

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

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

**PRELIMINARY DECISION
ADL 419341
BLM No. FF008594, Parcel A**

PUBLIC COMMENT PERIOD ENDS 3:00 PM, TUESDAY, DECEMBER 12, 2023

I. Proposed Action

Preliminary Decision: Edith Smith – ADL 419341

Attachment A: Vicinity Map

Attachment B: Public Notice

Attachment C: U.S. Survey 5621

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, Lot 1, U.S. Survey No. 5621, containing 79.99 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. FF008594, Parcel A, claimed by Edith Smith (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*, *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 419341 and BLM case file FF008594, Parcel A, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Eastern Tanana Area Plan for State Lands (ETAP, adopted August 8, 2015) and associated land classification files; and
- DNR case files: GS 888.

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

The subject parcel is located within DNR's Northern Region, at approximately MP 83 of the Tok Cutoff Highway. Some maps list the highway as the Glenn Highway. The subject parcel is within Section 5, 6, and 7, Township 13 North, Range 10 East, Copper River Meridian, within the Unorganized Borough. The subject parcel consists of approximately 79.99 acres identified for reconveyance by this proposed action. See *Attachment A: Vicinity Map* for a depiction of the subject parcel.

USGS Map Coverage: Nabesna D-6

Borough/Municipality: Unorganized Borough

Native Councils and Corporations: The project area is within the boundaries of Ahtna, Inc. Mentasta Lake is within 25 miles of this proposed action and notice will be sent to the Copper River Native Association and Mentasta Traditional Council.

VI. Legal Description

Lot 1, U.S. Survey No. 5621, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on May 29, 2009, and officially filed on June 22, 2009, containing 79.99 acres, more or less.

Situated in the Fairbanks Recording District.

VII. Title

The State received title to the land on December 10, 1963, under a Tentative Approval. The State file is GS 888. Title Report No. 22053 was issued on August 4, 2021. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in the Tentative Approval. An updated title report has been requested; if any concerns are discovered, they will be addressed in the final finding and decision.

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Acquisition: The State filed selection application GS 888 (BLM Serial No. F-028169) for Township 13 North, Range 10 East, Copper River Meridian on July 27, 1961.

Restrictions: The Tentative Approval contains a reservation for canals and ditches under the Act of August 30, 1890 (26 Stat. 392), and a reservation to the United States of a right-of-way for the construction of railroads, telegraph and telephone lines, under the Act of March 12, 1914 (38 Stat. 305), easements 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. Section 420-420c) for highway purposes including appurtenant protective, scenic, and service areas.

VIII. Background

Edith Smith began her use and occupancy of the subject lands in July of 1962, according to documentation in DNR case file ADL 419341. Her Native allotment application was signed on September 17, 1968, and filed on October 23, 1968. The State filed selection application GS 888 for Township 13 North, Range 10 East, Copper River Meridian on July 27, 1961, and received title by Tentative Approval on December 10, 1963. BLM surveyed the 79.99-acre parcel and issued plat U.S. Survey No. 5621 in 2009. On September 24, 2004, BLM determined Native Allotment application FF008594, Parcel A, valid, and the State received a request for reconveyance on February 20, 2009. The allottee built a home and related structures on this parcel.

IX. Planning, Classification, and Mineral Orders

1. *Planning:* The subject parcel is located within the Upper Tanana Region of the Eastern Tanana Area Plan (ETAP) adopted on August 28, 2015. ETAP erroneously excluded this parcel from the plan. Therefore, the subject parcel has no recommended land use or designation.
2. *Land Use Classification:* The subject parcel is unclassified. As this reconveyance falls under AS 38.05.035(b)(9), this parcel of land may be reconveyed without classification under AS 38.05.035(c).
3. *Mineral Order:* The 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 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 adjacent to the Tok Cutoff Highway. Driveways into the property from the highway require a permit from the Department of Transportation and Public Facilities, Northern Region Office.

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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*.

Bartell Creek flows through the parcel. This creek is neither navigable nor public waters, so no public access along the creek will be reserved.

Easements and Setbacks: Under *AS 19.10.010 Dedication of Land for Public Highways*, the application of a 50-foot section line easement is required on all protracted or surveyed township and section lines on State land. There are no provisions under the law to exclude this 50' section line easement dedication at conveyance or reconveyance back to the federal government. However, an affected landowner may, under *11 AAC 51.065 Vacation of Easements*, file a request with DNR to vacate, modify, or relocate a section line easement.

The section lines within this parcel are protracted or unsurveyed. Therefore, the exact location of the section line easements is unknown.

There are two RS 2477 trails adjacent to the parcel, RST 188, Slana-Tanana Crossing and RST 307, Mentasta-Tetlin Trail. As both trails run concurrently and follow the Tok Cutoff Highway right-of-way (ROW) at this location, and the Tok Cutoff Highway ROW is outside the parcel boundaries, no trail reservations are needed on the parcel.

An Alaska Telephone Company utility easement also runs within the Tok Cutoff Highway ROW at this location. Therefore, the utility easement is outside the parcel boundaries. The federal government issued this utility easement in 1967, BLM AA013508, with a quitclaim deed issued in 1971.

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 5 and 6, Township 13 North, Range 10 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) An easement fifty (50) feet in width along each side of the surveyed section line in common with Sections 6 and 7, Township 13 North, Range 10 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
- (c) All other valid existing rights, if any.

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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 5621*.

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 July 7, 2023, to July 28, 2023. 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 Parks and Outdoor Recreation.

Comments from DNR Division of Oil and Gas: DOG has no objection. DOG does not request reservation of the mineral estate. There is no potential for oil, gas, or geothermal.

DNR DMLW LCS response: Thank you for the information.

Comments from Department of Environmental Conservation: DEC does not have any record of environmental concerns on the parcel and has no objection.

DNR DMLW LCS response: Thank you for the information.

Comments from Department of Transportation and Public Facilities: DOT noted structures on the parcel and that the correct name for the Highway is Tok Cutoff. DOT noted that driveways or other access from the highway onto the property requires a permit from Department of Transportation and Public Facilities, Northern Region Office.

DNR DMLW LCS response: Thank you for the information.

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

- DNR Division of Agriculture
- DNR Division of Forestry and Fire Protection
- DNR Division of Geological and Geophysical Surveys
- DNR State Historical Preservation Office
- Alaska Department of Fish and Game
- 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.

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
3:00 PM, TUESDAY, DECEMBER 12, 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 **Section XI. Access, Including Access To and Along Public**

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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 Ms. Smith's Native Allotment application to be valid on September 24, 2004. 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.

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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. 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

November 2, 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

November 2, 2023

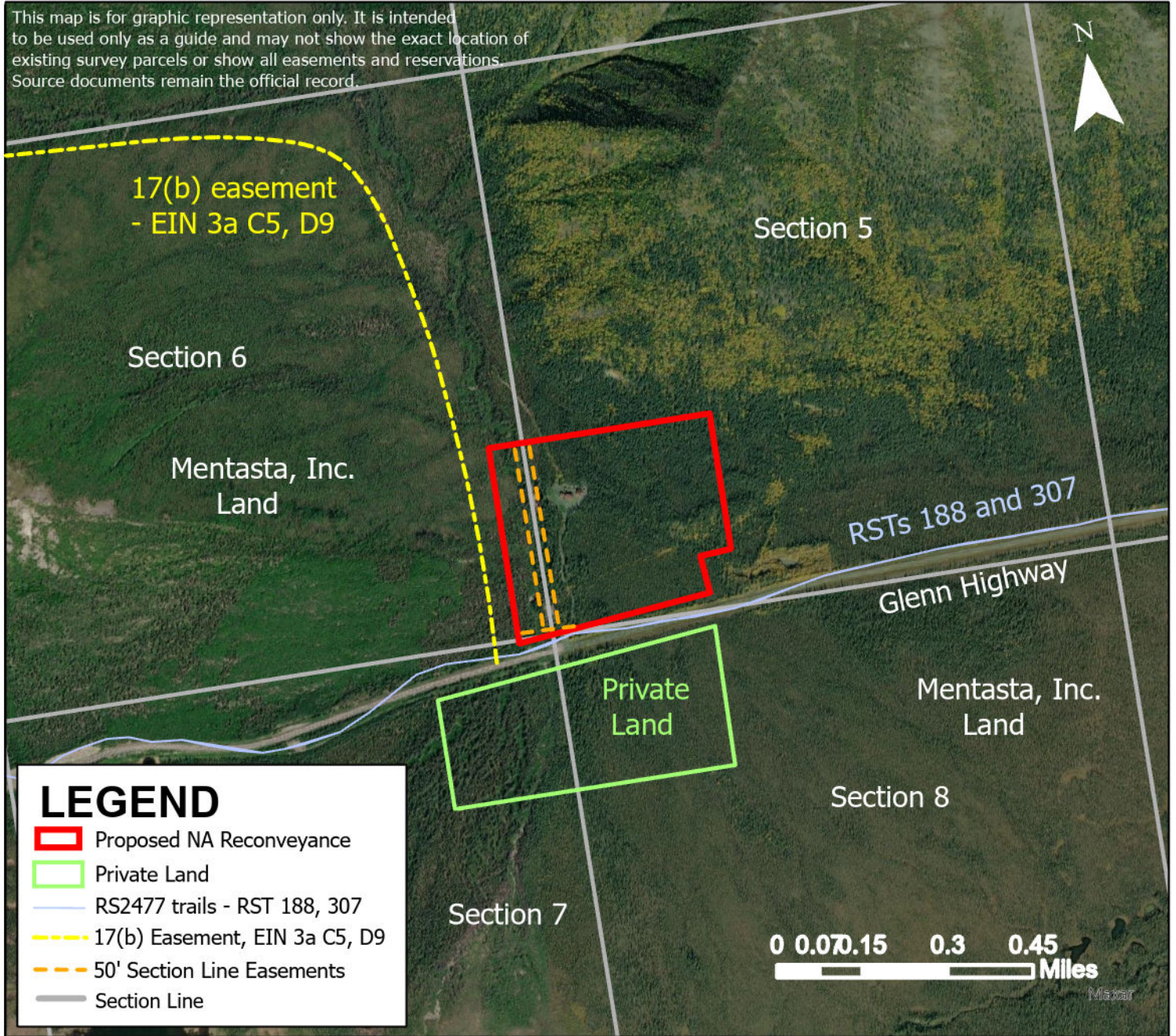
Approved by: Hannah Uher-Koch
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

Date



Attachment A: Vicinity Map Edith Smith, ADL 419341 / BLM FF008594-A

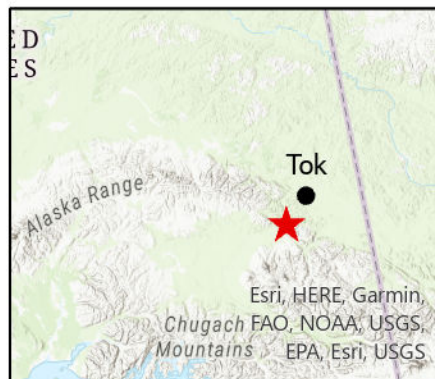
This map is for graphic representation only. It is intended to be used only as a guide and may not show the exact location of existing survey parcels or show all easements and reservations. Source documents remain the official record.



Sections 5, 6, and 7, Township 13 North, Range 10 East, Copper River Meridian

USGS Quad 1:63,360 Nabesna D-6

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



**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 419341
AS 38.05.035**

COMMENT PERIOD ENDS 3:00 PM, TUESDAY, DECEMBER 12, 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 at MP 83 of the Tok Cutoff Highway. Some maps list the highway as the Glenn Highway. The legal description for the parcel is Lot 1, U.S. Survey No. 5621, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on May 29, 2009, and officially filed on June 22, 2009, containing 79.99 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, December 5, 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, DECEMBER 12, 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.

U.S. SURVEY
No. 5621, ALASKA

DEPENDENT RESURVEY
AND
SUBDIVISION INTO LOTS 1, 2, 3, AND 4
AND
RETRACEMENT OF THE STATE OF ALASKA,
DEPARTMENT OF HIGHWAYS,
MATERIAL SITE 462-044-5

SITUATED
APPROXIMATELY 7 MILES EASTERLY OF THE
VILLAGE OF MENTASTA LAKE, ALASKA, ON THE
NORTH SIDE OF THE GLENN HIGHWAY,
AT BARTELL CREEK
WITHIN
TOWNSHIP 13 NORTH, RANGE 10 EAST
COPPER RIVER MERIDIAN, ALASKA

THE GEOGRAPHIC POSITION OF
CORNER No. 1, Lot 1, AS DETERMINED FROM THE
RECORD OF U.S. SURVEY No. 5621
IS:

LATITUDE: 62° 55' 46.35" NORTH
LONGITUDE: 143° 34' 27.19" WEST
NAD 27

SURVEYED BY
GARY L. MCINTYRE, CADASTRAL SURVEYOR
JUNE 19 THROUGH JULY 3, 2007
UNDER SUPPLEMENTAL SPECIAL INSTRUCTIONS
DATED MAY 23, 2007
APPROVED MAY 29, 2007

ALL SURVEYED LINES AND TIES BETWEEN
CORNERS ARE MEAN BEARINGS

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

This plat is strictly conformable to the approved
field notes, and the survey, having been correctly
executed in accordance with the requirements of
law and the regulations of this Bureau, is hereby
accepted.

For the Director

Mickie D. Schuman MAY 29, 2009
Date

Deputy State Director for Cadastral Survey, Alaska

Attachment C

