

## **Attachment A: F20249828 Public Comments and Responses**

The following are responses to public comments that were submitted via e-mail to the Department of Natural Resources' (DNR's) Division of Mining, Land and Water, <sup>1</sup> concerning the Application for Permits to Mine in Alaska (APMA) F20249828 (hereinafter the "application" and the "permit") requesting authorization to conduct Hardrock Exploration activities on state mining claims in the Darby Mountains 30 miles north of the community of Elim. Panther Minerals (AK) Inc. plans multiple drill holes. Drill holes are expected to have a maximum depth of 1,000ft. The equipment being utilized for the drilling will be an LF-70 rotary diamond core drill rig. The drill locations will be accessed using helicopters and existing ATV trails. The proposed surface use is limited to a temporary camp located within the claim block on ADL 741187. The camp is located on the existing airstrip on state land. The camp will consist of approximately 12 people and utilize existing tent platforms located from previous exploration projects. Tents will be dismantled at the end of field season and stored for the following year.

### **Comment Overview**

In rendering a decision on this application, the Department considered comments submitted during the comment period which ran from July 11, 2024, to July 26, 2024<sup>2</sup>.

DNR received 133 of comments letters on the application from the public. Two comments were submitted by state or federal agencies and addressed within the decision document. Public comments have been reviewed and cataloged in the administrative record. Responses to public comments are categorized by like topics.

Comments within the scope of the application review were considered, as well as relevant, competent and scientifically sound information that the commenter cited in support of their comments. Comments regarding activities on the adjacent federal claims are outside the scope this notice.

### **Comment/Comment Summaries and Responses**

#### **1. Issue Topic: Opinion comments against the issuance of the MLUP and ARP for mining withing Panthers Minerals Claim block generally.**

**Comment Summary:** All comments received for proposed exploration voiced their opposition to the project.

**DMLW Response:** Comments Noted. The Division appreciates the public taking time to provide input on the proposed project. General opposition comments were noted but are beyond the scope of review under 11 AAC 96 and 11 AAC 97.

#### **2. Issue Topic: Opinion comment in favor of issuance of the permit.**

**Comment Summary:** Commentor expresses support for the project and issuance of the permit.

**DMLW Response:** Comments Noted. General support/opposition comments were noted. DNR reviewed this application in accordance with applicable law and regulation, including AS 38.05 (Alaska Land Act), AS 27.19 (Mine Reclamation Act), 11 AAC 97 (Mining Reclamation Regulations), and 11 AAC 96 (Miscellaneous Land Use). DNR also reviewed the permit file including previous permits issued for the Boulder Creek deposit and compliance history for the applicant. DNR follows a consistent and practical process for adjudicating mining-related applications in Alaska that takes into account the fact that each permit is unique. Pursuant to the Northwest Area Plan, DNR has a subsurface resources goal of providing opportunities through state land management to for the exploration and development of mineral resources, as well as a general goal of

<sup>1</sup> "DNR", "ADNR", the "Department", the "Division", "DMLW", and "Mining Section," are used to indicate the Alaska Department of Natural Resources.

<sup>2</sup> A comment response document is not required by statute or regulation but provides a useful summary of the relevant comment on the application that were submitted to DNR during the comment period and Department responses.

attempting to provide through management actions for economic development. This means providing for jobs and income by managing state lands and resources to support a vital, self-sustaining local economy.

### **3. Issue Topic: Potential Impact to Resources and Uses.**

**Comment Summary:** These commenters stressed the potential impacts within the proposed project area would have on local residents' subsistence and recreational uses. "Mining operations would cause irreparable damage to the environment, and the community of Elim depends on salmon to sustain its cultural, traditional, and economic well-being and way of life."

**DMLW Response:** Comments Noted. DNR agrees with a need to adequately manage fishery resources. In administering DNR authorizations, DNR will continue to work closely with the Alaska Department of Fish and Game (ADF&G), which has the regulatory expertise considering management and protection of fish, wildlife and habitat resources. A Fish Habitat Permit (FHP) (FH24-111-0151) was issued during the DNR review of the application for water withdrawal locations at Tubutulik River, Granite, Boulder and an unnamed creek within the project area. The FHP includes stipulations to avoid and minimize obstruction of free fish passage by using the appropriate water intake equipment and screen interfaces and the placement of intake equipment shall be suspended in the water column with a depth that prevents disturbance of the streambed materials. With the requested locations water withdrawal associated with the drill program and adhering to permit stipulations should not have a significant impact to the watershed or fishery resources.

The RST 16- Topkok-Candle trail is in vicinity of the project area but will not be impacted. Public access within the project area will not be restricted. The scale of the proposed activities is not expected to have large impacts on the areas of disturbance.

The applicant does not currently propose to construct additional drill roads, at this time. Mobilization of personnel and equipment to the project area will be via helicopters. Movement between the camp and drill locations will be via helicopter or existing ATV trails. The application proposes a maximum footprint for 2024 of 1 acre of total disturbance. All disturbance will be required to be reclaimed according to the state's mine reclamation performance standards and the provisions of the issued authorizations. These standards provide for stockpiling of topsoil and vegetative mat disturbed, and the revegetation of the exploration areas. Reclamation must be conducted as contemporarily as practicable, leaving the site in stable condition. The permittee is required to comply with all applicable federal and state permit stipulations.

The Northwest Area Plan management intent is to "*Manage for mineral values.*" The resources and uses include "*This large unit encompasses an area considered to have high to very high mineral potential; this area was selected by the state for its mineral value. Uranium prospects are under exploration (2008) within parts of the unit*" The applicant has proposed de minimis disturbance and this application was considered pursuant to the Northwest Area Plan's management intent and within the scope to limit impacts to recreational uses in the area.

### **4. Issue Topic: Concerns regarding Community Health.**

**Comment Summary:** The proposed exploration area is home to fish and wildlife populations and supplies water to Elim's watershed. Drilling would disrupt the Tubutulik River with dangerous levels of uranium contamination, posing significant threats to the health of humans and wildlife. Uranium contamination can cause cancer, genetic damage, disrupt hormone levels, and reduce blood cell counts, and symptoms of diseases may not appear until decades later.

**DMLW Response:** Comments Noted. The Division understands the nature of concerns regarding community health. Panther minerals is proposing to conduct hardrock mineral exploration, not mining. The proposed project will not involve mining any uranium, or concentrating the material as might be done at a uranium mine. Instead, the exploration will involve drilling holes in the rock to bring samples to the surface to help determine if the site contains concentrations and quantities of the target minerals.

The area has been extensively drilled between 1979 and 1981. Prior exploration was at a much larger scale than what the current applicant is proposing. The Division concludes based on previous exploration drilling, this project will not “disrupt the Tubutulik River with dangerous levels of uranium contamination, posing significant threats to the health of humans and wildlife” as the comments suggest. The limited number of drilling locations and the type of drilling proposed will not expose the area to any higher concentrations than are found in the water, fish and wildlife already due to the naturally occurring background. Core samples stored at the camp location roughly 2.5 miles from the Tubutulik River and the nearest potential drill location is approximately half mile from the Tubutulik River. The DNR authorization includes a stipulation that strictly prohibits the discharge of drilling mud and cuttings into lakes, kettle ponds, streams, rivers, or wetlands. The project does not propose to conduct any direct discharge into the Tubutulik River or its tributaries. Discharge is precluded by the terms of our permit and would also require additional permitting from state agencies.

#### **5. Issue Topic: Public Notice and Comment Period.**

**Comment Summary:** The Comment Period is Insufficient to provide meaningful public notice and comment opportunities in connection with the TWUP. The mere 2 weeks DNR provided to comment on the APMA and the TWUP and APMA is entirely insufficient. Instead, the public notice and a minimum 30-day comment period for the TWUP applications, including initial permits, extensions, and amendments should apply to “to protect the public interest.”

**DMLW Response:** Comment Noted. Revocable permits and authorizations such as the issued land use permit are not a disposal of a state interest and are exempt from formal public notice requirements by AS 38.05.945(e). Pursuant to Alaska Constitution Article VIII, Section 10, the Alaska Legislature enacted AS 38.05, including the provisions of AS 38.05.945.

However, the department does retain the discretion to issue an online notice posting under 11 AAC 96.030(c) for Land Use Permit Applications. The Division determined that it was appropriate to post our standard exploration permit courtesy 14-day posting<sup>3</sup>, which is used for comparable exploration projects elsewhere on state lands. This is the typical timeframe that land use permits are noticed by the Mining Section and that the Division’s Regional Land Offices notice for non-mining related land use permits.

The commentor reference TWUP, Temporary Water Use Permit, which is an outdated term. The current term is a Temporary Water Use Authorization or TWUA. The notice posted was specific to the Land Use Permit and that TWUAs adjudicated by the Water Section have been exempted from public notice by the State Legislature under AS 46.15.155(d). Comments received regarding the TWUP or TWUA, and Instream Flow Reservations are considered outside the scope of this decision.

The Division provided a reasonable and substantial opportunity to participate in the adjudicatory process governing the issuance of the permit, received numerous substantive comments, and provided a response to comments document addressing public interests and concerns.

#### **6. Issue Topic: Public Hearing and Government to Government Consultation with the IRA Council for the Native Village of Elim.**

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<sup>3</sup> <http://notice.alaska.gov/210962> (Notice to the Public & Request for Information APMA F20249828)

**Comment Summary:** The Native Village of Elim, City of Elim, and Elim Native Corporation (Elim Tri-Entities) passed a resolution requesting Government-to-Government consultation. The Indigenous peoples of these communities have inhabited the Tubutulik River watershed and nearby locations since time immemorial and have unparalleled, traditional ecological knowledge of its waters; this knowledge is invaluable and should be considered by State decisionmakers in reviewing and issuing TWUP, water rights and the APMA.

**DMLW Response:** Comments Noted. There is no legal requirement for public meetings or hearings in the adjudication of AS 38.05.850 Land Use Permits. Permits and other authorizations that are revocable are also exempt from AS 38.05.945 public notice requirements and thus, are exempt from AS 38.05.946 public hearings<sup>4</sup>. DMLW has provided a detailed response to comments document to address concerns and questions raised during the 14-day public notice period.

The Division provided public notice from July 11, 2024, to July 26, 2024. No existing legal obligation warrants government-to-government consultation for the issued authorization. A 2017 Alaska Attorney General Opinion discussed the status of federally recognized tribes in Alaska and the authority of a sovereign government over its citizens, its land, and people who enter its land. The opinion recognizes that sovereignty includes the power of native tribes to form a government and laws, determine tribal citizenship, assert sovereign immunity, and enter certain agreements with the federal government. This advisory opinion does not indicate that the State has a legal obligation to provide a sovereign government with additional or greater rights or consultation opportunities than the rest of the public, or, for example, a municipality.

In contrast with advisory opinions, the notice requirement for Land Use Permits is governed by statute and regulation. Upon receipt and review of an application or application amendment, law<sup>5</sup> provides the Division with discretionary authority to determine whether notice is performed. As beforementioned, the Division provided notice and a 14-day comment period. The Native Village of Elim, City of Elim, and Elim Native Corporation (Elim Tri-Entities) participated in this public notice process by submitting comments during that time and the Division has responded with a comment response document.

In summary, although the Division did not engage in any specific government-to-government consultation as none is legally required, DMLW provided The Native Village of Elim, City of Elim, and Elim Native Corporation (Elim Tri-Entities) a substantial opportunity to participate in the adjudicatory process governing the issuance of the permit and substantially participated. The Division received, reviewed, and responded to The Native Village of Elim, City of Elim, and Elim Native Corporation (Elim Tri-Entities) (and others) comments as appropriate. The administrative record supports this finding, and no other law currently mandates DMLW to conduct government-to-government consultation.

## **7. Issue Topic: Duration of TWUP should be limited to one year.**

**Comment Summary:** Commenters request DNR limit the duration of the TWUP authorization to a period of one year due to conservation concerns.

**DMLW Response:** Comment noted. The commentor reference TWUP, Temporary Water Use Permit, which is an outdated term. The current term is a Temporary Water Use Authorization or TWUA. Comments received regarding the TWUP or TWUA are considered outside the scope of this land use permit adjudication.

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<sup>4</sup> Under [AS 38.05.946](#)

<sup>5</sup> AS 38.05.945(e) provides that notice is not required under this section for a permit or other authorization revocable by the commissioner. 11 AAC 96.030(c) further provides that the department may give public notice of any application. May is used to indicate a permissive provision, an express grant of discretion on the part of the agency.

## **8. Issue Topic: Deny a permit authorizing any mining activity.**

**Comment Summary:** Commenters request a denial of the permit for any mining activity based on concerns for about the impact of mining activity in the area.

**DMLW Response:** Comments noted. The applicant has AS 38.05.195<sup>6</sup> mining claims, which are an interest in real property that provide an exclusive right of possession and extraction of locatable minerals. Surface uses of mining claims are limited to those necessary for the prospecting of, extraction of, and basic processing of minerals and shall be subject to reasonable concurrent uses under AS 38.05.255(a)<sup>7</sup>. Issuance of the permit is consistent with those statutes, the Alaska Lands Act (AS 38.05) in its entirety and regulations adopted thereunder. Panther minerals is proposing to conduct hardrock mineral exploration, not mining. The proposed project will not involve mining any uranium, or concentrating the material as might be done at a uranium mine. Instead, the exploration will involve drilling core holes in the rock to bring samples to the surface to help determine if the site contains concentrations and quantities of the target minerals to economically build a mine in this remote location. The Department has decided to approve the application with stipulations to address concerns about potential impacts to fish and wildlife, water and land resources. The Alaska Department of Fish and Game and the Alaska Department of Environmental Conservation may further stipulate or restrict activities proposed.

## **9. Issue Topic: Subsistence Priority**

**Comment Summary:** “Because the potential impacts on subsistence resources in authorizing the use of the water in this case, DNR must take consideration the Subsistence Priority which clearly states that subsistence use in the highest priority above all other uses AS 16.258”

**DMLW Response:** Comment noted. DNR agrees with the need to adequately manage fish and wildlife resources and will continue to work closely with the Alaska Department of Fish and Game (ADF&G), which has the regulatory expertise considering management and protection of fish, wildlife and habitat resources under Title 16. The statute referenced AS 16.05.258<sup>8</sup> is subsistence priority amongst harvesters of fish and wildlife resources, not among uses of state land. DNR has no authority over fish habitat and subsistence, thus relies upon ADF&G for decisions with regards to impacts to fishery resources.

As stated earlier, The Northwest Area Plan the management intent for this specific area is to “*Manage for mineral values.*” The resources and uses include “*This large unit encompasses an area considered to have high to very high mineral potential; this area was selected by the state for its mineral value. Uranium prospects are under exploration (2008) within parts of the unit*” DNR has a constitutional and legislative mandate under AS 38.05.285 “Multiple Use.” To manage state lands under the principles of multiple purpose uses, the issuance of a permit, in conjunction with other state and federal authorizations, is consistent with the multiple use principles and the Northwest Area Plan intent.

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<sup>6</sup> Under [AS 38.05.195](#)

<sup>7</sup> Under [38.05.255\(a\)](#)

<sup>8</sup> Under [AS 16.05.258](#)