

**ALASKA DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND AND WATER  
MUNICIPAL ENTITLEMENT**

**PRELIMINARY DECISION  
CONVEYANCE OF LAND UNDER AS 29.65.030**

<b>DENALI BOROUGH MUNICIPAL LAND ENTITLEMENT SELECTIONS ALASKA DIVISION OF LANDS ADLs 415639, 415805, 415809, 415813, 417990, 417992</b>
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**I. PROPOSED ACTIONS**

The Department of Natural Resources (DNR) proposes to convey approximately 6,812 acres of state owned vacant, unappropriated, unreserved (VUU)<sup>1</sup> general grant land to the Denali Borough (borough) in fulfillment of the borough's municipal land entitlement pursuant to AS 29.65.030. These lands were found to be consistent with the adopted 2014 Yukon-Tanana Area Plan<sup>2</sup> (YTAP or plan) and the interests of the borough were found to outweigh the interest of the state. DNR also proposed to conditionally approve 1,920 acres and reject 5,937 acres.

This Preliminary Decision (PD or decision) covers approximately 14,669 acres in six geographical areas called: Julius Creek & West Clear Areas (Map 1), Boulder Creek Area (Map 2), Nenana River Area (Map 3), Stampede Road North & South Areas (Map 4), Quota Area (Map 5), and Broad Pass Area (Map 6). The attached maps are part of this decision and provide a depiction for the general location of the borough selections in this decision.

DNR proposes to conditionally approve 1,920 acres of land within the Boulder Creek Area. It is uncertain that the other land selections that are part of this decision will completely satisfy the municipal entitlement for the Denali Borough. Because of this, it is appropriate to (only) conditionally approve this selection. Land from this selection area is to be used for fulfillment of any remaining entitlement acreage not otherwise fulfilled by the other selections of the borough. Only that portion of the Boulder Creek Area is to be conveyed that will satisfy this requirement. Those components of this selection that are not used are to be retained by the state with the area co-classified Wildlife Habitat (WHB) and Minerals. Because this decision has determined that these lands are conditionally approved for conveyance, if needed, it is appropriate to convert the classification from WHB to Settlement under certain conditions.

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<sup>1</sup> *Vacant, unappropriated, unreserved* land is general grant land that is patented, quietclaim deed or tentatively approved to the state from the United States, excluding minerals as required in (a) or (b) of the Alaska Statehood Act and is conveyable pursuant to the Municipal Entitlement Act.

<sup>2</sup> *The Yukon Tanana Area Plan* adopted January 2014 determines the management intent, land-use designations, and management guidelines, that applies to all state lands in the applicable planning area. This plan forms the basis for the land use classifications that constitute VUU land for purposes of determining the eligibility of state land for potential conveyance.

This decision proposes to reject 5,937 acres of borough selected lands found deemed by DNR to be inappropriate for conveyance for the following reasons: (1) The area north of the southern YTAP boundary is designated Habitat and is one of the most important recreation areas in the state. Big game hunting and trapping as well as non-consumptive uses of wildlife (viewing, photography, etc.) are critical in this area. (2) The area of Stampede Road North is affected by a Habitat designation and therefore that is not VUU land, as required under statute. (3) The Broad Pass Area selections are not on state land.

The acreage proposed to be approved for conveyance will be credited towards fulfillment of the Denali Borough municipal land entitlement and management authority will be transferred as well as equitable title following the Final Finding and Decision (FFD) becoming effective. Those lands conditionally approved will not have management authority transferred unless acreage is needed to fulfill the boroughs' entitlement. Should this occur the borough will receive equitable title and management authority at the time this determination is made by DNR.

Furthermore, this decision will determine whether or not the Denali Borough land selections meet the requirements of AS 29.65.070(c). This statute requires that the land selections must be compact in form with its length not exceeding approximately four times its width. The boroughs' land selections proposed for conveyance will be affected by a required public access easement on navigable and public waters pursuant to AS 38.05.127. The bed of navigable waters from the ordinary high water mark (OHWM) to the OHWM will remain in state ownership, including all gravel bars and islands in between; the location of the OHWM on navigable and public waters will be determined at the time of survey pursuant to 11 AAC 51, including the final acreages on those lands proposed to be conveyed.

The public is invited to comment on this decision. The deadline for comments to be received is 30 days from the date of this PD. Refer to in this decision under the heading PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES for details on how, when and where to submit your comments.

## **II. AUTHORITY**

The proposed actions for this PD are authorized pursuant to the Alaska State Statues (AS) together with the Alaska Administration Code (AAC), in particular to AS 29.65, AS 38.05.035(e), AS 38.05.125, AS 38.05.127, AS 19.10.010, AS 19.30.400, 11 AAC 51 and 55.

## **III. ADMINISTRATION RECORD**

The administrative records of this PD consist of case files ADL: 415639, 415805, 415809, 415813, 417990, and 417992. It also includes, but not limited to the review of other resources: 2014 YTAP, USGS Fairbanks and Healy Quad maps, Alaska Anadromous Waters Atlas by the Alaska Department of Fish and Game, Alaska Department of Transportation 2002 Roads, and Alaska Department of Environmental Conservation list of Contaminated Sites. Other sources were consulted and are contained within the case files.

**IV. SCOPE OF DECISION**

The scope of this DNR review is limited to the determination of whether it is appropriate to convey the aforementioned borough land selections or a portion of these selections to the borough. It additionally includes the determination of third party interests, stipulations necessary to effectuate this decision, and whether the requirement of AS 29.65.070(c) apply and are met, and whether it is appropriate to allow the Denali Borough to exercise immediate management authority for conditional leases and conditional sales.

**V. DESCRIPTION**

**A. Location and Geographical Features**

1. Geographic: Denali Borough. This region is mountainous with areas of generally level topography adjacent to river drainages. Vegetation is typically lowland spruce/hardwood forest adjacent to principal river drainages and moist tundra or alpine in uplands and mountainous areas.
2. Borough/Municipality: Denali Borough
3. Meridian: Fairbanks (FM)
4. Regional Native Corp.: Doyon, Ahtna
5. Native Village Corp.: Yedetena Na Corp, Mendas Cha-ag Native Corp
6. USGS Map Coverage: Fairbanks, AK (1:250,000) and Healy, AK (1:250,000) quadrangles

<b>Map #</b>	<b>Municipal Entitlement Selection Area Name</b>	<b>USGS</b>
1	Julius Creek/West Clear Areas	Fairbanks B-5
2	Boulder Creek Area	Fairbanks A-3
3	Nenana River Area	Healy B-3
4	Stampede Road North & South Areas	Healy D-5
5	Quota Area	Fairbanks A-5
6	Broad Pass Area	Healy B-5

**B. Legal Descriptions - Land Title – Third Party Interest**

Table 1 below identifies the Denali Borough land selections by map number, area name, and meridian: Fairbanks Meridian (FM), Township (T), Range (R), Section (S), including title status, date, state case file and any third party interests affecting those lands owned by the state. The state holds fee title to the land and the mineral estates through either a patent, quitclaim deed or a Tentative Approval (TA) from the Bureau of Land Management (BLM). The state will only convey the land estate on those approved state lands to the borough, and will retain the mineral estate in state ownership.

**Table 1**  
**Legal Description – Land Status – Third Party Interest**

**Map 1: Julius Creek/West Clear Areas**

T. 7 S., R. 9 W., Section 28, FM

<b>Title</b>	<b>Date</b>	<b>State Case File</b>
Patent No. 50-86-0128	03/25/1986	GS431
Third Party Interest: None		

T. 7 S., R. 8 W., Sections 25, 36, FM

<b>Title</b>	<b>Date</b>	<b>State Case File</b>
Patent No. 50-94-0241, and amended Patent No. 50-94-0241 corrected another Patent with duplicate number.	05/12/1994 08/03/1994	CG100
Third Party Interest: None		
Subject to: <ul style="list-style-type: none"> <li>Sections 25 &amp; 36: the right to itself, its permittees or licensees, to enter upon, occupy, and use, any part or all of said land lying within 50-feet of the centerline of the transmission line right-of-way of the Power Project 7114, AA-56631, for the purpose set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, as amended, 41 Stat. 1075, as amended, 16 U.S.C. 818 (1988).</li> </ul>		

**Map 2: Boulder Creek Area**

T. 10 S., R. 4 W., Sections 1, 12, 13, FM

<b>Title</b>	<b>Dates</b>	<b>State Case File</b>
TA No. 197495	09/22/1974	GS 2202
Third Party Interest: None		

**Map 3: Nenana River Area**

T. 18 S., R. 4 W., Sections 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 21, 22, 23, FM

<b>Title</b>	<b>Dates</b>	<b>State Case File</b>
TA No. 2011-0014	10/05/2010	GS 5200
TA No. 2010-0015	06/03/2009	
Third Party Interest: Yes		
Subject to: <ul style="list-style-type: none"> <li>Easement interest for the Denali Highway (FAP 52-Omnibus Road) extending 150-feet on each side of the centerline and management interest of the Denali Highway is currently managed by the Department of Transportation and Public Facilities.</li> </ul> Surface Activity <ul style="list-style-type: none"> <li>ADL 227484, ANILCA 906(K), Award/Non-Objective/Interim: entire project area Nenana River and tributaries.</li> <li>ADL 231766, ANILCA 906(K), Award/Non-Objective/Interim within Section 6.</li> </ul>		

**Map 4: Stampede Road North & South Areas**

T. 12 S., R. 8 W., Sections 3, 4, 5, FM

T. 12 S., R. 8 W., Sections 14, 15, FM

Title	Dates	State Case File
Patent No. 50-84-0526	05/25/1984	GS 765
Third Party Interest: None		

**Map 5: Quota Area**

T. 8 S., R 9 W., Sections 10, 15, 22, FM

Title	Dates	State Case File
TA No. 198024	04/01/1980	GS 690
Patent No. 50-85-0069	12/20/1984	
Third Party Interest: YES		
A. ADL 30788: 100-foot wide right-of-way transmission line: Golden Valley Electric Association, Inc.		
B. RST 343, RS 2477, Kobi-Kantishna Trail (Sec. 15)		

**MAP 6: Broad Pass Area**

T. 18 S., R 8 W., Sections 12, 14, 15, 21, FM

Title	Dates	State Case File
Private and ANILCA	N/A	Not State Land

**VI. PRELIMINARY DECISION****A. Background**

The Denali Borough was granted 49,789 acres of municipal land entitlement under AS 29.65.030. To date, the borough has received patent to 4,769 acres of state land and equitable title to 37,013 acres. There is a remaining balance of approximately 8,007 acres still to be adjudicated. This decision deals with this remaining balance. Of this amount, this decision approves 6,812 acres for conveyance and conditionally approves 1,920 acres for eventual conveyance, if necessary. Adjudication of the remaining Denali Borough municipal land entitlement was postponed until YTAP was approved. This plan replaces the western portion of the Tanana Basin Area Plan (TBAP) prepared initially in 1985 and revised in 1991.

The Parks Highway region is one of the most accessible regions within the Denali Borough. The Parks Highway and West Alaska Range subregion is bisected by the highway and the railroad, and there are many trails, rivers, and roads which extend into the back country. Commercial guiding, hunting, trapping, recreation, and coal mining are the major land uses in the area, along with some grazing. Settlements extend along the highway throughout the area.

## **B. Planning, Classification, and Mineral Orders**

### **1. Planning**

The Denali Borough land selections are all located within the Denali Borough boundary in management units P-29, P-50, P-62, P-65, P-66, P-86, and P-88 of YTAP. Some of these selections were formerly designated as Habitat (Ha) and classified as Wildlife Habitat Land (WHB), a non-conveyable classification in the original area plan (TBAP). However, the new, applicable YTAP has changed the designation of certain lands to a designations of Public Recreation-Dispersed and Settlement, which converts to the classifications of Public Recreation Land and Settlement Land, both of which area conveyable classifications. However, the classification of WHB land is retained in YTAP on other borough selections, and state land cannot be conveyed under this classification. Table 2 identifies the classifications that affect each of the borough selections that are the subject of this decision. Note that the Boulder Creek selection retains the co-designation of Minerals and Habitat, but will convert to the designation of Settlement if the adjudication decision determines that the conveyance of the subject land is appropriate.

### **2. Land Use Classification**

The YTAP designation and classification of land selections are essential since they identify land use categories that are conveyable or are non-conveyable under AS 29.65. The classifications of these selections include: WHB, Mineral (Min), Settlement (STL), and Public Use Recreation (PUR) and are listed on Table 2. The classifications of WHB and Mineral are both non conveyable classifications under AS 29.65 and preclude conveyance to a municipality. In these instances, it is possible to reclassify to a conveyable classification and to modify the plan through a plan amendment or special exception, but any such actions must be consistent with 11 AAC 55.030(f), which are the standards that affect such actions, and such actions are infrequent, particularly with a relatively new adopted area plan. This is particularly pertinent since one of the functions of a plan is to determine whether a management unit is appropriate or inappropriate for conveyance to a municipality. The YTAP conducted such an analysis and provides specific direction as to whether a management unit of state land may be conveyable to the borough. Similar to a plan amendment involving the reclassification of use, any deviation from a specific management plan stipulation would also require a plan amendment or special exception and it is likely that both a plan amendment for a plan designation and management intent would be required.

**Table 2**

**YUKON TANANA AREA PLAN  
MANAGEMENT UNIT and CLASSIFICATION**

Map #	ADL # Area Name	Fairbanks Meridian, Township, Range	Section(s)	Resource Allocation Table page #	Management Unit #	Classification	Selected Acres
1	415639 Julius Creek Area	T. 07 S., R. 08 W.,	25, 36	3-112	P-66	SLT	1,280
	415639 West Clear Area	T. 07 S., R. 09 W.,	28	3-112	P-66	STL	37
2	415805 Boulder Creek	T. 10 S., R. 04 W.,	1, 12, 13	3-107	P-50	WHB, MIN* <sup>3</sup>	1,920
3	415813 Nenana River Area	T. 18 S., R. 04 W.,	5,6	3-112	P-65	WHB, PUR	465
		T. 18 S., R. 04 W.,	5, 6, 7, 8, 9, 14, 15 & 23	3-120	P-98.4	WHB, PUR	1,104
		T. 18 S., R. 04 W.,	6,7 & 8	3-120	P-98.4	WHB, PUR	184
		T. 18 S., R. 04 W.,	8, 9, 14, 15 & 23	3-110	P-62	PUR	455
		T. 18 S., R. 04 W.,	7, 8, 9, 15, 16, 17, 18, 21, 22 & 23	3-110	P-62	PUR	3,710
4	415809 Stampede Road North & South	T. 12 S., R. 08 W.,	3, 4 & 5	3-118	P-86	WHB, PUR	1,572
		T. 12 S., R. 08 W.,	14 & 15	3-118	P-88	STL	960
5	417990 Quota	T. 08 S., R. 09 W.,	10, 15 & 22	3-110	P-29	STL	370
6	417992 Broad Pass	T. 18 S., R. 08 W.	12, 14, 15 & 21	3-111	Not applicable	Not Sate Land	2,612
<b>TOTAL</b>							<b>14,669.00</b>

**3. Mineral Orders**

The mineral estate is reserved to the state pursuant to AS 38.05.125. There are no known orders at this time that affect the borough selections.

<sup>3</sup> The selections in the area of Boulder Creek are reclassified to Settlement Land only if needed to fulfill the boroughs' municipal land entitlement. This situation would only occur when all the previous approved selections have been conveyed and the conveyed acreage falls short of their entitlement (See Proposed Actions).

#### **4. Local Planning**

The Denali Borough has a comprehensive land use plan. The areas of selections are affected by the Denali Borough Code 9.15.010. *"All land in the borough is zoned unrestricted unless otherwise provided by ordinance. There are no prohibitions on land zoned unrestricted."*

##### **C. Traditional Use Finding**

Disposal of state land with traditional uses are to be reviewed under AS 38.05.830 in unorganized boroughs. The borough is an organized Home Rule Borough under AS 29.65.030; therefore, a determination for traditional uses is not required. All of the borough land selections are within their legal boundary.

##### **D. Access and Riparian**

The Denali Borough land selections have good access from the main highway as well as local roads. The Boulder Creek Area (MAP 2) is the exception. Boulder Creek has limited summer access to and through this region since there are no roads or airports. Depending upon the terrain and season of travel in this region, this area may be accessible by all-terrain vehicles and snow-machines. Public access will be reserved in accordance to AS 19.10.010, AS 19.30.400, AS 38.05.125, AS 38.05.127 and 11 AAC 51.

##### **1. Section Line Easement**

Section line easements (SLE) will be reviewed in accordance with AS 19.10.010 and 11 AAC 51.025. SLE is typically 50-feet in width from surveyed and protracted section lines on each side on state land.

##### **2. Trails, Roads and RST Rights-of-Way**

Denali Borough has a popular recreational trail going through the Parks Highway region. The trail is Kobi-Kantishna RST #343/RS2477. Because of the high public use of this trail, ensuring legal access to existing and proposed trails, trail maintenance, management, and enforcement are high priorities. DNR will protect public access along trails to ensure that easements or rights-of-way are filed for those trails that do not have protection. Rerouting of trails and legal access is allowed if the purpose is to provide for the needs of the long term maintenance of the trail, trail experience, habitat values, or public safety. The Denali Borough land selections approved for conveyance will be subject to the following:

##### **Subject to:**

- Easement interest for the Denali Highway (FAP 52-Omnibus Road) extending 150-feet on each side of the centerline and management interest of the Denali Highway is currently managed by the Department of Transportation and Public Facilities.

- A 60-foot wide easement overlaying an unimproved road lying within T. 18 S., R. 04 W., in Sections 7, 8, 9, 14, 15, 16 and 23, FM for those portions in the proposed approved lands for conveyance (MAP 3).
- A 100-foot dedicated right-of-way on RST #343/RS2477 known as Kobi-Kantishna Trail located in Section 15 of T. 08 S., R. 09 W., FM (MAP 5).

Management authority for the public easements will transfer to the borough, assuming that the FFD determines that the conveyance of state land is appropriate. No such easements may be vacated, abandoned or otherwise extinguished or rendered incapable of reasonable use by the public for the purpose for which it was reserved without the approval of the State of Alaska and unless an approved alternative means for reasonable public access is provided.

### **3. To & Along Easements**

A public access easement of 50-foot upland of the OHWM will be reserved on all water bodies and waterways determined to be public or navigable waters in accordance with AS 38.05.127 and 11 AAC 51. This easement is referred to as the 'along' easement and the 'to' easement will be provided through 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). Rights-of-way or easements to waterways shall be established approximately once each mile. Water bodies determined to be navigable are listed in Table 3. There were no identified public waters to list. Water bodies within the subject selections were found to be less than 10-feet in width. The 'along' easement applies to these waterbodies and the 'to' easement is intended to provide access to the 'along' easements that are established approximately once each mile.

### **4. Protection of Riparian Areas to Anadromous and Public Waters**

The YTAP requires riparian protection to be provided for all streams that are either anadromous, according to the ADF&G Anadromous Stream Catalog, or are considered to be of high riparian value (See YTAP, Ch. 2, Table 2-2). The areas that will be conveyed have no waters that require riparian protection. No bodies of water within the conveyable selections were found to be anadromous. Therefore, there is no need for riparian protection to the waters listed.

### **5. Navigable and Public Waters**

AS 38.05.127 and 11 AAC 51.045 require the imposition of a continuous 'along' easement that extends 50-foot wide upland of and adjoining the OHWM on navigable and public waters. The 'to' easement will be imposed through the section line easement in accordance with AS 19.10.010 and 11 AAC 51. Navigable<sup>4</sup> and public waters have been determined based on the criteria in 11 AAC 51.035 and as further defined as follows:

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<sup>4</sup> No navigable waters or the beds (underlying land) of a navigable water body are conveyed for any municipal entitlement decision. Only those determined to be uplands that are above the ordinary high water mark are intended to be conveyed (survey verification). Exposed sand or gravel bars that are in the middle of the river and are not above the ordinary high water mark are part of the bed of the waterways and are not uplands.

Navigable water: is water body at least 50 acres in size or a waterway at least 50-feet in width from the OHWM to the OHWM. The state will retain the bed of navigable water in state ownership, including all gravel bars and islands.

Public water: is a water body at least 10 acres but less than 50 acres in size or a waterway at least 10 feet but less than 50-feet in width from the OHWM to the OHWM. The state will convey the bed of public water to the municipality.

The location of the OHWM of public waters will be determined at the time of survey, which will also define the specific areas to be retained by the state adjacent to public waters. Furthermore, at the time of survey, field work performed by the surveyor may determine that a body of water or waterway is different than identified in this decision. The results of such survey work must be reviewed further within DNR. If the field work is determined to be accurate, then the survey results will supersede the recommendations in this decision. Prior to conveyance of any approved lands to the borough, a survey is required before issuance of a conveyance document.

Comments received from PAAD identified only one stream (Nenana River) that may be considered navigable under AS 38.05.965(13) within those lands proposed to be conveyed. No other water bodies were determined to be public waters pursuant to 11 AAC 51.035. Prior to issuance of a state patent, the state's determination of navigable and public waters may change due to field data obtained at the time of survey.

**Table 3**  
**NavigableWater**

Map # Area Name	Fairbanks Meridian, Township & Range	Waterbody Name	Anadromous Waters	Public Access Easement
3 Nenana River Area	T. 18 S., R. 04 W.	Lilly Creek and tributaries, unnamed body of water, unnamed tributaries , Wells Creek and tributaries	Not cataloged as anadromous for this area.	50-feet

**E. Reservation of Mineral Estate**

A conveyance of 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 subject parcels, if any, will remain under the authority of the state. In accordance with Section 6(i) 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 and other applicable statutes and regulations.

## **F. Hazardous Substances and Contaminations**

It is the responsibility of management for 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 upon the review of the Alaska Department of Environmental Conservation list of Contaminated Sites in Alaska, no hazardous material or contamination from hazardous material is known at this time to affect these selections. The environmental risk associated with this proposed conveyance should be minimal or nonexistent. The Denali Borough is expected to inspect these selections and familiarize themselves with regards to the condition and quality of the land. The state 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 for conveyance. The State of Alaska does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

## **G. Survey**

The borough will receive equitable title to all approved land for conveyance once the FFD is effective. This will allow the borough to approve conditional sales and leases pursuant to AS 29.65.070(b), but to not dispose of any land conveyed in this decision until the land has been surveyed. A survey determination may be requested by the borough at any time subsequent to the FFD. Prior to issuance of a conveyance document on approved state land, an approved survey will be required, and if no approved survey exists, then one must be performed by an Alaskan Registered Land Surveyor under directions issued by the DNR Land Survey Unit. The borough will be responsible for the expense of any surveys. There is no requirement under AS 29.65.070 to appraise the land for conveyance.

## **H. Conditional Leases and Conditional Sales**

Denali Borough will receive management authority and equitable title to all land approved for conveyance by this PD when the FFD becomes effective. This will allow the borough 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 the borough.

## **I. Unauthorized Use**

DNR has not physically inspected all areas of the land herein proposed for conveyance for unauthorized use, but it has reviewed department records and it is unaware of any current existing unauthorized use. The borough is expected to and has been given the opportunity to inspect the selected parcels and familiarize itself with the condition and quality of the land.

## **J. Disposition of Leases, Permits and Applications**

Administration of active leases, permits, and easements issued by DNR Division of Mining Land and Water on land to be conveyed will be transferred to the Denali Borough when the FFD

becomes effective, unless such authorizations are specifically excluded from the conveyance. Applications for authorizations that have not been adjudicated will be closed.

### **K. Archaeological Resources**

The State Office of History and Archaeology (OHA) maintain the Alaska Heritage Resources Survey (AHRS), which is an inventory of all reported historic and prehistoric sites in the state. No historical or archaeological sites were reported during agency review of the parcels proposed for conveyance to the borough. New resources are constantly being added to the AHRS, so any future use of this land should check the catalog.

### **L. Form and Width Requirement**

All municipal entitlement land selections shall be compact in form with its length not exceeding approximately four times its width pursuant to AS 29.65.070(c). The review of the borough's land selections proposed for conveyance in this decision is determined to be consistent with this statute.

### **M. Agency Review**

The location of the selections and other pertinent information was provided to state agencies that were expected to have an interest in the subject land. Agencies were asked to identify whether all or portions of these selections should be retained and, if so, the reasons for this action. Agencies were also asked to identify stipulations that would be appropriate and necessary to a decision to convey land out of state ownership. They were asked to reference comments according to the maps provided at agency review and the comments that follow are similarly organized parcels were arranged to fit on two 8" x 11" map, therefore the comments reference to those maps.

The agency review maps were reference as follows: Julius Creek and West Clear Parcels (MAP 1), Boulder Creek (MAP 2), Nenana River (MAP 3), Stampede Road, North and South (MAP 4), Quota (MAP 5), Broad Pass (MAP 6).

### **N. State Agency Comments and DNR responses**

#### **1. Comments from the Alaska Department of Fish and Game (ADF&G), Division of Sport Fish:**

*ADL 415639 (Map 1) - Julius Creek Area:* Julius Creek (A WC # 334-40-11 000-2490-3200-4115) has been specified as important habitat for chum, coho, and king salmon downstream from the selection area. Fish resource data for Julius Creek is not available, but ADF&G staff expects important resident fish such as grayling and dolly varden to also be present. ADF&G recommends a 50' public access easement be reserved along both sides of Julius Creek and its tributaries (Windy Creek) prior to conveyance to ensure adequate riparian protection and public access to the fishery resource. If possible, a larger, 100' buffer should be

retained in state ownership to more adequately protect the anadromous creek and encompass the public access easement.

**DNR Response:** DNR acknowledges ADF&G concerns on Julius Creek. The borough selections are further south of this area. However PADD indicates that the streams in this area are less than 10-feet wide. They therefore are not appropriate to list as public waters. There will not be an imposition of an 'along' easement, unless prior to issuance of a state patent, the state's determination of navigable and public waters may change due to the collected field data obtained at the time of survey. If this occurs, the imposition of an 'along' easement will be imposed and depending on the outcome, it could be appropriate to impose a riparian buffer.

2. **Comments from ADF&G, Division of Sport Fish:**

*ADL 415813 (Map 3) Nenana River:* The Nenana River corridor provides prime wildlife habitat and is one of the most important recreation areas in the state. Big game hunting and trapping as well as non-consumptive uses of wildlife (viewing, photography, etc.) are important. Several tributaries to the Nenana River flow through the selection and provide accessible roadside fishing opportunities for grayling and Dolly Varden. ADF&G would prefer, and recommends, that only the lands selected south of the highway be conveyed to the DB. If the lands to the north were retained in state ownership, public access and recreational opportunities would not be blocked. ADF&G recommends that no portion of the proposed Unit 98.4 in the draft YTAP be conveyed to the DB. This unit is classified Wildlife Habitat and Public Recreation Lands due because of significant number of resources. ADF&G also recommends that at a minimum, a 200' buffer of state land should be retained along both sides of the Nenana River and its tributaries to protect recreation, fishing, and public access. Access from the river to the Denali Highway should also be maintained.

**DNR Response:** The only lands on Map 3 that are being conveyed are south of the highway. The area north of the highway, containing Nenana River, is to be retained by the state. Management unit 98.4 of the 2014 YTAP, which includes the Nenana River, is proposed to be rejected because of the presence of a non-conveyable classification (Wildlife Habitat). Furthermore, there is no need to impose a 200' buffer since the area in question is to be retained by the state. Waterbodies within the selected areas to be conveyed are considered navigable in the determination of PADD under (AS 38.05.965(13)) and therefore will have 'to' and 'along' easements imposed (AS 38.05.127).

3. **Comments from ADF&G, Division of Sport Fish:**

*ADL 415809 (Map 4) Stampede Road North:* Panguingue Creek (A WC # 334-40-11 000-2490-3200-4075) has been cataloged as important habitat for rearing and spawning coho salmon. Although no data exists within the selection area, the

potential that coho also use this portion is high. ADF&G recommends a 100' buffer of land be retained in state ownership prior to conveyance to DB to protect fish habitat, water quality, and provide public access to this resource.

**DNR Response:** This selection is rejected and will remain in state ownership.

4. **Comments from ADF&G, Division of Sport Fish:**

*ADL 415809 (Map 4) Stampede Road South:* This selection is located adjacent to existing settlement areas. There are several trails in the area as well, but none appear to go through the selection. ADF&G staff has no fish, wildlife, or access comments at this time.

**DNR Response:** ADF&G comments are acknowledged.

5. **Comments from ADF&G, Division of Sport Fish:**

*ADL 417990 (Map 5) Quota:* The Rex-Roosevelt Trail (RST 491) and the Kobi-Kantishna Trail (RST 343) are found within the selection area. ADF&G recommends the access to and along these trails be maintained by an easement and/or retention of state lands.

**DNR Response:** The right-of-way for the Kobi-Kantishna Trail will be protected. It has been found Rex-Roosevelt Trail is not within the borough selections, but located west in the next township. The Agency Review map had improperly disclosed the approximate location.

6. **Comments from DNR, Division of Oil & Gas:**

Township 12 S., R. 8 W., FM, Sections 3, 4, 5, 14 & 15 shows an active Exploration License, ADL 390606, however, our Permitting group indicated that although the lessee has done some seismic work in the area, it shouldn't impact the surface on a long-term basis. Since the State reserves the oil & gas in our municipal entitlements, there are no further comments

**DNR Response:** Division of Oil and Gas comments are acknowledged.

7. **Comments from DNR Mining Section:**

Effectively it does not appear as though these selections will impact mineral deposits to any significant degree. The land ownership on the north side of the Nenana River might well block access to large tracts of state owned land valuable for other uses besides mining. While there are mining claims in that area it is uncertain how viable these claims might be as the mineralized zone is sporadic at best in the area. We have some reservations about the north shore of the Tanana, but have no overwhelming objections to the transfer. You can weigh our limited

concerns against the other agency comments and we will be Ok with whichever way you decide.

**DNR Response:** Department of Mining, Land and Water (Mining) comments are acknowledged.

8. **Comments from DNR Public Access Assertion & Defense Unit (PAAD):**

Map 1: Julius Creek Area – **Julius Creek** in this area is not navigable, for title purposes. There is evidence that Julius Creek is navigable from the Nenana River upstream to the Confluence of Clear Creek at Shores Landing. If Julius Creek is navigable above this point it would not extend upstream to the AK Railroad Crossing. This stream needs to be added to the navigable waters map. Within the proposed municipal conveyance parcel the stream is less than 10 feet wide and is not listed within the Anadromous Waters Catalog. Therefore in this area Julius Creek is not public water. **West Clear Creek** has no water within parcels.

Map 2: None of the waters in this area have been edited into the navigable waters map, nor have state determinations been made for these water bodies, for title purposes. PAAD only recently received from BLM navigable waters memos for this area from the BLM. The BLM determined all waters within F010S003W and F010S004W non-navigable. PAAD would need to conduct further research on Tatlanika Creek to determine if there was pre-statehood use for mining purposes as significant mining has taken place in the area. It would be doubtful if either Boulder Creek or the unnamed stream within this selection would be navigable for title purposes. I downloaded high resolution color infrared photography of this area from the 1980's these creeks are very small I would estimate less than 10 feet, with few locations where the streambed is visible through the brush. There is no information on this area from the Anadromous Waters Catalog. I do not believe these small streams would be navigable or public water.

Map 3: Nenana River within F018S004W. I performed a quick reminder look at the file today. There are several mentions of use above the previous review. One is of a group that went up the Susitna from Valdez Creek crossing over to the headwaters of Nenana River which they floated to the mouth. Another memo in the file states that a group was intending to float Bruskana Creek from the campground downstream to Monahan Creek to the Nenana River. Two members of the group were inexperienced with whitewater, so the plan was changed and they put in where the river is close to the road in Section 1, F018N005W. We only have the one documented use of the river above this point in the file. The lack of a determination does not make a river non-navigable and the Nenana may be navigable within these upper townships. I recommend meandering and not transferring the Nenana River within this Township. After downloading the aerial photography for this area the Nenana River does not have a character change until upstream of Monahan Creek. This change is a short section of braiding and the river returns to a single channel. This change in character does not appear to

impact the navigability of the stream. There are multiple unnamed lakes and ponds within the municipal selection that may be considered navigable under 38.05.965(13) for use in trapping and hunting waterfowl. I recommend considering them navigable water for municipal conveyance purposes.

Map 4: Panguingue Creek and Dry Creek have pending non-navigable determinations for title purposes that were started in 2008 & 2011. Panguingue Creek is an anadromous fish stream from the Nenana River upstream to just above the highway crossing; it is just under 50 feet wide within the area of the conveyance. Due to the potential for fish and fishing within this stream and lacking a call back from the Fairbanks Habitat division on this stream it is my inclination to call this stream navigable/public under 11 AAC 51.035 (b) to avoid conflicts over the public fishing in the stream.

Map 5: No water within parcels

Map 6: Cantwell Creek is navigable for title purposes. The lakes of Broad Pass should be shown in conflict status in the navigable waters map. The state asserts they are navigable and the BLM has determined them non-navigable for title purposes. I understand that these lands have been transferred to Native Corporation and are not eligible for selection.

**DNR Response:** This decision incorporates the information provided by PAAD and uses it as the basis for the determination of navigable waters and public waters in this decision. On Map 3, the borough selected lands north of management unit P-62 is not appropriate for conveyance and are rejected (See classification of this decision). The waters not listed do not meet the criteria established in 11AAC 51.035 for navigable or public waters. They may be determined otherwise at time of survey. On MAP 4, the area of Panguingue Creek is rejected in this decision.

## VII. DISCUSSION AND ALTERNATIVES

### A. Discussion

This PD covers those land selections made by the Denali Borough consisting of 14,669 acres and DNR proposes for conveyance 6,812 acres of state owned VUU land in fulfillment of their entitlement pursuant to AS 26.65.030. These lands were found to be consistent with the adopted 2014 Yukon-Tanana Area Plan and that the interests of the borough were found to outweigh the interest of the state. Also, DNR has proposed to conditionally approve 1,920 acres as these lands are only to be used for the fulfillment of any remaining entitlement acreage not otherwise fulfilled by the other selections of the borough. Those land rejected were found deemed by DNR inappropriate to convey based upon the designation/classification identified in the YTAP.

The principal issues that were raised in agency review focused on maintenance of public access, protection of critical areas and significant riparian areas. In most instances, these concerns have already been dealt with in the area plan.

It identified those areas appropriate and inappropriate for conveyance. Areas that were important habitat or recreation areas were rejected or were determined not to be conveyable based on the designations in the plan. Important public accesses as routes were included as stipulations in the decision, usually as easements and sometimes reservations. Important riparian corridors are recommended to be protected, either through the rejection of certain areas of a selection or the presence of non-conveyable classifications. Accordingly, most of the known significant issues have or will be dealt with, including retaining certain land in state ownership that has been determined to be important for habitat or recreation values and uses. Other than the aforementioned areas that are retained, no other overriding state interests were found to exist and therefore the standard for determining whether a selection was appropriate for conveyance have been satisfied for those selections recommended or conditionally recommended for conveyance.

The acreage approved for conveyance will be credited towards fulfillment of the Denali Borough municipal land entitlement and management authority will be transferred as equitable title once the FFD is effective.

The Denali Borough land selections recommended for conveyances with management authority transferred are listed below in Table 4. Those lands that are conditionally approved are listed in Table 5, with management authority postponed, and lands rejected are listed in Table 6.

## **B. Alternatives**

1. Take no action to approve, conditionally approve, postpone or reject the land NWAB land selections. This alternative would, in effect, preclude the borough'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 disapproval of a municipal land selection. Such selections can only be rejected when the state's interests outweigh the interests of the borough, and there is no basis for such a determination.
2. Reject the Denali Borough selections in its entirety. This alternative would have the same effect as Alternative 1 and would be inconsistent with the statutory basis for rejection of a municipal land selection.
3. Approve the certain Denali Borough land selections for conveyance; conditionally approve others, and reject others. This alternative reflects the recommendations for selection approval, postponement, and/or rejection as described in this decision. It also includes the recommended stipulations that are identified in this decision. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general land to the Denali Borough.

## VIII. RECOMMENDATION

### A. Recommended Alternative

DNR has determined that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. The Denali Borough land selections identified in this decision are approved for conveyance for a large portion of state lands to the Denali Borough, while retaining state land of significant recreational and habitat value.

### B. Recommended Conditions, Restrictions and Reservations.

The state land proposed for conveyance to the Denali Borough are to be subject to the following conditions, restrictions, and reservations upon transfer of equitable title and issuance of the conveyance documents.

#### 1. Conditions

- a. The state will retain in state ownership the bed of navigable waters from the OHWM to the OHWM, including all islands and gravel bars pursuant to 11 AAC 51.035.
- b. The location of the OHWM for navigable and public waters will be identified at time of survey and will form the basis for delineating the specific area to be retained by the state in waterbodies determined to be navigable.
- c. Management authority for public access easements is transferred to the Denali Borough when the FFD becomes effective. No such easements may be vacated, abandoned or otherwise extinguished or rendered incapable of reasonable use by the public without approval by the state, unless an alternative means for reasonable public access is provided and approved by the state.
- d. Management authority will transfer to the Denali Borough on approved lands for conveyance when the FFD becomes effective.
- e. Administration of state leases and permits pertinent to the surface estate will be transferred to the Denali Borough when the FFD becomes effective; administration of issued state leases and permits, in the mineral estate, will remain with the state.
- f. When the FFD becomes effective, the Denali Borough may execute conditional leases and conditional sales prior to issuance of a state patent in accordance to AS 29.65.070(b) on lands approved for conveyance, when the FFD becomes effective.
- g. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of the Denali Borough municipal land entitlement pursuant to AS 29.65.030. Acreages determined at the time of survey will constitute the final determination of acreage for the purposes of establishing net chargeable acreages.

## 2. Restrictions and Reservations

### Subject to:

- a. 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.
- b. 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.
- c. A 50-foot wide easement adjacent to surveyed and protracted section lines on each side in accordance with AS 19.10.010 and 11 AAC 51.025.
- d. A continuous public access easement 50-foot wide landward of and adjoining the OHWM of all navigable and public waters pursuant to AS 38.05.127 and 11 AAC 51.
- e. Easement interest for the Denali Highway (FAP 52-Omnibus Road) extending 150-feet on each side of the centerline and management interest of the Denali Highway is currently managed by the Department of Transportation and Public Facilities.
- f. A 60-foot wide easement overlaying an unimproved road lying within T. 18 S., R. 04 W., in Sections 7, 8, 9, 14, 15, 16 and 23, FM for those portions in the proposed approved lands for conveyance
- g. A 100-foot dedicated right-of-way on RST 343 – The RS2477 called Kobi-Kantishna Trail.
- h. A 50-foot wide easement lying on each side of the centerline of a transmission line right-of-way for Power Project 7114, AA-56631, for the purpose set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, as amended, 41 Stat. 1075, as amended, 16 U.S.C. 818 (1988).
- i. 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.

## C. Land Actions on Municipal Selections

### 1. Lands proposed for conveyance

The state will retain the beds, including all islands and gravel bars of navigable waters. The acreages listed in Table 4 are not reflecting any exclusion out of the navigable waters and represents estimated acreages only. The final acreage determination will be identified at time of survey. The following lands are approved for conveyance, subject to public review and final determination in the FFD.

**Table 4  
Lands proposed for conveyance**

Map # Area Name	Fairbanks Meridian, Township, Range	Sections	Acres
1 Julius Creek Area West Clear Area	T. 07 S., R. 08 W. T. 07 S., R. 09 W.	Sec. 25: All Sec. 36: All Sec. 28: SW1/4	1,317
3 Nenana River	T. 18 S., R. 04 W.	Sec. 06: That portion below the 2014 YTAP management unit P-62 Sec. 07: That portion below the 2014 YTAP management unit P-62 Sec. 08: That portion below the unnamed unimproved road and the 2014YTAP management unit P-62 Sec. 09: That portion below the unnamed unimproved road, Sec. 14: That portion below the unnamed unimproved road, Sec. 15: That portion below the unnamed unimproved road, Sec. 16: All Sec. 17: N1/2 Sec. 18: N1/2 NE1/4 Sec. 21: NE1/4 Sec. 22: All Sec. 23: That portion below the unnamed unimproved road,	4,165
4 Stampede Road South	T. 12 S., R. 08 W.	Sec. 14: W1/2 Sec. 15: All	960
5 Quota Area	T. 08 S., R. 09 W.	Sec. 10: Tract J Sec. 15: Tracts I, B, and H, excluding Kobi-Kantishna Trail RST No. 343 RS2477 on Tracts I & B. Sec. 22: Tract C	370
<b>TOTAL</b>			<b>6,812</b>

**2. Lands Proposed to be Conditionally Approved**

It is uncertain that the other selections that are part of this decision will completely satisfy the municipal entitlement of the Denali Borough. Because of this, it is appropriate to (only) conditionally approve this selection. Land from this selection is to be used for the fulfillment of any remaining entitlement acreage not otherwise fulfilled by the other selections of the borough. Only that portion of the Boulder Creek Area is to be conveyed that will satisfy this requirement.

**Table 5  
Lands proposed to be conditionally approved**

Map # Area Name	MTR	Sections	Acres
2 Boulder Creek	T. 10 S., R. 04 W.	Sec. 01: All Sec. 12: All Sec. 13: All	1,920
<b>TOTAL</b>			<b>1,920</b>

**3. Lands proposed to be rejected**

Table 5 lists those areas rejected for conveyance. DNR has found that it is in the best interest of the state to retain in state ownership that certain lands were designated Habitat and therefore are not conveyable or they are not in state ownership.

**Table 6  
Land proposed to be rejected**

Map # Area Name	Fairbanks Meridian, Township & Range	Sections	Acres
3 Nenana River	T. 18 S., R. 04 W.	Sec. 05: S1/2 Sec. 06: That portion above the 2014YTAP management unit P-62 Sec. 07: That portion above the 2014YTAP management unit P-62 Sec. 08: That portion above the Omnibus Road #52 and the 2014YTAP management unit P-62 Sec. 09: That portion above the Omnibus Road #52, Sec. 14: That portion above the Omnibus Road #52, Sec. 15: That portion above the Omnibus Road #52, Sec. 23: That portion above the Omnibus Road #52,	1,753
4 Stampede Road North	T. 12 S., R.08 W.	Sec. 03: All Sec. 04: All Sec. 05: N1/2	1,572
6 Broad Pass	T. 18 S., R. 07 W.  T. 18 S., R. 08 W.	Sec. 07: All Sec. 12: All Sec. 14: All Sec. 15: All Sec. 21: All	2,612
<b>TOTAL</b>			<b>5,937</b>

**IX. FINDINGS OF THE PRELIMINARY DECISION**

This Preliminary Decision finds that Alternative 3 best fits the interest of the state and of the Denali Borough. DNR has considered the available resources uses associated with these selections and has evaluated agency comments pertinent to them and finds that the proposed actions are in the best interest of the state and this decision is hereby approved to proceed to public noticing pursuant to AS 38.05.945.

The following findings support the conclusion of the proposed actions:

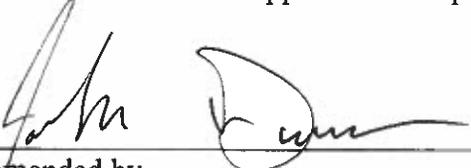
1. That it is appropriate to convey 6,812 acres of state owned land to the Denali Borough with management authority transferred. This decision determines that the interest of the state to retain this land does not outweigh the interest of the borough to obtain it.
2. That it is appropriate for the Denali Borough land selections in Boulder Creek Area (MAP 2) of 1,920 acres to be conditionally approved for conveyance, and the acreage amount to be determined subsequently through survey. Only

that portion of this selection necessary to fulfill the boroughs' entitlement shall be conveyed. This finding is consistent with the requirements of the area plan. The transfer of management authority occurs with the determination that certain land is appropriate for conveyance.

3. That it maybe appropriate to redesignate the area of Boulder Creek selections to settlement in order to fulfill the borough's entitlement as provided by YTAP. This redesignation is to occur if land is needed for fulfillment the borough entitlement.
4. That it is appropriate to reject 5,937 acres of selected lands. DNR has found that it is in the best interest of the state to not convey these lands or that certain lands were designated Habitat and therefore are not conveyable. This finding coincides with the requirements of the area plan.

The Preliminary Decision described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the state and that it is hereby approved to proceed to public notice.

This is a preliminary decision and subsequent public review may result in changes to the preferred alternative or disapproval of the proposed action altogether.

  
\_\_\_\_\_  
Recommended by  
John Dwyer  
Natural Resource Specialist  
Municipal Entitlement Unit

3/5/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Approved by  
Sandra Swanger-Jensen, Manager  
Municipal Entitlement Unit

3/5/2014  
\_\_\_\_\_  
Date

## **PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES**

The public is invited to comment on the Preliminary Decision to transfer ownership of the subject land to the Kenai Peninsula Borough. Any comments must be received in writing or emailed to John Dwyer at the Division of Mining, Land and Water, Resource Assessment and Development Section, Municipal Entitlement Unit at 550 West 7<sup>th</sup> Avenue, Suite 1050, Anchorage, Alaska 99501-3579 **on or before April 4, 2014** to ensure consideration. Please direct any questions concerning this Preliminary Decision to John Dwyer at (907) 269-8531, or by fax (907) 269-8915, or email: [john.dwyer@alaska.gov](mailto:john.dwyer@alaska.gov)

A public notice, announcing the Preliminary Decision and soliciting comments, will be sent to the postmasters in Nenana, Talkeetna, Cantwell, Healy, Anderson and Clear will be asked to post the notice. Public Notice on the Internet will be posted on the State's internet web page under *Notices* and under the DNR's public notice site: <http://dnr.alaska.gov/mlw/muni/>. Additionally, notice will be sent to the Kenai Peninsula Borough and tribal governments in the area of this proposed land transfer.

Following the comment deadline, all written responses will be considered and this decision may be modified to incorporate public comments. Only persons who comment during the public comment period will be eligible to file an administrative appeal of the Final Finding and Decision (FFD). A copy of the FFD will be sent to any person who submitted comments on the preliminary decision. The final decision will include appeal instructions. Please direct any questions concerning this decision to John Dwyer at (907) 269-8531, or by fax (907) 269-8915, or email: [john.dwyer@alaska.gov](mailto:john.dwyer@alaska.gov)

The Department of Natural Resources 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 department's Public Information Center in Anchorage between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, at TDD# 1-907-269-8411.

### **ATTACHMENTS**

Vicinity Map of the DB Land Selections

MAP 1 ADL 415639 JULIUS CREEK AREA & WEST CLEAR AREAS

MAP 2 ADL 415805 BOULDER CREEK AREA

MAP 3 ADL 415813 NENANA RIVER AREA

MAP 4 ADL 415809 STAMPEDE ROAD NORTH, STAMPEDE ROAD SOUTH AREAS

MAP 5 ADL 417990 QUOTA AREA

MAP 6 ADL 417992 BROAD PASS AREA