

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

**PRELIMINARY DECISION
CONVEYANCE OF LAND UNDER AS 29.65.090
and
MATANUSKA SUSITNA BOROUGH UNDER MSB 23.05.030**

ADL 231717 and MSB 006782

I. PROPOSED ACTION

The Department of Natural Resources (DNR) proposes to convey 594 acres of state land to the Matanuska-Susitna Borough (MSB or borough); in return, the borough will convey 566 acres of borough land to the state. The state land is situated along the Alaska Railroad ROW¹ between Houston and Port MacKenzie generally west of Big Lake. The MSB land is located generally on the west side and adjacent to the Nancy Lake State Recreation Area (NLSRA) west of Willow. The purpose of this exchange is to allow the borough to acquire state land along the ARR proposed ROW and for the state to acquire borough land adjacent to the NLSRA, to consolidate land ownership and management functions. The Vicinity Map, attached, depicts the location of these parcels. Maps 1 through 5 depict the specific parcels under consideration in this proposed exchange.

II. AUTHORITY

This proposed action is authorized under AS 29.65.090, AS 38.05.127, AS 19.10.010 and AS 38.05.945, and Administrative Code section 11 AAC 55. The MSB is authorized to enter into this exchange under the authority of MSB 23.05.030.

III. ADMINISTRATIVE RECORD

The administrative record for this decision consists of the case file for ADL 231717, MSB case file 006782, the ARR Report of Proposed Right-of-Way, the NLSRA Management Plan (Revised), and the Southeast Susitna Area Plan.

¹ Identified as the 'Mac East Variant – Connector 3 Variant-Houston-Houston South Alternative' in the Final Environmental Impact Statement.

IV. SCOPE OF DECISION

The scope of this decision is limited to the determination of whether it is appropriate to convey state land to the borough for the purpose of acquiring right-of-way for the Alaska Railroad (ARR) and for the state to acquire borough land adjacent to the NLSRA that would augment the size of the State Recreation Area (SRA).

V. DESCRIPTION

a. Location and Geographic Features

Geographic: State land occupies areas of level topography that are generally inaccessible. Depending on location within the parcel, the vegetation consists of either or a mixture of wetlands and upland forest vegetation. None of the parcels are associated with lakes or drainage features.

Borough: Matanuska Susitna Borough

Meridian: Seward

Regional Native Corporation: Cook Inlet Regional Corporation

Native Village Corporation: None affected

USGS Map Coverage (Tyonek Quadrangle 1:250,000)
and MSB tax map:

Parcel A (State): Tyonek B-1 – Flathorn Lake 32

- Parcel B (State): Tyonek B-1 – Goose Bay 4
- Parcel C (State): Anchorage C-8 – Little Susitna 9
- Parcel D (Borough): Tyonek C-1 – Little Susinta 3
- Parcel E (Borough): Tyonek C-1 – Little Susitna 4
- Parcel F (Borough): Tyonek C-1 – Little Susitna 6

b. Title: Legal Descriptions and Third Party Interests

Parcel	Legal Description	Land Status	Third Party Interests/Encumbrances	Acres
A (State)	Section 24; All, excluding ASLS 83-001 (Iditarod Trail) T16N, R5W, SM (See Map 1)	GS 106 Patent 50-06-034	Iditarod Trail Public Use Easement (ASLS 83-001)	589 (excludes area of Iditarod Trail Easement)
B (State)	An approximately 1 acre parcel located west of ARR right of way, within the NW1/4NW1/4NW1/4NW1/4 of Section 7, T16N, R4W, SM Survey will establish final legal description (See Map 2)	GS 207, Patent 50-69-0039	None	1
C (State)	An approximately 4 acre parcel located in the ARR right of way, within the NW1/4NW1/4 of Section 15, T17N, R4W, SM Survey will establish final legal description(See Map 3)	MH 55, Patent 50-69-0223	None	4
D (Borough)	S1/2SW1/4 Section 10, T18N, R5W SM (See Map 4)	GS-196, Patent 50-92-0250 Municipal Land Act Final Decision (ADL 201385)	None. The Red Shirt Lake Trail passes through this parcel; however, the trail does not have an easement or right-of-way of record.	80
E (Borough)	SE1/4NE1/4 Section 16, T18N, R5W, SM (See Map 4)	GS-196, Patent 50-92-0250 Municipal Land Act Final Decision (ADL 201385)	None. The Red Shirt Lake Trail passes through this parcel; however, the trail does not have an easement or right-of-way of record.	40
F (Borough)	Section 34; All, excluding USS 3868, T18N, R5W, SM (See Map 5)	GS-196, Patent 50-92-0250 Municipal Land Act Final Decision (ADL 201385)	None	446

c. Background:

This decision involves the acquisition of state-right-of way for the Alaska Railroad rail extension between Houston and Point MacKenzie. The Borough and the Alaska Railroad Corporation have initiated construction on the Port MacKenzie Rail Extension Project (PMRE Project). The PMRE Project includes a rail line spur and associated rail operation facilities between Port MacKenzie and the ARRC's existing main line just south of Houston, Alaska.

The purpose of the proposed rail line is to provide rail service to Port MacKenzie and connect the Port with the existing ARRC main line, providing Port MacKenzie customers with rail transportation between the Port and Interior Alaska. Development of a multimodal transportation infrastructure at the Port would support private investment and employment opportunities as well as increase the Borough's competitiveness for export-oriented industrial development.

The MSB is obtaining the land needed for the rail extension right-of-way, terminal reserve, and in some cases acquiring additional land so as to ensure that logical land ownership and management patterns result. Following construction of the rail line, the MSB will issue a right-of-way or equivalent document to the AARC. Some of the parcels the rail line will cross are owned by the state and, to ensure consistency of management, these parcels need to be conveyed to the borough. This also includes obtaining title to some additional state land that is adjacent to the proposed right of way.

In return, the state will receive parcels of borough land that adjoin the NLSRA. Certain of these parcels (D and E) are crossed by the Red Shirt Lake Trail and acquisition of this land will provide for consistent management of this trail by the DNR Division of Parks and Outdoor Recreation.

d. Planning, Classification, and Mineral Orders

Planning: State parcels (parcels A, B, and C) are affected by the Southeast Susitna Area Plan. The parcels are designated General Use, a multiple use land designation. Parcel A is encompassed by management unit H-22. The other parcels occupy portions of unit H-23. The borough parcels are not affected by a land-use plan.

The borough parcels are not affected by a land-use plan

Classification: The designations of General Use on state land convert to the land use classification of Resource Management Land, which is conveyable to municipalities.

The borough land is unclassified and is conveyable to the state following Borough Assembly approval.

Mineral Orders: No mineral orders affect these parcels. The state and borough parcels are open to mineral entry under AS 38.05.185.

e. Traditional Use Finding

A traditional use finding is not required since the parcels are all situated within an organized borough.

f. Access

Surface: The two smaller parcels (Parcels B and C) under consideration for exchange will be included within the ARR right of way, but are still affected by the requirement for a section line easement. Additional surface access is inappropriate. The larger parcel is affected by section line easements (SLEs) and the Iditarod Trail easement. SLE easements (half) are required on all parcels as appropriate; the Iditarod Trail is to be reserved to the state and not conveyed to the borough.

Water: Parcel A contains an unnamed tributary of the Little Susitna River that runs east-west and an additional unnamed tributary to the unnamed tributary of the Little Susitna River that runs north-south. Both of these streams are anadromous, and therefore warrant the imposition of a riparian protection easement pursuant to the requirements of the Southeast Susitna Area Plan. However, both of these streams are less than 10 feet in width and do not meet the requirements under 11 AAC 51.035 as they are applied by DNR for the imposition of an “along” easement, and an easement of this type will not be required.

g. Reservation of Mineral Estate

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.

The state has title to the mineral estate, including oil and gas beneath the Borough owned parcels. Accordingly, only the surface estate can and will be conveyed by the Borough.

h. Hazardous Materials and Potential Contaminants

There are no known hazardous materials or potential contaminants on the state or borough parcels.

The state and the borough make no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed here for conveyance. The State of Alaska and the MSB do 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 on the lands they are respectively exchanging with each other.

i. Performance Guarantees

Performance guarantees are not required since this decision involves the exchange of land and does not involve a project.

j. Survey

State Owned Parcels: The parcels acquired by the borough will require a subdivision plat to create a parcel of record in order for the borough to obtain equitable title as part of the PMRE Project. The costs of survey will be borne by the borough.

Borough Owned Parcels: Two of the parcels (Parcels D and E) may require a borough subdivision plat to create a parcel of record in order for the borough to convey the land to the state. If a survey is required, the costs of survey will be borne by the borough. Parcel F is a parcel of record and will be conveyed by Quitclaim deed in its entirety.

h. Valuation

Land exchanges entered into under AS 29.65.090 and MSB 23.05.030 must be in the public interest and the land or interests in land that are exchanged must be of approximately equal value, including the nonmonetary value of public benefits. Land exchanges under this statute have, as a matter of practice, focused on monetary value, which are usually established through the use of comparable property values. A similar approach was used in this analysis.

The Borough and DNR agreed on a financial valuation method that related typical per unit costs for lands of certain types to the borough and state land that corresponded to these types. The purpose of this assessment was to establish estimates of value based on the use of comparable values appropriate to specific parcels of land. While this method is not an appraisal of value, it is sufficient to establish the relative value of parcels such that the requirement of ‘approximately equal value’ under statute can be reasonably met.

The chart that follows, provides information about each of the parcels and identifies a value per acre estimate for each; these values are based on the use of comparables available to the Borough, including information obtained from the Statewide MLS system, borough appraisal records, a local real estate appraiser, and soils data obtained from the NRCS Soil Survey Data. Maps 1 through 5 depict the location of these parcels.

Parcel I.D.	State Owned Parcels			Borough Owned Parcels		
	A (42) 16N05W24	B (46) 16N04W07	C (62) 17N04W15	D 18N05W10 B001	E 18N05W16 A001	F 18N05W34 A001
Average Evaluation Per Acre	\$ 600.00	\$ 600.00	\$ 300.00	\$ 750.00	\$ 600.00	\$ 600.00
Acquisition Area (Acres)	589	1	4	80	40	446
Total Acquired Parcel Evaluated Value	\$353,400.00	\$ 600.00	\$1,200.00	\$60,000.00	\$24,000.00	\$267,600.00
Total Exchange Value for Acquired Parcels	\$355,200.00			\$351,600.00		

Based on this analysis, the following value estimates apply:

State Parcels:

Parcel A: \$353,400.00
Parcel B: \$ 600.00
Parcel C: \$1,200.00
Total, State: \$355,200

Borough Parcels

Parcel D: \$60,000.00
Parcel E: \$24,000.00
Parcel F: \$267,000.00
Total, Borough: \$351,000

This decision determines that the monetary value of the parcels involved in the exchange is of approximately equal value.

VI. STATE AGENCY COMMENTS

Comments were received from the ADF&G: Parcel A contains a tributary of the Little Susitna River, identified as AWC 247-41-10100-2090, which provides spawning and rearing habitat for coho and pink salmon. There are additional streams within Parcel A that are classified as anadromous. Based on the definition of AS 38.05.965(18), ADF&G recommends the reservation of a 150'-wide buffer on either side of the streams within Parcel A. They note that this is consistent with the requirements of the Southeast Susitna Area Plan for protecting riparian areas adjacent to anadromous fish streams. Further, they recommend the reservation of a 50' wide public access easement under AS 38.05.127 in order to maintain public access along both sides of each stream in Parcel A. ADF&G concurs with the retention of the Iditarod Trail and the reservation of section line easements on Parcels A, B, and C. These easements should be noted on the plats, once surveyed.

Response: DNR concurs that the aforementioned tributaries of the Little Susitna River within Parcel A are anadromous and warrant the protection of a 100' riparian buffer. The Southeast Susitna Area Plan applies FRPA standards in the determination of the width of the riparian protection area; in this case the width is that associated with a stream type designated a Type-II-C waterbody, which merits a width of 100'. However, these streams measure less than 10' in width and do not meet the requirement for the imposition of an 'along' easement under AS 38.05.127 as applied by DNR. Accordingly, along easements are not to be applied in this decision.

VII. DISCUSSION AND ALTERNATIVES

Whether it is appropriate or not to enter into this exchange depends on whether the exchange is of approximately equal value and is in the public interest.

Both requirements are met. The requirement for the exchange to be of approximately equal value has been met and the requirement for it to be in the public interest is also satisfied. The acquisition of borough land by the state along the boundary of the NLSRA results in more effective land management for the Division of Parks and Outdoor Recreation and specifically for the Red Shirt Lake Trail since the length of the trail is wholly under state control. Divesting Parcel A from state ownership is also advantageous; that parcel is an isolated remnant of state land surrounded by University of Alaska and borough properties and it is difficult to manage. The exchange is also advantageous to the borough in that it consolidates properties under their

ownership within the ARR right of way. Other than the ARR right-of-way, parcel A is intended to be included in the borough's wetland mitigation bank.

The range of alternatives that are appropriate to this decision are the following:

Alternative A. Do Nothing.

Alternative B. Vary the parcels under consideration for acquisition by the state, particularly to acquire borough parcels on the north and east sides of the NLSRA which could function as buffers to activities in other areas within the SRA.

Alternative C. Recommended Approach described in this PD.

These alternatives, if implemented, would result in the following:

Alternative A. This alternative would not result any of the benefits of the kind recommended in the PD and is therefore rejected.

Alternative B. Originally only Parcels D and E (borough land) were proposed to be exchanged for Parcels A, B and C (state land). However, during the negotiation process the borough wanted to expand the area of Parcel A to encompass the entirety of section 24 in order to consolidate land ownership patterns. To compensate for the increased acreage, the state enlarged the size of parcel D from 40 acres to the current size of 80 acres and identified a new parcel (Parcel F, consisting of 446 acres) in order to match the value of the borough parcels.

DNR initially proposed exchange parcels along the northern and eastern boundaries of the SRA, in addition to the area of what is now parcel F. The borough reviewed these parcels and determined that it would not be in their best interest to convey the northern and eastern parcels to the state. They felt that these properties were needed for community expansion and for land disposals. Accordingly, this alternative was rejected by the borough as part of the parcel review process and it would be imprudent to attempt to implement this alternative in this decision.

Alternative C. This alternative provides benefits to both the state and borough and meets the requirements for exchanges under AS 29.65.090 and MSB 23.05.030. It is therefore considered in this decision as the 'Preferred Alternative'.

VIII. RECOMMENDATION AND PRELIMINARY DECISION

Recommendation. Alternative C, described above, is selected in this decision as the Preferred Alternative and forms the basis of this decision.

Stipulations.

Lands conveyed to the borough will be subject to the following stipulations:

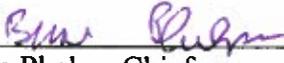
- All valid existing rights, including reservations, easements, and exceptions in the U.S. Patent or other state or federal conveyances, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any;
- A 50' wide easement adjacent to surveyed and protracted section lines on each side of the center line in accordance with AS 19.10.010 and 11 AAC 51.025;
- Excluding the Iditarod Trail easement as depicted in ASLS 83-001 within parcel A; and
- The State of Alaska will retain ownership of the mineral estate pursuant to section 6(i) of the Alaska Statehood Act.
- An easement of 100' measured from the Ordinary High Water on each side of anadromous tributaries to the Susitna River, the purpose of which is to protect the riparian area of these streams. The principal tributary is identified by ADF&G as AWC # 2417-41-10100-2090; the unnamed tributary is situated in the SW1/4 of Section 25. Only water dependent uses of the type described in the (former) 6 AAC 80.900(17) and a transportation corridor for the Alaska Railroad are allowed within this area. All such uses are subject to the requirements of the along easement under AS 38.05.127.

Lands *conveyed to the state* will be subject to the following stipulations:

- All valid existing rights, including reservations, easements, and exceptions in the U.S. Patent or other state or federal conveyances, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any;
- A 50' wide easement adjacent to surveyed and protracted section lines on each side of the center line in accordance with AS 19.10.010 and 11 AAC 51.025.

Preliminary Decision. The Preliminary Decision described above, as represented by the Preferred Alternative (Alternative C) has been reviewed and considered. I find that the recommended action may be in the best interest of the state under AS 38.05.035(e), including the broader public interest under AS 29.65.090, and it is hereby approved to proceed to public notice.

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



 Bruce Phelps, Chief
 Resource Assessment and Development Section

11/13/13

 Date

Public Notice, Decision, and Appeal Procedures

The public is invited to comment on the proposed Preliminary Decision (ADL 231717 and MSB 006782) to exchange land with the Matanuska Susitna Borough.

The exchange will involve the state conveying 594 acres of land to the Matanuska-Susitna Borough; in return the borough will convey 566 acres to the state. The state land is situated along the expansion of the Alaska Railroad ROW between Houston and Port MacKenzie, generally west of Big Lake. The Borough land is adjacent to, and on the west side of the Nancy Lake State Recreation area west of Willow.

The purpose of this exchange is to allow the borough to acquire state land along the ARR proposed ROW and for the state to acquire borough land adjacent to the Nancy Lake State Recreation Area in order to consolidate land ownership and management functions.

The Post Master in each of the following communities will be requested to post the public notice per AS 38.05.945(b)(3)(B): Anchorage, Houston, Wasilla and Willow. Notice will be sent to the Matanuska-Susitna Borough, pursuant to AS 38.05.945(c)(1). Public notice on the Internet will be posted on the State's web page (<http://www.state.ak.us>) under *Online Public Notice*. Public notice, as required by MSB 23.05.025 will be provided by the Matanuska Borough concurrently with this notice.

The Preliminary Decision is available on the internet at: <http://dnr.alaska.gov/mlw/planning> or from the Division of Mining, Land and Water, Resource Assessment and Development Section (RADS), 550 W 7th Avenue, Suite 1050, Anchorage, AK 99501-3579; telephone 1-907-269-8531; fax 1-907-269-8915; email: Bruce.Phelps@alaska.gov

Submit comments in writing to: Division of Mining, Land and Water, Resource Assessment and Development Section, 550 W 7th Ave, Anchorage AK 99501, Fax (907)269-8915, or via email to: Bruce.Phelps@alaska.gov **OR** Matanuska-Susitna Borough, Community Development Department, 350 E. Dahlia Ave., Palmer, AK 99645, Fax (907) 745 -9635 or via email to: LMB@matsugov.us

Comments must be received **in writing, post marked or emailed on or before March 18, 2013** to ensure consideration. Following the comment deadline, all written responses will be considered and the decision may be modified to incorporate public comments. A copy of the final decision will be sent to any person who comments in writing on the Preliminary Decision. The final decision will include appeal instructions. In addition, the exchange must be approved by the Borough Assembly before it can be implemented.

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 11:00 a.m. and 5:00 p.m., M-F, at TDD# 1-907-269-8411.

The right is reserved to waive technical defects in this document.