

Kivalina Title Report Review – 6.20.18/jfb

(Note: Parcelization based on preliminary ROW plans by J. Hutchinson)

Parcel E1 – Kivalina Airport

- No title report provided
- Parcel within Kivalina Airport – Easement to be granted to City of Kivalina by DOT.
- DOT title by patent No. 1231516 from USA for USS No. 3776 recorded in B26/P376 in the Noatak-Kobuk Recording District on April 24, 1963. (Note: Noatak-Kobuk Recording District merged with Fairbanks Recording District in 1969. A portion of the Noatak/Fairbanks Recording District below the 68 degree North Latitude is now the Kotzebue Recording District.)

Parcels 2 & 3 – Tidelands within Kivalina Airport

- No title report provided
- DOT interest under DNR ILMA – ADL No. 412110 signed July 12, 1985 and Recorded in Book 29/Page 441 on August 21, 1985 Kotzebue Recording District – Tracts IV and V of Kivalina Airport (Note: ILMA specifically for “airport purposes”)

Parcels 4, 5, & 6 – Kivalina Lagoon Title Report.pdf (11/9/17)

- Report includes submerged lands in Sections 15 & 16, T27N R26W KRM. It should also include Section 21 to cover Parcel 4.

Applies to all Nana parcels 7-16:

- Encumbrances include reference to PLO 1613 that is irrelevant to Kivalina but may be a part of title report boilerplate.
- Terms & conditions of the granted easement IC No. 1759 issued on August 28, 1998 to NANA. 25-foot easement crosses National Monument lands. Not in conflict with project
- No 17b easement conflicts.

Parcel 7 - Section 15 T27N R26W KRM Title Report.pdf (11/9/17)

- GL-1 (Not a part of segregation survey) (ROW conflict with project water body)
- Nana/USA Land exchange B30/P807 – 2 trail easements in lieu of 17b between Kivalina and Noatak (IC 1759) – No conflict with project.

Parcel 8 - Section 10 T27N R26W KRM Title Report.pdf (11/9/17)

- GL-3 (No apparent water body conflicts)

Parcel 9 - Section 11 T27N R26W KRM Title Report.pdf (11/15/17)

- GL-3 (ROW conflict with project water body)

Parcel 10 - Section 2 T27N R26W KRM Title Report.pdf (11/9/17)

- (ROW conflict with project water body)

Parcel 11 - Section 1 T27N R26W KRM Title Report.pdf (11/20/17)

- GL-8 (No apparent water body conflicts)
- EMI 41? Emergent Islands in the Wulik River.

Parcel 12 – Section 36 T28N R26W KRM Title Report.pdf (11/20/17)

- GL-3: This is all of Sec. 36 except the water body according to the segregation survey filed 11/30/06. Only GL-3 was patented to Nana. A portion of the water body shown in the segregation survey crosses the proposed ROW. **Project water body based on Lidar survey?**

Parcel 13 - Section 31 T28N R25W KRM Title Report.pdf (11/20/17)

- GL-4 (No apparent water body conflicts)

Parcel 14 - Section 30 T28N R25W KRM Title Report.pdf (11/20/17)

- GL-1 (No apparent water body conflicts)

Parcel 15 - Section 19 T28N R25W KRM Title Report.pdf (11/29/17)

- GL-1 (No apparent water body conflicts)
- Encumbrance No. 7 lists BLM plats for T27N R26W

Parcel 16 - Section 20 T28N R25W KRM Title Report.pdf (11/29/17)

- (No apparent water body conflicts)

Water Body Conflicts

I have determined by comparison that the McClintock SCP imported the water body outlines from “Photogrammetric Resurvey and Segregation Survey” plats prepared by BLM as updates to the Township survey plats. These water body outlines are what BLM used to define the Government Lots within the sections such that Nana was only conveyed the non-water body lots. There is a question as to whether the water bodies are in title to the State of Alaska or retained by BLM.

The water body outlines shown on the DOT preliminary ROW plans are clearly different when compared to the BLM water body outlines. McClintock had commissioned a Lidar survey for the Evacuation Road project and this might be the basis for the updated water body outlines. Brian thinks that the water body outlines could also have been based on the work performed by USKH in 2011-12 for the Kivalina Airport surveys.

6.20.18: Called Brian Raynes, PLS, the Coastal and Riparian Boundary supervisor at DNR cadastral (269-8519 brian.raynes@alaska.gov) He said that generally the BM photogrammetric/segregation surveys were intended to calculate the chargeable acreage against the ANCSA selections. The water body lots

may not have been listed in the Nana patents but BLM would not have intended to retain them. If they actually do meet the requirements for navigability, then they are held in title by DNR under the Statehood act. But if they are not navigable, Brian says that common law would hold that ownership would go to the adjoining upland owner, NANA. He recommended I also speak to Wendy Steinberger in the Navigability section for verification. (269-6018)

The Alaska Mapper – Navigable Waters layer shows the Wulik River to the southeast of the project alignment and a series of interconnected lakes within Section 9, 10, 11 & 16 of T27N R26W KRM as being navigable.

It appears that these bodies of water and potentially navigable lakes & rivers according to the DNR maps should not conflict with the Nana ownership interest in the proposed ROW corridor. The greatest risk is if in the future DNR asserts that some of these bodies of water are declared navigable. I believe risk is low.

6.21.18: Called Wendy Steinberger, Natural Resources Technician with DNR Navigability section (907.269.6018 wendy.steinberger@alaska.gov) Navigability Project website at <http://dnr.alaska.gov/mlw/nav/index.cfm> . She noted that in the vicinity of Kivalina, other than the tidal waters in Kivalina Lagoon, two freshwater bodies determined to be navigable by the State. These include the Wulik River to the south and southeast of our alignment and the Qayaqtaugiaq Slough (name from 2013 DCRA Community Map) to the north and northwest of our alignment within sections 9, 10, 11 & 16 of T27N R26W, KRM. The slough was determined to be navigable in part because it is tidally influenced.

We then looked at the three-legged lake within Section 36, T28N R26W, KRM. The pond outline from the BLM Twp Resurvey & Segregation plat would show one leg of the pond crossing our alignment. As BLM had assigned a lot number to the pond and not conveyed it to Nana, the question is whether this is another parcel under separate ownership. She agreed that recent photography shows the leg crossing the alignment to have dried up substantially. She believes that this was a 50-acre pond and had long ago been a channel of the Wulik River.

Wendy said that state policy would not claim ponds like this not connected to navigable water access. She agrees with Brian Raynes statement that as the ponds had relicted, title would attach to the upland adjoining owner, or in this case, NANA. She said she would not consider these small ponds to have been navigable at statehood and therefore not held under State title.

After reviewing the title reports, patents, MTPs, TWP plats and discussions with DNR, I believe that acquisition of parcels 7-16 will all be from NANA and no involvement with BLM or DNR is required.