

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

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

**NORTHWEST ARCTIC BOROUGH  
MUNICIPAL LAND ENTITLEMENT SELECTIONS  
SQUIRREL RIVER AREA  
ALASKA DIVISION OF LANDS  
ADL 417404**

**I. PROPOSED ACTION**

The Department of Natural Resources (DNR) proposes to convey approximately 46,167 acres of state owned vacant, unappropriated, unreserved (VUU)<sup>1</sup> land to the Northwest Arctic Borough (NWAB or borough) to fulfill, in part, and the borough's general grant land entitlement pursuant to AS 29.65.030. This Preliminary Decision (PD or decision) covers approximately 57,059 acres of land in the Squirrel River and North Fork Squirrel River areas located within the NWAB. The five attached maps are part of this decision and provide a depiction of the general location of the borough's land selections: Vicinity Map, North Fork Squirrel River (Map 1), West Squirrel River (Map 2), Central Squirrel River (Map 3), and South Squirrel River (Map 4). These areas are located within the Western Brooks Range and the Baird Mountains Region in management unit B-03, as described in the Northwest Area Plan<sup>2</sup> (NWAP or plan).

This decision furthermore proposes to reject those borough selections for a total of 10,892 acres. Of this total acreage, 3,312 are to be rejected because the selections do not conform to the requirement of AS 29.65.070(c) and it is state practice & policy to retain the islands and gravel bars within the ordinary high water mark (OHWM) of navigable waterbodies, which includes Squirrel River, North Fork (of the Squirrel River), and certain tributaries to these waterbodies. Additionally, 7,580 acres are rejected since the state does not own these lands and has not selected or top-filed on them.

The land selected by the borough and recommended for conveyance by this PD is not currently classified in a conveyable classification pursuant to AS 29.65 (VUU land). However, the NWAP related to management unit B-03 provides for a land redesignation and reclassification to a conveyable land category under certain conditions. This procedure is described more fully in the Planning section of this PD. Any land which is recommended for conveyance by the Final

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<sup>1</sup> *Vacant, unappropriated, unreserved* land is general grant land that is patented 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 *Northwest Area Plan* of state lands adopted in October 2008, determines the management intent, land-use designations and management guidelines that apply in the planning area. This plan forms the basis of the land use classifications that constitute VUU land for the purpose of determining the eligibility, which coincides with the boundary of the NWAB of state land for potential conveyance.

Finding and Decision (FFD) for this action, and is currently classified in a non-conveyable classification, may, under certain conditions be classified to Public Recreation-Dispersed, a conveyable classification, as provided for by the 2008 NWAP (Ch. 3, p. 32).

The acreage proposed to be approved for conveyance will be credited towards fulfillment of the NWAB municipal land entitlement, and management authority will be transferred following the FFD becoming effective. The borough's land selections will be affected by necessary and required buffers and easements for public access and the protection of riparian areas adjacent to anadromous water bodies pursuant to the NWAP and under AS 38.05.127 and 11 AAC 51. The beds of navigable waters from the OHWM to the OHWM will remain in state ownership, including all gravel bars and islands in between; the location of the OHWM on those navigable 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 March 21, 2014. Refer to the heading of PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES for details on how, when and where to submit comments.

## **II. AUTHORITY**

The PD and its proposed actions are authorized pursuant to Alaska State Statutes (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 11 AAC 55.

## **III. ADMINISTRATIVE RECORD**

The administrative record for this PD is known as case file ADL 41740, which includes, but is not limited to the: 2008 Northwest Area Plan, Alaska Anadromous Waters Catalogue (Department of Fish and Game) and Statewide Contaminated Sites Map (Department of Environmental Conservation).

## **IV. SCOPE OF DECISION**

The scope of administrative review and finding for this PD is limited to the determination of whether or not it is appropriate to convey the entire land selection or a portion of the selection to the NWAB. The scope of review includes identification of third party interests, appropriate stipulations to facilitate conveyance, whether the requirements of AS 29.65.070(c) have been met, and if it is appropriate to allow the NWAB to exercise immediate management authority for conditional sales and leases.

## **V. DESCRIPTION**

### **A. Location and Geographical Features**

1. Geographic: Western Brooks Range, Baird Mountains Region. This region is mountainous, with areas of generally level topography adjacent larger rivers.

Vegetation is typically lowland spruce-hardwood forest in principal river drainages and moist tundra or alpine vegetation in uplands and mountainous areas.

2. Borough or Municipality: Northwest Arctic Borough
3. Meridian: Kateel River (KRM)
4. Regional Native Corp.: NANA
5. Native Village Corporation: Akuliuk (Selawik), Buckland Nunachiak (Buckland), Deering Ipnatchiak (Deering), Isingnakmeut (Shungnak), Ivaisaapaagmit (Ambler), Katyaak (Kiana), Kikiktagruk Inupiat (Kotzebue), Kivalina Sinuakmeut (Kivalina), Koovukmeut (Kobuk), Noatak Napaaktukmeut (Noatak), and Putoo (Noorvik).
6. USGS Map Coverage: Baird Mountains Quadrangle (1:250,000)

Map	Name	USGS
1	North Fork Squirrel River	B-4 & 5
2	West Squirrel River	A 5 & 6, B 5 & 6
3	Central Squirrel River	A 5, B 5
4	South Squirrel River	A 4 & 5

**B. Legal Description – Land Status – Third Party Interest**

Table 1 presents the borough’s land selections identified by map number, meridian, township, range, section, title status from Bureau Land Management (BLM), the state case file, and third party interests. The state holds fee title to the land and mineral estates through either patent or tentative approval (TA) received from BLM. On lands approved for conveyance, the state will convey only the land estate and the mineral estate will not be conveyed.

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

**Map 1: North Fork Squirrel River**

T. 22 N., R. 11 W., Sections 2, 10, 11, 15, 16, 28 & 33, KRM

Title	Date	State Case File
BLM TA: F-89368	10/14/2010	CG 175
BLM TA: F-89281	06/14/2012	CG 216
Third Party Interest: None		

T. 22 N., R. 11 W., Sections 1, 2, 11, 12, 13, 14, 25, 26, 35 & 36, KRM

Title	Date	State Case File
BLM TA: F-88754	01/10/2007 04/08/2010	GS 5728
Third Party Interest: None		

T. 24 N., R. 11 W., Sections 25, 26, 35 & 36, KRM

Title	Date	State Case File
BLM TA: F-88758	07/08/2010	GS 5732
Third Party Interest: None		

**Map 2: Squirrel River West**

T. 21 N., R. 13 W., Sections 2, 3, 10 & 11, KRM

Title	Date	State Case File
BLM TA: F-88745	05/05/2006 07/20/2010	GS 5719
Third Party Interest: None		

T. 22 N., R. 12 W., Sections 3, 9, 10, 15, 16, 21, 22, 27 - 30, 33 & 34, KRM

Title	Date	State Case File
BLM TA: F-88748, F-88749, F-8836	11/18/2011	CG 176, CG 213, CG 214
Third Party Interest: None		

T. 22 N., R. 13 W., Sections 19, 20, 21, 23, 24, 25, 26, 28, 29, 30, KRM

Title	Date	State Case File
BLM TA: F-88749, F-89370	12/22/2011	CG 177, CG 214
Third Party Interest: Yes		
Surface Activity: Section 25		
<ul style="list-style-type: none"> <li>ADL 417315: ANILCA 906(K) - Temporary base camp for guided hunting</li> </ul>		

T. 22 N., R. 14 W., Sections 10, 15, 21, 22, 24, 25, 27, 28, KRM

Title	Date	State Case File
BLM TA: F-88750	05/17/2012	CG 215
Third Party Interest: Yes		
Surface Activity: Section 27		
<ul style="list-style-type: none"> <li>LAS 28611: DMLW permit - Seasonal commercial recreational camp</li> </ul>		

**Map 3: Squirrel River Central**

T. 21 N., R. 11 W., Sections 4 - 8, 17, 18, 20, 29, 30, 31 & 32, KRM

Title	Date	State Case File
BLM TA: F-89280	01/08/2008	GS 5715
BLM TA: F-89366	06/06/2010	CG 173
BLM TA: F-89281	06/25/2012	CG 216
Third Party Interest: Yes		
Surface Activity: Section 32		
<ul style="list-style-type: none"> <li>ADL 417317: ANILCA 906(K) - Temporary base camp for guided hunting</li> </ul>		

T. 21 N., R. 12 W., Sections 1, 2, 3, 12, 28 & 35, KRM

Title	Date	State Case File
BLM TA: F-88745	05/05/2006	GS 5719
BLM TA: F-89281	07/20/2010	CG 216
BLM TA: F-88748	06/12/2012	CG 213
	08/21/2012	
Third Party Interest: None		

**Map 4: Squirrel River North**

T. 20 N., R. 11 W., Sections 6, 13, 14 & 24, KRM

Title	Date	State Case File
BLM TA: F-89280	01/08/2008	GS 5715
Third Party Interest: None		

T. 20 N., R. 12 W., Sections 1, 3, 4, 11, KRM

Title	Date	State Case File
BLM TA: F-89270	05/05/2006	GS 6764
	08/06/2012	
Third Party Interest: None		

**VI. PRELIMINARY DECISION**

**A. Background**

The NWAB was granted 285,438 acres of municipal land entitlement under AS 29.65.030. To date, the borough has received title to approximately 45,826 acres of state land, leaving a balance of approximately 239,612 acres. Of this remaining acreage, 189,150 acres consist of land previously approved for conveyance to the borough, which establishes equitable title, leaving 50,462 acres of selected land remaining to be adjudicated. A portion of the remaining selected acreage, approximately 57,059 acres, is the subject of this PD and is collectively referred to as the Squirrel River Area.

Several years ago, DNR worked with NWAB to fulfill the majority of their municipal land entitlement<sup>3</sup> leaving four remaining areas that collectively consist of approximately 70,718 acres. The four remaining areas are known as Squirrel River (subject of this PD), Squirrel River (FFD, 2005), Omar River (FFD, 2012), Ferguson Peak (selection status) and Kobuk River (selection status). The Borough's selections in these areas were submitted to DNR in 2005, but the area plan was being revised at the time and consequently adjudication of the selections was postponed until after adoption of the NWAP in 2008.

<sup>3</sup> The previously approved state lands for conveyance to the NWAB were from the 2005 FFD's for Kobuk Area ADL 414528 thru 414533 & 414537; Squirrel River Area ADL 417404; Wulik River Area ADL 414525, 414526 & 414527 and Deering-Candle-Buckland Area ADL 414535, 414536 & 415695.

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

### **1. Planning**

The land selections in this decision are located in Baird Mountains Region and specifically within the NWAP management unit B-03 (Ch. 3, p. 29-33). These selections are currently designated as Habitat (Ha) and classified Wildlife Habitat Land (WHB). Land classified WHB cannot be conveyed to municipalities. However, the NWAP provides an alternative means to allow conveyance. Borough selected land in management unit B-03 that is approved for conveyance in the FFD can be redesignated to Public Recreation-Dispersed and reclassified to Public Recreation Land pursuant to the NWAP (Ch. 3, p. 32). This redesignated and reclassified land is potentially conveyable to the borough if the FFD determines that it is appropriate to convey certain lands to the borough. This PD determines that it is appropriate to convey certain lands. Assuming that the recommendations of the PD are maintained in the FFD, the requirement for reclassification to Public Recreation-Dispersed will have been met and these lands will be affected by this designation. Those selections that are recommended to be rejected do not meet these criteria and the current designations of Habitat and Public Recreation-Dispersed are to be retained.

The management intent of unit B-03 has been cited below from the NWAP Resource Allocation Table for Upland Units – Baird Mountain Region (Ch. 3, p. 32):

*“This area may be considered appropriate for conveyance to the Northwest Arctic Borough as part of their municipal entitlement.”*

*“Before this can occur, a final finding and decision must be made under the Municipal Entitlement Act to convey the land to the Borough. In the event that these decisions determine that conveyance is appropriate, those portions that are affected by such a decision are re-designated Public Recreation-Dispersed and are reclassified Public Recreation Land. This designation and classification becomes effective if/when an entitlement decision makes a determination that conveyance to the borough is appropriate. In the event that these decisions determine that conveyance is inappropriate, the Habitat designation continues.”*

As stated, the management intent for this unit is concerned that authorization involving long-term, permanent uses are to carefully consider impacts to Dall Sheep and caribou (Western Arctic Caribou Herd). Special consideration is to be given to activities occurring during migration periods and to the protection of movement corridors.

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

See discussion above. Re-designation and re-classification are essential since the current Ha designation and WHB classification would prevent any conveyances to the borough. Any portion of the Squirrel River selections adjudicated in this decision and found inappropriate to convey will retain its current non-conveyable designation and classification. However, if this

decision (FFD) determines that the borough's land selections are appropriate to convey, then the land classification will change to Public Recreation Land, allowing the land to be conveyed. Land classified Public Recreation is considered to be VUU land under AS 29.65 and may be conveyed.

### **3. Mineral Orders**

The mineral estate will be reserved to the state pursuant to Article 5. *Reservation of Rights to Alaska* under AS 38.05.125. There are no known mineral orders affecting the proposed approved selections.

### **4. Local Planning**

The area of selections is affected by the 1993 NWAB Comprehensive Plan<sup>4</sup> and the Borough's Zoning Map (Districts). The North Fork Squirrel River (Map 1) is affected by zoning district 'Subsistence Conservation and Subsistence Sub-District'; the West Squirrel River (Map 2) zoning district is 'General Conservation'; and the Central Squirrel River (Map 3 & 4) and South Squirrel River (Map 4) are affected by the 'General' and 'Subsistence Conservation' districts. The intent of these land zoning districts is to enhance subsistence by borough residents and to provide an economic base in the form of outdoor recreation by the public.

As cited in the NWAB Comprehensive Plan:

*"Subsistence Conservation District is intended to conserve the ecosystem, plant and animal resources, and access to and use of the resources for subsistence purpose." "It would prohibit development that would negatively affect subsistence uses."*

*"General Conservation District would encompass the undeveloped areas of the borough outside the boundaries of the districts." "Intended to conserve the ecosystem, plant and animal resources important to subsistence, resource development could be accommodated on a limited scale."*

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

In an unorganized borough, disposal of state land having traditional uses is to be reviewed under AS 38.05.830. NWAB is a home-ruled borough, organized in June 1968, and is eligible for a municipal land entitlement under AS 29.65.030. A traditional use finding is not required. All of the land selections in this decision are located within the borough's established boundary.

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

Public access will be reserved in accordance with AS 19.10.010, AS 19.30.400, AS 38.05.125, AS 38.05.127, and 11 AAC 51. There is limited access to the land selections in this PD because

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<sup>4</sup> Chapter 4: Land Use Element, Section 4.2.2 Existing Land Use and Use Control: Subsistence /Traditional Land Use.

there are no roads or airports; the nearest gravel airstrip is at Kiana, about 17 air miles southeast of the southern most parcel. Depending on terrain and season of travel, these selections may be accessible by water (skiffs and small boats), all-terrain vehicles or snowmachines. Barge access reaches the community of Kiana located at the confluence of the Squirrel and Kobuk Rivers (Ch. 3, p. 29).

### **1. Section Line Easements**

Section line easements (SLE) are required in accordance with AS 19.10.010 and 11 AAC 51.025. On lands approved for conveyance to the borough, an SLE 100 foot wide centered on the section line (50-feet on each side) will be imposed on both surveyed and protracted section lines.

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

A review of state records concluded there were no trails, roads or RST: Rights-of-Way found; therefore, there are no stipulations to be imposed (AS 38.05.127 and 11 AAC 51).

### **3. To and Along Easements**

AS 38.05.127 and regulation 11 AAC 51.045 require the state to identify public access easements called 'to' and 'along' on navigable and public waters. The 'along' easement adjoins and extends continuously for a 50-foot wide upland of the OHWM of those water bodies determined to be navigable or public waters. Section line easements (see above) provide the required 'to' easement and are established approximately once each mile. The 'along' easement will be imposed for all such navigable and public waters (Tables 2 & 3). These tables also indicate the width of these easements, which are typically 50-feet measured from OHWM.

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

The NWAP requires protection of the riparian areas adjacent to anadromous stream and high value fish streams, identified by ADF&G. These areas are identified in Table 2 & 3 in the column 'Riparian Buffer Easement Width on Anadromous Waterbodies' and are to be affected by a 100-foot easement buffer, measured from the OHWM. The following stipulations are to apply to all such streams<sup>5</sup>.

Subject to:

Reservation for an easement of 100-feet wide to be located upland and adjoining the ordinary high water mark of (*See Tables 2 & 3 for waterbody name*), the purpose of which is to protect the riparian area of the aforementioned waterbody. Only water dependent uses of the type described in [former] 6 AAC 80.900(17) are allowed within the first 70-feet from ordinary high water mark. No more than

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<sup>5</sup> In the event that public review or further agency review determines that it is more appropriate to retain the areas affected by this stipulation, DNR maintains the authority in this decision to identify such areas as retained areas in the FFD.

25% of this area may be de-vegetated and no more than 50% may be de-vegetated in areas in excess of 70-feet. All such uses are subject to the requirements of the 'along' easement imposed under AS 38.05.127.

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

Waterbodies determined to be navigable or public waters are identified in Tables 2 & 3. Navigable and public waters have been determined based on the criteria in 11 AAC 51.035 and are defined and are described as follows:

*Navigable water*: a 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. A waterbody will also be considered navigable if it is found navigable for a useful public purpose in accordance with AS 38.05.965(13).

*Public water*: 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.

For waters identified as navigable, the location of the OHWM will be determined at the time of survey, which will identify the specific areas to be retained by the state and will identify the actual acreages of those lands proposed to be conveyed. Prior to transferring ownership, a survey is required on the unsurveyed approved lands by an Alaska Professional Licensed Surveyor hired by the NWAB. At the time of survey, the field work performed by the surveyor may determine that a body of water or waterway appears to be different than as identified in this decision. If this is correct, the surveyor will be required to submit their findings to the state's surveyor for review and the municipal entitlement unit. If the field work is determined to be accurate by these entities the survey findings will supersede the recommendations in this decision for those waterbodies affected by this determination.

For those lands approved for conveyance, ownership of the uplands from the OHWM of navigable and public waters does not grant an exclusive right to the use of the water and a right of title to the land below the OHWM pursuant to AS 38.05.126.

**Table 2**  
**Navigable Waters**

Map # and Name	KRM Township Range	Waterbody Name	Riparian Buffer Easement Width on Anadromous Streams & Rivers	Public Access Easement
1 North Fork Squirrel River	T22N, R11W T23N, R11W T24N, R11W	North Fork Squirrel River	100-feet North Fork Squirrel River (Catalog # 331-00-10490-2115-3060)	50-feet
2 West Squirrel River	T21N, R13W T22N, R12W T22N, R13W T22N, R14W	Squirrel River  unnamed tributary	100-feet Squirrel River (Catalog # 331-00-10490-2115)  100-feet unnamed tributary (Catalog #331-00-10490-2115-3076)	50-feet
3 Central Squirrel River	T21N, R11W T21N, R12W	Squirrel River  North Fork Squirrel River  unnamed lake (greater > than 50-feet = navigable water, but not anadromous: NE1/4, Sec. 4: imposition of AS 38.05.127 only)	100-feet Squirrel River (Catalog #331-00-10490-2115)  100-feet North Fork Squirrel River (Catalog #331-00-10490-2115-3060)  NONE	50-feet
4 South Squirrel River	T20N, R11W T20N, R12W	Squirrel River	100-feet Squirrel River (Catalog #331-00-10490-2115)	50-feet

**Table 3  
 Public Waters**

Map # and Name	KRM Township Range	Waterbody Name	Riparian Buffer Easement Width on Anadromous Stream	Public Access Easement
1 North Fork Squirrel River	T22N, R11W T23N, R11W T24N, R11W	unnamed tributary	NONE	50-feet
2 West Squirrel River	T21N, R13W T22N, R12W T22N, R13W T22N, R14W	West Fork tributary unnamed tributary	100-feet West Fork tributary (331-00-10490-2115-3121)  100-feet unnamed tributary (331-00-10490-2115-3086)	50-feet
3 Central Squirrel River	T21N, R11W T21N, R12W	unnamed tributary	NONE	50-feet
4 South Squirrel River	T20N, R11W T20N, R12W	unnamed tributary	NONE	50-feet

**E. Reservation of Mineral Estate**

A conveyance of VUU 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 land to be conveyed, 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 29.65.130 and other applicable statutes and regulations.

**F. Hazardous Substances and Contamination**

It is the responsibility of 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 on review of the Alaska Department of Environmental Conservation’s list of Contaminated Sites in Northwest 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 NWAB is expected to inspect these selections and familiarize itself with regards to the condition and quality of the land. The state makes no representation and no warranty, 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 assumes no liability for removal of hazardous substances, hazardous wastes, contaminants, pollutants, nor any liability for the remediation of the site should such substances ever becomes identified.

### **G. Survey**

A survey determination may be requested by the borough at any time subsequent to the FFD. An approved survey will be required prior to issuance of a conveyance document. If no approved surveyor exists, then an Alaska Registered Land Surveyor must be hired under the direction of the DNR Survey Section. The borough will be responsible for the expense of any survey. There is no requirement under AS 29.65.070 to appraise the land prior to conveyance.

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

NWAB 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 these land selections for the presence of unauthorized use, and is unaware of any existing unauthorized use. NWAB is expected to familiarize itself with the condition and quality of the land and has been given the opportunity to do so.

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

Administration of active leases, permits, and easements in the surface estate of the land to be conveyed will be transferred to the borough when the FFD becomes effective, unless the authorization has been specifically excluded from conveyance. Applications that have not been adjudicated will be closed.

### **K. Archaeological Resources**

The Alaska State Historical Preservation Office (SHPO) maintains the Alaska Heritage Resources Survey (AHRs) which is an inventory of all reported historic, prehistoric and archaeological sites in the state. No historic, prehistoric and archaeological sites were identified by SHPO during agency review. Should such cultural resources be found on borough land, the Borough must protect the site and take those actions required by AS 41.35.070(d).

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

Each municipal entitlement land selection is required to be compact in form with its length not exceeding approximately four times its width pursuant to AS 29.65.070(c). Review of the borough's land selections determine that certain selections are inconsistent with this statute and

are to be rejected and retained in state ownership (Table 5). This requirement of the ‘four to one’ rule facilitates public access across areas that would otherwise be inaccessible and, in this case, allows public access to state waters. These rejected areas have been depicted on Map 2 & 3 of there approximate location and described in Table 5.

### **M. Agency Review**

The intent of agency review is to solicit comments from agencies that may be affected by a municipal entitlement land conveyance. In the agency review process, agencies are given the opportunity to evaluate and comment on individual selections, recommend that all or a portion of the selection be rejected, and recommend stipulations that may be appropriate to protect state interests if the land is approved for conveyance. In all cases, adequate justification must be included with the agency’s comments.

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

1. **Comment from the Alaska Department of Fish and Game (ADF&G), Division of Sport Fish:** Many of the parcels in this proposed conveyance are located in the spring migration corridor of the Western Alaska Caribou Herd (WACH) used primarily by pregnant cows as they head back toward the calving grounds. These parcels are also located west of one of the most heavily used fall migration corridors. Additionally, the Squirrel River supports a healthy moose population and is an important moose hunting area. The Squirrel River and North Fork Squirrel River are anadromous fish-bearing waters; in addition to salmon these rivers and their tributaries support a variety of other fish. The fish and game resources of this area are traditionally used for subsistence purposes by residents of Kiana, the nearest community, and also by residents of Noorvik, Ambler and Kotzebue.

ADF&G expects the WACH movement corridors to remain the same based on data from the past 20 years. ADF&G recommends that the WACH migration corridors be protected from mining, transportation routes or other types of development that could alter caribou movement between their seasonal ranges. ADF&G’s major concern is that these areas remain undeveloped because of the importance of the WACH to the ecology of the region, to visiting hunters and commercial operators, and subsistence hunters. However, ADF&G understands that it is not possible to stipulate in a municipal entitlement land conveyance decision that the lands in the migration corridor remain undeveloped. ADF&G also understands that it cannot predict future land use by either the state or the borough; consequently ADF&G does not support nor oppose this conveyance.

**DNR Response:** ADF&G’s concerns over adverse impact to the Western Alaska Caribou Herd will be brought to the attention of the NWAB. The borough should contact ADF&G prior to any decision to develop land or to convey land out of Borough ownership. In reference to the management intent requirements of unit B-03, these requirements pertain to the issuance of

authorizations for specific projects. Municipal entitlement decisions are not authorizations per se and the state, as a matter of policy and statute, does not speculate on the nature of future land uses in its decisions and cannot impose specific restrictions on the use of land by the borough for entitlement decisions.

2. ***Comment from ADF&G:*** ADF&G recommends that a minimum 100-foot riparian buffer be reserved adjacent to anadromous streams, Squirrel River, North Fork Squirrel River and the tributaries as identified in the 2008 Northwest Area Plan.

***DNR Response:*** DNR acknowledges the importance of riparian protection and concurs with ADF&G recommendation for the protection of riparian areas adjacent to anadromous and high-value resident fish waters. Appropriate easements, both ‘along’ and ‘riparian’, are identified and are consistent with AS 38.05.127 (50-foot wide public access easement) and the NWAP criteria to require a 100-foot riparian buffer landward from the OHWM adjacent to rivers and streams identified as anadromous.

3. ***Comment from ADF&G:*** ADF&G recommends that DNR reserve public access easements on navigable and public waters and on section lines in accordance with AS 38.05.127, AS 19.10.010, and 11 AAC 51.

***DNR Response:*** Acknowledged.

## VII. DISCUSSION AND ALTERNATIVES

### A. Discussion

This Preliminary Decision for NWAB municipal entitlement land selections in the Squirrel River area covers approximately 57,059 acres. This decision approves for conveyance 46,167 acres of state land and transfers management authority for approved land to the borough if/when the FFD becomes effective. If the FFD is approved consistent with the recommendations of this document and determines that conveyance of certain lands is appropriate, the effect of these actions will be to redesignate and reclassified as Public Recreation-Dispersed specific selections, thereby enabling the conveyance of these selections to the borough. It also rejects approximately 10,892 acres of municipal selections; these lands are to be retained in state ownership and the current designations and classifications of Habitat and Public Recreation are unaffected.

During agency review, the principal issue identified was potential impact to the fish and game resources that could result from future development following a transfer of land ownership to the borough. It is not possible to stipulate that the land remain undeveloped; this fact is recognized by both ADF&G and DNR. Reliance must be placed on borough code to minimize possible adverse effects to caribou migration and subsistence use. ADF&G proposed that a 100-foot wide buffer be reserved adjacent to anadromous fish streams. Squirrel River and the North Squirrel River are identified as anadromous, as well as a stream locally called West Fork (T. 22 N., R 14

W., Section 15) and two unnamed tributaries of Squirrel River. One stream goes through T. 22 N., R. 13 W., Sections 24 & 25, and a large unnamed river traversing through T. 22 N., R. 12 W. crossing through most of the borough land selections in this area (Map 2). This decision concurred with this recommendation and imposes a 100-foot easement adjacent to these waterbodies for the purpose of riparian protection. Significantly, in this review, no important state resources were recommended to be retained by the state.

Since no significant state interests were identified that would necessitate the denial of certain borough selections, this PD determines that the borough's interest in obtaining the land outweighs the public's interest in retaining the selected land in state ownership for those selections that are recommended for conveyance in this decision and included in Table 4, 'Land Proposed for Conveyance'. The standard for conveyance of land to the Borough required under statute has been met and the conveyance of the land is appropriate. However, state statute and the Public Trust Doctrine, necessitate that certain areas of selections be retained by the state, either to assure conformance with the 'four-to-one' rule or to maintain the long standing practice of the department to retain the islands and gravel bars within navigable rivers in any form of conveyance. This decision further rejects certain selections on the basis that the state does not own and never owned this land – since no state selection or top-filing exists that would cause the conveyance of federal land to the state for these selections. For the aforementioned reasons the state rejects (or determines invalid) those selections that are identified in the Table 5, 'Land Proposed for Rejection' and Table 6, 'Invalid Selections'.

This decision further determines that, for those lands to be conveyed to the borough, that certain conditions and restrictions are appropriate and are necessary to ensure the protection of important resources and public access. This decision therefore imposes restrictions reservations and stipulations that are to be part of the conveyance document, to ensure adherence to pertinent state statutes, state administrative code and the state's area plan.

## **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 NWAB land 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, in part, the NWAB land selections for conveyance with management authority transferred; reject, in part, and retain in state ownership. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state-owned VUU land to the NWAB.

## **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 NWAB land selections identified in this decision are approved for conveyance, subject to the recommended conditions, restrictions and reservations listed below.

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

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

#### **1. Conditions**

- a. The state will retain in state ownership the bed of navigable waters from the OHWM to the OHWM, including all gravel bars and islands 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 NWAB 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 for riparian buffers easement is transferred to the NWAB 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 of the state and unless an alternative means for reasonable public access is provided.
- e. Management authority will transfer to the NWAB on approved lands for conveyance when the FFD becomes effective.
- f. Administration of state leases and permits pertinent to the surface estate will be transferred to the NWAB when the FFD becomes effective. Administration of issued state leases and permits, in the mineral estate, will remain with the state.
- g. When the FFD becomes effective, the NWAB 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.

- h. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of the NWAB 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. A 50-foot wide easement on surveyed and unsurveyed section lines in accordance with AS 19.10.010 and 11 AAC 51.025.
- c. 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 (Table 3).
- d. 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.
- e. A riparian buffer easement of 100-foot wide located landward and adjoining the OHWM of anadromous waterbodies identified in Tables 2 and 3, the purpose of which is to protect the riparian area of the aforementioned waterbody. Only water dependent uses of the type described in [former] 6 AAC 80.900(17) are allowed within the first 70-feet from ordinary high water mark. No more than 25% of this area may be de-vegetated and no more than 50% may be de-vegetated in areas in excess of 70-feet. All such uses are subject to the requirements of the 'along' easement imposed under AS 38.05.127.
- f. 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. Recommended Action on Municipal Selections

This decision recommends conveyance of 46,167 acres of state land and the transfer of management authority for approved land to the NWAB when the FFD becomes effective and recommends to reject 10,892 acres of municipal selections where 3,312 acres of state lands is to be retained in state ownership with the current designations and classifications of Habitat and Public Recreation unaffected and 7, 580 acres because the state does not own this lands and has not selected or top-filed on them.

Tables 4 and 5 represent estimated acreages only. The state will retain the beds, including all islands and gravel bars of navigable waters and the final acreage determination will be identified at the time of survey. The acreage will be the net chargeable acreage to be credited towards partial fulfillment of the borough’s land entitlement. Table 4 lists those lands approved for conveyance to the NWAP; Table 5 lists those selections that are to be rejected for being inconsistent with the four-to-one rule and those that are invalid selections that cannot be adjudicated by DNR.

**1. Lands Proposed for Conveyance**

Table 4 identifies the selections appropriate for conveyance and the estimated acreage associated with these selections. The state will retain all beds, islands and gravel bars of those areas in navigable waters between the OHWM to the OHWM. The actual acreage amount to be conveyed will be determined at the time of survey. The acreage will be the net chargeable acreage to be credited towards partial fulfillment of the borough’s land entitlement.

**Table 4  
Lands Proposed for Conveyance**

Map Number and Name	KRM Township Range	Section	Acres by Section	Acres by Map
1 North Fork Squirrel River	T. 22 N., R. 11 W.,	Sec. 2: All, excluding North Fork Squirrel	640	12,945
		Sec. 10: All, excluding North Fork Squirrel and NW 1/4	480	
		Sec. 11: W½, excluding North Fork Squirrel	320	
Sec. 15: All, excluding North Fork Squirrel		640		
Sec. 16: All, excluding North Fork Squirrel		640		
Sec. 28: All, excluding North Fork Squirrel		635		
Sec. 33: All, excluding North Fork Squirrel		630		
T. 23 N., R.11 W.,	Sec. 1: All, excluding North Fork Squirrel	640		
	Sec. 2: All, excluding North Fork Squirrel	640		
	Sec. 11: All, excluding North Fork Squirrel	640		
	Sec. 12: All, excluding North Fork Squirrel	640		
	Sec. 13: All, excluding North Fork Squirrel	640		
	Sec. 14: All	640		
	Sec. 25: All	640		
	Sec. 26: All, excluding North Fork Squirrel	640		
	Sec. 35: All, excluding North Fork Squirrel	640		
Sec. 36: All	640			
T. 24 N., R. 11 W.,	Sec. 25: All, excluding North Fork Squirrel	640		
	Sec. 26: All, excluding North Fork Squirrel	640		
	Sec. 35: All, excluding North Fork Squirrel	640		
	Sec. 36: All	640		
2 West Squirrel River	T. 21 N., R. 13 W.,	Sec. 2: All	640	19,931
		Sec. 3: All	640	
		Sec. 10: All	640	
		Sec. 11: All	640	

2 West Squirrel River	T. 22 N., R. 12 W.,	Sec. 3: All, excluding unnamed tributary Sec. 9: All Sec. 10: All, excluding unnamed tributary Sec. 15: All, excluding unnamed tributary Sec. 16: All, excluding unnamed tributary Sec. 27: All, excluding unnamed tributary Sec. 28: All Sec. 30: All, excluding Squirrel River Sec. 33: All, excluding Squirrel River Sec. 34: All, excluding unnamed tributary	640 640 640 640 640 640 640 598 605 640	
	T. 22 N., R. 13 W.,	Sec. 19: All, excluding Squirrel River. Sec. 20: South 1/2 Sec. 21: All Sec. 23: All Sec. 24: All Sec. 25: All, excluding Squirrel River Sec. 26: All, excluding Squirrel River Sec. 28: All, excluding Squirrel River Sec. 29: All, excluding Squirrel River Sec. 30: All, excluding Squirrel River	620 320 640 640 640 600 610 640 620 623	
	T. 22 N., R. 14 W.,	Sec. 10: All, excluding Squirrel River Sec. 15: All, excluding Squirrel River Sec. 21: All Sec. 22: All, excluding Squirrel River Sec. 24: All, excluding Squirrel River Sec. 25: All, excluding Squirrel River Sec. 27: All, excluding Squirrel River Sec. 28: All	640 640 640 640 620 635 640 640	
3 Central Squirrel River	T. 21 N., R. 11 W.,	Sec. 4: All, excluding North Fork, unnamed lake in NE corner Sec. 5: All, excluding North Fork Squirrel Sec. 6: All, excluding Squirrel River Sec. 7: All, excluding Squirrel River Sec. 8: All, excluding North Fork Squirrel Sec. 20: All, excluding Squirrel River; that portion of USS 6711 Sec. 29: All, excluding Squirrel River Sec. 30: All, excluding Squirrel River Sec. 31: All, excluding Squirrel River Sec. 32: All, excluding Squirrel River	525 620 622 520 620 625 635 617 600 615	8,504
	T. 21 N., R. 12 W.,	Sec. 1: All, excluding Squirrel River Sec. 3: All, excluding Squirrel River Sec. 28: All Sec. 35: All	625 600 640 640	
4 South Squirrel River	T. 20 N., R. 11 W.,	Sec. 6: All Sec. 13: All, excluding Squirrel River Sec. 14: All, excluding Squirrel River Sec. 24: All, excluding Squirrel River, USS 5208 & USS 5157	587 545 585 510	4,787

4 South Squirrel River	T. 20 N., R. 12 W.,	Sec. 1: All	640	
		Sec. 3: All	640	
		Sec. 4: All	640	
		Sec. 11: All	640	
<b>TOTAL</b>			<b>46,167</b>	

### 2. Lands Proposed to be Rejected

Table 5 lists those areas rejected for conveyance. These selections either are apparent islands within the Squirrel, North Fork and the unnamed rivers or are selections, which if approved, would be inconsistent with the four-to-one rule (AS 29.65.070(c)) and unduly restrict public access to the waterbodies within the Squirrel River area.

**Table 5  
Lands Proposed to be Rejected**

Map Number and Name	KRM Township Range	Section	Acres by Section	Acres by Map
2 West Squirrel River	T. 22 N., R. 12 W.,	Sec. 21: All	560	1,805
		Sec. 22: All	640	
		Sec. 29: North of Squirrel River	605	
3 Central Squirrel River	T. 21 N., R. 11 W.,	Sec. 17: that portion in the West 1/2, excluding USS 6711	305	1,507
		Sec. 18: that portion NE of slough, excluding USS 6711	607	
	T21N, R12W	Sec. 2: All	595	
<b>TOTAL</b>			<b>3,312</b>	

### 3. Invalid Land Selections

Table 6 lists those areas that are invalid selections made by the borough. The state did not select these lands and does not have or will acquire title to them. These are BLM land parcels.

**Table 6  
Invalid Land Selections**

Map Number and Name	KRM Township Range	Section	Acres by Section	Acres by Map
2 West Squirrel River	T. 22 N., R. 12 W.,	Sec. 29: South of Squirrel River	215	1,155
	T. 22 N., R. 13 W.,	Sec. 32: All	620	
3 Central Squirrel River		T. 21 N., R. 11 W.,	Sec. 20: North 1/2	320
	Sec. 9: All		640	
	Sec. 16: All		640	
	Sec. 17: East 1/2		320	
	Sec. 18: West of Squirrel River		425	
Sec. 19: All, excluding Squirrel River, and USS 6711	590			

3 Central Squirrel River	T. 21 N., R. 12 W.,	Sec. 11: All	640	
		Sec. 12: South of Squirrel River	610	
		Sec. 13: All	640	
		Sec. 25: All	640	
		Sec. 26: All	640	
		Sec. 36: All	640	
<b>TOTAL</b>			<b>7,580</b>	

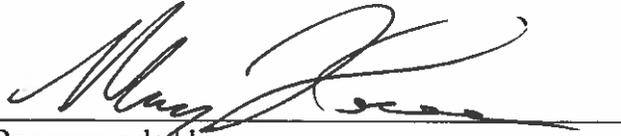
**IX. FINDINGS OF THE PRELIMINARY DECISION**

This Preliminary Decision finds that Alternative #3 best fits the interest of the state and of the NWAB. 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:

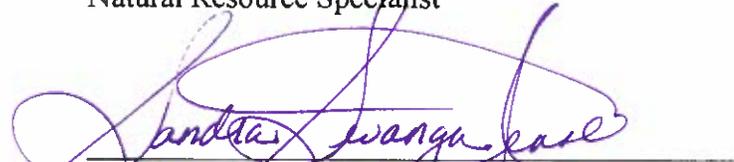
1. That it is appropriate to convey 46,167 acres of state owned land to the NWAB with management authority transferred. This decision determines that the interest of the state to retain this land does not outweigh the interest of the borough to obtain it.
2. That it is appropriate to reject 3,312 acres of borough land selections in West Squirrel River Area (Map 2) consisting of 1,805 acres and Central Squirrel River Area (Map 3) of 1,507 acres because these areas do not conform to the 'four-to-one' rule under AS 29.65.070(c) and will remain in state ownership;
3. That, 7,580 acres of borough selections are invalid because the state does not own these lands and does not have any state selections or top-filings that would ultimately result in their conveyance to the state.
4. That, since certain selections are recommended for conveyance to the borough, the criteria for redesignation and reclassification as described in the management intent for unit B-03 in the NWAB have been met, and when/if the FFD is approved redesignation and reclassification of the subject selections will occur.
5. That, since certain selections are recommended to be rejected, the criteria for redesignation and reclassification as described in the management intent for unit B-03 in the NWAB have not been met, and when/if the FFD is approved the current designations and classifications related to these selections will be unaffected.

This Preliminary Decision determines that Alternative 3 is the preferred alternative. I have reviewed and considered the material in this decision and find that the recommended action may be in the best interest of the state and the Preliminary Decision is hereby approved to proceed to public notice.



Recommended by:  
Mary Hermon, Adjudicator  
Natural Resource Specialist

2-18-14  
Date



Approved by:  
Sandra Swanger-Jensen, Manager  
Municipal Entitlement Unit

2/18/2014  
Date

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

The public is invited to comment on this Preliminary Decision (PD or decision) proposed to transfer ownership of state land to the Northwest Arctic Borough. Any comments received must be in written form to the Division of Mining, Land and Water, Resource Assessment and Development Section, Municipal Entitlement Unit, Attention: Mary Hermon at 550 West 7<sup>th</sup> Avenue, Suite 1050, Anchorage, Alaska 99501-3579, by fax (907) 269-8915 or by electronic email to [mary.hermon@alaska.gov](mailto:mary.hermon@alaska.gov) and **must be received on or before March 21, 2014** in order to ensure consideration.

A copy of the public notice is available on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>, and a copy of the PD is available on the Division of Mining, Land & Water, Municipal Entitlement website at: <http://dnr.alaska.gov/mlw/muni/>. The Postmasters in Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Selawik and Shungnak will be asked to post the public notice per AS 38.05.945. Additionally, notices will be sent to the Northwest Arctic Borough and those tribal governments in the area.

Following the comment deadline, all timely written responses received will be considered and this PD may be modified to incorporate public comments into a Final Finding and Decision (FFD). Only persons who comment during the public comment period will be eligible to file an administrative appeal of the FFD. A copy of the FFD will be sent to any person who commented during the public notice period, and will include appeal instructions. Please direct any questions concerning this PD to Mary Hermon at (907) 269-6546, by fax (907) 269-8915, or email: [mary.hermon@alaska.gov](mailto:mary.hermon@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 the proposed actions 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# (907) 269-8411.

### **ATTACHMENTS**

#### **VICINITY MAP**

MAP 1 – North Fork Squirrel River

MAP 2 – West Squirrel River

MAP 3 – Central Squirrel River

MAP 4 – South Squirrel River