

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

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

**PRELIMINARY DECISION
ADL 421617
BLM FF014425, Parcel B**

PUBLIC COMMENT PERIOD ENDS 3:00 PM, TUESDAY, AUGUST 15, 2023

I. Proposed Action

Preliminary Decision: Brady Henry – ADL 421617

Attachment A: Vicinity Map

Attachment B: Public Notice

Attachment C: U.S. Survey 14042

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. 14042, containing 40.00 acres of wrongfully conveyed state land. See *Attachment A: Vicinity Map* for a depiction of the project area.

The subject parcel is an Alaska Native allotment, Bureau of Land Management (BLM) Serial No. FF014425, Parcel B claimed by Brady Henry. 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*, *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*.

Preliminary Decision

ADL 421617

Page 2 of 7

III. Administrative Record

The DNR case file - ADL 421617 and BLM case file FF014425, Parcel B, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Eastern Tanana Area Plan (ETAP, adopted August 2015) and associated land classification files; and
- DNR case files: 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 9 miles west of Tok, the subject parcel is within Section 22, Township 18 North, Range 11 East, Copper River Meridian, within the Unorganized Borough. The subject parcel consists of approximately 40.00 acres identified for reconveyance by this proposed action. See *Attachment A: Vicinity Map* for a depiction of the subject parcel.

USGS Map Coverage: Tanacross B-5

Borough/Municipality: Unorganized Borough

Native Councils and Corporations: The project area is within the boundaries of Doyon, Limited. Tok, Tanacross, and Tetlin are within 25 miles of this proposed action and notice will be sent to the Tanacross Incorporated, Native Village of Tanacross, Native Village of Tetlin, Tetlin Native Corporation, and Tanana Chiefs Conference.

VI. Legal Description

U.S. Survey No. 14042, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on February 10, 2022, and officially filed on August 11, 2022, containing 40.00 acres, more or less.

Situated in the Fairbanks Recording District.

VII. Title

The State received title to the land on October 31, 1961, under a Tentative Approval. Patent 1234212 was issued on November 20, 1963. The State file is GS 110. Title Report No. 21614 was issued on March 10, 2021. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in Patent 1234212 dated November 20, 1963. An updated title report has been requested; if any concerns are discovered, they will be addressed in the final finding and decision.

Preliminary Decision

ADL 421617

Page 3 of 7

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 Patent contains the following reservations:

- A right-of-way thereon for ditches or canals constructed by the authority of the United States;
- A right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the Act of March 12, 1914 (38 Stat. 305, 48 U.S.C. Sec. 305); and
- Reserving unto the United States that certain pipeline and access road and all appurtenances thereto, constructed by the United States, though, 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 a needed or used for or by the United States.

VIII. Background

Brady Henry began his use and occupancy of the subject lands in June of 1955 according to documentation in DNR case file ADL 421617. His Native allotment application was signed on December 2, 1970, and filed on October 27, 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, and Patent on November 20, 1963.

On October 3, 2008, BLM determined Native Allotment application FF014425, Parcel B, valid and the State received a request for reconveyance on February 17, 2009. BLM surveyed the 40.00-acre parcel and issued plat U.S. Survey No. 14042 in 2022.

IX. Planning, Classification, and Mineral Orders

1. *Planning:* The subject parcel is located within the Upper Tanana Region of the Eastern Tanana Area Plan adopted on August 28, 2015, in unit U-21. Recommended land use within this unit includes management for forestry and wildlife habitat and maintaining the natural character of the land while providing for personal economic activities. The plan designates the subject parcel as Forestry and Habitat. These designations convert to classifications of Forest Land and Wildlife Habitat Land.
2. *Land Use Classification:* The State classified the subject parcel as Forest Land and Wildlife Habitat Land under Classification Order CL NC-10-004 based on ETAP, adopted August 28, 2015.
3. *Mineral Order:* The subject parcel is not subject to a mineral order.
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 the Unorganized Borough, and a traditional use finding is required. 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

Preliminary Decision

ADL 421617

Page 4 of 7

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 along the RST 188 Slana-Tanana Crossing Trail (the Eagle Trail). This parcel is primarily accessed by foot and ATV in the summer and by dogsled and 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*.

There are no public or navigable waters within the parcel.

Easements and Setbacks: The reconveyance will except, reserve, or be subject to the reservations brought forth by the public notice, if any. There are no section lines within the parcel. Therefore, the following applies.

Subject to:

- (a) Valid existing rights, if any.

XII. Reservation of the Mineral Estate

The 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. See *Attachment C: U.S. Survey 14042*.

XV. DMLW and Agency Review

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from April 25, 2023, to May 18, 2023. Comments

Preliminary Decision

ADL 421617

Page 5 of 7

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 Parks and Outdoor Recreation, Alaska Department of Fish and Game, and Alaska Department of Transportation and Public Facilities.

Comments from DNR Division of Oil and Gas: DOG has no objection. DOG does not request reservation of the mineral estate. The finding for the energy potential around the parcel is minimal to none for gas, and none for oil and geothermal.

DNR DMLW LCS response: Thank you for the information.

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

- DNR Division of Agriculture
- DNR Division of Forestry
- DNR Division of Geological and Geophysical Surveys
- DNR State Historical Preservation Office
- Alaska Department of Environmental Conservation
- US Fish and Wildlife Service

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 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.

Preliminary Decision

ADL 421617

Page 6 of 7

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 B: Public Notice*.

DEADLINE TO SUBMIT WRITTEN COMMENT IS 3:00 PM, TUESDAY, AUGUST 15, 2023

XVII. 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. Henry's Native Allotment application to be valid on October 3, 2008. 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

ADL 421617

Page 7 of 7

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.

/s/ Kathryn Young

July 7, 2023

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

Date

/s/ Hannah Uher-Koch

July 11, 2023

Approved by: Hannah Uher-Koch
Acting Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

Date



Attachment A: Vicinity Map

Brady Henry, ADL 421617 / BLM FF014425-B

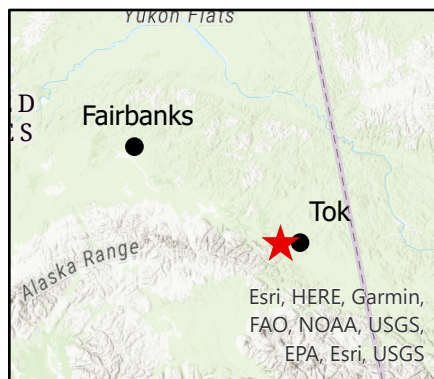
This map is for graphic representation only. It is intended to be used only as a guide and may not show the exact location of existing survey parcels or show all easements and reservations. Source documents remain the official record.



USGS Quad 1:63,360 Tanacross B-5

For more information contact:
Kathryn Young
Department of Natural Resources
Division of Mining, Land and Water
Land Conveyance Section
Phone: 907-269-8574
Fax: 907-269-8916
Email: kathryn.young@alaska.gov

Section 22, Township 18 North, Range 11 East, Copper River Meridian



**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 421617
AS 38.05.035**

COMMENT PERIOD ENDS 3:00 PM, TUESDAY, AUGUST 15, 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 nine miles west of Tok. The legal description for the parcel is U.S. Survey No. 14042, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on February 10, 2022, and officially filed on August 11, 2022. containing 40.00 acres, more or less.

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, August 8, 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 3:00 PM, TUESDAY, AUGUST 15, 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 comment may be received by fax, email, or postal mail. To submit comments or for direct inquiries, contact Kathryn Young by mail at 550 West 7th Ave, Suite 640, Anchorage, AK 99501 or by fax at (907) 269-8916 or by email at kathryn.young@alaska.gov. If you have questions, call Kathryn Young at (907) 269-8574.

If no significant change is required, the PD, 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.

Attachment C - Henry Native Allotment Parcel B

Officially Filed

DATE August 11, 2022

ORIGINAL

Sheet 1 of 3 Sheets

The geographic position of corner No. 1, U.S. Survey No. 14042, in NAD 83 (2011), epoch 2010.00, as determined by GNSS observations, utilizing the National Geodetic Survey Online Positioning User Service (OPUS), to a Network Accuracy, with a maximum peak-to-peak separation for each component of the computed position, of less than or equal to 0.05 meter, semi-major axis 95% error ellipse, as defined in the Bureau of Land Management's Standards for the Positional Accuracy of Cadastral Surveys When Using Global Navigation Satellite Systems (GNSS), dated February 23, 2009, is:

Latitude: 63° 19' 52.719" North
 Longitude: 143° 16' 27.485" West

NAD 83

**U. S. SURVEY
 No. 14042, ALASKA**

AND THE DEPENDENT RESURVEY OF
 A PORTION OF U. S. SURVEY NO. 2631
 AND THE RECOVERY AND REMONUMENTATION OF
 A CERTAIN CORNER
 IN TOWNSHIP 18 NORTH, RANGE 11 EAST,
 COPPER RIVER MERIDIAN

This plat (in three sheets) contains the entire survey record. See sheets 2 and 3 for monumentation details.

A portion of the south and north boundaries, and a portion of the subdivision lines of Township 18 North Range 11 East, Copper River Meridian, Alaska, were surveyed by Edward T. Hutchison, Cartographer (Cadastral), in 1955.

U.S. Survey No. 2631 was surveyed by F. W. Williamson, Associate Cadastral Engineer, in 1943. This survey was subdivided into Lots 1, 2 and 3 by Roy Harpin, Supervisory Cadastral Surveyor, in 1964. Lot 3 was subsequently surveyed and subdivided into Lots 4 and 5 by Eric Stehli, Registered Alaska Land Surveyor, under contract in 1990. A portion of Lot 1 was dependently resurveyed and divided into Lots 6, 7 and 8 by Matthew J. Kurchansk and Michael O. Harmering, Cadastral Surveyors, in 2001 through 2003.

This survey was accomplished using Global Navigation Satellite Systems (GNSS), and no lines were brushed or marked between corners.

This survey was conducted under The Stipulated Procedures for Implementation of Order E-1183, Auxiliary Act of the United States of America, 474 F. Supp. 840 (D Alaska 1979), and by authority of the Memorandum of Understanding between the United States Department of the Interior, Bureau of Land Management and the State of Alaska, Department of Natural Resources, dated September 5, 2000.

This survey was executed by John G. Hill, Cadastral Surveyor, September 30 through October 1, 2021, in accordance with the specifications set forth in the Manual of Surveying Instructions (2009), Special Instructions dated June 27, 2021, approved September 15, 2021, and Assignment Instructions dated September 29, 2021.

Field assistants were:

Garhard (NM) Hahn, Cadastral Surveyor
 Nolan D. Notch, Survey Technician
 Ryan L. Wetzel, Survey Technician

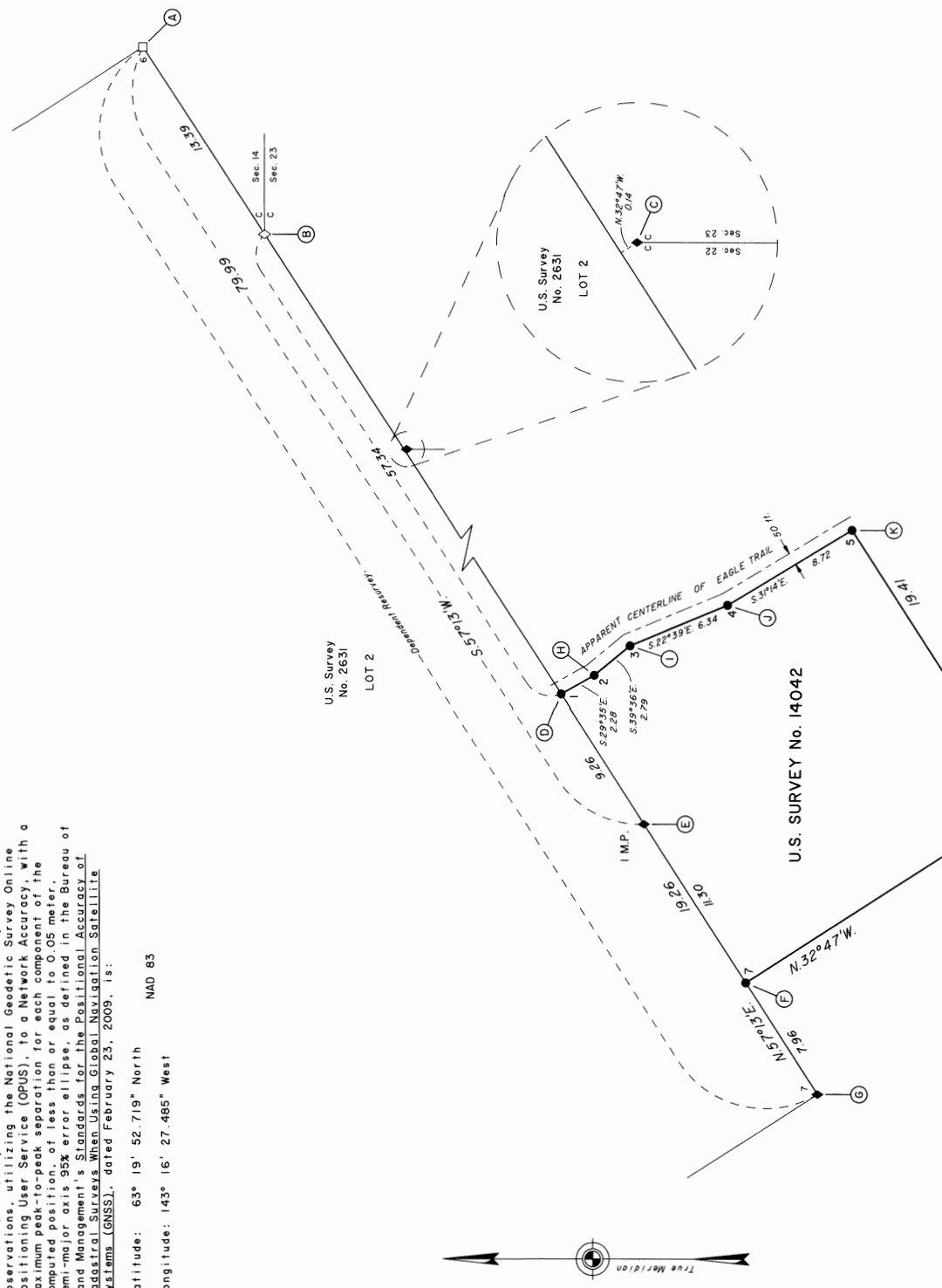
Area Surveyed: 40.00 Acres

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

The survey represented by this plat (in three sheets) having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director
Thomas S. O'Boeh February 10, 2022
 Date

Chief Cadastral Surveyor for Alaska



NOTE:
 Corners 1 through 5 of this survey, were determined at a 50 ft. perpendicular offset from the apparent centerline of Eagle Trail.

Legend

- ◇ Original Corner
- ◆ Original Corner Remonumented
- Local Corner Accepted
- New Corner Monumented

I, John G. Hill, HEREBY CERTIFY upon honor that in pursuance of Special Instructions dated June 27, 2021, I have executed the survey depicted on this plat in strict conformity with said Special Instructions, the Manual of Surveying Instructions (2009), and in the specific manner described on this plat.

FEBRUARY 8, 2022
 Date

John Hill
 Cadastral Surveyor

JGH

U.S. Survey No. 14042, Alaska