

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

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

PRELIMINARY DECISION

**ADL 109298
BLM AA007929**

PUBLIC COMMENT PERIOD ENDS 3:00 P.M., TUESDAY, OCTOBER 15, 2024

I. Proposed Action

Preliminary Decision: Esther Hotch Native Allotment – ADL 109298

Attachment A: Vicinity Map

Attachment B: Public Notice

Attachment C: U.S. Survey 14476

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 2, U.S. Survey No. 14476, containing 159.96 acres, more or less, 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. AA007929 claimed by Esther Hotch (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 38.05.035(b)(9) Power and Duties of the Director, and the settlement authority of the Attorney General in accordance with *Aguilar*.

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III. Administrative Record

The DNR case file ADL 109298 and BLM case file AA007929, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Northern Southeast Area Plan for State Lands (NSEAP, adopted October 15, 2002) and associated land classification files; and
- DNR case file MH 16.

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(b)(9) 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 in DNR's Southeast Region and the Haines Borough, the subject parcel is approximately eighteen miles northwest of Haines and within Sections 12 and 13, Township 29 South, Range 56 East, Copper River Meridian and Sections 7 and 18, Township 29 South, Range 57 East, Copper River Meridian. The subject parcel consists of 159.96 acres, more or less, identified for reconveyance by this proposed action. See *Attachment A: Vicinity Map* for a depiction of the subject parcel.

USGS Map Coverage: Skagway B-3

Borough/Municipality: Haines Borough

Native Councils and Corporations: The subject parcel is within the boundaries of Sealaska Corporation. Klukwan and Skagway are within 25 miles of this proposed action. Notice will be sent to the Klukwan Incorporated, Chilkoot Indian Association, Chilkat Indian Village, Skagway Village, and Central Council Tlingit Haida Indian Tribes of Alaska (CCTHITA).

VI. Legal Description

Lot 2, U.S. Survey No. 14476, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on May 5, 2020, and officially filed on July 9, 2020, containing 159.96 acres, more or less.

Situated in the Haines Recording District.

VII. Title

The State received title to the land under Patent 1232179 which was issued on June 10, 1963. The State file is MH 16 (BLM J 011279). No third-party interests have been identified. The parcel is subject to the reservations, easements, and exceptions contained in Patent 1232179 dated June 10, 1963. A 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 MH 16 (BLM J 011279) for Township 29 South, Range 56 East, Copper River Meridian and Township 29 South, Range 57 East, Copper River Meridian on September 26, 1958.

Restrictions: Any reservations in the Patent the State received from BLM will merge with the title once the land is conveyed back to the United States.

VIII. Background

The following events for this case are:

- Esther Hotch began her use and occupancy of the subject lands in 1928 according to documentation in DNR case file ADL 109298.
- The Native allotment application was signed on January 4, 1971, and filed on April 24, 1972.
- The State filed selection application MH 16 for Township 29 South, Range 56 East, Copper River Meridian, and Township 29 South, Range 57 East, Copper River Meridian, on June 18, 1959, and received title by Patent on June 10, 1963.
- BLM determined Native allotment application AA007929, valid on October 3, 2014.
- The State received a request for reconveyance on November 7, 2014.
- BLM surveyed the 159.96-acre parcel and issued plat U.S. Survey No. 14476 in 2020.

IX. Planning, Classification, and Mineral Orders

1. *Planning:* The subject parcel is located within the Northern Southeast Area Plan, adopted on October 15, 2002, and is listed as private land. Therefore, the parcel has no designation or classification. The subject parcel is also in the Haines State Forest (HSF) under AS 41.15.300, and the Chilkat Bald Eagle Preserve (CBEP) under AS 41.21.610. The plans for both the HSF and the CBEP list the parcel as a pending Native allotment. The northeast corner of the parcel is within the Chilkat River Critical Habitat Area under AS 16.20.585.
2. *Land Use Classification:* The subject parcel is unclassified as the land was identified as private in the area plan. As this reconveyance falls under AS 38.05.035(b)(9) Powers and Duties of the Director, and pursuant to AS 38.05.035(c) Powers and Duties of the Director, this parcel of land may be reconveyed without classification or reclassification under AS 38.05.300 Classification of Land.
3. *Mineral Order:* The parcel is not subject to a mineral order.
4. *Local Planning:* Reconveyance of this parcel supports local planning within the Haines Borough as an access easement along the Dalton Trail, RST 1225, will be reserved.

X. Traditional Use Finding

In accordance with AS 38.05.830 Land disposal in the Unorganized Borough, a traditional use finding is required if the subject parcel is within the Unorganized Borough. This parcel is in the Haines Borough. Therefore, a traditional use finding is not required. 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.**

Submission of Public Comments at the end of this document and *Attachment B: 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 accessed via the Dalton Trail, RST 1225.

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 is unaffected by AS 38.05.127 Access To Navigable or Public Water easements. The parcel is outside the 50-foot easement limit as the Tsirku River is approximately 250 feet from the nearest (northwest) parcel corner.

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 section or township 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 affecting this parcel are protracted section lines which have not been field surveyed or monumented on the ground. Therefore, the exact location of the section lines and attached section line easements are unknown. These section line easements cannot be used until the section lines and said easements have been surveyed and monumented by a licensed Professional Alaska Surveyor. If the section line is on or bordering State land the survey must be accomplished under instructions from the State of Alaska DNR. The estimated location of these easements is shown on *Attachment A: Vicinity Map*.

An existing RS 2477 right-of-way identified as RST 1225, the Dalton Trail, borders the northern edge of this parcel. The precise location and width of this RST has not been formally located or surveyed. USS 14476 shows the "apparent centerline of the Dalton Trail" as the northern boundary of the parcel. When the RST is formally located and surveyed, it may be in a different location than shown on *Attachment A: Vicinity Map* or USS 14476. It should be noted that USS 14476 lists the Dalton Trail's RST number as 1255. The actual RST number for the Dalton Trail is 1225.

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) A right-of-way easement fifty (50) feet in width along each side of the unsurveyed township line common to Section 12, Township 29 South, Range 56 East, Copper River Meridian and Section 7, Township 29 South, Range 57 East, Copper River Meridian, and each side of the unsurveyed township line common to Section 13, Township 29 South, Range 56 East, Copper River Meridian and Section 18, Township 29

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South, Range 57 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;

- (b) A right-of-way easement fifty (50) feet in width along each side of the unsurveyed section line common to Sections 12 and 13, Township 29 South, Range 56 East, Copper River Meridian and each side of the unsurveyed section line common to Sections 7 and 18, Township 29 South, Range 57 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;
- (c) Pursuant to AS 19.30.400, the State of Alaska asserts an existing RS 2477 right-of-way identified as RST 1225 "Dalton Trail" that may impact Lot 2, U.S. Survey No. 14476, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on May 5, 2020, and officially filed on July 9, 2020. The precise location and width of RST 1225 have not been formally surveyed and platted; and
- (d) All other valid existing rights, including reservations, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions reservations, notes of the plat, and restrictions of record, 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 14476*.

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 January 9, 2024, to January 30, 2024. 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 FFD.

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DNR DMLW LCS received brief comments of non-objection from the following agencies: Alaska Department of Environmental Conservation and Alaska Department of Transportation and Public Facilities.

DNR DMLW LCS response: Thank you for your review of this reconveyance.

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

DNR DMLW LCS response: Thank you for the information. The mineral estate will not be reserved.

Comments from DNR Division of Forestry and Fire Protection: DOF&PF has no objection. However, the State should ensure the preservation of the access rights associated with the RS2477 route "Dalton Trail" as Alaska case file RST 1225.

DNR DMLW LCS response: Thank you for the information. RST 1225, Dalton Trail, will be reserved.

Comments from Alaska Department of Fish and Game (ADF&G): ADF&G has no objection. We concur with DNR's reservation of the 50-foot section line easements and RST 1225, Dalton Trail. This parcel contains habitat suitable for brown and black bears, moose and a variety of small game and furbearer species.

DNR DMLW LCS response: Thank you for the information. The section line easements and RST 1225, Dalton Trail, will be reserved.

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

- DNR Division of Agriculture
- DNR Division of Geological and Geophysical Surveys
- DNR Division of Parks and Outdoor Recreation
- DNR State Historical Preservation Office
- 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) Hearings 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 FFD. Upon approval and issuance of a FFD, 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 P.M., TUESDAY, OCTOBER 15, 2024**

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 or Navigable Water**. 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. Hotch's Native Allotment application to be valid on October 3, 2014. 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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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 is 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.



September 10, 2024

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

Date



September 10, 2024

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

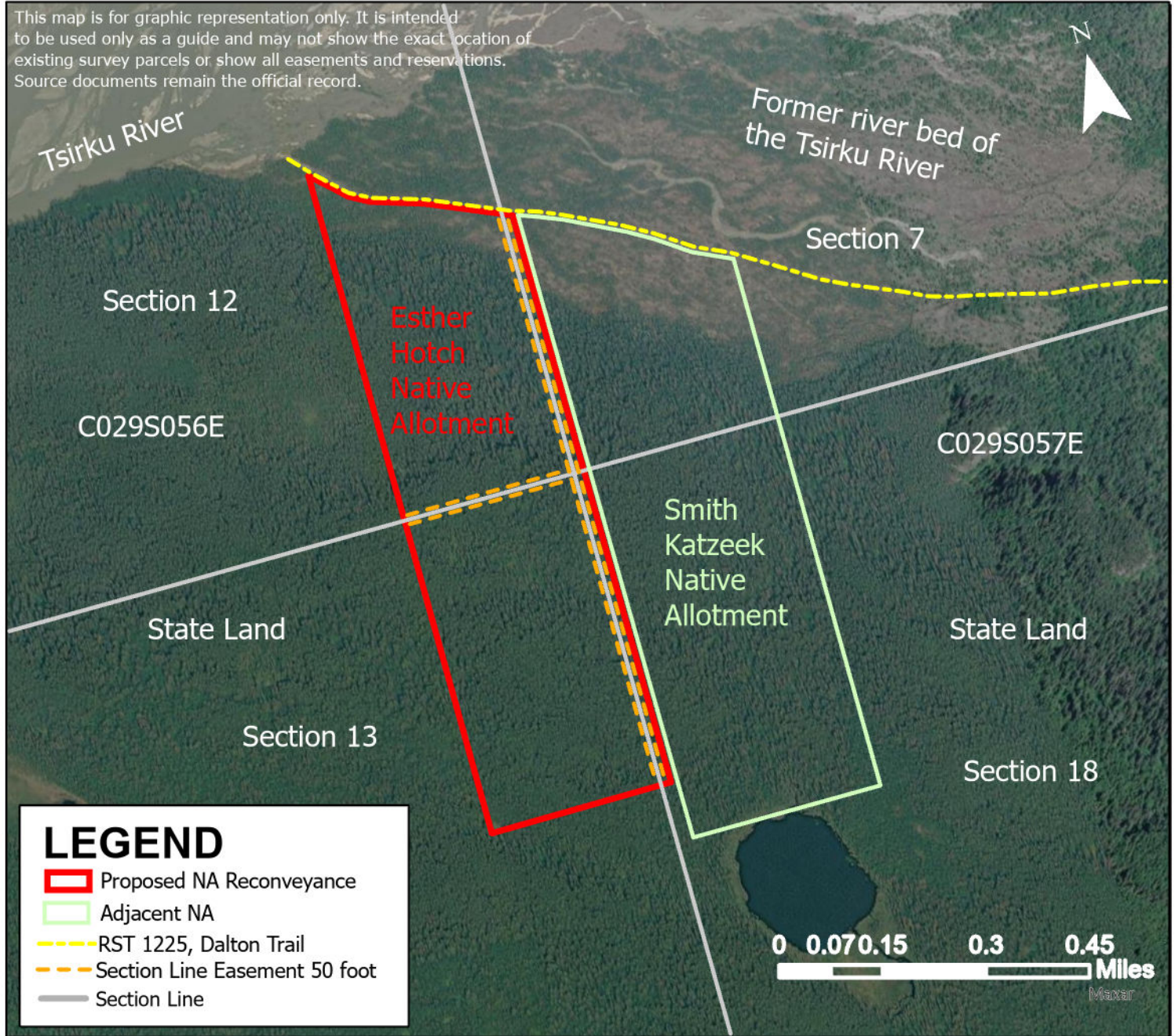
Date



Attachment A: Vicinity Map

Esther Hotch Native Allotment, ADL 109298 / BLM AA007929

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 Skagway 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
Fax: 907-269-8916
Email: kathryn.young@alaska.gov

Sections 12 and 13, T29S, R56E Sections 7 and 18, T29S, R57E 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 109298
AS 38.05.035(b)(9)**

COMMENT PERIOD ENDS 3:00 P.M., TUESDAY, OCTOBER 15, 2024

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 18 miles northwest of Haines. The legal description for the parcel is Lot 2, U.S. Survey No. 14476, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on May 5, 2020, and officially filed on July 9, 2020, containing 159.96 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 a.m. and 5:00 p.m. 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 p.m., Tuesday, October 8, 2024.

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 p.m., TUESDAY, OCTOBER 15, 2024.** 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.

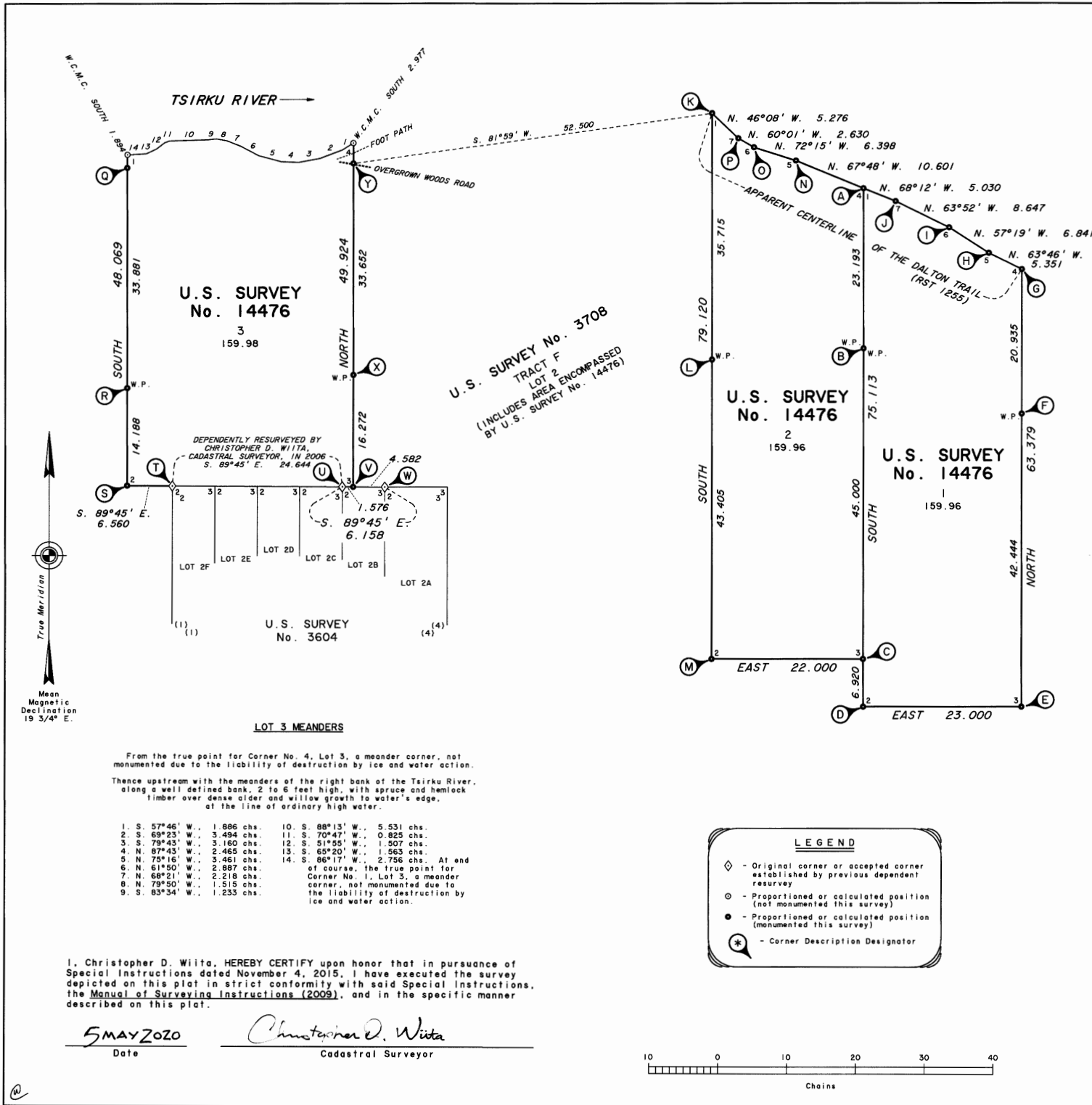
DNR reserves the right to waive technical defects in this notice.

Attachment C

Officially Filed
DATE July 9, 2020

ORIGINAL

Sheet 1 of 4 Sheets



THE DEPENDENT RESURVEY
OF A PORTION OF LOT 2B
U.S. SURVEY No. 3604

AND THE SURVEY OF
U.S. SURVEY
No. 14476, ALASKA
COMPRISING 3 LOTS

This plat, in 4 sheets, contains the entire survey record. See Sheets 2, 3, and 4 for additional survey information.

U.S. Survey No. 3604, comprising 2 lots, was executed by Claud M. Hoffman, Cartographic Survey Aid, in 1959, as shown on the official plat of survey accepted March 22, 1960.

U.S. Survey No. 3708, comprising Tracts A, B (in Lots 1, 2, and 3), and C (in Lots 1 and 2), was executed by Leslie H. Goodwin and Frederick W. Ward, Cadastral Surveyors, in 1959, as shown on the official plats of survey accepted July 11, 1962 (Tract A), February 24, 1964 (Tract B), and July 19, 1962 (Tract C).

Areas within original Lots 1 and 2 of Tract C, U.S. Survey No. 3708, were revised by amended plat methods, resulting in the creation of Lots 1 and 2 of Tract F, as shown on the official plat of survey accepted September 4, 1992.

In order to subdivide original Lot 2, U.S. Survey No. 3604, into Lots 2A through 2F, the adjustment of a portion of the record meanders of Chilkat Lake, the dependent resurvey of a portion of the exterior boundaries, and the recovery of Corner No. 4, identical with Corner No. 2, Lot 1, on line 3-4, Lot 2A, were executed by Christopher D. Wiita, Cadastral Surveyor, in 2006, as shown on the official plat of survey accepted August 20, 2007.

This survey was executed by Christopher D. Wiita, Cadastral Surveyor, July 22 through July 30, 2016, in accordance with the specifications set forth in the Manual of Surveying Instructions (2009), Special Instructions for U.S. Survey No. 14476, Alaska, dated November 4, 2015, approved May 11, 2016, and Assignment Instructions dated June 2, 2016.

This survey was conducted under The Stipulated Procedures for Implementation of Order, Ethel Aguilar, et al. v. 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 Interior, Bureau of Land Management, and the State of Alaska, Department of Natural Resources, dated September 5, 2000.

Field assistants were:
Connor G. Hannon, Surveying Technician
Gabe M. Daavettilla, Surveying Technician
Madison M. Baker, Surveying Technician

Area Surveyed: 479.90 Acres

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 law and the regulations of this Bureau, is hereby accepted.

For the Director

Douglas N. Hayward May 5, 2020
Date

Chief Cadastral Surveyor for Alaska

Attachment C

U.S. Survey No. 14476, Alaska