

To: 'Wackowski, Stephen'[stephen_wackowski@ios.doi.gov]
Cc: Roy Jones[rjones@sjgdc.com]; Matt Ganley (BSNC)[mganley@beringstraits.com]; Leathard, Scott (Sullivan)[Scott_Leathard@sullivan.senate.gov]; Humphrey, Cameron[Cameron.Humphrey@mail.house.gov]; Zane, C. J.[Zane-CJ@blankrome.com]
From: Rayfield, John
Sent: 2019-03-12T15:41:16-04:00
Importance: Normal
Subject: RE: [EXTERNAL] Subtitle C of title V of the Coast Guard Authorization Act of 2016, Conveyance of Coast Guard Property At Point Spencer, Alaska
Received: 2019-03-12T15:41:27-04:00

Thanks.

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From: Wackowski, Stephen <stephen_wackowski@ios.doi.gov>
Sent: Tuesday, March 12, 2019 3:33 PM
To: Rayfield, John <John.Rayfield@mail.house.gov>
Cc: Roy Jones <rjones@sjgdc.com>; Matt Ganley (BSNC) <mganley@beringstraits.com>; Leathard, Scott (Sullivan) <Scott_Leathard@sullivan.senate.gov>; Humphrey, Cameron <Cameron.Humphrey@mail.house.gov>; Zane, C. J. <Zane-CJ@blankrome.com>
Subject: Re: [EXTERNAL] Subtitle C of title V of the Coast Guard Authorization Act of 2016, Conveyance of Coast Guard Property At Point Spencer, Alaska

Thanks John. I've already spoken to our solicitors since we hung up our call. I'll get something scheduled in the next few days to talk through our next steps. My Best, Steve

Steve Wackowski
Senior Adviser for Alaskan Affairs

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On Tue, Mar 12, 2019 at 3:25 PM Rayfield, John <John.Rayfield@mail.house.gov> wrote:
Steve –

Good talking to you. Section 533 (b) directs the Secretary of the Interior to convey tracts (2) and (5), as defined in the Act, to the Bering Straits Native Corporation no later than February 8, 2017 – 108 week ago. There is no direction in statute to consult with the Secretary of the Department in which the Coast Guard is operating, or any other Federal entity, nor to wait for any Federal entity to take action prior to making this mandatory and now long overdue conveyance..

The statute states, “the Secretary of the Interior shall convey, subject to valid existing rights, all right, title, and interest of the United States in and to the surface and subsurface estates of Tract 2 and Tract 5 in accordance with subsection (d).” Subsection (d) states, “the Secretary of the Interior shall offer Tract 2 and Tract 5 to BSNC under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).”

Both of the subsection (b) and subsection (d) direct the Secretary of the Interior and only the Secretary of the Interior to act. Neither of the subsection (b) nor subsection (d) require the Secretary to consult with or act in conjunction with any other Federal entity, or defer action until some precipitating action taken by another federal agency.

Specifically, the statute does NOT require the Secretary of the Department in which the Coast Guard is operating to relinquish its withdrawal under Public Land Order 5260. In fact, the statute terminates such withdrawal by process of law on the date on which tracts (2) and (5) are conveyed. Section 536 (b) states that for “any Tract conveyed under this subtitle, Public Land Order 2650 shall automatically terminate upon issuance of a conveyance document issued pursuant to this subtitle for such Tract.”

Convey tracts (2) and (5)!

Again, it was good to talk to you. Please do not hesitate to call if you have any questions. Subtitle C is included below for your convenience.

Subtitle C--Conveyance of Coast Guard Property at Point Spencer, Alaska
SEC. 531. FINDINGS.

The Congress finds as follows:

- (1) Major shipping traffic is increasing through the Bering Strait, the Bering and Chukchi Seas, and the Arctic Ocean, and will continue to increase whether or not development of the Outer Continental Shelf of the United States is undertaken in the future, and will increase further if such Outer Continental Shelf development is undertaken.
- (2) There is a compelling national, State, Alaska Native, and private sector

need for permanent infrastructure development and for a presence in the Arctic region of Alaska by appropriate agencies of the Federal Government, particularly in proximity to the Bering Strait, to support and facilitate search and rescue, shipping safety, economic development, oil spill prevention and response, protection of Alaska Native archaeological and cultural resources, port of refuge, arctic research, and maritime law enforcement on the Bering Sea, the Chukchi Sea, and the Arctic Ocean.

(3) The United States owns a parcel of land, known as Point Spencer, located between the Bering Strait and Port Clarence and adjacent to some of the best potential deepwater port sites on the coast of Alaska in the Arctic.

(4) Prudent and effective use of Point Spencer may be best achieved through marshaling the energy, resources, and leadership of the public and private sectors.

(5) It is in the national interest to develop infrastructure at Point Spencer that would aid the Coast Guard in performing its statutory duties and functions in the Arctic on a more permanent basis and to allow for public and private sector development of facilities and other infrastructure to support purposes that are of benefit to the United States.

SEC. 532. DEFINITIONS.

In this subtitle:

(1) ARCTIC- The term 'Arctic' has the meaning given that term in section 112 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4111).

(2) BSNC- The term 'BSNC' means the Bering Straits Native Corporation authorized under section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. 1606).

(3) COUNCIL- The term 'Council' means the Port Coordination Council established under section 541.

(4) PLAN- The term 'Plan' means the Port Management Coordination Plan developed under section 541.

(5) POINT SPENCER- The term 'Point Spencer' means the land known as 'Point Spencer' located in Townships 2, 3, and 4 South, Range 40 West, Kateel River Meridian, Alaska, between the Bering Strait and Port Clarence and withdrawn by Public Land Order 2650 (published in the Federal Register on April 12, 1962).

(6) SECRETARY- Except as otherwise specifically provided, the term 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

(7) STATE- The term 'State' means the State of Alaska.

(8) TRACT- The term 'Tract' or 'Tracts' means any of Tract 1, Tract 2, Tract 3, Tract 4, Tract 5, or Tract 6, as appropriate, or any portion of such Tract or Tracts.

(9) TRACTS 1, 2, 3, 4, 5, AND 6- The terms 'Tract 1', 'Tract 2', 'Tract 3', 'Tract 4', 'Tract 5', and 'Tract 6' each mean the land generally depicted as Tract 1, Tract 2, Tract 3, Tract 4, Tract 5, or Tract 6, respectively, on the map entitled the 'Point Spencer Land Retention and Conveyance Map', dated January 2015, and on file with the Department of Homeland Security and the Department of the Interior.

SEC. 533. AUTHORITY TO CONVEY LAND IN POINT SPENCER.

(a) Authority To Convey Tracts 1, 3, and 4- Within 1 year after the Secretary notifies the Secretary of the Interior that the Coast Guard no longer needs to retain jurisdiction of Tract 1, Tract 3, or Tract 4 and subject to section 534, the Secretary of the Interior shall convey to BSNC or the State, subject to valid existing rights, all right, title, and interest of the United States in and to the surface and subsurface estates of that Tract in accordance with subsection (d).

(b) Authority To Convey Tracts 2 and 5- Within 1 year after the date of the enactment of this section and subject to section 534, the Secretary of the Interior shall convey, subject to valid existing rights, all right, title, and interest of the United States in and to the surface and subsurface estates of Tract 2 and Tract 5 in accordance with subsection (d).

(c) Authority to Transfer Tract 6- Within one year after the date of the enactment of this Act and subject to sections 534 and 535, the Secretary of the Interior shall convey, subject to valid existing rights, all right, title, and interest of the United States in and to the surface and subsurface estates of Tract 6 in accordance with subsection (e).

(d) Order of Offer to Convey Tract 1, 2, 3, 4, or 5-

(1) DETERMINATION AND OFFER-

(A) TRACT 1, 3, OR 4- If the Secretary makes the determination under subsection (a) and subject to section 534, the Secretary of the Interior shall offer Tract 1, Tract 3, or Tract 4 for conveyance to BSNC under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(B) TRACT 2 AND 5- Subject to section 534, the Secretary of the Interior shall offer Tract 2 and Tract 5 to BSNC under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) OFFER TO BSNC-

(A) ACCEPTANCE BY BSNC- If BSNC chooses to accept an offer of conveyance of a Tract under paragraph (1), the Secretary of the Interior shall consider Tract 6 as within BSNC's entitlement under section 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)) and shall convey such Tract to BSNC.

(B) DECLINE BY BSNC- If BSNC declines to accept an offer of conveyance of a Tract under paragraph (1), the Secretary of the Interior shall offer such Tract for conveyance to the State under the Act of July 7, 1958 (commonly known as the 'Alaska Statehood Act') (48 U.S.C. note prec. 21; Public Law 85-508).

(3) OFFER TO STATE-

(A) ACCEPTANCE BY STATE- If the State chooses to accept an offer of conveyance of a Tract under paragraph (2)(B), the Secretary of the Interior shall consider such Tract as within the State's entitlement under the Act of July 7, 1958 (commonly known as the 'Alaska Statehood Act') (48 U.S.C. note prec. 21; Public Law 85-508) and shall convey such Tract to the State.

(B) DECLINE BY STATE- If the State declines to accept an offer of

conveyance of a Tract offered under paragraph (2)(B), such Tract shall be disposed of pursuant to applicable public land laws.

(e) Order of Offer to Convey Tract 6-

(1) OFFER- Subject to section 534, the Secretary of the Interior shall offer Tract 6 for conveyance to the State.

(2) OFFER TO STATE-

(A) ACCEPTANCE BY STATE- If the State chooses to accept an offer of conveyance of Tract 6 under paragraph (1), the Secretary of the Interior shall consider Tract 6 as within the State's entitlement under the Act of July 7, 1958 (commonly known as the 'Alaska Statehood Act') (48 U.S.C. note prec. 21; Public Law 85-508) and shall convey Tract 6 to the State.

(B) DECLINE BY STATE- If the State declines to accept an offer of conveyance of Tract 6 under paragraph (1), the Secretary of the Interior shall offer Tract 6 for conveyance to BSNC under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(3) OFFER TO BSNC-

(A) ACCEPTANCE BY BSNC-

(i) IN GENERAL- Subject to clause (ii), if BSNC chooses to accept an offer of conveyance of Tract 6 under paragraph (2)(B), the Secretary of the Interior shall consider Tract 6 as within BSNC's entitlement under section 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)) and shall convey Tract 6 to BSNC.

(ii) LEASE BY THE STATE- The conveyance of Tract 6 to BSNC shall be subject to BSNC negotiating a lease of Tract 6 to the State at no cost to the State, if the State requests such a lease.

(B) DECLINE BY BSNC- If BSNC declines to accept an offer of conveyance of Tract 6 under paragraph (2)(B), the Secretary of the Interior shall dispose of Tract 6 pursuant to the applicable public land laws.

SEC. 534. ENVIRONMENTAL COMPLIANCE, LIABILITY, AND MONITORING.

(a) Environmental Compliance- Nothing in this Act or any amendment made by this Act may be construed to affect or limit the application of or obligation to comply with any applicable environmental law, including section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(b) Liability- A person to which a conveyance is made under this subtitle shall hold the United States harmless from any liability with respect to activities carried out on or after the date of the conveyance of the real property conveyed. The United States shall remain responsible for any liability with respect to activities carried out before such date on the real property conveyed.

(c) Monitoring of Known Contamination-

(1) IN GENERAL- To the extent practicable and subject to paragraph (2), any contamination in a Tract to be conveyed to the State or BSNC under this subtitle that--

- (A) is identified in writing prior to the conveyance; and
- (B) does not pose an immediate or long-term risk to human health or the environment;

may be routinely monitored and managed by the State or BSNC, as applicable, through institutional controls.

(2) INSTITUTIONAL CONTROLS- Institutional controls may be used if--

- (A) the Administrator of the Environmental Protection Agency and the Governor of the State concur that such controls are protective of human health and the environment; and

(B) such controls are carried out in accordance with Federal and State law.

SEC. 535. EASEMENTS AND ACCESS.

(a) Use by Coast Guard- The Secretary of the Interior shall make each conveyance of any relevant Tract under this subtitle subject to an easement granting the Coast Guard, at no cost to the Coast Guard--

(1) use of all existing and future landing pads, airstrips, runways, and taxiways that are located on such Tract; and

(2) the right to access such landing pads, airstrips, runways, and taxiways.

(b) Use by State- For any Tract conveyed to BSNC under this subtitle, BSNC shall provide to the State, if requested and pursuant to negotiated terms with the State, an easement granting to the State, at no cost to the State--

(1) use of all existing and future landing pads, airstrips, runways, and taxiways located on such Tract; and

(2) a right to access such landing pads, airstrips, runways, and taxiways.

(c) Right of Access or Right of Way- If the State requests a right of access or right of way for a road from the airstrip to the southern tip of Point Spencer, the location of such right of access or right of way shall be determined by the State, in consultation with the Secretary and BSNC, so that such right of access or right of way is compatible with other existing or planned infrastructure development at Point Spencer.

(d) Access Easement Across Tracts 2, 5, and 6- In conveyance documents to the State and BSNC under this subtitle, the Coast Guard shall retain an access easement across Tracts 2, 5, and 6 reasonably necessary to afford the Coast Guard with access to Tracts 1, 3, and 4 for its operations.

(e) Access- Not later than 30 days after the date of the enactment of this Act, the Coast Guard shall provide to the State and BSNC, access to Tracts for planning, design, and engineering related to remediation and use of and construction on those Tracts.

(f) Public Access Easements- No public access easements may be reserved to the United States under section 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(b)) with respect to the land conveyed under this subtitle.

SEC. 536. RELATIONSHIP TO PUBLIC LAND ORDER 2650.

(a) Tracts Not Conveyed- Any Tract that is not conveyed under this subtitle shall remain withdrawn pursuant to Public Land Order 2650 (published in the Federal Register on April 12, 1962).

(b) Tracts Conveyed- For any Tract conveyed under this subtitle, Public Land Order

2650 shall automatically terminate upon issuance of a conveyance document issued pursuant to this subtitle for such Tract.

SEC. 537. ARCHEOLOGICAL AND CULTURAL RESOURCES.

Conveyance of any Tract under this subtitle shall not affect investigations, criminal jurisdiction, and responsibilities regarding theft or vandalism of archeological or cultural resources located in or on such Tract that took place prior to conveyance under this subtitle.

SEC. 538. MAPS AND LEGAL DESCRIPTIONS.

(a) Preparation of Maps and Legal Descriptions- As soon as practicable after the date of the enactment of this Act, the Secretary of the Interior in consultation with the Secretary shall prepare maps and legal descriptions of Tract 1, Tract 2, Tract 3, Tract 4, Tract 5, and Tract 6. In doing so, the Secretary of the Interior may use metes and bounds legal descriptions based upon the official survey plats of Point Spencer accepted by the Bureau of Land Management on December 6, 1978, and on information provided by the Secretary.

(b) Survey- Not later than 5 years after the date of the enactment of this Act, the Secretary of the Interior shall survey Tracts conveyed under this subtitle and patent the Tracts in accordance with the official plats of survey.

(c) Legal Effect- The maps and legal descriptions prepared under subsection (a) and the surveys prepared under subsection (b) shall have the same force and effect as if the maps and legal descriptions were included in this Act.

(d) Corrections- The Secretary of the Interior may correct any clerical and typographical errors in the maps and legal descriptions prepared under subsection (a) and the surveys prepared under subsection (b).

(e) Availability- Copies of the maps and legal descriptions prepared under subsection (a) and the surveys prepared under subsection (b) shall be available for public inspection in the appropriate offices of--

- (1) the Bureau of Land Management; and
- (2) the Coast Guard.

SEC. 539. CHARGEABILITY FOR LAND CONVEYED.

(a) Conveyances to Alaska- The Secretary of the Interior shall charge any conveyance of land conveyed to the State of Alaska pursuant to this subtitle against the State's remaining entitlement under section 6(b) of the Act of July 7, 1958 (commonly known as the 'Alaska Statehood Act'; Public Law 85-508: 72 Stat. 339).

(b) Conveyances to BSNC- The Secretary of the Interior shall charge any conveyance of land conveyed to BSNC pursuant to this subtitle, against BSNC's remaining entitlement under section 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)).

SEC. 540. REDUNDANT CAPABILITY.

(a) In General- Except as provided in subsection (b), section 681 of title 14, United States Code, as amended by this Act, shall not be construed to prohibit any transfer or conveyance of lands under this subtitle or any actions that involve the dismantling or disposal of infrastructure that supported the former LORAN system that are associated with the transfer or conveyance of lands under this subtitle.

(b) Continued Access to and Use of Facilities- If the Secretary of the department in which the Coast Guard is operating determines, within the 5-year period beginning on

the date of the enactment of this Act, that a facility on any of Tract 1, Tract 3, or Tract 4 that is transferred under this subtitle is subsequently required to provide a positioning, navigation, and timing system to provide redundant capability in the event GPS signals are disrupted, the Secretary may, for as long as such facility is needed to provide redundant capability--

- (1) operate, maintain, keep, locate, inspect, repair, and replace such facility; and
- (2) in carrying out the activities described in paragraph (1), enter, at any time, the facility without notice to the extent that it is not possible to provide advance notice.

SEC. 541. PORT COORDINATION COUNCIL FOR POINT SPENCER.

(a) Establishment- There is established a Port Coordination Council for the Port of Point Spencer.

(b) Membership- The Council shall consist of a representative appointed by each of the following:

- (1) The State.
- (2) BSNC.

(c) Duties- The duties of the Council are as follows:

- (1) To develop a Port Management Coordination Plan to help coordinate infrastructure development and operations at the Port of Point Spencer, that includes plans for--
 - (A) construction;
 - (B) funding eligibility;
 - (C) land use planning and development; and
 - (D) public interest use and access, emergency preparedness, law enforcement, protection of Alaska Native archaeological and cultural resources, and other matters that are necessary for public and private entities to function in proximity together in a remote location.
- (2) Update the Plan annually for the first 5 years after the date of the enactment of this Act and biennially thereafter.
- (3) Facilitate coordination among BSNC, the State, and the Coast Guard, on the development and use of the land and coastline as such development relates to activities at the Port of Point Spencer.
- (4) Assess the need, benefits, efficacy, and desirability of establishing in the future a port authority at Point Spencer under State law and act upon that assessment, as appropriate, including taking steps for the potential formation of such a port authority.

(d) Plan- In addition to the requirements under subsection (c)(1) to the greatest extent practicable, the Plan developed by the Council shall facilitate and support the statutory missions and duties of the Coast Guard and operations of the Coast Guard in the Arctic.

(e) Costs- Operations and management costs for airstrips, runways, and taxiways at Point Spencer shall be determined pursuant to provisions of the Plan, as negotiated by the Council.

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From: Wackowski, Stephen <stephen_wackowski@ios.doi.gov>
Sent: Tuesday, March 12, 2019 2:09 PM
To: Zane, C. J. <Zane-CJ@blankrome.com>
Cc: Roy Jones <rjones@sjgdc.com>; Matt Ganley (BSNC) <mganley@beringstraits.com>; Rayfield, John <John.Rayfield@mail.house.gov>; Grant, Chandra <grant-c@blankrome.com>
Subject: Re: [EXTERNAL] conf. call

Yes I will be on.

Steve Wackowski
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On Tue, Mar 12, 2019 at 2:06 PM Zane, C. J. <Zane-CJ@blankrome.com> wrote:
Guys, we sent out a calendar appointment and call-in number for a call on the Port Clarence conveyance issue. John Rayfield and Matt Ganley accepted, **Steve can you join us at 10:30 AM your time? Roy?**

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