

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

**PRELIMINARY DECISION**  
**ADL 421232**  
**BLM No. FF018439 - Parcel D**

**Proposed Reconveyance of a  
Alaska Native Allotment in the Northwest Arctic Borough**

**PUBLIC COMMENT PERIOD ENDS 5:00 PM, THURSDAY, DECEMBER 22, 2022**

**I. Proposed Action**

*Preliminary Decision:* Joseph Harvey (deceased) – ADL 421232

*Attachment A:* Public Notice

*Attachment B:* Vicinity Map

Proposed Action: The primary proposed action of this Preliminary Decision (PD) of the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) is to voluntarily reconvey to the United States of America, Lot 3, U.S. Survey No. 12657, containing 7.62 acres of wrongfully conveyed state land. See *Attachment B: Vicinity Map* for a depiction of the project area.

The subject parcel is an Alaska Native allotment, Bureau of Land Management (BLM) Serial No. FF018439, Parcel D claimed by Joseph Harvey (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 A: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, DNR DMLW LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

**II. Authority**

This reconveyance is being adjudicated pursuant to AS 38.05.020 *Authority and Duties of the Commissioner*, AS 38.05.035 *Power and Duties of the Director*, 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 421232 and BLM case file F-18439-D constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Northwest Area Plan for State Lands (NWAP, adopted October 2008) and associated land classification files; and
- DNR case files: GS 1896.

### **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 47 miles east of Ambler, the subject parcel is within Section 21, Township 19 North, Range 14 East, Kateel River Meridian, within the Northwest Arctic Borough. The subject parcel consists of approximately 7.62 acres identified for reconveyance by this proposed action. The subject parcel is on the left bank of the Mauneluk River, approximately 31 miles northeasterly of Kobuk, Alaska. See *Attachment B: Vicinity Map* for a depiction of the subject parcel.

*USGS Map Coverage:* Survey Pass A-6

*Borough/Municipality:* Northwest Arctic Borough

*Native Councils and Corporations:* The project area is within the boundaries of the NANA Regional Corporation. The village of Kobuk is within 25 miles of this proposed action. Notice will be sent to the NANA Regional Corporation and Maniilaq Association.

### **VI. Legal Description**

The legal description is Lot 3 of U.S. Survey No. 12657, Alaska, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on July 11, 2001, and officially filed on July 27, 2001, containing 7.62 acres, more or less.

Situated in the Kotzebue Recording District.

### **VII. Title**

The State received title to the land on September 22, 1980, under a Tentative Approval. The State file is GS 1896. Title Report 11911 was issued August 20, 2019. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in Patent 50-87-0315 dated September 30, 1987. 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 1896 (BLM Serial No. FF-015194) for Township 19 North, Range 14 East, Kateel River Meridian on January 21, 1972.

*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.

### VIII. Background

Joseph Harvey (deceased) claims that he began his use and occupancy of the subject parcel in May 1923 according to documentation in the BLM case file F-18439 (Parcel D). On April 17, 1972, the BLM stamped Mr. Harvey's Native Allotment application as received. The State filed selection application GS 1896 (BLM Serial Number F-15194) for Township 19 North, Range 14 East, Kateel River Meridian on January 21, 1972, received title by Tentative Approval on September 22, 1980, and by Patent 50-87-0315 on September 30, 1987. Mr. Harvey's application was determined valid on August 6, 2009, and the BLM requested reconveyance of the lands from the State on August 28, 2009.

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

1. *Planning:* The subject parcel is located within unit U-05 in the Kobuk Region of the Northwest Area Plan (NWAP) adopted on October 2008. Unit U-05's recommended land use includes habitat management and harvest values. The NWAP designation of the subject parcel is Habitat and Harvest. These designations convert to the classification of Wildlife Habitat Land.
2. *Land Use Classification:* The State classified the subject parcel as Wildlife Habitat Land under Classification Order CL NC-08-001 based on NWAP, adopted on October 2008.
3. *Mineral Order:* None
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 located within the Northwest Arctic 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 A: 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 accessed via air, land, or water by floatplane, boat, snow machine, or dog sled.

*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

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### *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 the Mauneluk River, which has 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. A review of the subject parcel, the surrounding area, and land ownership shows that land status prevents continuous easement. The lands east and north of the subject parcel along the river's east bank were conveyed into private ownership without any public access easements along the river. However, access along the west bank of the river is unencumbered. 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 section line in common with Sections 21 and 22, Township 19 North, Range 14 East, Kateel River Meridian, pursuant to *AS 19.10.010 Dedication of Land for Public Highways*, *11 AAC 51.025 Section Line Easements*, and *AS 19.25.010 Use of Rights-of-way for Utilities*; and
- (b) All other valid existing rights, if any.

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

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

## **XIII. Hazardous Materials and Potential Contaminants**

The Department of the Interior, BLM, is expected to inspect the parcel and familiarize itself with the condition and quality of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for reconveyance. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

## **XIV. Survey**

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

## **XV. DMLW and Agency Review**

Information and comments received from multiple sections with DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from July 19, 2021, to August 18, 2021. Comments pertinent to this proposed action received during agency review have been considered. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision (FFD).

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DNR DMLW LCS received brief comments of non-objection from the following agencies:

- DNR Division of Oil and Gas
- Alaska Department of Fish and Game

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

- State Historical Preservation Office

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

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

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

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

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

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

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

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

**DEADLINE TO SUBMIT WRITTEN COMMENT IS  
5:00 PM, THURSDAY, DECEMBER 22, 2022**

### **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**

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**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 Aquilar, BLM reviewed and determined Mr. Harvey's Native Allotment application to be valid on August 6, 2009. Based on documentation within BLM's case file and subsequent comments received from agency review, LCS has found no legal reason for denying this reconveyance subject to public notice and a final decision.

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

*Recommendation follows.*

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**XVIII. Recommendation**

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

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

/s/ Kathryn Young

November 17, 2022

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/ Rachel Longacre

November 18, 2022

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

Date

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

**ATTACHMENT A: PUBLIC NOTICE**

**Requesting Input for Proposed Native Allotment Reconveyance - ADL 421232**  
AS 38.05.035

**COMMENT PERIOD ENDS 5:00 PM, THURSDAY, DECEMBER 22, 2022**

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 47 miles east of Ambler and 28 miles east of Shungnak. The legal description for the parcel is Lot 3 of U.S. Survey No. 12657, Alaska, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on July 11, 2001, and officially filed on July 27, 2001, containing 7.62 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, Thursday, December 15, 2022.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comments on the Preliminary Decision. **The deadline for public comment is 5:00 PM, THURSDAY, DECEMBER 22, 2022.** 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 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 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.

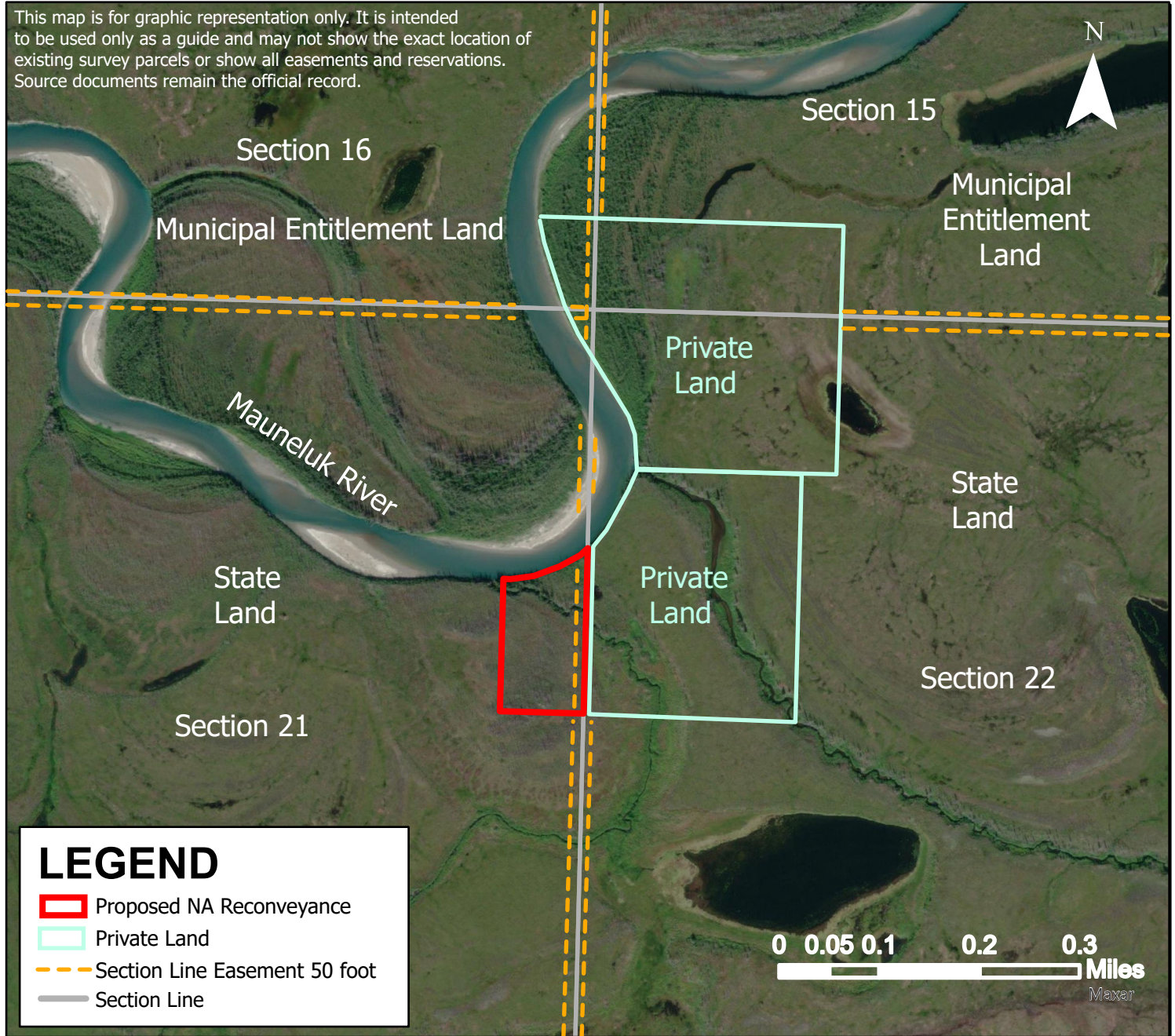
DNR reserves the right to waive technical defects in this notice.





# Preliminary Decision: Attachment B, Vicinity Map Joseph Harvey, ADL 421232 / BLM FF018439-D

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 21, Township 19 North, Range 14 East, Kateel River Meridian

USGS Quad 1:63,360 Survey Pass A-6

For more information contact:  
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