

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

PRELIMINARY DECISION
ADL 414812
BLM No. F-14473 (Parcel B)

**Proposed Reconveyance of a
Alaska Native Allotment in the Unorganized Borough**

PUBLIC COMMENT PERIOD ENDS 5:00 PM, WEDNESDAY, MARCH 10, 2021

I. Proposed Action

Preliminary Decision: Virginia Moore – ADL 414812

Attachment A: Public Notice

Attachment B: U.S. Survey No. 13171

Attachment C: Ownership Map

Attachment D: Vicinity Map

Proposed Action: The primary proposed action of this Preliminary Decision (PD) of the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) is to voluntarily reconvey to the United States of America, U.S. Survey No. 13171, containing 39.99 acres of wrongfully conveyed state land. See *Attachment D: Vicinity Map* for a depiction of the project area.

The subject parcel is an Alaska Native allotment, Bureau of Land Management (BLM) Serial No. F-14473 (Parcel B) claimed by Virginia Moore. The claim is being settled in accordance with the Stipulated Procedures for Implementation of Order approved by the Court to implement the decision in Ethel Aguilar v. United States of America, 474 F. Supp. 840 (D. Alaska 1979) (herein cited as Aguilar) and Alaska Statute (AS) 38.05.035(b)(9) *Powers and Duties of the Director*.

Public Notice of Proposal: In accordance with AS 38.05.945 *Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal.

See **Section VII. Submittal of Public Comments** at the end of this document and *Attachment A: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, DNR DMLW LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. Authority

This reconveyance is being adjudicated pursuant to AS 38.05.020 *Authority and Duties of the Commissioner*, AS 38.05.035 *Power and Duties of the Director*, AS 38.05.830 *Land Disposal in the Unorganized Borough*, 11 Alaska Administrative Code (AAC) 67.930 *Purpose and Procedure* and the settlement authority of the Attorney General in accordance with Aguilar. The authority to execute this PD has been delegated to the Section Chief, LCS, DMLW, DNR, pursuant to AS 38.05.035(b)(1) *Power and Duties of the Director*.

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III. Administrative Record

The DNR case file - ADL 414812 and BLM case file F-14473 (Parcel B) constitute the administrative record for this proposed action. Also incorporated by reference are:

- Eastern Tanana Area Plan for State Lands (ETAP, adopted August 28, 2015) and associated land classification files; and
- DNR case files: RST 188, GS 110.

IV. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to DNR DMLW's proposal to voluntarily reconvey this land to the United States of America in accordance with the Stipulated Procedures for Implementation of Order approved by the Court to implement the decision in Aguilar and AS 38.05.035 *Power and Duties of the Director*, and whether the reconveyance should be made subject to any stipulations to best serve the interests of the public and the State.

V. Location

Located within DNR's Northern Region, approximately 7.7 miles southwest of Tok, Alaska, the project area is within Sections 35 and 36, Township 18 North, Range 11 East, Copper River Meridian, within the Unorganized Borough. The project area consists of approximately 39.99 acres identified for reconveyance by this proposed action. See *Attachment D: Vicinity Map* for a depiction of the project area.

USGS Map Coverage: Tanacross B-5

Borough/Municipality: Unorganized Borough, Southeast Fairbanks Census Area

Native Councils and Corporations: The project area is within the boundaries of the Doyon Regional Corporation. Tanacross, Tetlin, and Tok are within 25 miles of the project area. Notification will be sent to the village corporations and post offices in Tanacross and Tok.

VI. Legal Description

The legal description is U.S. Survey No. 13171, Alaska, containing 39.99 acres, more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on December 23, 2005, and officially filed on April 25, 2006.

VII. Title

The State received title to the land on October 31, 1961 under Tentative Approval. The state file is GS-110. Title Report 21296 was issued November 6, 2020. The parcel is subject to the reservations, easements, and exceptions contained in the federal patent.

Acquisition: The State filed selection application GS-110 (BLM Serial No. F-024800) for Township 18 North, Range 11 East, Copper River Meridian on February 2, 1960.

Restrictions: The Tentative Approval contains a reservation for a right-of-way thereon for ditches and canals under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945 and a reservation for the right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the Act of March 12, 1914 (38 Stat. 305).

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Furthermore, the patent is subject to the easement as established by Public Land Order 1613 (23 F.R. 2376), pursuant to the Act of August 1, 1956. (70 Stat. 898; 48 U.S.C. sec. 420-420c), for pipeline, telephone lines and highway purposes, including appurtenant protective, scenic and service areas.

Reserving unto the United States that certain pipeline and access road and all appurtenances thereto, constructed by the United States, through, over or upon the land herein described and the right of the United States, its officers, agents or employees to maintain, operate, repair or improve the same so long as needed or used for or by the United States.

VIII. Background

Virginia Moore began her use and occupancy of the subject lands in 1958 according to documentation in BLM case file F-014473 (Parcel B). Her native allotment application was submitted on November 5, 1971. The State filed selection application GS-110 for Township 18 North, Range 11 East, Copper River Meridian on February 2, 1960 and received title by Tentative Approval on October 31, 1961. The BLM surveyed the 39.99-acre parcel and accepted U.S. Survey No. 13171 on December 23, 2005. On April 24, 1992, the BLM determined Native Allotment application F-014473 (Parcel B) to be valid and the State received a request for reconveyance on May 15, 1992.

IX. Planning, Classification, and Mineral Orders

1. *Planning:* The subject parcel is located within the Eastern Tanana Area Plan, adopted August 28, 2015, Upper Tanana Region. Recommended land uses within this management unit are consistent with the legislative purposes described in *AS 41.17.200 State Forest Purposes and Management* and with the Tanana Valley State Forest (TVSF) management plan. The plan designates the subject parcel as Unit L-01 Tanana Valley State Forest.
2. *Land Use Classification:* The subject parcel was classified as L-01 Tanana Valley State Forest and is primarily designated for timber management while allowing for beneficial uses of public land and resources.
3. *Mineral Order:* No mineral order exists for this parcel.
4. *Local Planning:* This parcel is not located within a municipality and no local plan exists.

X. Traditional Use Finding

Before a sale, lease under *AS 38.05.070 – 38.05.105 Alaska Land Act*, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or disposal may be expected to have on the density of population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter (§33 ch. 113 SLA 1981).

Additional information on traditional use is welcome during the public comment period and if this proposal is approved, LCS will address the information received in a subsequent FFD. See the **Section XVI. Submittal of Public Comments** at the end of this document and *Attachment A: Public Notice* for details on how to submit comment.

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XI. Access, including Access To and Along Public or Navigable Water

Public Access: This parcel is accessible by foot or ATV in the summer months, and snow machine or dog sled in the winter. Most access is via the Eagle Trail.

In consultation with pertinent sections with DMLW it was determined that this parcel is not adjacent to any navigable or public water bodies per *AS 38.05.126 Navigable and Public Water* or *AS 38.05.965 Definitions*. While there is a trail crossing the southeastern corner of the parcel, there are no statutory or regulatory requirements to make the reconveyance of the parcel subject to this particular trail. It does not appear to be a codified RS2477 or fall within any other specific statute.

Easements and Setbacks: The reconveyance will except, reserve, or be subject to the reservations brought forth by the public notice, if any, and the following:

Subject to:

- (a) An easement fifty (50) feet in width along each side of the surveyed section line in common with Sections 35 and 36 Township 18 North, Range 11 East, Copper River Meridian, pursuant to *AS 19.10.010 Dedication of Land for Public Highways*, *11 AAC 51.025 Section Line Easements*, and *AS 19.25.010 Use of Rights-of-way for Utilities*; and
- (b) All other valid existing rights, if any.

XII. Reservation of the Mineral Estate

The DNR, Division of Oil and Gas (DOG) and DMLW have determined that it is not in the State's best interest to retain the mineral estate. The mineral estate will not be retained pursuant to *AS 38.05.035(e) Powers and Duties of the Director*. The State will receive an acreage credit for the lands.

XIII. Hazardous Materials and Potential Contaminants

The Department of the Interior, BLM, is expected to inspect the parcel and familiarize itself with the condition and quality of the land. The State makes 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 for reconveyance. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

XIV. Survey

The parcel is adequately surveyed for reconveyance to the United States of America.

XV. DMLW and Agency Review

Information and comments received from multiple sections with DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from November 24, 2020 to December 29, 2020. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision (FFD).

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DNR DOG: DOG Leasing does not object to surface reconveyance. There are no oil and gas activities, third-party interests or pending applications.

DNR DMLW LCS Response: The State will not retain the mineral estate in the reconveyance of this parcel. DMLW will receive an acreage credit from BLM for this allotment.

The following agencies or groups were included in the agency review, but no comment was received:

- State Historical Preservation Office
- Alaska Department of Fish and Game
- Division of Forestry

XVI. Submittal of Public Comments

See *Attachment A: Public Notice for specific dates and conditions.*

Pursuant to *AS 38.05.945 Notice*, LCS is issuing public notice inviting comment on this Preliminary Decision.

In accordance with *AS 38.05.946(a) Hearings*, a municipality or corporation entitled to receive notice under *AS 38.05.945(c) Notice* may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision, without further notice.

Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at <http://landsales.alaska.gov/> or <https://aws.state.ak.us/OnlinePublicNotices/> and sent with an explanation of the appeal process to any party who provides timely written comment.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information refer *Attachment A: Public Notice*.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
5:00 PM, WEDNESDAY, MARCH 10, 2021**

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XVII. Discussion and Alternatives

The following alternatives were considered:

Alternative 1: Reconvey

Reconvey the land to the United States subject to the reservations, exceptions, and restrictions as stipulated in **XI. Access, Including Access To and Along Public or Navigable Water, Easements and Setbacks**. This will allow the Native Allottee to obtain title to the land while the State will retain public access on the property as prescribed by statute and thus avoid title recovery litigation by the federal government. Therefore, it is in the best interest of the state to sell the parcel as proposed in this decision, and this is the preferred alternative.

Alternative 2: Retain

Retain ownership and withhold reconveyance. DNR currently does not have a persuasive reason to pursue this option. This alternative may lead to title recovery litigation brought by the United States on behalf of the Native Allottee, thus subjecting the State to an uncertain expenditure of resources and an uncertain result of litigation. This alternative is not preferred.

In accordance with the Stipulated Procedures for Implementation of Order in Aguilar, BLM reviewed and determined Ms. Moore's Native Allotment application to be valid on June 18, 2009. Based on documentation within BLM's case file and subsequent comments received from agency review, LCS has found no legal reason for denying this reconveyance subject to public notice and a final decision.

For the reasons outlined above, Alternative 1 is the preferred alternative.

Recommendation follows.

Preliminary Decision


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XVIII. Recommendation

This Preliminary Decision for the proposed reconveyance of state lands described throughout this document and its attachments may be within the State's best interest. Reconveyance under the conditions in Alternative #1 is preferable to title recovery litigation. The State's reconveyance will allow the BLM to transfer title of the land to the Native Allottee and will eliminate any further title recovery action. The PD described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed reconveyance of State lands. If the decision is approved, a Final Finding and Decision may be issued.

 2.5.2021
Recommended by: Daniel Hovancsek Date
Native Allotment Coordinator
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

For  2.5.2021
Approved by: Rachel Longacre Date
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

PUBLIC NOTICE

State of Alaska
Department of Natural Resources (DNR)
Division of Mining, Land and Water
Land Conveyance Section
550 W. 7th Ave., Suite 640
Anchorage, Alaska 99501-3579

Notice is hereby given that the Division of Mining, Land and Water has made a preliminary decision under AS 38.05.035(e) to reconvey the following erroneously conveyed State land to the United States of America for conveyance to the Native allotment applicant noted below pursuant to AS 38.05.035(b)(9) and in accordance with the Stipulated Procedures for Implementation of Order in *Aguilar v. United States*, 474 F. Supp. 840 (D. Alaska 1979):

Applicant: Virginia Moore (deceased)
BLM No.: F-14473 (Parcel B)
ADL No.: 414812
Location: Sections 35 and 36, T. 18 N., R. 11 E., Copper River Meridian
Survey: Survey No. 13171, containing 39.99 acres, more or less

The public is invited to comment on the proposals to reconvey the land. Copies of the Preliminary Decision are available from the address above. Comments must be in writing and received at the above physical address, faxed to (907) 269-8916, or submitted by email to danny.hovancsek@alaska.gov before 5:00 pm, March 10, 2021 in order to ensure consideration and appeal in accordance with 11 AAC 02.010(c). Public comments will be reviewed and considered in the Final Finding and Decision. The final decision will be issued on or about March 17, 2021, or thereafter, and will be sent to any person who commented during the thirty-day comment period. The Final Finding and Decision will provide additional information about the appeal procedures.

The State of Alaska, Department of Natural Resources, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may call 269-8411 TTY/TTD. Please provide sufficient notice in order for the Department to accommodate your needs.

The DNR, Division of Mining, Land and Water reserves the right to waive technical defects in this notice and will forgo an additional notice and comment period upon issuance of the Final Finding and Decision.

Date of Publication: February 5, 2020

**U.S. SURVEY
No. 13171, ALASKA**

This plat contains the entire survey record. A portion of the south boundary, a portion of the north boundary, and a portion of the subdivisional lines of Township 18 North, Range 11 East, Copper River Meridian, Alaska, was surveyed by Edward T. Hitchison, Cartographer (Cadastral), in 1955. A portion of the south boundary was surveyed concurrently under T. 17 N., R. 11 E., Copper River Meridian, Alaska.

This survey was executed by Gary L. McIntyre, Surveyor, on July 16, 2002, in accordance with the submittal of the Manual of Surveying Instructions, 1973, and Special Instructions dated April 17, 2002, approved June 7, 2002, and Assignment Instructions dated June 7, 2002.

Field assistants were:
Nathan C. Erickson, Land Surveyor
Matthew A. Sturos, Surveying Technician
Andrew M. Buck, Surveying Aid

The azimuth was obtained by retracing a portion of the line between section 35 and section 36, of Township 18 North, Range 11 East, Copper River Meridian, Alaska, and refers to the true meridian. The geographic position of corner No. 1, as determined by utilizing autonomous precise positioning techniques, is:

Latitude: 63° 17' 59.7" North
Longitude: 143° 13' 15.0" West
MUD 27

The geographic position of the south east corner of the Eagle Trail, as determined by the position of corner No. 1, as it was determined that it did not reflect the accuracy and precision of those methods and procedures used to execute this survey.

The mean magnetic declination was obtained from the U.S. Geological Survey quadrangle map "TANACROSS IN 1994", Alaska, 1966 edition, with minor revisions in 1994.

This survey is situated on the southwesterly side of the Eagle Trail, approximately 1/4 mile southeast of the village of Tanacross, Alaska, within Township 18 North, Range 11 East, Copper River Meridian, Alaska.

The surveyed area is level. Vegetation is primarily spruce timber and scattered cottonwood timber, with some aspen. The soil is sand, with gravel intermixed.

Access to the survey was by automobile and dirt terrain vehicles. Acceptance of this survey does not purport to transfer any interest in submerged lands to which the provisions of the Equal Rights Act, Public Law 96-359, (withholding the use, location, or absence of meander lines to depict water bodies.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

The survey represented by this plat, having been correctly executed in accordance with the requirements of the regulations of this Bureau, is hereby accepted.

For the Director
John Smith 12/23/2005
Date

Deputy State Director for Cadastral Survey, Alaska

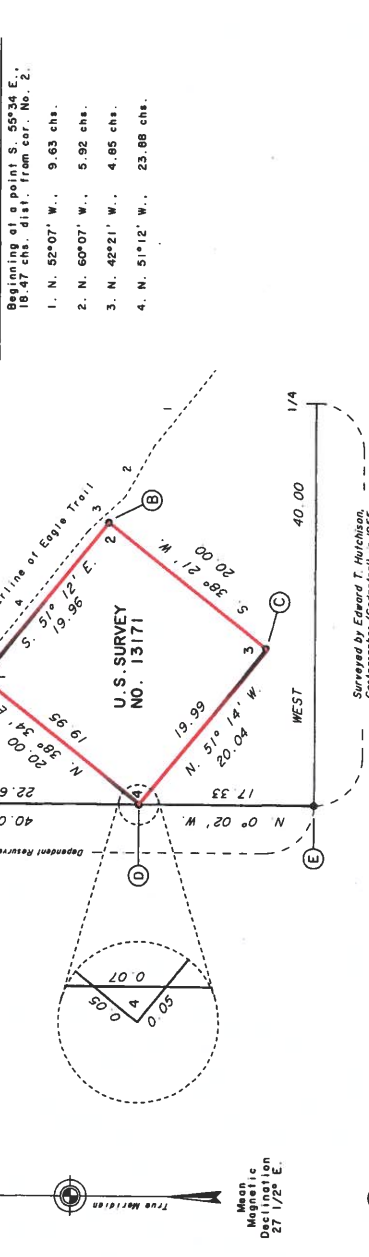
- (A) Set a stainless steel post, 28 ins. long, 2 1/2 ins. diam., 25 in. in the ground, with brass cap mkd. as shown, from which
A spruce, 10 ins. diam., bears S. 21 1/2° W., 21 lks. dist., mkd. S13171 C1 BT.
- (B) Set a stainless steel post, 28 ins. long, 2 1/2 ins. diam., 25 in. in the ground, with brass cap mkd. as shown, from which
A spruce, 6 ins. diam., bears S. 21 1/2° E., 17 lks. dist., mkd. X BT.
- (C) Set a stainless steel post, 28 ins. long, 2 1/2 ins. diam., 25 in. in the ground, with brass cap mkd. as shown, from which
A spruce, 7 ins. diam., bears S. 64 1/4° E., 42 lks. dist., mkd. X BT.
- (D) Set a stainless steel post, 28 ins. long, 2 1/2 ins. diam., 25 in. in the ground, with brass cap mkd. as shown, from which
A spruce, 8 ins. diam., bears N. 51 1/4° E., 62 1/2 lks. dist., mkd. S13171 C4 BT.
- (E) Set a stainless steel post, 28 ins. long, 2 1/2 ins. diam., 25 in. in the ground, with brass cap mkd. as shown, from which
A spruce, 5 ins. diam., bears S. 28 1/2° E., 52 lks. dist., mkd. X BT.

Informational Traverse of a Portion of the Apparent Centerline of the Eagle Trail, Beginning at a point S. 59°34' E., 18.47 chs. dist. from cor. No. 2.

1. N. 92°07' W., 9.63 chs.
2. N. 60°07' W., 5.92 chs.
3. N. 42°21' W., 4.85 chs.
4. N. 5°12' W., 23.88 chs.

SEC. 35

SEC. 36



- (A) Found on iron post, 2 1/2 ins. diam., firmly set, projecting 6 ins. above the surface, with brass cap mkd. as shown, from which the original bearing tree
A spruce, 5 ins. diam., bears N. 65° E., 71 lks. dist., mkd. T18N R11E S36 BT.
- (B) A down and dead spruce, 7 ins. diam., bears N. 70° W., 122 lks. dist., with fragmentary scrobe marks visible on a rotted blaze. (Record N. 64 1/2° W., 29 LKS.)
- (C) And new bearing trees
A spruce, 4 ins. diam., bears S. 33 3/4° E., 77 1/2 lks. dist., mkd. T17N R11E S1 BT.
- (D) A spruce, 4 ins. diam., bears S. 31 1/4° W., 122 lks. dist., mkd. T17N R11E S2 BT.
- (E) A spruce, 5 ins. diam., bears N. 4 1/4° W., 138 lks. dist., mkd. T16N R11E S5 BT.

Add the marks 2002 to the brass cap.

Found on iron post, 2 1/2 ins. diam., firmly set, projecting 1 in. above the surface, with brass cap mkd. as shown, from which the remains of an original bearing tree
A spruce stump, 30 ins. high, bears N. 80° E., 63 lks. dist., with fragmentary scrobe marks visible on a rotted blaze. (Record N. 83 1/2° E.)

And new bearing trees
A spruce, 6 ins. diam., bears N. 56 1/2° E., 27 lks. dist., mkd. T18N R11E 1/4 S36 BT.

A spruce, 7 ins. diam., bears N. 79° W., 8 1/2 lks. dist., mkd. T18N R11E 1/4 S35 BT.

Add the marks 2002 to the brass cap.

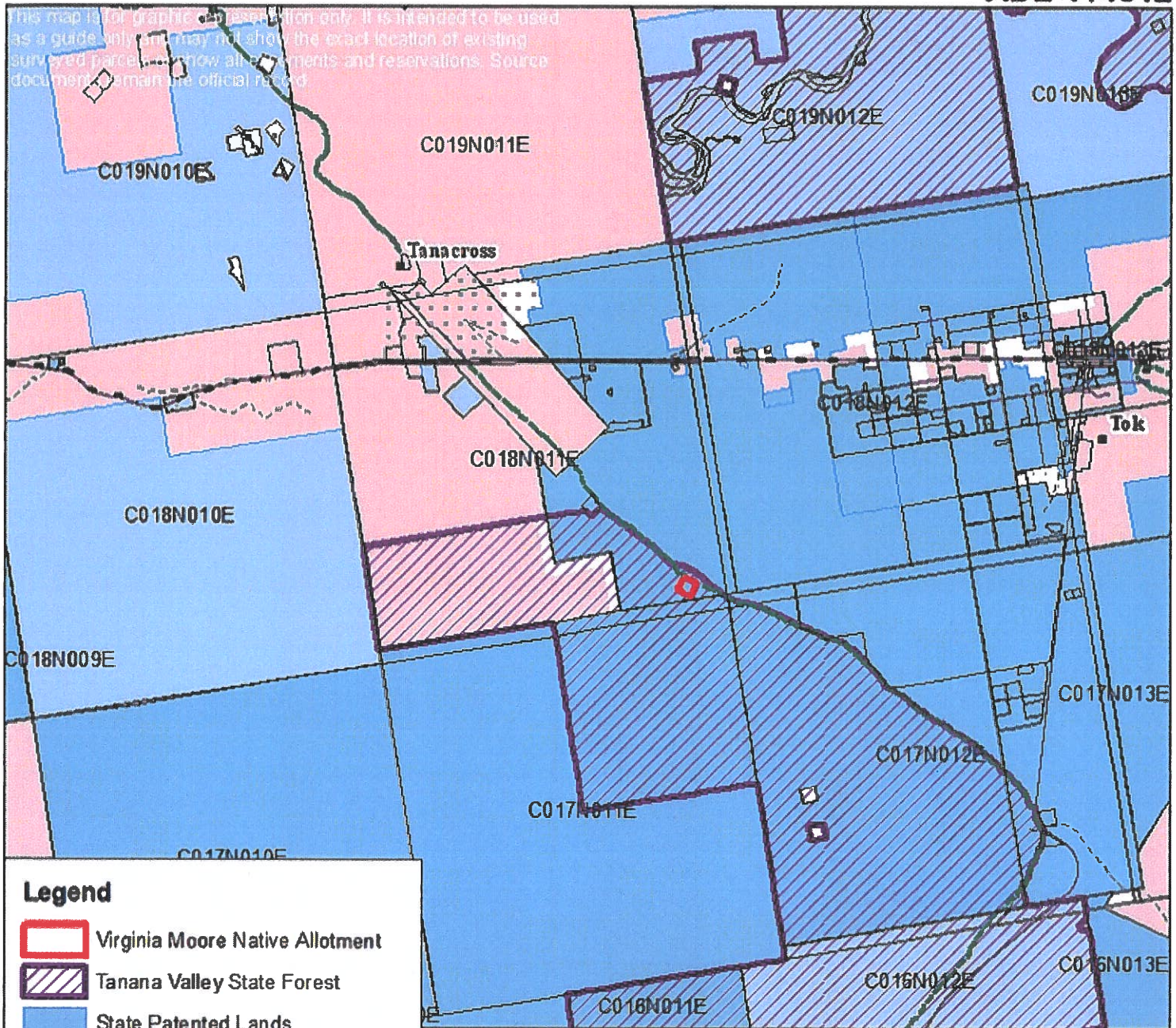
Surveyed by Edward T. Hitchison, Cartographer (Cadastral), in 1955.

I, Gary L. McIntyre, HEREBY CERTIFY upon honor that I have executed the survey of the land described in this plat in accordance with the Manual of Surveying Instructions for the Survey of the Public Lands of the United States, 1973, and in the specific manner described in this plat.

BLM Date
Gary L. McIntyre Cadastral Surveyor



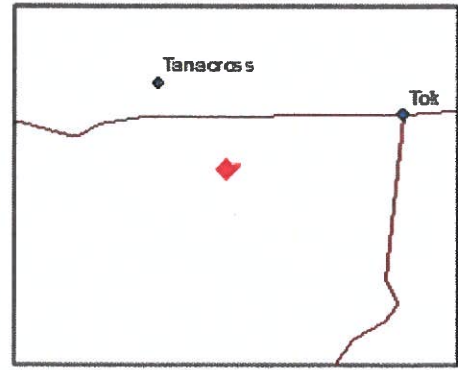
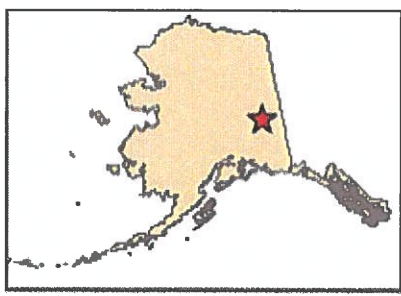
Attachment C: Ownership Map Virginia Moore (Parcel B) ADL 414812



Legend

- Virginia Moore Native Allotment
- Tanana Valley State Forest
- State Patented Lands
- State Tentatively Approved Lands
- ANCSA Patented Lands
- RS2477 Historic Route

**Section 27, Township 18 North,
Range 11 East, Copper River Meridian** DLH 2/2/21

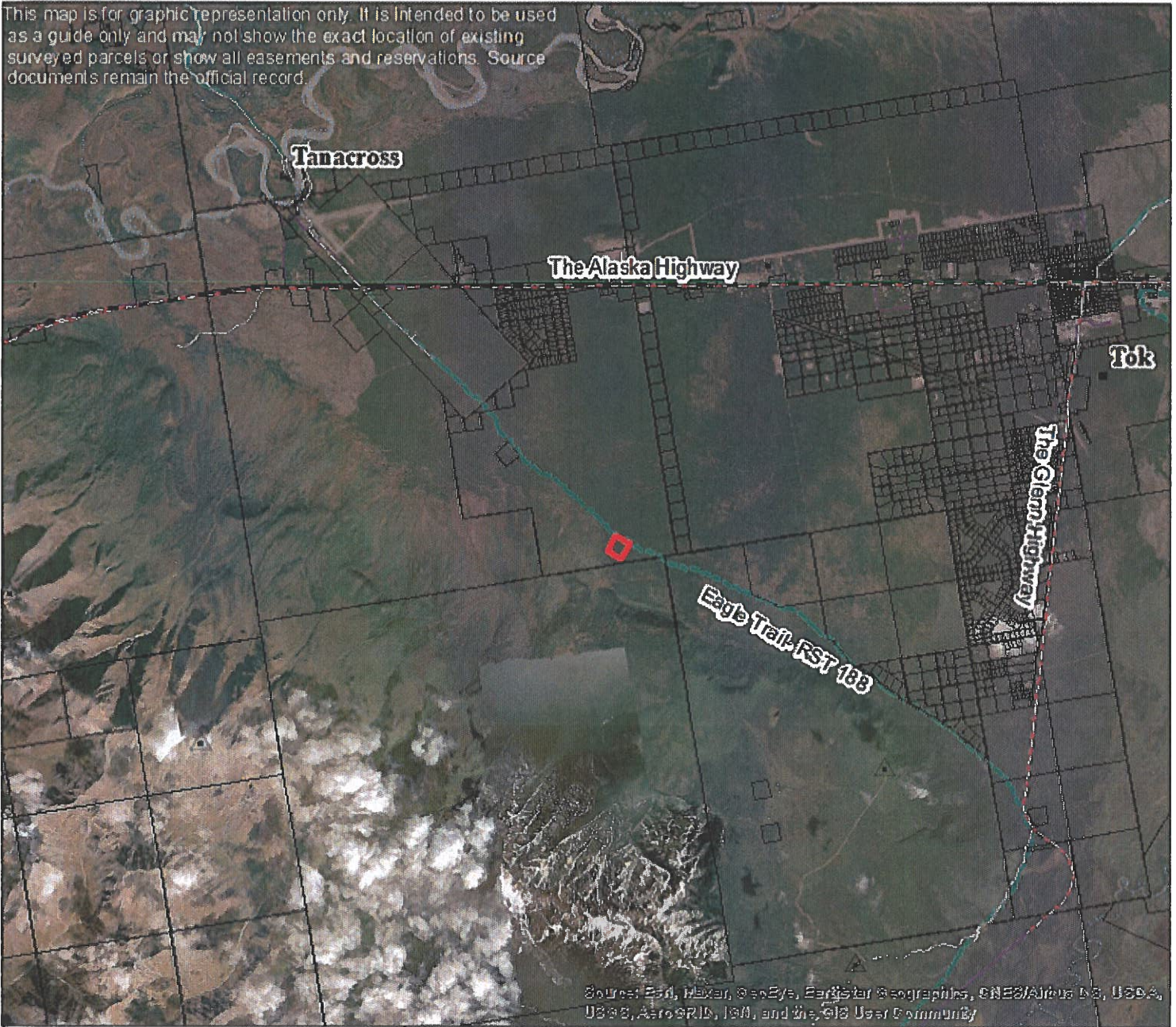


USGS QUAD 1:63,360 Tanacross B-5
 For more information contact:
Daniel Hovancsek
 Department of Natural Resources
 Division of Mining, Land, and Water
 Land Conveyance Section
 Phone: 907-269-8574
 Fax: 907-269-8916
 Email: danny.hovancsek@alaska.gov





Attachment D: Vicinity Map Virginia Moore (Parcel B) ADL 414812

This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



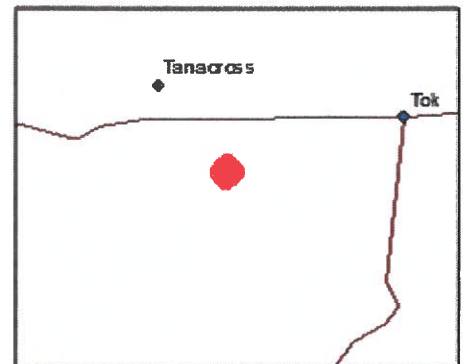
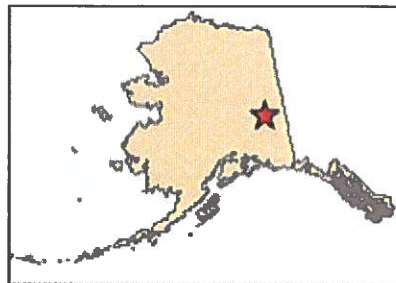
Source: Esri, Navar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Legend

-  Virginia Moore Native Allotment
-  RS 2477 Historic Route

Section 27, Township 18 North,
Range 11 East, Copper River Meridian

DLH 2/2/21



USGS QUAD 1:63,360 Tanacross B-5
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