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

### PRELIMINARY DECISION ADL 421586 BLM No. FF017959

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

#### PUBLIC COMMENT PERIOD ENDS 5:00 PM, TUESDAY, MAY 25TH, 2021

#### I. Proposed Action

Preliminary Decision: Marian Norback - ADL 421586

Attachment A: Public Notice

Attachment B: U.S. Survey No. 7296

Attachment C: Easement and Vicinity Map

Attachment D: Ownership Map

<u>Proposed Action</u>: 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. 7296, containing 95.55 acres of wrongfully conveyed state land. See *Attachment C:* Easement and Vicinity Map for a depiction of the project area.

The subject parcel is an Alaska Native allotment, Bureau of Land Management (BLM) Serial No. FF017959 claimed by Marian Norback (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 <a href="Ethel Aguilar v. United States of America">Ethel Aguilar v. United States of America</a>, 474 F. Supp. 840 (D. Alaska 1979) (herein cited as <a href="Aguilar">Aguilar</a>) and Alaska Statute (AS) 38.05.035(b)(9) Powers and Duties of the Director.

<u>Public Notice of Proposal</u>: 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, 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 421586 and BLM case file FF017959, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Kuskokwin Area Plan for state Lands (KAP, adopted May 19, 1988) and associated land classification files; and
- DNR case files: GS 2104.

#### 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 <u>Aguilar</u> 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 Southcentral Region, approximately 45 miles southwest of McGrath, the project area is within Section 12, Township 30 North, Range 41 West, Seward Meridian, within the Unorganized Borough (UB). The project area consists of approximately 95.55 acres identified for reconveyance by this proposed action. See *Attachment C*: Easement and Vicinity Map for a depiction of the project area.

USGS Map Coverage: Iditarod C-2

Borough/Municipality: Unorganized Borough

Native Councils and Corporations: The project area is within the boundaries of the Doyon regional corporation. No villages are within 25 miles of this proposed action but courtesy notice will be sent to McGrath, Takotna, and Tanana Chiefs Conference.

#### VI. Legal Description

The legal description is Lot 2, U.S. Survey No. 7296, Alaska, containing 95.55 acres, more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on May 3, 2002, and officially filed on September 18, 2002.

#### VII. Title

The State received title to the land on July 28, 1975 under Tentative Approval. The State file is GS 2104. Title Report 21515 was issued January 22, 2021. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in the federal patent.

Acquisition: The State filed selection application GS 2104 (BLM Serial No. FF015318) for Township 30 North, Range 41 West, Seward Meridian on February 1, 1972.

Restrictions: The Tentative Approval contains a reservation for a right-of-way thereon for ditches and canals under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945 and a

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reservation for the right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the Act of March 12, 1914 (38 Stat. 305).

#### VIII. Background

Marian Norback began her use and occupancy of the subject lands in 1963 according to documentation in BLM case file FF017959. Her native allotment application was submitted on July 7, 1971 and was received and certified by the BIA on April 5, 1972. The State filed selection application GS 2104 for Township 30 North, Range 41 West, Seward Meridian on February 1, 1972 and received title by Tentative Approval on July 28, 1975. The BLM surveyed the 95.55-acre parcel and officially filed plat U.S. Survey No. 7296 in 2002. The BLM determined Native Allotment application FF017959 valid and requested reconveyance on August 7, 2006.

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

- Planning: The subject parcel is located within the Kuskokwim Area Plan adopted on May 19, 1988. Recommended land use within this management unit/region includes forestry, mining, public recreation, and wildlife habitat. The plan designates the subject parcel as subunit 9a-Fourth of July Creek- Little Warden Fork River.
- 2. Land Use Classification: The State classified the subject parcel as resource management specifically noting general uses and remote recreation based on the Kuskokwim Area Plan of May 19, 1988.
- 3. *Mineral Order:* No mineral order exists for the subject parcel.
- 4. Local Planning: No local management plans exist for the subject parcel.

#### X. Traditional Use Finding

Before a sale, lease under AS 38.05.070 – 38.05.105 Alaska Land Act, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or disposal may be expected to have on the density of population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter (§33 ch. 113 SLA 1981).

Additional 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*: Access to this parcel is by foot or ATV in the summer months and dog sled or snow machine in the winter months. Access is primarily via the Iditarod trail. This parcel is not adjacent to Fourth of July Creek which is considered a public water.

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

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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.

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 for public access, upland, abutting, and running in common with the ordinary high-water mark along both sides of Fourth of July Creek bisecting Lot 2, U.S. Survey No. 7296, Alaska, pursuant to AS 38.05.127 Access to Navigable and Public Water, 11 AAC 51.045 Easements To and Along Navigable and Public Water;
- (b) An easement fifty (50) feet in width along the west side of the protracted township line in common with Township 30 North, Range 41 West, Seward Meridian and Township 30 North, 40 West, Seward 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) A right-of-way easement fifty (50) feet in width along each side of the centerline of the RST 201, Takotna-Flat Winter Trail (via Moose Creek) pursuant to AS 38.04.050 Access to Private Use Areas, 11 AAC 51.015 Standards for Public Easements, AS 19.10.015 Establishment of Highway Widths; and
- (d) All other valid existing rights, if any.

#### XII. Reservation of the Mineral Estate

The Division of Oil and Gas (DOG) and the 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 January 13, 2021 to February 16, 2021. Comments pertinent to this proposed action received during agency review have been considered and addressed below.

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Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision (FFD).

<u>Division of Oil and Gas (DOG)</u>: DOG has no objection to the re-conveyance and does not find a need to retain the mineral estate.

DNR DMLW LCS Response: LCS appreciates your comments. The State will not retain the mineral estate.

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

- Division of Forestry
- Alaska Department of Fish and Game
- 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 <a href="http://landsales.alaska.gov/">https://landsales.alaska.gov/</a> or <a href="https://laws.state.ak.us/OnlinePublicNotices/">https://laws.state.ak.us/OnlinePublicNotices/</a> 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, TUESDAY, MAY 25TH, 2021

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#### XVII. Discussion and Alternatives

The following alternatives were considered:

#### Alternative 1: Reconvey

Reconvey the land to the United States subject to the reservations, exceptions, and restrictions as stipulated in **XI.** Access, Including Access To and Along Public or Navigable Water, Easements and Setbacks. This will allow the Native Allottee to obtain title to the land while the State will retain public access on the property as prescribed by statute and thus avoid title recovery litigation by the federal government. Therefore, it is in the best interest of the State to sell 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 <u>Aguilar</u>, BLM reviewed and determined Ms. Norback Native Allotment application to be valid on August 7, 2006. 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.

Recommended by: Daniel Hovancsek

Native Allotment Coordinator Land Conveyance Section

Division of Mining, Land and Water Department of Natural Resources

State of Alaska

4.21.2021

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Approved by: Rachel Longacre

**Section Chief** 

Land Conveyance Section

Division of Mining, Land and Water Department of Natural Resources

State of Alaska

#### **PUBLIC NOTICE**

State of Alaska Department of Natural Resources (DNR) Division of Mining, Land and Water Land Conveyance Section 550 W. 7th Ave., Suite 640 Anchorage, Alaska 99501-3579

Notice is hereby given that the Division of Mining, Land and Water has made a preliminary decision under AS 38.05.035(e) to reconvey the following erroneously conveyed State land to the United States of America for conveyance to the Native allotment applicant noted below pursuant to AS 38.05.035(b)(9) and in accordance with the Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979):

Applicant:

Marian Norback (deceased)

BLM No.:

FF017959

ADL No.:

421586

Location:

Section 12, T. 30 N., R. 41 W., Seward Meridian

Survey:

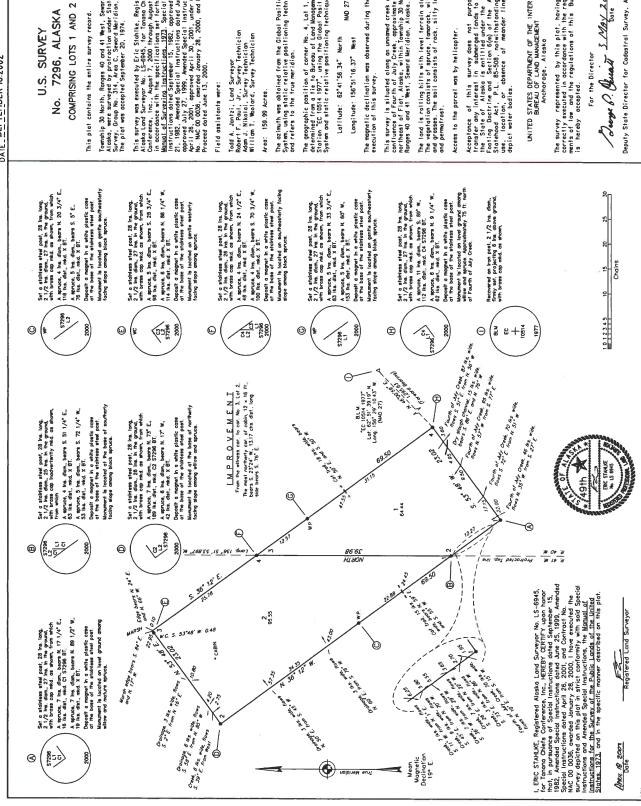
Lot 2, Survey No. 7296, containing 95.55 acres, more or less

The public is invited to comment on the proposals to reconvey the land. Copies of the Preliminary Decision are available from the address above. Comments must be in writing and received at the faxed to (907) 269-8916, or submitted by email to above physical address, danny.hovancsek@alaska.gov before 5:00 pm, May 25, 2021 in order to ensure consideration and appeal in accordance with 11 AAC 02.010(c). Public comments will be reviewed and considered in the Final Finding and Decision. The final decision will be issued on or about June 1, 2021, or thereafter, and will be sent to any person who commented during the thirty-day comment period. The Final Finding and Decision will provide additional information about the appeal procedures.

The State of Alaska, Department of Natural Resources, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may call 269-8411 TTY/TTD. Please provide sufficient notice in order for the Department to accommodate your needs.

The DNR, Division of Mining, Land and Water reserves the right to waive technical defects in this notice and will forgo an additional notice and comment period upon issuance of the Final Finding and Decision.

Date of Publication: April 21, 2021



### No. 7296, ALASKA U.S. SURVEY

This plat contains the entire survey record.

Township 30 North, Ranges 40 and 41 West, Seward Meridian, Alasko, were surveyed by protrotein under State Selection Survey, Group No. 314, Area C, Seward Meridian, Alasko. The plat was accepted September 30, 1974.

This survey was executed by Eric Stahtke, Registered Atlaste Land Surveyor No. 12-6934, for Transfor Ories Conference, Inc., Adgust 7, 2000 Harough August 6, 2001. In accordance with the specifications set forth in the Menual of Surveying Instructions and 4 Superior 1982, operved December 21, 1982, wanned Special Instructions dored June 20, 1992, periored December 21, 1982, wanned Special Instructions dored June 25, 1999 operved July 27, 1992, Mended Special Instructions dored June 25, 1999 operved April 20, 2001, operved April 20, 2001, under Confront Proceed dored June 13, 2000, and Notice to Proceed dored June 13, 2000, and Notice to

The azimuth was obtained from the Global Positioning System, using static relative positioning techniques and refers to the true meridian.

The geographic position of corner No. 4, Lot 1, as determined from it is to Bureau of Land Management Control. Systoian 'EC 10314 1977', varing the Global Positioning System and static relative positioning techniques, 1s:

NAD 27 Latitude: 62\*41'56.34" North

The magnetic declination was observed during the execution of this survey.

This survey is situated along an unmaned creek at the confluence of Fourth of July Cheek, approximately 39 miles mortheast of Flat, Alaska, within Tawahip 30 North, Ranges 40 and 41 Mest, Seward Meridian, Alaska,

The land is rolling hills with level terrain along creeks. The vegetation consists of spruce, tamprock, willow, moss and grosses. The soil consists of rack, silty laam and permatrast.

Access to the parcel was by helicopter.

Acceptance of this survey does not purport to transfer any interest in submerged lands to which the Start of Alaska is entitited under the Equal Footing Doctrine and Section (60) of the Alaska Starkhood Act, P. L. 85–500, note inhistoriding thas use. Incortain, or absence of meander lines to depict water bodies.

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

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.

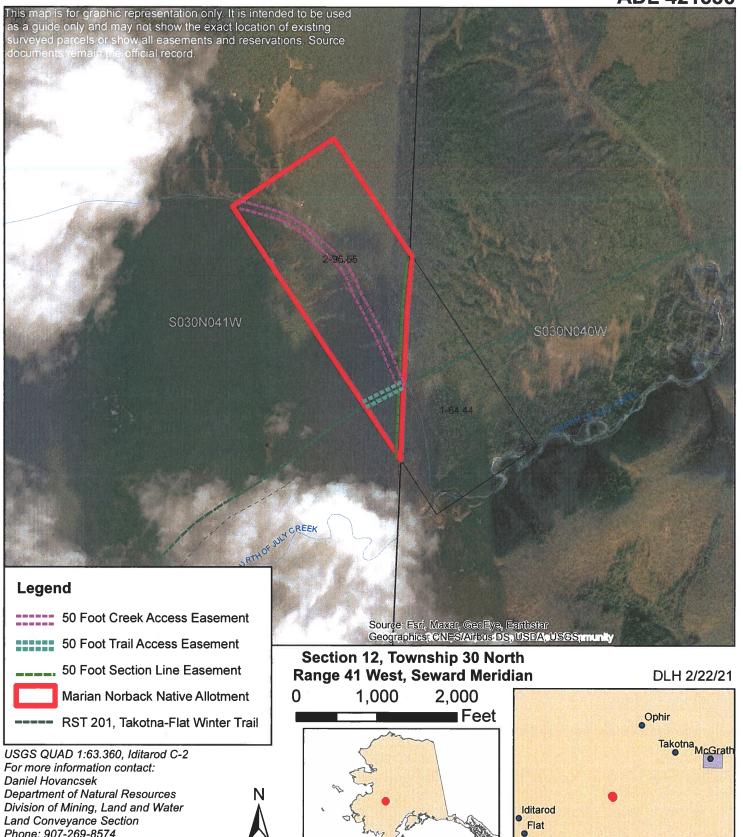
For the Director

Jooge B. Guan 3 May 2002

Deputy State Director for Cadastral Survey, Alaska



### **Attachment C: Easement and Vicinity Map Marian Norback ADL 421586**



Land Conveyance Section Phone: 907-269-8574

Fax: 907-269-8916

Email: danny.hovancsek@alaska.gov



# Attachment C: Ownership Map Marian Norback

