of the USACE. When and if future proposed Plan of Operations are to be permitted, that include wetlands, the USACE will be included. The USACE has a separate permitting process associated with their authorities that includes consultation under the National Historic Preservation Act.

d. **Comment Summary:** The presence of wetlands indicate the USACE should be part of the permitting process, and DNR should coordinate with the USACE, SHPO, TAK, and

other consulting parties under Section 106 of the National Historic Preservation Act so impacted Tribes can fully understand and participate in the cultural resources research for this project.

**Response:** See comment response 15.c. The Millsite Lease grants the use of the surface estate of State of Alaska Lands, but does not authorize work to be done on the lease area and requires that each project to be permitted must obtain the permit before work can commence. The current Plan of Operations Approval has a stipulation that requires the permittee to coordinate with the Alaska Historic Preservation Act (AS 41.35.200) and a similar stipulation has been added to Appendix C of the Millsite Lease. A review of the requested Plan of Operations and a map of the Alaska Heritage Resource Survey provided by the commenter and produced by the Office of History and Archeology, indicates that the requested Plan of Operations locations does not include designated sites on State of Alaska lands.

**Exhibit A**  
Modified DD-2 Material Site Boundary






-  Millsite Lease
-  DD-2 Material Site - Revised for Millsite Lease
-  DD-2 Material Site - Prior to Millsite Lease Revision

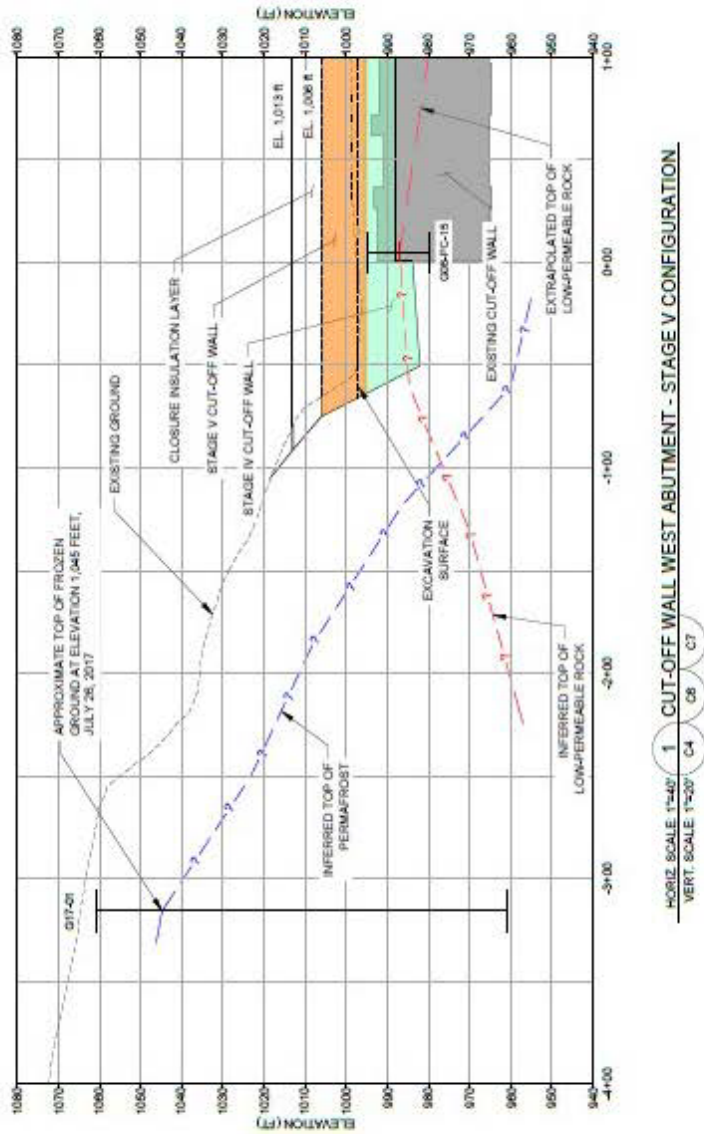


Exhibit A  
Page 1 of 1



## Exhibit B

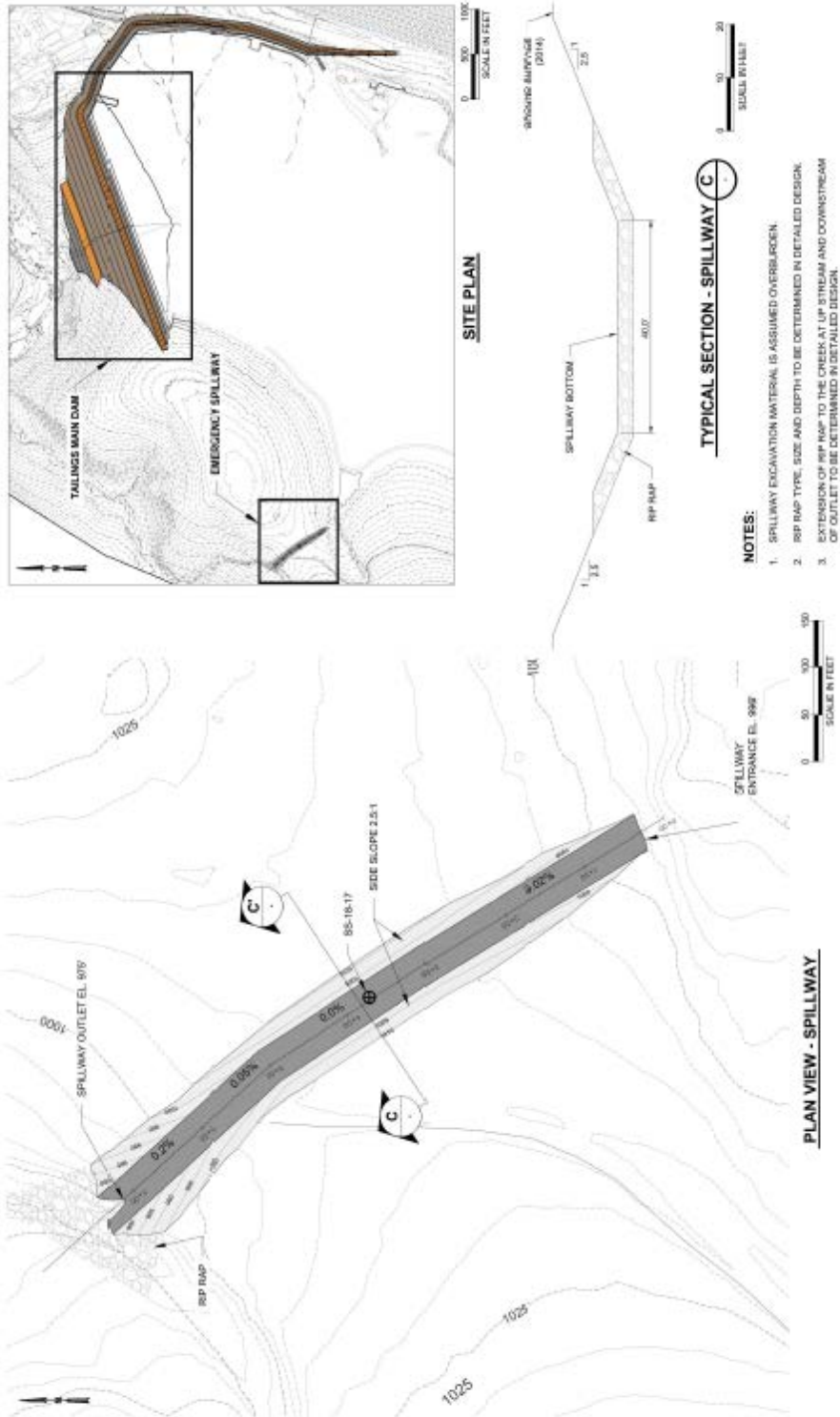
### Cross-Section of the DD-2 Material Site Boundary



1 CUT-OFF WALL WEST ABUTMENT - STAGE V CONFIGURATION

# Exhibit C

## Conceptual Design of the Proposed Spillway



## Exhibit D

### Response to Material Sales Comments from one Commenter ADL 233521 Millsite Lease; ADL 420972 Material Sale F20209958POOA Draft Plan of Operations Approval

The March 5, 2020 communication from Kivalina IRA Council commenting on the proposed ADL 233521 Millsite Lease includes a section related entirely to material sales. This response is limited to that section of the comments, which is included as Section II on pages 5 – 10 of the comments.

Section II begins with this comment: “The nine material sale contracts that DNR entered into with TAK for the DD-2 material site reveal that TAK has not adhered to the contract terms, there has been inadequate public notice, and that the safeguards of the Material Sale statutes, AS 38.05.550 *et. seq.*, have not been followed.” These concerns will be addressed below.

#### I. 2012 Material Sale Statute and DD-2 Material Site Designation

It’s possible that some of the comments stem from misunderstanding the change in procedures that resulted from the 2012 statute change related to material sales. Prior to 2012, The Division typically issued 2-step Best Interest Findings for material sales. These decisions included a Preliminary Decision, a 30-day Public Notice, a Final Finding and Decision, and a 20-day appeal period.

The 2012 Material Sales statute shifted the Best Interest Findings from material *sales* to material *sites*. Under AS 38.05.550(b), The Division conducts the 2-step Best Interest Finding when designating a material site. Once that process is completed, “the department may sell materials continuously, without further finding or notice, from that designated source or site under this section until the source or site is closed by the department.” Under the 2012 Material Sales statute there is no longer a requirement for public notice for material sales from a designated material site.

The DD-2 site was identified as a designated material site under ADL 419715 along with other existing material sites as part of the 2012 statute under criteria established by the statute. Subsequent designations or expansions require the 2-step Best Interest Finding described above.



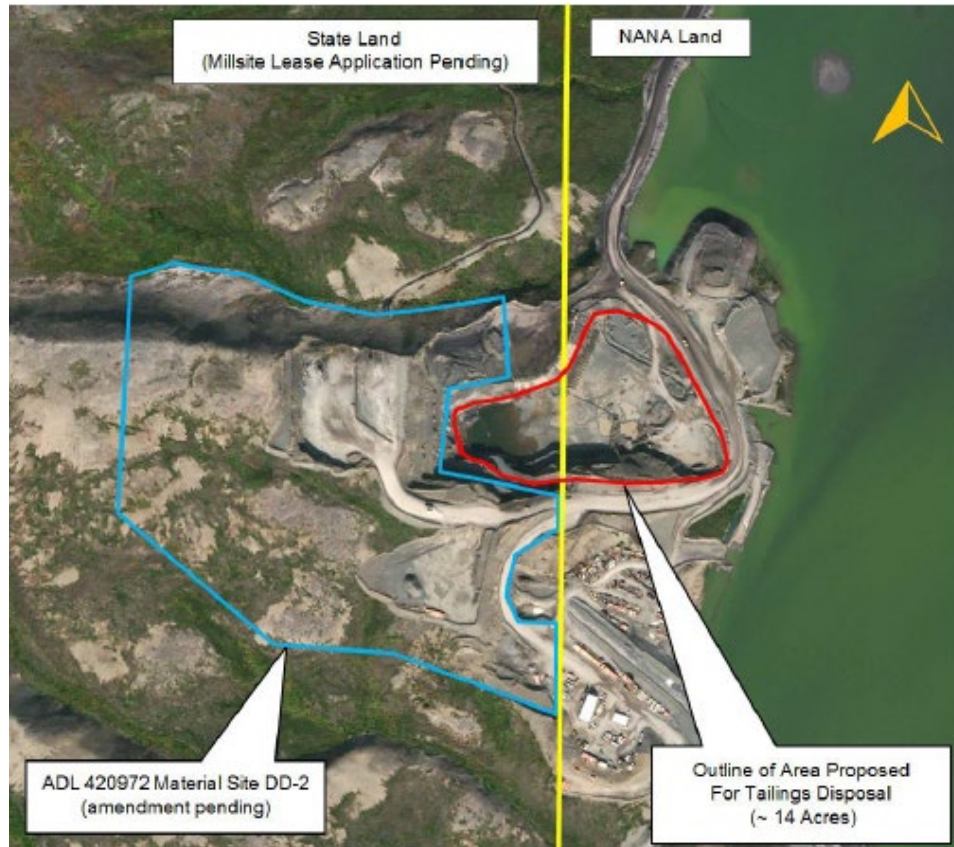
In November 2016 THE DIVISION received a request to expand the DD-2 material site from 26 acres to 72 acres. The old configuration is shown in red and the new configuration is shown in blue in the image to the right (above).

THE DIVISION approved the request to expand the DD-2 site after following the 2-step Best Interest Finding process, including:

- Preliminary Decision: signed May 19, 2017
- Public Notice:
  - Online Public Notice May 19 – June 16, 2017
  - Public Notice Letter to NANA Regional Corporation – mailed May 19, 2017
  - Public Notice Letter to Northwest Arctic Borough – mailed May 19, 2017
- Final Finding and Decision: signed July 10, 2017
- Appeal Period: 20 days after issuance of the Final Finding and Decision

The designation and expansion of the DD-2 material site comply with the 2012 Material Sales statute.

The current request to issue a Millsite Lease would reduce the size of the material site by approximately 60.5 acres. These 60.5 acres would no longer be used for material extraction and would be managed under the Millsite Lease. The proposed new material site boundaries are shown by the blue boundary in Figure 2 of the proposed Plan of Operations:





Under the proposed Millsite Lease, the material site will continue to be managed by The Division's Lands Section, and the Millsite Lease will be managed by the The Division Mining Section.

## **II. Material Sales from DD-2**

Numerous concerns have been listed related to TAK's Material Sale Contracts beginning in 1999. The information related to the Material Sale Contracts is not directly related to the proposed Millsite Lease because the material site will continue to be managed by the Division's Lands Section while the Millsite Lease will be managed by the Division's Mining Section under the Millsite Lease.

In response to the concerns outlined in the comments, this section will provide clarifying information related to each of the material sale contract casefiles. Note that every material sale contract includes requirements related to the method of disposal as well as limitations, conditions and terms of the material sale as required by state statute.

### **A. Contract #1 – Material Sale Contract at DD-2: ADL 416194**

The comments include a typo for this ADL number. The correct number is ADL 416194.

The comments indicate that TAK exceeded the 25,000 cubic yard (cy) limit in 2008 and 2009. The information provided in the comments is consistent with the Division's records. It appears that TAK over-extracted by 638 cy in 2008 and by 2,723 cy in 2009. The records also show that TAK paid for the excess material extracted during these years.

### **B. Contract #2 – Material Sale Contract at DD-2: ADL 418654**

The comments accurately note that TAK reported extraction under this contract and the previous contract in 2009, for a total of 46,526 cy for that year.

It does not appear, however, that TAK operated under a 5-year contract for six years as indicated in the comments. The contract was issued from August 28, 2009 through August 27, 2014, which explains the reporting for six calendar years under the same 5-year contract.

The comments also indicate concerns related to additional contracts under ADL 419182 (Contract #3) and ADL 419895 (Contract #4). These contracts will be addressed in the following sections.

### **C. Contract #3 – Material Sale Contract at DD-2: ADL 419182**

The Division issued a 2-year contract to TAK for 170,000 cy of material under ADL 419182. The term of the contract was May 17, 2011 – May 16, 2013. The casefile shows that for this contract, an Adjudication Summary was issued and Public Notice was posted on the State of Alaska Online Public Notice System on March 16 through March 30, 2011. Public notice was provided to the Northwest Arctic Borough, the City of Kivalina, and the Kivalina Board Member

for the NANA Corporation. Notice was also sent to the Kotzebue and Kivalina Post Offices for posting. No public comments were received.

TAK extracted the full 170,000 cy under this contract and paid \$2.00 per cy for the material.

D. Contract #4 – Material Sale Contract at DD-2: ADL 419895

The Division issued a 5-year contract to TAK for 250,000 cy of material under ADL 419895. The term of the contract was April 8, 2013 – April 7, 2013. The comments accurately note that TAK over-extracted by 109,654 cy in the first year and paid for all the material extracted.

This contract was issued in 2013, following the enactment of the 2012 Material Sales statute. From this point forward, public notice was not required for material sale contracts from designated material sites, including DD-2.

E. Contract #5 – Material Sale Contract at DD-2: ADL 420034

The comments accurately note that The Division issued a 5-year contract for 250,000 cy of material under ADL 420034. 218,897 cy was extracted in 2014, and the remainder was extracted in 2015. TAK paid for all the material extracted.

F. Contract #6 – Material Sale Contract at DD-2: ADL 420188

The comments also accurately note that the Division issued another 5-year contract for 150,000 cy under ADL 420188. All the material under this contract was extracted and paid for in 2015.

Public notice was not required for this material sale contract because it was issued after 2012 from a designated material site.

G. Contract #7 – Material Sale Contract at DD-2: ADL 420374

In 2015 The Division issued another 5-year contract under ADL 420374 for 700,000 cy. The comments erroneously assert that TAK did not pay the full amount for the material under this contract. In this case, TAK overpaid requiring The Division to issue a refund.

Again, public notice was not required for this contract because it was issued after 2012 from a designated material site.

H. Contract #8 – Material Sale Contract at DD-2: ADL 420751

In 2017 the Division expanded the DD-2 material site and issued another material sale contract for 250,000 cy of material under ADL 420751. The Division followed the required 2-step Best Interest Finding process and provided public notice as detailed above. TAK extracted and paid for the entire 250,000 cy in 2018.

I. Contract #9 – Material Sale Contract at DD-2: ADL 420972

In 2018 the Division issued a 5-year material sale contract for 1,500,000 cy of material under ADL 420972. The comments accurately reflect the quantity extracted and amounts paid under

this contract. Public notice was not required for this contract because it was issued after 2012 from a designated material site.

J. List of all The Division Contracts for DD-2

See below for a list of all the Material Sale Contracts for DD-2.

Material Sale Contract File Number	Effective Date	Expiration Date	Price per cubic yard	CY allowed entire contract	To Date/ Final CY extracted	Date closed
ADL 416194	5/7/99	5/6/09	0.75/1.00	249,000	181,618	2/3/10
ADL 418654	8/28/09	8/27/14	\$2.00	125,000	140,191	7/15/14
ADL 419182	5/17/11	5/16/13	\$2.00	170,000	170,000	8/28/12
ADL 419895	4/8/13	4/7/18	\$2.00	250,000	359,654	1/15/14
ADL 420034	3/11/14	3/10/19	\$2.00	250,000	250,000	7/22/15
ADL 420188	8/12/14	8/11/19	\$2.00	150,000	150,000	10/2/16
ADL 420374	4/21/15	4/20/20	\$2.00	700,000	684,344	10/12/18
ADL 420751	1/10/18	1/9/23	\$2.00	250,000	250,000	11/28/18
ADL 420972	6/4/18	6/3/23	\$2.00	1,500,000	528,411	
<b>TOTAL</b>					<b>2,714,218</b>	

**III. Conclusion**

This summary of the DD-2 Material Sale Contracts shows that while TAK did over-extract on some of the material sale contracts related to DD-2, the company reported those over-extractions and paid for the material. It also shows that The Division provided public notice for the 2017 material site expansion of DD-2 and provided public notice and other requirements for Material Sale Contracts under the pre-2012 and post-2012 material sales statutes.