

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

**PRELIMINARY DECISION**  
**ADL 421272**  
**BLM No. FF014632, Parcel B**

**Proposed Reconveyance of a  
Alaska Native Allotment in the North Slope Borough**

**PUBLIC COMMENT PERIOD ENDS 4:00 PM, TUESDAY, MAY 9, 2023**

**I. Proposed Action**

*Preliminary Decision: Andrew Oenga – ADL 421272*

*Attachment A: Vicinity Map*

*Attachment B: Public Notice*

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. 13671, containing 9.99 acres of wrongfully conveyed state land. See *Attachment A: Vicinity Map* for a depiction of the subject parcel.

The subject parcel is an Alaska Native allotment, Bureau of Land Management (BLM) Serial No. FF014632, Parcel B, claimed by Andrew Oenga (deceased). 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 XVI. Submittal of Public Comments** at the end of this document and *Attachment B: 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*, *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 421272 and BLM case file FF014632, Parcel B, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- North Slope Area Plan for State Lands (NSAP, adopted March 12, 2021) and associated land classification files; and
- DNR case files: GS 1337.

### **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 12 miles northeasterly of Deadhorse, the project area is within Section 1, Township 11 North, Range 15 East, Umiat Meridian, within the North Slope Borough. The project area consists of approximately 9.99 acres identified for reconveyance by this proposed action. See *Attachment A: Vicinity Map* for a depiction of the project area.

*USGS Map Coverage:* Beechey Point B-3

*Borough/Municipality:* North Slope Borough

*Native Councils and Corporations:* The project area is within the boundaries of the Arctic Slope Regional Corporation. Prudhoe Bay/Deadhorse and the village of Nuiqsut are within 25 miles of this proposed action. Notice will be sent to the Inupiat Community of the Arctic Slope, the Arctic Slope Native Association, and the Arctic Slope Regional Corporation.

### **VI. Legal Description**

The legal description is U.S. Survey No. 13671, Alaska, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on February 26, 2009, and officially filed on March 18, 2009, containing 9.99 acres, more or less. The parcel is situated in the Barrow Recording District.

### **VII. Title**

The State received title to the land on October 9, 1964, under a Tentative Approval. Patent 50-74-0093 was issued on March 27, 1974. The State file is GS 1337. Title Report 21928 was issued on July 23, 2021. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in the patent. An updated title report has been requested; if any concerns are discovered, they will be addressed in the FFD.

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*Acquisition:* The State filed selection application GS 1337 (BLM Serial No. F-031771) for Township 11 North, Range 15 East, Umiat Meridian, on January 8, 1964.

*Restrictions:* The Patent 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).

### **VIII. Background**

Andrew Oenga began his use and occupancy of the subject lands in March of 1935, according to documentation in DNR case file ADL 421272. His Native allotment application was signed on August 13, 1970, and filed with the Bureau of Indian Affairs (BIA) on November 24, 1971. The State filed selection application GS 1337 for Township 11 North, Range 15 East, Umiat Meridian on January 8, 1964, and received title by Tentative Approval on October 9, 1964, followed by Patent 50-74-0093 on March 27, 1974. BLM surveyed the 9.99-acre parcel and issued U.S. Survey No. 13671 in 2009. On July 28, 2009, BLM determined Native Allotment application FF014632 Parcel B valid, and the State received a request for reconveyance on October 23, 2009.

There is a third-party interest on the subject parcel. Standard Alaska Production Company (Standard) built improvements on the land. Standard was made aware of the Native allotment application in 1988 when Aguilar notices were sent. As a result of this notice, Standard entered into a lease with Mr. Oenga in 1989 with the approval of the Secretary of the Department of Interior. The lease was amended at least three times in the intervening years. First, BP Exploration (BP) acquired Standard and became the lessee, and then BP sold to Hilcorp; Mr. Oenga's heirs are now the lessors. The land under lease now includes the subject parcel and land owned by Mr. Oenga's heirs that is north and adjacent to the subject parcel.

Since Standard entered into a lease with the Native allottee to allow the improvements, the third-party interest fails to be a reason for the State to refuse reconveyance of the subject parcel to the federal government.

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

1. *Planning:* The subject parcel is located within the Arctic Coast Region of the North Slope Area Plan adopted on March 12, 2021, in Unit A-05. The plan designates the subject parcel as Habitat and Oil and Gas. These designations convert to classifications of Wildlife Habitat Land and Oil and Gas Land.

Recommended land use within this unit includes management for wildlife habitat as well as oil and gas resource values. The subject parcel is part of Prudhoe Bay, and the area plan designation emphasizes the protection of known heritage sites and the maintenance of important harvest/subsistence values.

2. *Land Use Classification:* The State classified the subject parcel as Oil and Gas and Wildlife Habitat Land under Classification Order CL NC-19-001 based on NSAP, adopted on March 12, 2021.
3. *Mineral Order:* No mineral order exists for the parcel in question.

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4. *Local Planning*: This parcel does not exist within any local planning unit.

### X. Traditional Use Finding

In accordance with AS 38.05.830, a traditional use finding is required if the subject parcel is within the Unorganized Borough. This parcel is in North Slope Borough; therefore, a traditional use finding is unnecessary. However, 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 B: Public Notice* for details on how to submit comment.

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

*Public Access*: This parcel is bisected by an oil and gas access road within the Prudhoe Bay development. This parcel is primarily accessed by vehicle or ATV in the summer and by vehicle or snow machine in the winter.

*Access To and Along Public or Navigable Waters*: In accordance with AS 38.05.127 *Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include 11 AAC 51.035 *Determination of Navigable and Public Water*, 11 AAC 51.045 *Easements To and Along Navigable and Public Water*, and 11 AAC 53.450 *Buffer Strips, Reserved Areas, and Public Easements*.

The subject parcel sits on a peninsula with Prudhoe Bay to the west and the Sagavanirktok River to the east. The Sagavanirktok River and Prudhoe Bay have been determined to be navigable. Normally, a 50-foot public access easement under AS 38.05.127 *Access To Navigable or Public Water* would be reserved along the river. However, a review of the subject parcel, the surrounding area, and land ownership shows that land status prevents a continuous easement to Heald Point at the end of the peninsula. The land north of the subject parcel, which includes the end of the peninsula and Heald Point, was conveyed into private ownership without any public access easements along the river or bay. Therefore, as allowed by 11 AAC 51.045 *Easements To and Along Navigable and Public Water* in these circumstances, the AS 38.05.127 *Access To Navigable or Public Water* easement will not be imposed on the subject parcel.

*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 township line in common with Section 1, Township 11 North, Range 15 East, Umiat Meridian, and Section 36, Township 12 North, Range 15 East, Umiat 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.

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### **XII. Reservation of the Mineral Estate**

The DNR Division of Oil and Gas (DOG) and DMLW have determined that it is in the State's best interest to retain the mineral estate. The mineral estate will be retained pursuant to AS 38.05.035(e) *Powers and Duties of the Director*. The State will not 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 agencies prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from June 21, 2021, to July 27, 2021. 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).

DNR DMLW LCS received brief comments of non-objection from the following agencies:  
DNR Division of Oil and Gas.

*DNR DMLW LCS Response:* LCS appreciates your review.

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

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

### **XVI. Submittal of Public Comments**

**See Attachment B: 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) 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

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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 to *Attachment B: Public Notice*.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS  
4:00 PM, TUESDAY, MAY 9, 2023**

### **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 reconvey 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 Mr. Oenga's Native Allotment application to be valid on July 28, 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.

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*Recommendation follows.*

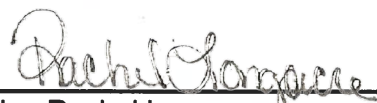
**XVIII. Recommendation**

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. As represented by the preferred alternative, the PD described above 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.

  
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Recommended by: Kathryn Young  
Native Allotment Coordinator  
Land Conveyance Section  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

March 30, 2023  
\_\_\_\_\_  
Date

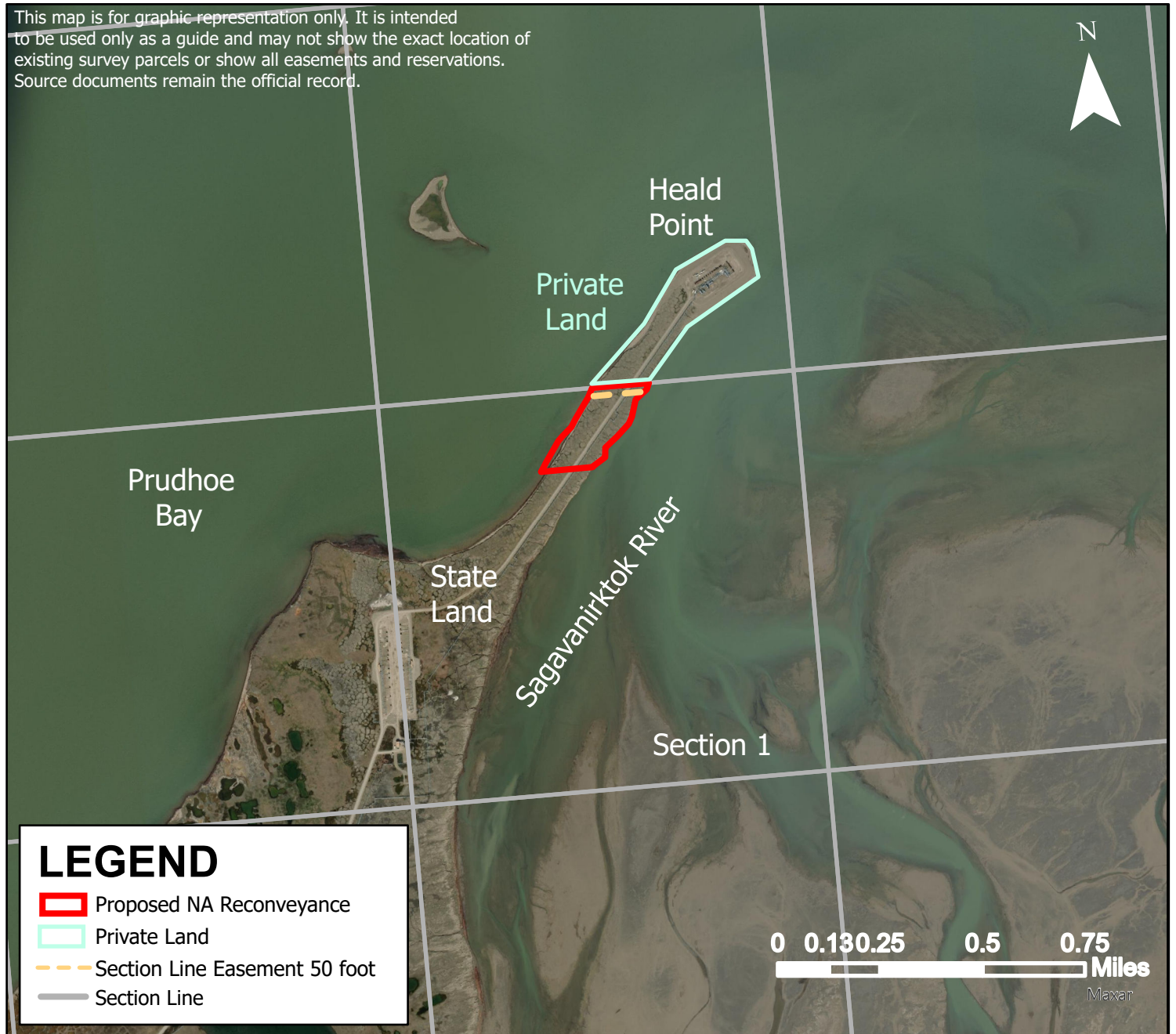
  
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Approved by: Rachel Longacre  
Chief of Operations  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

4/4/2023  
\_\_\_\_\_  
Date



# Preliminary Decision: Attachment A, Vicinity Map Andrew Oenga, ADL 421272 / BLM FF014632-B

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



## Section 1, Township 11 North, Range 15 East, Umiat Meridian

USGS Quad 1:63,360 Beechey Point B-3

For more information contact:  
Kathryn Young  
Department of Natural Resources  
Division of Mining, Land and Water  
Land Conveyance Section  
Phone: 907-269-8574  
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**STATE OF ALASKA,  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND AND WATER**

**ATTACHMENT B: PUBLIC NOTICE**

**Requesting Input for Proposed  
Native Allotment Reconveyance - ADL 421272  
AS 38.05.035**

**COMMENT PERIOD ENDS 4:00 PM, TUESDAY, MAY 9, 2023**

The Alaska Department of Natural Resources (DNR), Division of Mining Land and Water (DMLW), Land Conveyance Section (LCS) is conducting a public notice to reconvey the following erroneously conveyed State land to the United States of America for conveyance to the Native allotment applicant. The parcel of land is approximately 12 miles northeasterly of Deadhorse. The legal description for the parcel is U.S. Survey No. 13671, Alaska, containing 9.99 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 February 26, 2009, and officially filed on March 18, 2009.

To obtain the notice, Preliminary Decision (PD), or instructions on submitting comment, go to <http://dnr.alaska.gov/mlw/landsale/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10:00 AM and 5:00 PM in Anchorage at (907) 269-8400 or Fairbanks at (907) 451-2705 or the Southeast Land Office in Juneau at (907) 465-3400 or TTY: 711 for Alaska Relay or 1-800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Tuesday, May 2, 2023.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comments on the Preliminary Decision. **The deadline for public comment is 4:00 PM, TUESDAY, MAY 9, 2023.** 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 (FFD). Written comments may be received by fax, email, or postal mail. To submit comments or for direct inquiries, contact Kathryn Young by mail at 550 West 7<sup>th</sup> Ave, Suite 640, Anchorage, AK 99501 or by fax at (907) 269-8916 or by email at [kathryn.young@alaska.gov](mailto:kathryn.young@alaska.gov). If you have questions, call Kathryn Young at (907) 269-8574.

If no significant change is required, the PD and related actions, including any minor changes and a summary of comments and responses, will be issued as the FFD without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

DNR reserves the right to waive technical defects in this notice.