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

FINAL FINDING AND DECISION
CONVEYANCE OF STATE INTERESTS IN LAND: HEALY AND CHUITNA AREAS

ADL 230241

ASSOCIATED ACTIONS
Amendment of Mineral Order 1046

This Final Finding and Decision (FFD) is intended to complement and update the Preliminary Decision (PD) of January 31, 2008, for the proposed action. All requirements stipulated in the PD continue to apply with the exception of two recommendations noted in 'Proposed Action', following.

Proposed Action: The Alaska Department of Natural Resources (DNR) proposes to convey 28,082[1] acres from two areas of state land at Chuitna (26,722 acres) and Healy (1,360 acres) to the Mental Health Trust Authority (Trust Authority). The purpose of this action is twofold: to fulfill a significant portion of the remaining entitlement under the Trust Authority's Federal grant and to ensure that areas within the Chugach State Park (25,894 acres) that are currently selected under the Mental Health Enabling Act[2] but have not been conveyed to the Trust Authority can be conveyed to the State of Alaska for inclusion in the Chugach State Park (CSP). Maps 2, 3, and 4 depict the areas that are proposed to be conveyed to the Trust Authority[3]. The area that is to be added to Chugach State Park when the land is conveyed to the State of Alaska is depicted in Map 1. Legal descriptions of these areas are included within the PD.

This FFD modifies two of the recommendation contained in the PD: the following text replaces recommendations 4 and 5:

> 4. The coal estate of the mineral estate is excluded from conveyance in Chuitna subunit B. The remaining portions of the fee estate of this parcel are to be conveyed. In the event that the coal lease encumbering subunit B expires or is otherwise terminated, remaining interest in the coal estate will automatically transfer to the Trust Authority.

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[1] Subsequent to the distribution of the Preliminary Decision, DNR amended this document to clarify that the decision involved the conveyance of a total of 28,082 acres and that this decision was related to the Trust's remaining entitlement under the Enabling Act. Previously, the decision indicated that up to 25,894 acres were under consideration for conveyance. This change was distributed on February 8, 2008 and immediately thereafter.

[2] Selected under P.L. 84-830 - Section 202 of the Alaska Mental Health Enabling Act (70 Stat. 709, 1956).

5. The Trust Authority (or its assigns) will include a stipulation in its authorization that requires a grantee, prior to site disturbance and to the extent required by law, to consult with the OHA to determine if archaeological resources are likely to exist with the areas of excavation and to the extent required by law, to consult with this entity to determine the appropriate means of mitigation.

Associated with this action is the amendment of Mineral Order 1046 to include the parcels in this decision. This mineral order closes state land being conveyed to the Trust Authority to mineral entry. After the mineral order is approved, this land becomes subject to the mineral entry and location requirements of the Trust Authority.

Authority. DNR will convey state land to the Trust Authority in accordance with Section 40, Chapter 5, FSSLA 1994 as amended by Sections 4 and 5, Chapter 1, SSLA 1994; the Settlement Agreement between the state and the Settling Plaintiffs (Articles II, III and IV); Alaska Supreme Court decision involving Vern T. Weiss, et al v. State of Alaska (File no. S-653/678); AS 38.05.020; and AS 38.05.035(e). These documents are available for review at the address given in the Public Notice paragraph of this decision.

Public Notice/Review of Public Comments. Notice of the proposed conveyance was sent to newspapers (Anchorage Daily News, Fairbanks Daily News-Miner), post offices, agencies, local governments, and native organizations. Information on the proposed conveyance was also sent to a variety of special interest groups as well as those entities with a current DNR authorization. In addition, public notice on the Internet was posted on the State's web page under *Online Public Notice* and under DNR's *public notice* site. Five public comments were received; two[4] were supportive of the decision and three[5] were not. An issue response summary follows.

1. Issue: The Preliminary Decision (PD) fails to explain how DNR proposes to fulfill the remainder of the Trust's entitlement under the Mental Health Enabling Act (1956) and whether this is a state or federal responsibility. The PD "states that the Trust's selection pool currently totals 34,623 acres and that the selections within the Chugach State Park total 25,894 acres". How will the remaining entitlement be fulfilled?

Response: The action that is being taken in the PD is related, in part, to the close-out of the Mental Health Enabling Act (Enabling Act); at the time the PD was written, the Trust's remaining entitlement under the Act was 38,245 acres.[6] It is the responsibility of the federal government to satisfy the remaining Trust entitlement under the Enabling Act, but the state has become involved because of the presence of two Mental Health selections in Chugach State Park, which now total 25,647 acres. These areas will be otherwise conveyed to the Trust Authority except for an agreement between DNR and Trust Authority that will enable DNR to acquire the areas within the Chugach State Park,

[4] Chugach State Park Citizen's Advisory Board and Usibelli Coal Mine, Inc.
[5] Beluga Coal Company (Barrick Gold of North America) and Trustees of Alaska. The third respondent, Cook Inlet Regional Corporation, did not submit their comments in a timely fashion. However, the issues raised by CIRI were similar to those raised by the Beluga Coal Company.
[6] This is the total acreage owed to the Alaska Mental Health Trust as of February 2008.

subject to substitute state land being conveyed to the Mental Health Trust in the Healy and Chuitna areas (28,082 acres). Both DNR and the Trust Authority have agreed that it is in the best interests of both parties for the Chugach land to be in state ownership and become part of Chugach State Park; however, this agreement is contingent on other state land being conveyed to the Trust as a substitute for the Chugach land, which conveyance is the subject of the PD and this decision. Of the Trust's remaining Enabling Act selections outside Chugach State Park, there are 8,180 unencumbered acres which are conveyable to the Trust. The remainder of the lands owed to the Trust (1,983 acres) will be fulfilled from lands selected by the State of Alaska, under the General Grant or other state entitlements.

2. Issue: The PD:

> "places great weight on its statement that the proposed conveyance is consistent with one of the principal thrusts of the 1994 Settlement, which was to convey as much Original Trust Land to the Trust as practicable. … This purpose is not reflected in the 1994 Settlement itself, which provided for a combination of original and replacement lands to be conveyed to the Trust and is entirely silent on the purported objective of conveying as much Trust Land as possible. Thus, DNR should either provide citations to other documents from the 1994 Settlement proceedings that do reflect this objective, or not rely on this objective as a basis for a best interest finding supporting the conveyance."

Response: The 1994 Settlement legislation was an attempt to resolve a long standing dispute over the redesigantion of Trust Land as General Grant land by the state legislature in the late 1970's. Litigation was brought by Vern Weiss, et al, that disputed the state's position that it could redesignate Trust Land. In this litigation, the Alaska Supreme Court held that:

> "It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective." … "Those general grant lands which were once mental health lands will return to their former trust status." … "The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation."[7]

This principle was embodied in the 1994 Settlement Legislation:

> "in State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court held that the 1978 legislation removing mental health land from trust status and redesignating it as general grant land was a breach of the federally created trust because the trust was never directly compensated for that land, that it was not reasonable to infer that the legislature intended to compensate the mental health trust for all of the original mental health land, that the 1978 redesignation legislation therefore was invalid, and

[7] State v. Weiss, 706 P. 2d 681, 684 (Alaska 1985)

> that the appropriate remedy was to return the original mental health land still in state ownership to trust status …"[8]

DNR was guided by this principle in its reconstitution of the Trust after the 1994 Settlement Legislation. The lands designated Trust Lands were those Original Trust Lands that were not conveyed out of state ownership by DNR or, if in state ownership, were not part of Legislatively Designated Areas or contained public use areas or facilities.[9] The return of these lands to the Trust was consummated by the conveyance of Original Trust Land not otherwise encumbered or conveyed out of state ownership.

This same principle, of attempting to restore original trust land wherever possible, has been continued to guide subsequent decisions by DNR[10] that dealt with the compensation of Trust Land returned to DNR either because of hazardous materials or a determination that land had been conveyed in error to the Trust. The Letter of Concurrence on Replacement Land[11] identifies the process to be used in the conveyance of land to the Trust for land returned to the state. In each of the subsequent decisions made by DNR, this department was guided by the court's principle to reconstitute the Trust to the extent possible. The 2008 PD has been guided by the same principle.

3. Issue: Trustees also maintain that "this section should provide an explanation of why the Chuitna and Healy lands were not included in the Original Trust Lands conveyed to the trust in the 1994 Settlement.

Response: While the state was attempting to settle the mental health litigation during the early 1990s, many entities and individuals, including coal lease owners, were affected by the lis pendens that was filed against Original Trust Land which prevented certain activities. After the court denied preliminary approval of the Chapter 66 settlement, representatives from the coal industry, as well as others, became involved in the negotiation process that resulted in the final list of lands to be conveyed to the Trust under HB201.[12] In the end, the parties agreed that only un-leased original mental health trust coal lands within Healy, Beluga and the Matanuska Valley Moose Range would be conveyed to the Trust.[13]

The list of objectives in the 1994 legislation consummated the intention of the settling parties in its findings and purpose, Section 1(a)(16)(B): [14]

> "to ratify and confirm the removal from trust status of certain original mental health land and the validity of dispositions and uses of that land, including but not necessarily limited to certain original mental health land

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[8] Section 1(a)(7), CH.5, FSSLA 1994
[9] Sec. 40, CH. 5, FSSLA 1994, as amended, by CH. 1, SSSLA 1994
[10] FFD ADL 227494 (October 9, 1998) and FFD ADL 229606 (June 12, 2006)
[11] Letter of Concurrence, Replacement Land Process, January 5, 2000.
[12] Memorandum of Decision and Order Granting Final Approval to the HB201 Settlement, filed December 6, 1994. Weiss v. State 4FA-82-2208 Civil; p.20
[13] Ibid., p.62
[14] Section 1(a)(16)(B), CH.5, FSSLA 1994

(i) that has been purchased by, conveyed to, *or leased by third parties*[15],
(ii) on which third parties have made *significant development expenditures*;"

This objective was reflected in the land list[16] adopted in the 1994 legislation that identified land that was *not* to be conveyed to the Mental Health Trust. Parcels of Original Trust Land that were affected by active coal leases were included in the non-conveyable list, including those at Chuitna and Healy.

The impact of this decision is apparent on maps depicting the distribution of Original Trust Land in Chuitna and Healy areas. Several areas of Original Trust Land that have high coal potential were conveyed to the Trust in the 1994 Settlement Legislation. This resulted in areas of conveyed Original Trust Land that enclosed 'dough-nut' holes of Original Trust Land that were not conveyed because of the coal leases, consistent with the settlement and legislative objective described above.

Another way of answering this issue is to explain why these lands are now suitable for conveyance to the Trust. The reason is straightforward: the coal lease owners in these areas, with one exception[17], no longer oppose the conveyance of these particular Original Trust Land parcels, whereas they did in 1994. If they had not opposed their conveyance in 1994, legislative intent and statutory language almost certainly would have resulted in these areas being conveyed to the Trust Authority in the Settlement Legislation as evidenced by Judge Green in her final decision.[18]

4. Issue: Why is the coal portion of the mineral estate to be excluded from conveyance in Chuitna Subunit B?

Response: This area was excluded from the conveyance proposed in the Preliminary Decision at the request of the Mental Health Trust Land Office (TLO). The entity holding the coal lease within Subunit B did not agree to the conveyance of land to the Mental Health Trust and the TLO requested that the coal portion of the mineral estate be excluded in the proposed disposal action by DNR. Having secured agreement for the proposed conveyance of Original Trust Land from other coal lease owners, the TLO did not want to include the coal interest for areas where an agreement had not been reached.

5. Issue: The Preliminary Decision fails to provide a discussion of whether there are other state lands that could be conveyed to the Trust instead of the Healy and Chuitna lands.

> "The Preliminary Decision places great weight on the fact that the Chuitna and Healy lands are Original Trust Lands, yet it fails to provide any discussion of

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[15] *Emphasis added*
[16] Section 41(b), CH. 5, FSSLA 1994, as amended by CH. 1, SSSLA 1994
[17] The area termed 'Subunit B' is affected by coal lease ADL 79816 issued to the Beluga Coal Company is the exception.
[18] Ibid. footnote 7

what other Original Trust Lands remain in State hands, where they are located, what resource potential they have, or whether any of these lands could provide an alternative to conveying the Chuitna and Healy lands. In order to support a best interest finding, the decision should also consider whether any non-Original Trust lands might satisfy the purpose of the proposal, or whether the purpose could be satisfied by conveying to the Trust several smaller pieces of State land with resource potential. Without some type of discussion and analysis of what other State lands – whether Original Trust Lands or not – might be available and appropriate to convey to the Trust in lieu of Chuitna and Healy lands, the Preliminary Decision fails to support the conclusion that the proposed conveyance is in the best interest of the State."

Response: The issues raised here are dealt with sequentially below.

a. Whether there is other Original Trust Land not returned to the trust that has revenue potential. The 1994 Settlement Legislation conveyed 560,000 acres of Original Trust Land and converted 420,000 acres to General Grant land. Land conveyed to the Trust was that land *not* contained in Legislatively Designated Areas, purchased by, conveyed to, or leased by third parties, approved for conveyance to municipalities, used by state agencies, or land on which third parties had made significant development expenditures. [19]

   Thus, most of the land that was not conveyed to the Trust Authority had already been conveyed out of state ownership or was included within the criteria defined in the settling legislation. Those areas of Original Trust Land that were retained in state ownership under the 1994 Settlement Legislation are state facilities or use areas, which are usually of small size, areas included within Legislatively Designated Areas that, while comprised of large acreages cannot be conveyed out of state ownership without a legislative act, or these two areas at Chuitna and Healy that are affected by existing coal leases. The remaining Original Trust Land at Chuitna and Healy that are not part of this decision are affected by coal leases for which agreement to convey to the Trust could not be reached.

   Accordingly, there are no areas of Original Trust Land that are presently available for conveyance to the Trust except for the two areas which are the subject of the proposed action. Lands not conveyed to the Trust because they were conveyed or purchased by third parties, conveyed to municipalities, or retained by the state by virtue of their continuing use as facilities or as Legislatively Designated Areas remain unavailable.

   This information was known to TLO and DNR staff at the time of the PD and was not presented in the PD since, in our opinion at that time, the presentation of this information would not advance an understanding of the issues involved

[19] Section 1(a)(16), CH. 5, FSSLA 1994

in the proposed decision. The focus of the decision was on the appropriateness of conveyance of the subject tracts.

b. Whether other state land exist with revenue potential.

DNR and the Mental Health Trust Land Office (TLO) had previously conducted an analysis of available state land as part of a decision involving the conveyance of state land to the Trust Authority as part of a replacement land process. (DNR is required to replace Trust Land conveyed in error to the trust or found to contain hazardous material under the terms of a settlement agreement between DNR and the TLO.) This evaluation occurred during 2005-2006 and was concluded in a FFD dated June 12, 2006[20]. In that evaluation the TLO identified state owned and state selected land that it thought had revenue potential and was appropriate for conveyance to the Trust. Over 60 parcels were identified[21], with parcel size ranging from several acres to over 400 acres, with one parcel of 3,700 acres but only involving the conveyance of the mineral estate. The TLO identified parcels it thought had revenue potential, adjoined or were situated close to existing Trust Land, did not contain hazardous materials or present significant habitat, land use, or environmental conflicts. This analysis occurred throughout the state, with parcels identified in Interior, Southcentral, and Southeast Alaska. This was an extensive evaluation, but resulted in only 4,764 acres being identified for conveyance that were related to the fee estate. The other parcels that were considered were dismissed as unacceptable by TLO or found inappropriate in the decision by DNR. To find 26,000 acres of acceptable, revenue generating land other than the Healy and Chuitna parcels would not be possible, based on previous experience in land selection and conveyance processes conducted by DNR.

A similar process, this time involving the selection of parcels for conveyance to the University of Alaska in 2005 University Land Conveyance Legislation[22], encountered similar problems, with large number of parcels being removed from consideration by the University of Alaska, DNR, or the Legislature. The effect of the University Land Conveyance legislation was to remove many relatively good parcels (totaling 250,000 acres) from possible conveyance to the Trust Authority that might otherwise be appropriate for conveyance.

Based on these experiences, and knowing the results of these analyses prior to the Preliminary Decision, DNR concluded that alternative parcels were unlikely to be identified that could provide satisfactory alternatives. The

[20] Final Finding and Decision: Replacement Land (ADL 229606; June 12, 2006)

[21] In fact, many other parcels were evaluated but were determined to not possess the necessary revenue producing potential or the Trust's locational requirement that parcels consolidate Trust land holdings or adjoin Trust Land.

[22] SSC HB 130(efd fld S)

> subject lands were Original Trust Land, the companies with coal leases did not object, and Trust Lands surround the lands in the decision. Again, the focus of the decision was on the appropriateness of conveyance of the subject tracts.

6. Issue: DNR did not consider the social, environmental, or economic impacts of this conveyance. Trustees notes that the PD mentions the Mental Health Trust's "fiduciary mandates", but fails to address how the conveyance might create particular social or economic impacts. Specifically, the PD fails to provide any analysis of the numerous social and environmental impacts of coal mining and combustion. They note that development of the coal lands is possible with or without the proposed conveyance, but will be more likely if the land is conveyed to the Trust Authority because "of its fiduciary mandate to use its lands to generate revenues to fund programs for its beneficiaries."

Response: The proposed decision involves the conveyance of lands to the Mental Health Trust. The decision involves the question of the appropriateness of conveyance of state lands to the Trust; it does not involve the consideration of the conveyance for the purpose of coal exploration and development. Granted that the areas conveyed to the Trust could be used for that purpose, it is not appropriate that DNR disposal decisions speculate about what the Trust may use the lands for in the future. The decisions on how the land is to be used, once conveyed, will be the responsibility of the entity obtaining title to the conveyed land. DNR conveyances, as a matter of practice and policy, do not contain land use restrictions such that some uses are recognized as appropriate and some uses as prohibited. More importantly, statutory language precludes DNR from dealing with the issue of possible uses and possible consequences in a disposal decision. Alaska Statute 38.05.035(h) provides in part:

> " In preparing a written finding under (e)(1) of this section, the director may not be required to speculate about possible future effects subject to future permitting that cannot be reasonably be determined until the project or proposed use for which a written best interest finding is required is more specifically defined, including speculation about (1) the exact location and size of an ultimate use and related facilities …"

The determination of use is made by the Trust Authority after the conveyance of state land, not in a conveyance decision by DNR. To speculate about future uses and related impacts is inappropriate in a decision involving the conveyance of land to another entity. The land is being conveyed to the Trust subject to existing coal leases. DNR will, and must, deal with impacts created by a potential coal operation within its regulatory powers under the Alaska Surface Mining Control and Reclamation Act if and when the use, its exact location, and size are adequately known, and at such time as there is a proposed authorization that must be acted upon by DNR. That time is not now, in the Preliminary Decision that involves only the conveyance of land.

7. Issue: Applicability of Area Plans. The Trustees make the following arguments: the Susitna and Kenai Area Plans are applicable to this decision; that the Susitna Area Plan requires that the land affected by the coal leases be managed for coal, oil, gas, and wildlife habitat values; and, that the proposed conveyance is problematic under the Kenai Area Plan. With regard to the latter, Trustees contend that this land must be "retained in public ownership and managed primarily for coal development." And, "the post-mining intent for this unit is to provide high-value habitat for moose overwintering and water quality for downstream fisheries." The Trustees further contend that the Trust cannot manage these lands for moose habitat and fisheries once coal mining is completed. And that the Kenai Area Plan provides guidance on which lands are available for conveyance to entities like the Trust. "The general rule is that if lands are available for conveyance to municipalities and individuals, then they are available for conveyance to trusts; conversely, if they are not available to municipalities and individuals, then they should not be conveyed to trusts."

Response: The issues raised here are dealt with sequentially below.

a. Whether the Susitna and Kenai Area Plans are applicable to this decision.

Response: The Kenai Area Plan (KAP) is applicable; the Susitna Area Plan (SAP) is not. The SAP was superseded by the Kenai Area Plan for Management Region 11, which includes the area under consideration in the Preliminary Decision. The KAP was adopted on January 7, 2000; the SAP was rescinded in its application within the Kenai Peninsula Borough on that same date under AS 38.04.065(b).

b. Whether the SAP requires that the coal leases are managed for coal, oil, gas, and wildlife habitat values.

Response: The SAP is not applicable; see (a) above.

c. Whether the proposed conveyance is problematic under the KAP. Specifically, that (1) the KAP requires that the land be retained in public ownership and (2) managed for coal development. Further, that (3) the post-mining intent is to provide high-quality habitat for moose overwintering and water quality for downstream fisheries.

Response (1): The Preliminary Decision does not convey land to a non-public entity. This conveyance is to a state agency; the Mental Health Trust Authority is a public corporation within the Department of Revenue.

Response (2): This wording assumes that the land would remain under the management jurisdiction of DNR. As indicated, although it is possible that the Trust Authority will use the land conveyed under the Preliminary Decision for coal exploration and development, this may or may not occur. DNR is guided in its decision by the requirements of AS 38.05.035(h), which indicates that DNR is 'not required' to speculate about future development in its written best interest

interpretations. The PD chose not to speculate on the nature of future development given the uncertainty that attaches to such analyses.

Response (3): This recommendation is included in the management intent language for unit 177 of the KAP. Area plans include management intent statements to give direction in the issuance of future authorizations. They are meant to provide guidance and should be followed where appropriate, and are to be followed when the wording of 'shall' or 'will' is used. This is the interpretation of the meaning of management intent statements and management guidelines used by the Department, which is contained in the Division of Mining, Land, and Water's Division Policy File 06-01.. The management intent statement at issue is a discretionary guideline and may or may not be followed in adjudicatory decisions. Area plans provide guidance to the Mining Section's reclamation plans that control the reuse and rehabilitation of previous coal mining areas, but these reclamation plans are based on a wide variety of factors that may influence how reclamation occurs. A reclamation plan is under consideration now and it may or may not include requirements related to habitat and fisheries, but this is a decision that is made within the context and limitations of the regulations that regulate mining reclamation plans. An area plan can suggest or recommend an action, but the final determination of what stipulations to include are made in the regulatory or permitting decision process.

8. Issue: Area plans determine what land is appropriate for conveyance to municipalities and that this guidance extends to other disposal actions.

Response: While it is true that area plans provide guidance on the appropriateness of conveyance of state land to municipalities, this guidance does not extend to other types of disposals, including those that are the subject of the Preliminary Decision. Standards for the disposal of land to municipalities are identified in the Municipal Entitlement Act and are related, in part, to specific classifications. AS 29.65.030 entitles municipalities to 10 per cent of the vacant, unappropriated, and unreserved land within the corporate boundaries of a municipality. It then further defines in AS 29.65.130 that 'vacant, unappropriated, and unreserved' is related to certain land classifications, and one of the principal functions of area plans is to designate potential land use classifications. Because of this, area plans identify areas for municipal selections and indicate whether they may be appropriate for conveyance.

It is much less common, however, that these plans identify areas for other types of conveyances[23]. There are several reasons for this. First, other conveyances (often related to settlements) are not controlled by classifications. Second, the type of settlement that is

[23] Although most recent area plans (those prepared since 2000) do not include guidance on the conveyance of land to other entities than municipalities, the Kenai Area Plan does provide limited guidance (p. 3-10). But this guidance is discretionary in nature and does not have to be followed. As indicated, more recent area plans generally do not provide this guidance because of the need to convey land using land use classifications that are pertinent to the type of disposal action. This need was found to exist in this decision as well.

under consideration determines whether lands are appropriate for conveyance. For example, the mental health replacement program is controlled by requirements for finding revenue generating parcels generally close to existing trust land, whereas much of the land identified in the University's 2005 legislation was structured around finding parcels that contributed to the University's core educational mission. For these reasons, DNR area plans are not developed to identify parcels appropriate for disposal as part of dispute resolutions and do not usually do so. To insist that DNR area plans are intended to perform this function is inconsistent with how they are, in fact, developed and how they are used.

9. Issue: In a footnote the Trustees state that the authority under which the DNR decision is to convey land requires clarification. They state that it is unclear why AS 38.05.801(b)(2) and AS 38.50 should be identified as authorities.

Response: DNR concurs that the PD was in error in its citing these authorities. The reference under AS 38.05.801 is to the Trust Authority's authority to transfer land and that under AS 38.50, to a form of land exchange that is not applicable in this situation. This language was carried over from a previous decision and should have been changed.

This decision references the following authorities for the conveyance: Section 40, Chapter 5, FSSLA 1994 as amended by Sections 4 and 5, Chapter 1, SSLA 1994; Settlement Agreement between the state and the Settling Plaintiffs (Articles II, III and IV); Alaska Supreme Court decisions in State v. Weiss, 706 P.2d 681 (Alaska 1985) and Weiss v. State, 939 P.2d 380 (Alaska 1997); AS 38.05.020; and AS 38.05.035(e). These more properly identify the authorities that DNR is using in this decision, and the decision has been amended accordingly.

10. Issue: The Beluga Coal Company is opposed to the conveyance of the remaining portions of the fee estate to the Trust Authority. (The PD proposes to convey all but the coal portion of the Mineral Estate to the Trust Authority.) This transfer, they contend, complicates the situation significantly by creating split estates with the coal resources remaining the province of DNR and the other portions of the Mineral estate as well as the Land Estate being transferred to the Trust Authority. This introduces the potential for disagreements and conflicts as to permissible uses, and the possibility of legal difficulties or, in the worst case, litigation. Based on these concerns their preference is for the state to retain ownership of the parcels that are under lease to the Beluga Coal Company.

Response: Most land conveyed out of state ownership is to individuals, entities, and municipalities. In all cases, the conveyance is of the surface estate (Land Estate). The state cannot convey, with few exceptions, the mineral estate; the exceptions are conveyances of the mineral estate to other state entities, like the University of Alaska and the Trust Authority. Thus, most land conveyed out of state ownership creates a split estate condition, and it is our experience that there are relatively few problems associated with the existence of a split estate. Indeed, DNR has conveyed split estates even when it has not been forced to do so. Under both the University and Mental Heath settlements,

split estates have been conveyed and no discernible problems have arisen in our administration of split estates.

The supremacy of the mineral estate is a component of common law and of Alaska State Statute (AS 38.05.125), and the right of access to mineral resources is included in conveyances issued by DNR. This common law principle is intended to ensure that mineral (or coal) exploration and development can occur and not be subject to inappropriate restrictions imposed by the surface land owner. In addition, AS 38.05.130 provides a mechanism for mineral development to continue in the event of a conflict with the surface owner.

DNR has issued an oil and gas lease on these same lands under ADLs 79816 and 309744. If the existence of another mineral development in and of itself creates a conflict, then DNR, through its own management, has created this "potential for conflict" to the extent that an oil and gas lease conflicts with a coal lease. Likewise, DNR has allowed for potential hard rock mineral developments by leaving this area open to mineral location. There are two active mining claims in this area. If mineral development is an inconsistent use with coal and/or oil and gas development, this area would have been closed to mineral location by DNR. The only time this area has been closed to mineral location was during the mental health litigation under a blanket mineral closing order that closed all mental health trust land to mineral location. In issuing both leases and leaving the area open to mineral location, DNR through its action found that multiple mineral uses can co-exist in this area. In Section 3 of the coal lease, the state reserved:

> (a)… "The right to permit for joint or several use such as easements or rights-of-way, including easements upon, through, or in the land lease, occupied or used as may be necessary or appropriate to the workings of other lands for natural resources, *or the same lands for natural resources other than coal*, … subject to this lease." (*emphasis added)*
> (b) "Disposition of the Surface. The right to lease, sell, or *otherwise dispose of the surface of the leased land* under existing law, or laws hereinafter enacted, subject to the right of the lessee to extract and remove coal therein, or to *dispose of any resource* in such lands which will not unreasonably interfere with operation under this lease." *(emphasis added)*

Although the conveyance to the Trust does not transfer the coal interest, the coal lease remains a valid interest that will continue to be managed by DNR under the existing terms and conditions of that lease. Other mineral development of the land cannot unreasonably interfere with the coal operations under the lease. The owners of the coal lease are protected under the terms and conditions of the lease, and are protected by state law.

For the above reasons it is unlikely that the difficulties envisaged by the Beluga Coal Company would actually occur.

Discussion: While most commenters supported the inclusion of Trust Land within the Chugach State Park, others had serious concerns about the proposed conveyance and with the determination in the PD that it is in the best interest to convey land to the Trust Authority in Chuitna. These concerns derived in part from the Trustees "strong opposition to the proposed development of the low-quality, low-value coal resources in the area of the Chuitna lands proposed for conveyance."

DNR evaluated these concerns at length in the issue-response summary and concluded that many of the issues raised during public comment were readily answerable and, in any event, did affect the overall value of the proposed conveyance decision. Importantly, the question of the development of the coal resources of the Chuitna area is outside the scope of a conveyance decision of this type. DNR is enjoined from speculating about the future use of land in a Preliminary Decision and the determination of how and when to use the land is the province of the party receiving the Chuitna land:

> "The determination of use is made by the Trust Authority after the conveyance of state land, not in a conveyance decision by DNR. To speculate about future uses and related impacts is inappropriate in a decision involving the conveyance of land to another entity. The land is being conveyed to the Trust subject to existing coal leases. DNR will, and must, deal with impacts created by a potential coal operation within its regulatory powers under the Alaska Surface Mining Control and Reclamation Act if and when the use, its exact location, and size are adequately known, and at such time as there is a proposed authorization that must be acted upon by DNR." (p. 8, Issue-Response Summary)

DNR, in balancing these concerns with the protection of land within Chugach State Park and the fulfillment of the Trust Authority's Federal entitlement, concludes that it is in the overall best interest of the state to proceed with the proposed conveyance of state land at Chuitna and Healy. The effect of this decision will be to ensure the inclusion of 25,894 acres of Trust Enabling Act selections as state land within the Chugach State Park and to expedite the close-out of the remaining selections of the Mental Health Enabling Act.

Final Finding and Decision. The finding presented above has been reviewed and considered. The case files have been found to be complete and the requirements of all applicable statutes have been satisfied. I find that it is in the best interest of the state to proceed with this conveyance subject to the stipulations identified in the PD and with the revised stipulations identified on pages 1 and 2 of this decision.

Director, Division of Mining, Land, and Water

Date: 4/14/08

A person affected by this decision who provided timely written comments or public hearing comments or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received by 5:00 pm, May 7, 2008, and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, AK, 99501; faxed to 1-907-269-8918; or sent by electronic mail to *dnr_appeals@state.ak.us* . If no appeal is filed by that date, this decision goes into effect as a final order and decision on May 16, 2008. An elgible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

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149° 36' 42.044" W
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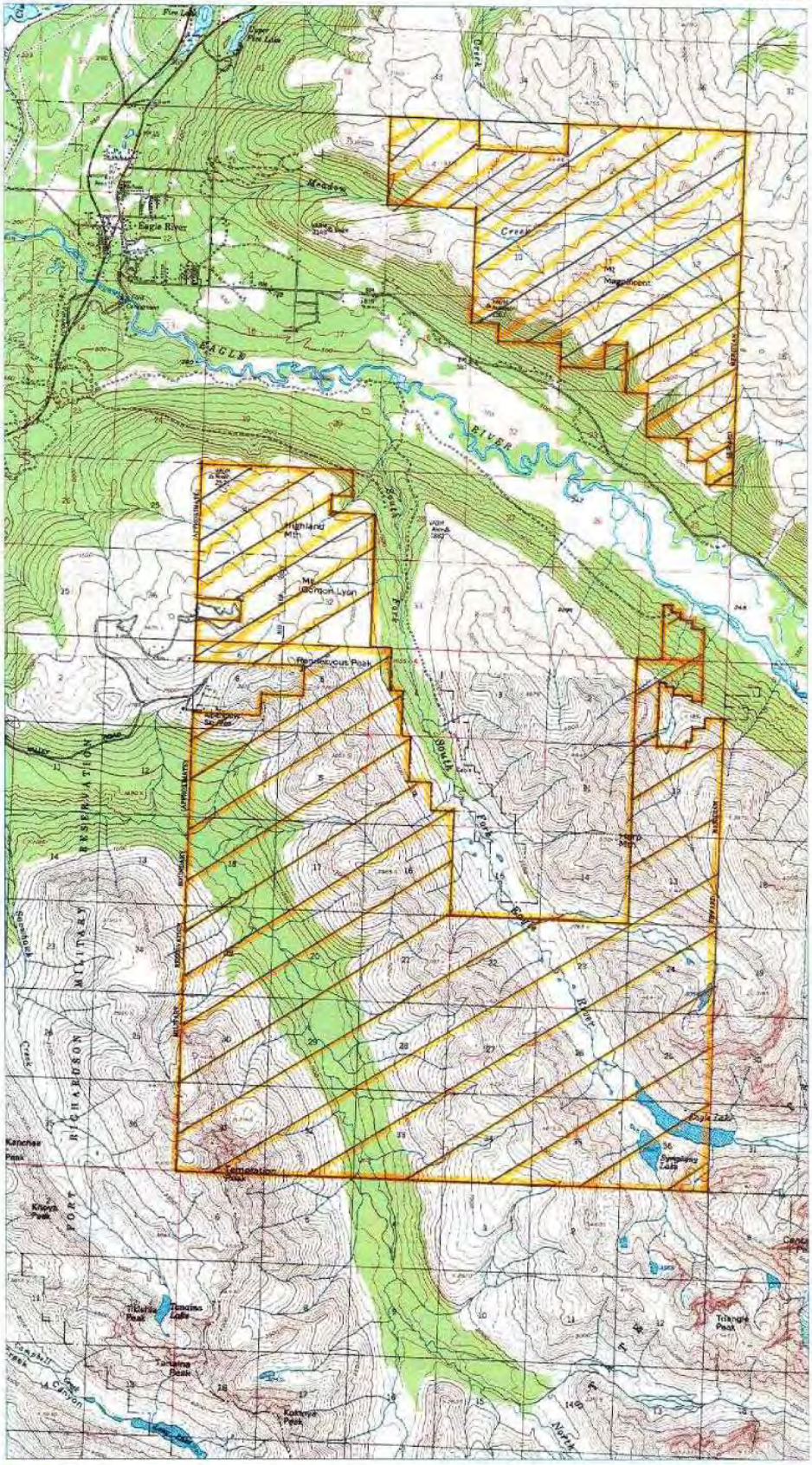
Map 1



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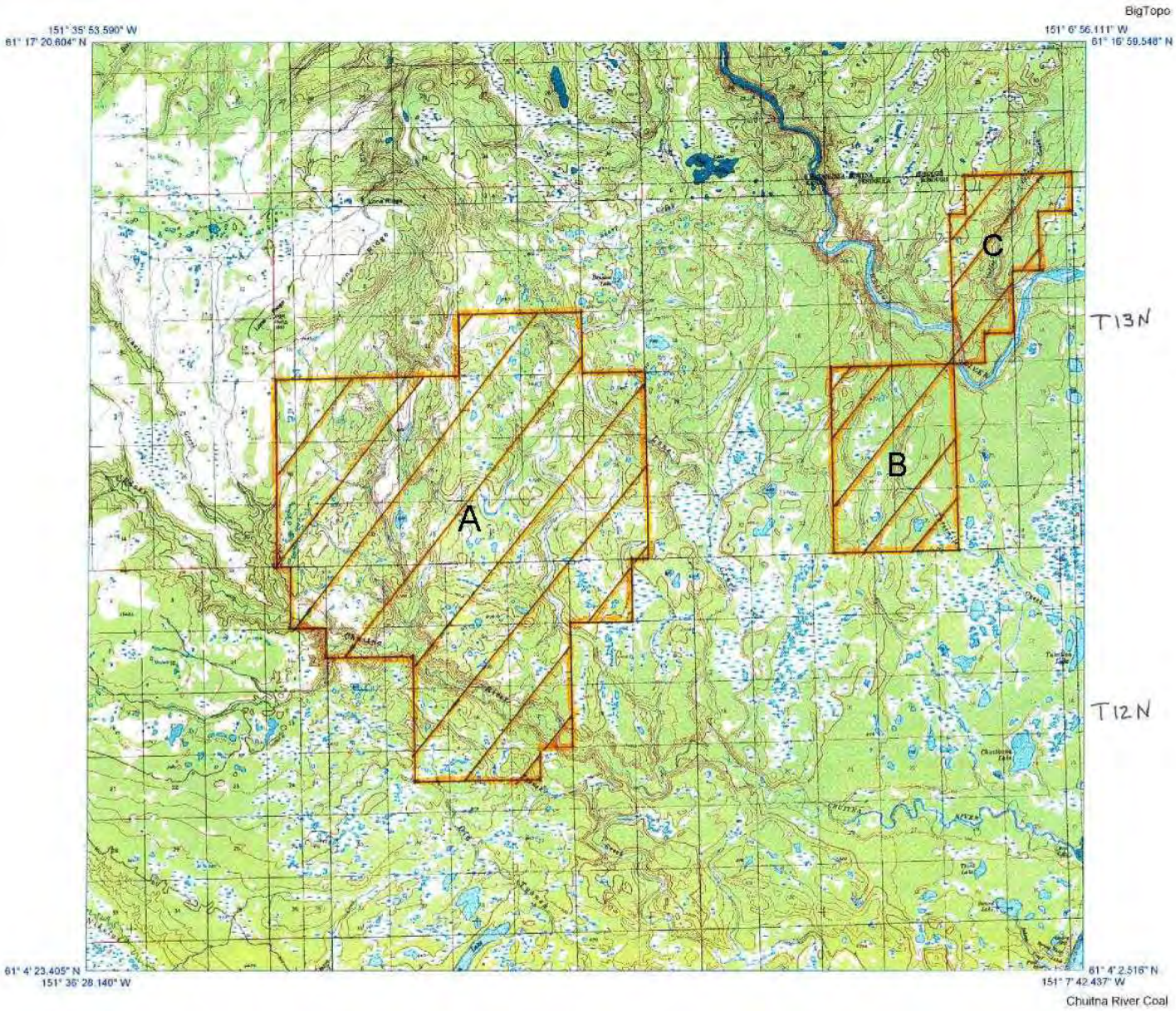
Mental Health Trust Priorities #16 & #17--Chugach State Park

Final Ownership per agreement:
Alaska Department of Natural Resources
Acreage: 25,894

Map 2



Chuitna River Coal

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Acreage: 26,722

TOWNSHIP 12S RANGE 6W OF THE FAIRBANKS MERIDIAN, ALASKA

LEGEND

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- CABIN PERMIT
- TRAPPING CABIN PERMIT
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- CERTIFICATE

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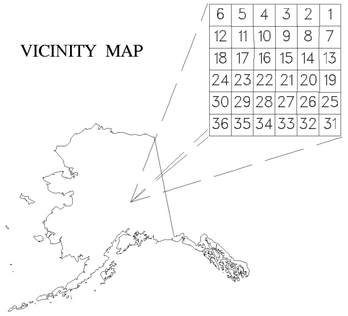

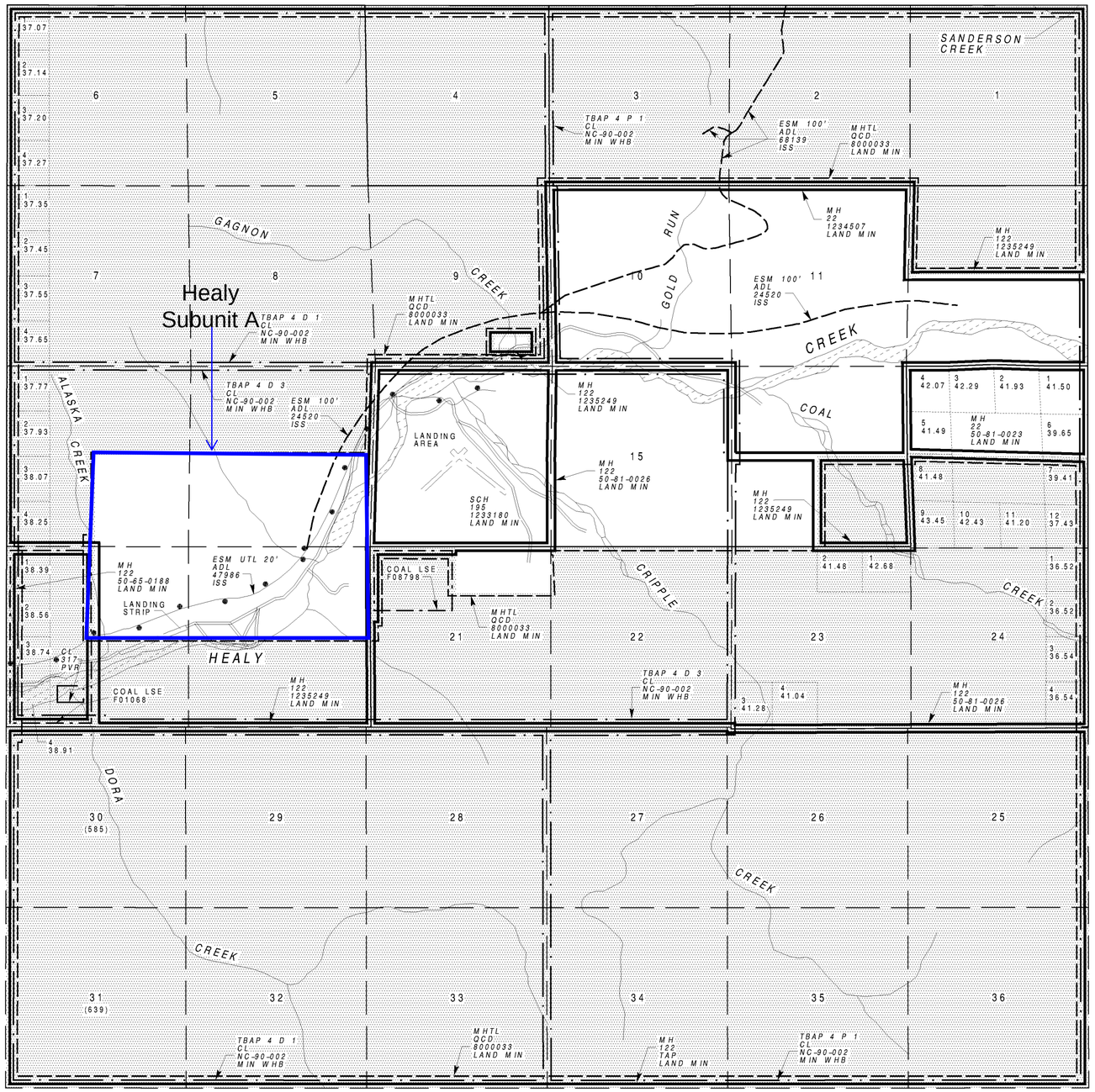

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Map 3

GRAPHIC ILLUSTRATION ONLY.
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SCALE

1 inch = 2640 feet
2640 1500 500 0 1000 2000 5280 FEET

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LAND RECORDS INFORMATION SECTION

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CHECKED BY: TERI MOODY

LE
TWP 12S
RNG 6W
FM

USER: GEORGE
DATE: Monday March 15, 2004 at 2:05 PM
VERSION: Arc/Info 8.0.2,,(Tue Feb 22 08:01:14 PST 2000)
ARC Update

TOWNSHIP 12S RANGE 7W OF THE FAIRBANKS MERIDIAN, ALASKA

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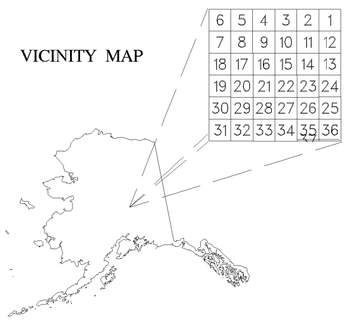

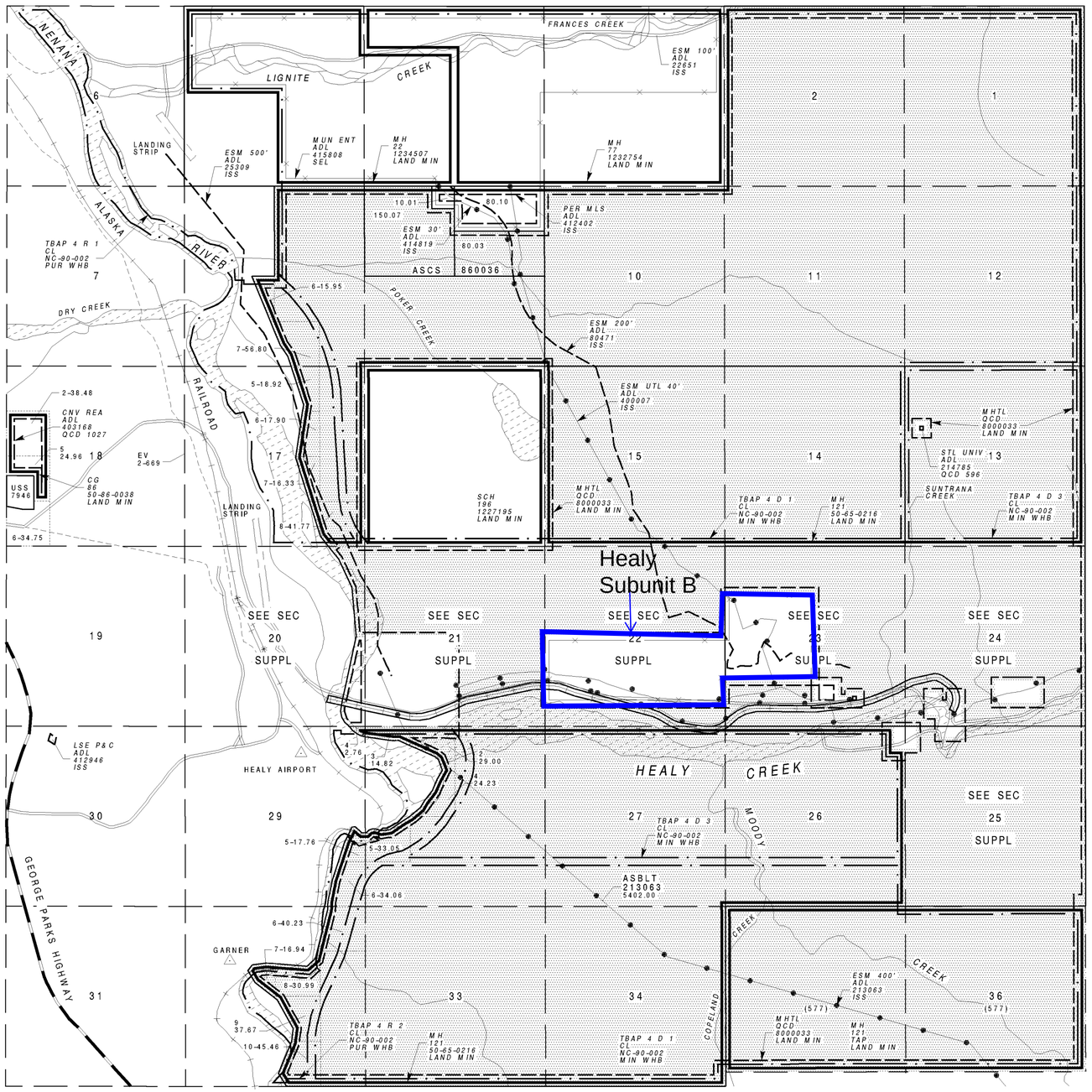

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USRS, 10,515.98 ACRES; ACCEPTED 03/12/1923
USRS, ACCEPTED 12/14/1949
USRS, SUPPLEMENTAL PLAT OF SECTION 18; OFFICIALLY FILED 10/13/1984
USS 7946; OFFICIALLY FILED 10/31/1984
USS 9053; OFFICIALLY FILED 03/10/1993
ASCS 860036; FILED 03/11/1988
ASBUILT 213063; FILED 12/08/1987
EV 2-535; RECORDED 06/22/1993
EV 2-669; RECORDED 06/24/1997

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CHECKED BY: TERI MOODY

LE
TWP 12S
RNG 7W
FM

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

MINERAL ORDER NO. 1046

__X_ Closing Lands to Mineral Entry _____ Opening Lands to Mineral Entry

I. Name: Mental Health Trust Land: Chuitna and Healy

II. Reason for Mineral Order: This mineral order is based on the attached Commissioner's Administrative Finding and applicable statutes.

III. Authority: AS 38.05.185 and AS 38.05.300(b).

III. Location and Legal Description: Lands to be closed under this order include the area known as and as further described in the Attachment.

IV. This order revises this Mineral Order to include two parcels in Healy and three parcels in Chuitna, as described in ADL 230241.

IV. Mineral Closing: This mineral order is subject to valid existing rights and is issued under the authority granted by AS 38.05.185 – AS 38.05.275 to the Department of Natural Resources. In accordance with AS 38.05.185(a), I find that the best interests of the State of Alaska and its residents are served by closure of the land described in this mineral closing order to entry under the mineral location and mining laws of the State of Alaska. The above described lands are hereby closed to entry under the locatable mineral and mining laws of the State of Alaska.

Concur: _____ 4/14/08
for Dick Mylius, Director — Date
Division of Mining, Land & Water

Approved: _____ 4/14/08
for Tom Irwin, Commissioner — Date
Department of Natural Resources

REQUEST FOR RECONSIDERATION

A person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received by 5:00 pm, May 7, 2008 and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8919; or sent by electronic mail to *appeals@dnr.state.ak.us* If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on May 16, 2008**.** Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

LEGAL DESCRIPTION
ADL 230241

Chuitna Parcels

T.12N., R.12W., S.M.
- SEC. 2: ALL
- SEC. 3: ALL
- SEC. 4: ALL
- SEC. 5: ALL
- SEC. 6: ALL
- SEC. 7: N1/2
- SEC. 8: N1/2
- SEC. 8: SE1/4 160 ACRES
- SEC. 9: N1/2
- SEC. 9: S1/2 320 ACRES
- SEC. 10: N1/2
- SEC. 10: S1/2 320 ACRES
- SEC. 15: ALL 640 ACRES
- SEC. 16: ALL 640 ACRES
- SEC. 17: E1/2 320 ACRES
- SEC. 20: NE1/4 160 ACRES
- SEC. 21: N1/2 320 ACRES
- SEC. 22: NW1/4 160 ACRES

T.12N., R.13W., S.M.
- SEC. 1: E1/2

T.13N., R.10W., S.M.
- SEC. 6: N1/2, SW1/4
- SEC. 7: NW1/4

T.13N., R.11W., S.M.
- SEC. 1: E1/2NW1/4, NE1/4, S1/2
- SEC. 12: ALL
- SEC. 13: N1/2, SW1/4
- SEC. 22: ALL 640 ACRES
- SEC. 23: ALL 640 ACRES
- SEC. 26: ALL 640 ACRES
- SEC. 27: ALL 640 ACRES
- SEC. 34: ALL 640 ACRES
- SEC. 35: ALL 640 ACRES

T.13N., R.12W., S.M.

SEC. 14: ALL
SEC. 15: ALL
SEC. 19: ALL
SEC. 20: ALL
SEC. 21: ALL
SEC. 22: ALL
SEC. 23: ALL
SEC. 24: ALL
SEC. 25: ALL
SEC. 26: ALL
SEC. 27: ALL
SEC. 28: ALL
SEC. 29: ALL
SEC. 30: ALL
SEC. 31: ALL
SEC. 32: ALL
SEC. 33: ALL
SEC. 34: ALL
SEC. 35: ALL
SEC. 36: ALL

Healy Parcels

T.12S., R.6W., F.M.
Sec. 17: S1/2
Sec. 18: SE1/4
Sec. 19: NE1/4
Sec. 20: N1/2

T.12S., R.7W., F.M.
SEC. 22: N1/2S1/2, N1/2S1/2S1/2
SEC. 23: S1/2NW1/4, N1/2SW1/4

ADMINISTRATIVE FINDING OF THE COMMISSIONER
MINERAL ORDER 1046 (REVISED)

STATE LANDS AT HEALY AND CHUITNA TO BE CONVEYED UNDER ADL 230241

The Commissioner of the Department of Natural Resources (DNR) determines that it is appropriate to close 28,082 acres of state land to new mineral entry. This land is situated in Chuitna (26,722 acres) and at Healy (1,360 acres). Maps showing the areas of closure are attached. The purpose of this closure is to ensure that the entirety of the mineral estate can be conveyed to the Mental Health Trust Authority (Trust Authority) without impairment.

Preliminary and Final Finding and Decisions (ADL 230147) are the basis for this closure. The Final Finding and Decision determined that lands located at the aforementioned locations and as described more specifically in the Mineral Order are appropriate for conveyance to the Trust Authority. It is in the overall best interest of the state to convey land at these two locations, subject to land (25,894 acres) within the Chugach State Park affected by two Mental Health Enahling Act selections being assigned to the State and retained by the state for the purpose of inclusion in the State Park.

Under Department Order 142 (Management of Mental Health Trust Land) and the 1994 Settlement Agreement dealing with the resolution of the then outstanding mental health lands litigation, DNR is required to close to mineral entry lands it conveys to the Trust Authority. This closure is consistent with this requirement of the Department Order and the Settlement Agreement. Without this closure state mining claims could be filed during the interim period between the date of approval of the FFD and the issuance of quit claim deeds, which would have the effect of reducing, perhaps substantially, the area of the mineral estate that could be conveyed to the Trust Authority.

For the reasons stated above, I find that that it is appropriate to close to future mineral entry those areas of state land identified in the FFD to be conveyed to the Trust, and that it is in the best interest of the state to do so. Potentially inconsistent surface and subsurface uses will be precluded through this action.

Tom Irwin, Commissioner

4/14/08
Date

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149° 20' 24.358" W
61° 21' 36.539" N

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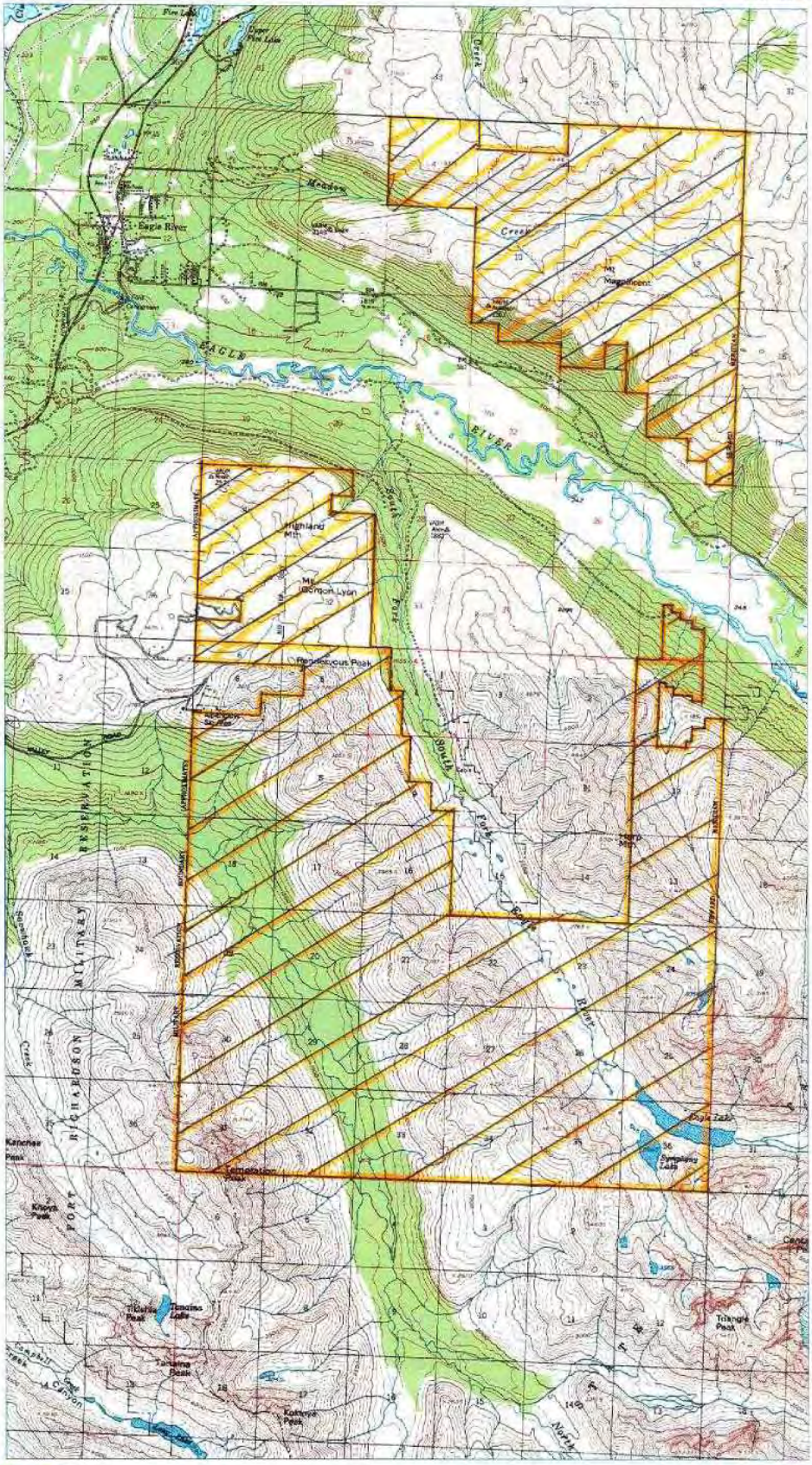

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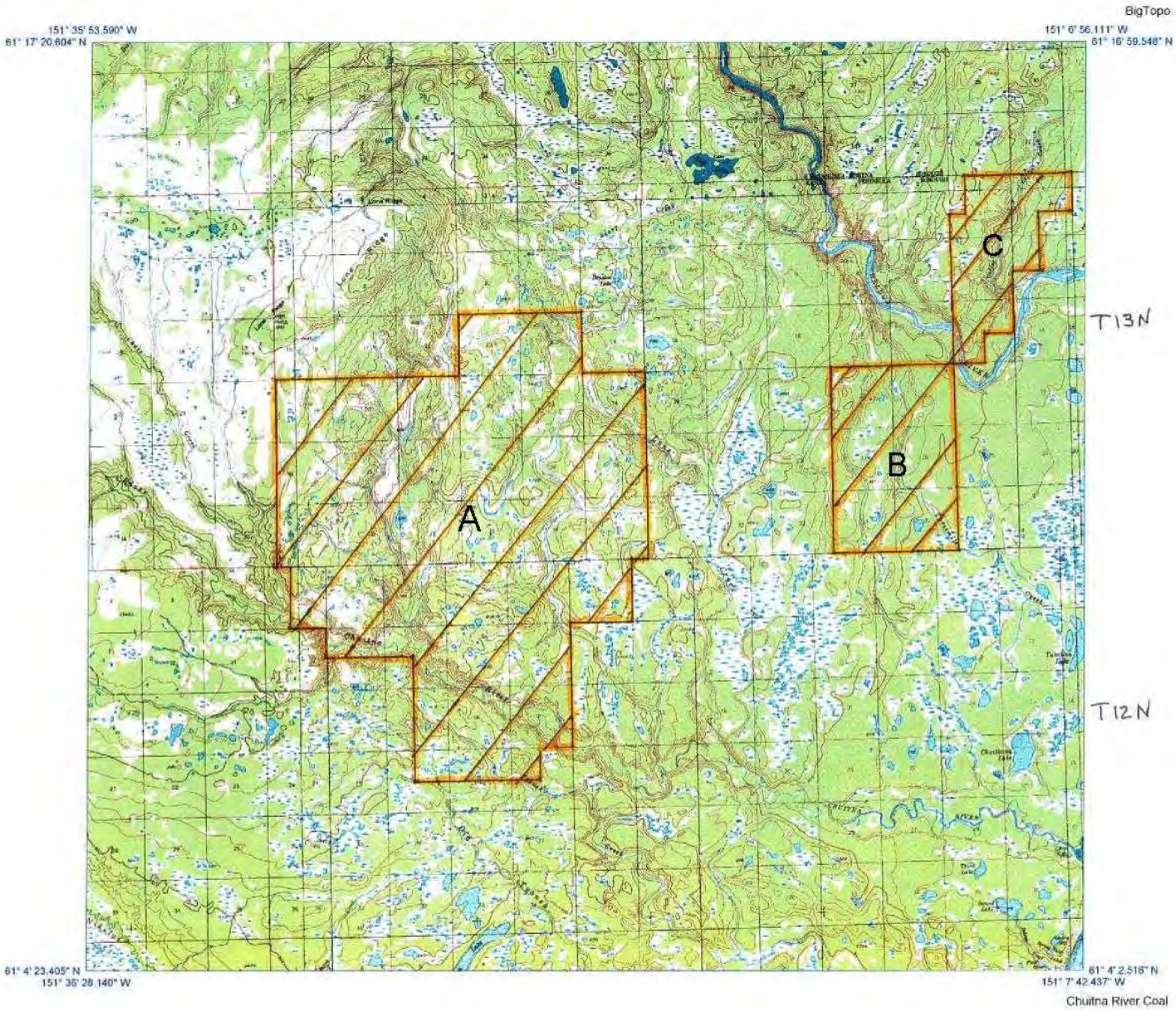

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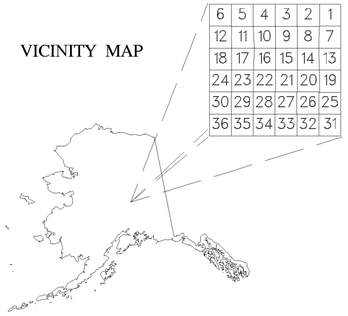

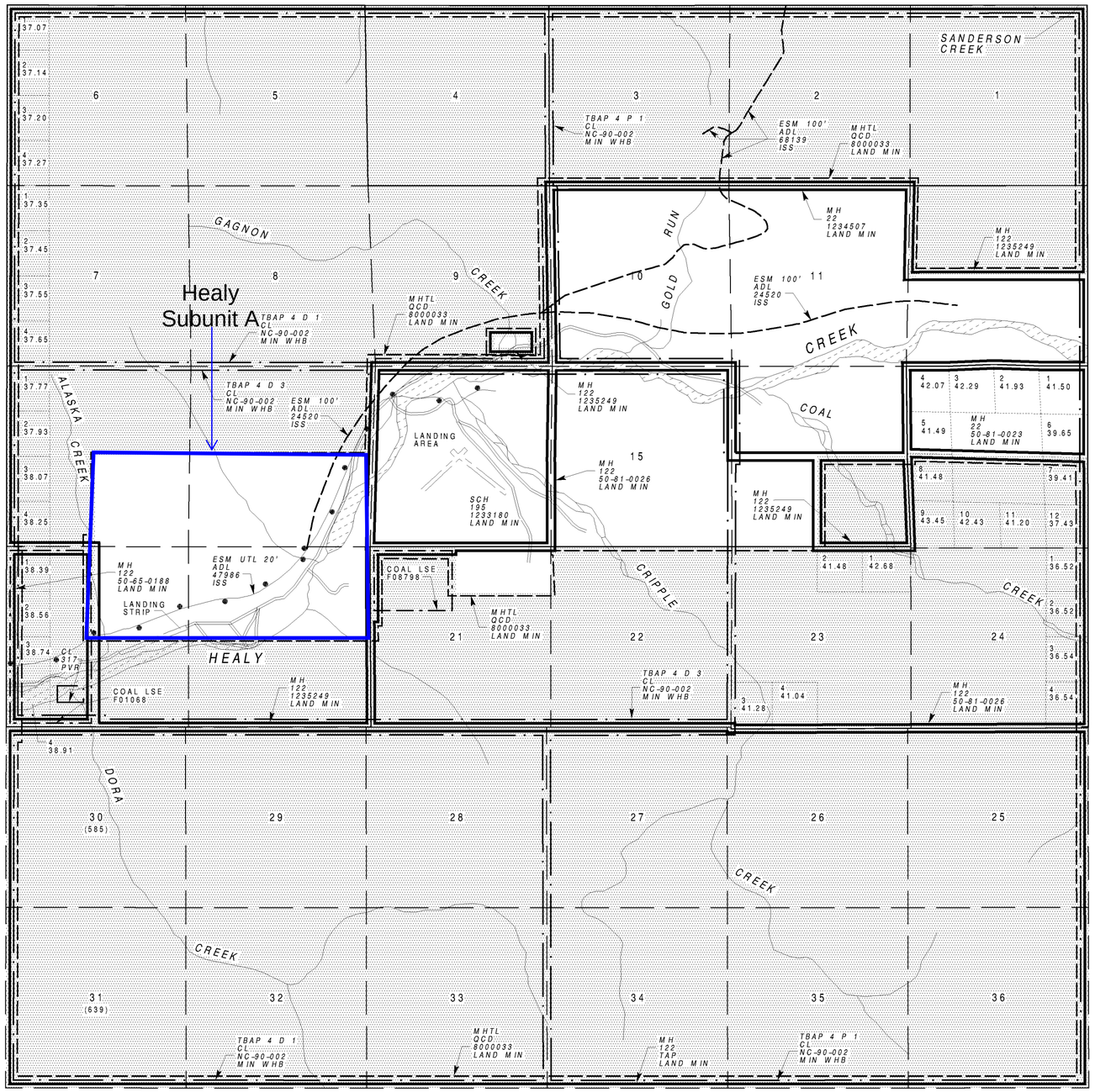

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LAND RECORDS INFORMATION SECTION

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CHECKED BY: TERI MOODY

LE
TWP 12S
RNG 6W
FM

USER: GEORGE
DATE: Monday March 15, 2004 at 2:05 PM
VERSION: Arc/Info 8.0.2,,(Tue Feb 22 08:01:14 PST 2000)
ARC Update

TOWNSHIP 12S RANGE 7W OF THE FAIRBANKS MERIDIAN, ALASKA

LEGEND

BASE INFORMATION

- HYDROGRAPHY
- SURVEY LINE
- SURVEY LOT LINE
- TOWNSHIP/SECTION GRID
- 1/4 SECTION LINE
- HIGHWAY
- ROAD
- TRAIL
- RAILROAD
- ELECTRICAL POWER LINE
- TELEPHONE LINE
- PIPELINE
- AIRPORT/LANDING STRIP
- HORIZONTAL CONTROL
- CONTROL MONUMENT

STATUS INFORMATION

- TITLE
- BOUNDARY
- CLASSIFICATION
- DISPOSAL
- MUNICIPAL
- RESTRICTION
- FEDERAL ACTION
- MENTAL HEALTH TRUST
- LIMITS OF ACTION
- NAVIGATIONAL AID
- CABIN PERMIT
- TRAPPING CABIN PERMIT
- TRESPASS LOCATION

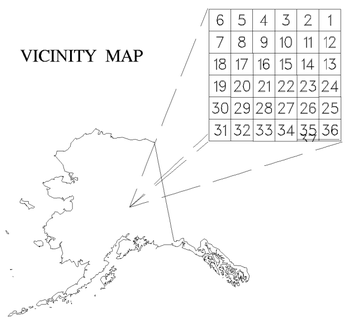
SURFACE WATER RIGHTS
- APPLICATION
- PERMIT
- CERTIFICATE

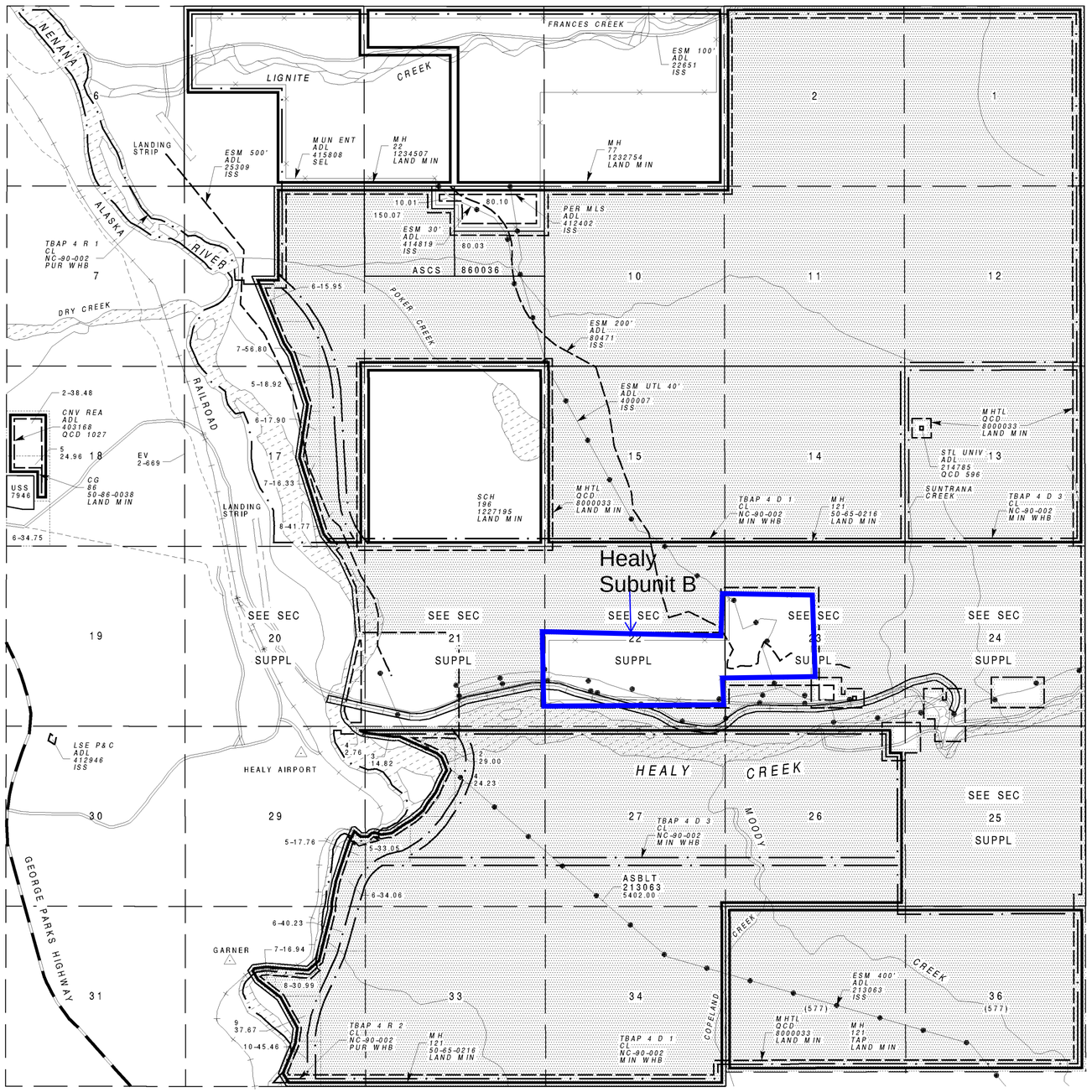
SUB- SURFACE WATER RIGHTS
- APPLICATION
- PERMIT
- CERTIFICATE

IN- STREAM FLOW RESERVATION
- APPLICATION
- CERTIFICATE

DAM, WEIR, BARRIER
- APPLICATION
- PERMIT
- CERTIFICATE

VICINITY MAP





LAND ESTATE

THE STATE OWNS ALL LAND UNDER WATERS THAT ARE NAVIGABLE-IN-FACT, ARE SUBJECT TO THE EBB AND FLOW OF THE TIDES, OR ARE RIPARIAN OR LITTORAL TO UPLANDS OWNED BY THE STATE.

BASED ON:

COORDINATES:
ALASKA STATE PLANE ZONE 4
SE CORNER OF TOWNSHIP;
X 691064.379
Y 359195 1.484
LAT 63 49 28.364 N
LONG 148 49 1.671 W

HYDROGRAPHY:
USGS HEALY (D4) AND (D5) REVISED BY BLM
FROM AERIAL HIGH ALTITUDE PHOTOGRAPHY 1978-1985

LAND NET:
BLM PROTRACTION DIAGRAM F10-10; APPROVED 07/20/1960
USRS, 5,120.00 ACRES; APPROVED 05/10/1916
USRS, 5,443.60 ACRES; ACCEPTED 12/23/1919
USRS, 10,515.98 ACRES; ACCEPTED 03/12/1923
USRS, ACCEPTED 12/14/1949
USRS, SUPPLEMENTAL PLAT OF SECTION 18; OFFICIALLY FILED 10/13/1984
USS 7946; OFFICIALLY FILED 10/31/1984
USS 9053; OFFICIALLY FILED 03/10/1993
ASCS 860036; FILED 03/11/1988
ASBUILT 213063; FILED 12/08/1987
EV 2-535; RECORDED 06/22/1993
EV 2-669; RECORDED 06/24/1997

OTHER ACTIONS AFFECTING DISPOSAL OR USE OF STATE LANDS; SEE THE LAS CASEFILE OR ORIGINAL SOURCE DOCUMENTS FOR ADDITIONAL INFORMATION:

ENTIRELY W/IN DENALI BOROUGH
ENTIRELY W/IN NENANA RECORDING DISTRICT
SUBJECT TO TANANA BASIN AREA PLAN
CL NC-90-002, DOES NOT CLASSIFY ANY PRIVATE, BOROUGH OR FEDERAL LANDS

ATTENTION: MENTAL HEALTH LAND INFORMATION

SHADED AREAS (SEE LEGEND) ARE MENTAL HEALTH TRUST LAND. CONSULT THE TRUST LAND OFFICE FOR FURTHER INFORMATION.

ORIGINAL MENTAL HEALTH GRANT LAND (MH) NOT SHADED AS MENTAL HEALTH TRUST LAND AND NOT CONVEYED TO A THIRD PARTY PRIOR TO JUNE 24, 1994 IS REDESIGNATED AS GENERAL GRANT LAND PURSUANT TO SECTIONS 6 AND 7, CHAPTER 1, SSSLA 1994.

ATTENTION: SCHOOL LAND LITIGATION

SCH 196; LITIGATION AFFECTS SCHOOL SECTION 16 CONVEYED TO THE STATE OF ALASKA PURSUANT TO THE ACT OF MARCH 4, 1915; PLAINTIFFS V. STATE OF ALASKA CASE NO. 3AN 97-3782 CIVIL DATED MAY 20, 1998.

Map 4

GRAPHIC ILLUSTRATION ONLY.
SOURCE DOCUMENTS REMAIN THE OFFICIAL RECORD. CONSULT LAND ADMINISTRATION SYSTEM (LAS) CASEFILE FOR ADDITIONAL INFORMATION.

SCALE

1 inch = 2640 feet
2640 1500 500 0 1000 2000 5280 FEET

1 inch = 40 chains
40 20 10 5 0 40 80 CHAINS

ATTENTION STATUS PLAT USERS: ON THIS PLAT, ALL STATUS LINES CLOSE FOR ACTIONS THAT EXTEND INTO ADJACENT TOWNSHIPS; THIS INCLUDES STATUS LINES SUCH AS DISPOSAL, MUNICIPAL, TITLE, CLASSIFICATION, ETC. PLEASE REFER TO ADJACENT TOWNSHIPS OR LAS TO DETERMINE IF ACTIONS EXTEND BEYOND THE BOUNDARIES SHOWN ON THIS PLAT. REMEMBER TITLE, CLASSIFICATION, AND RESTRICTION LINES ALWAYS CLOSE ON ALL PLATS.

A PRODUCT OF THE
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
LAND RECORDS INFORMATION SECTION

PLAT CURRENT TO 08/06/2001, REFER TO THE DNR STATUS PLAT TRACKING SYSTEM (NP45/NP62) FOR OTHER PENDING ACTIONS ON THIS TOWNSHIP/PLAT

CHECKED BY: TERI MOODY

LE
TWP 12S
RNG 7W
FM