

**State of Alaska  
Department of Natural Resources  
Division of Mining, Land and Water  
Northern Regional Office**

Preliminary Decision  
Expansion of Designated Material Site ADL 420038

**Proposed Action**

The Alaska Department of Transportation and Public Facilities (DOT) submitted an application requesting expansion of designated material site ADL 420038 from approximately 198.3 acres to approximately 209.7 acres. The area requested to be added is approximately 11.4 acres. The site is located at MP 10.5 of the Elliott Highway, on the north side of the road. There is no application for a material sale contract at this time as there is a current contract, ADL 419200, for 400,000 cubic yards (cy), which runs through June 24, 2024. DOT is requesting expansion of the material site to ensure there are sufficient materials to extract under ADL 419200.

The Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW), Northern Region Office (NRO) proposes to approve the expansion and to amend the boundaries and size of the designated site which will allow for continued extraction of materials under existing material sale contracts and subsequent issuance of material sale contracts under AS 38.05.550-565.

This document serves as the state's preliminary best interest finding regarding this action.

**Scope of Review and Proposed Finding**

The scope of this Preliminary Decision (PD) is to determine whether it is appropriate to designate the expanded area as a material site and what, if any, additional operating requirement should be implemented for material sale contracts issued from the material site location. The scope is based on the statutes, regulations and other facts contained in case files ADL 420038 and 419200 and the body of this decision.

**Authority**

The file is being adjudicated pursuant Alaska Statutes AS 38.05.035(e) (best interest finding), AS 38.05.550-565 (material sales), AS 38.05.810(a) (public and charitable use), AS 38.05.945 (notice), and AS 27.19 (reclamation). AS 38.05.810 allows DNR to sell material from state land for public purposes at less than fair market value.

The Director, DMLW, is authorized by AS 38.05.035(a)(6) to act on behalf of the State in this matter. The Director has subsequently delegated his authority under AS 38.05.035(b)(1) and Department Order 3 to the Regional Manager, NRO.

**Administrative Record**

The administrative record for this case is comprised of material sale file, ADL 420038, and the file for the current DOT material sale contract, ADL 419200, which expires on June 24, 2024. Also referenced are the Eastern Tanana Area Plan, and the Fairbanks North Star Borough Code.

## **Location and Legal Description**

Location: MS 680-001-2 located on the north side of the Elliott Highway at MP 10.5, see attached map.

Legal Description: Township 3 North, Range 1 West, Fairbanks Meridian, within a portion of:

Section 14: Lot 5, that portion lying north of the Elliott Highway subject to the 200' right of way for the Old Elliott Highway and mining claim ADL 334960; NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  subject to the 200' right of way for the Old Elliott Highway; E  $\frac{1}{2}$  SW  $\frac{1}{4}$  subject to mining claim ADL 334960; and that portion of Mineral Survey No. 2169 situated in section 14, located north of the Elliott Highway, subject to the 200' right of way for the Old Elliott Highway.

Section 15: Lot 6, subject to 200' right of way for the Old Elliott Highway; Lot 7: that portion lying north of the Elliott Highway, subject to the 200' right of way for the Old Elliott Highway; Lot 10: that portion lying north of the Elliott highway; and that portion of Mineral Survey No. 2169 situated in section 15, located above the Elliott Highway, subject to the 200' right of way for the Old Elliott Highway.

Size: The proposed expansion area is approximately 11.4 acres. The existing material site area is approximately 198.3 acres. The total area for the new designated area is approximately 209.7 acres. This is addressed in greater detail in the Discussion section on page 6 of this decision.

Borough/Municipality: The site is located within the Fairbanks North Star Borough (FNSB). No FNSB lands are involved.

Regional/Village Corp: The site is located within the Doyon Ltd. Region. No corporation lands are involved.

Adjacent Landowner: The Elliott Highway abuts a part of the southern border of the material site. The Chatanika River runs along the western border of the material site. The material site is otherwise surrounded by state land.

## **Title**

The State obtained title under GS 566, federal patent number 50-91-0150, issued on February 7, 1991, with reservations for rights-of-way for ditches or canals, and railroads, telegraph, and telephone lines constructed by the authority of the United States.

## **Third Party Interests**

A portion of the subject site is also designated as a material site by the Statewide Pipeline Coordinator's Section (SPCS) under ADL 420408. Alyeska Pipeline Services Company has a current material sale contract for 20,000 cubic yards that runs through December 31, 2019.

Mineral Closing Order (MCO) 510 was issued on November 20, 1986. All of Sections 14 and 15 are closed to mineral entry through this MCO. A portion of ADL 334960 is within the boundaries of the material site at the eastern edge; however, this claim was grandfathered in as it was claimed and operational prior to the issuance of the MCO. The additional acreage being designated does not impact the mining claim.

The material site is subject to the Right-of-Way (ROW) FAS 680 for the Old Elliott Highway that crosses through the material site.

### **Planning and Classification**

The proposed material site is located within the FNSB Borough and zoned as General Use 1 (GU-1). Under FNSB code 18.84.020(A), GU-1 zoned areas allow any use, except for correctional facilities.

The existing material site is located within the Eastern Tanana Area Plan (ETAP), in unit number F-139 which is designated for Materials.

The approximately 11.4 acre area which has been requested to be included in the expansion is in ETAP unit F-11, and is land classified as Habitat and Public Recreation-Dispersed. Unit F-11 runs along the Chatanika River corridor. (ETAP, 3 – 31). Habitat land “applies to areas of varied size for fish and wildlife species during a sensitive life-history stage where alteration of the habitat or human disturbance could result in a loss of a population or sustained yield of a species or that contain a unique or rare assemblage of a single or multiple species of regional or statewide significance.” (ETAP, 3 – 31). Public Recreation-Dispersed land “have a high potential for dispersed recreation or tourism and where desirable recreation conditions are scattered or widespread rather than localized. Developed facilities are generally not necessary other than trails, trail signs, primitive campsites, and other minor improvements.” (ETAP, 3 – 9).

Public Recreation-Dispersed land uses and authorizations are not “considered appropriate unless necessary for public health, safety or recreation.” However, uses for “[u]tilities, roads, and other uses may be appropriate with appropriate design if recreation functions can be maintained, the uses can be made to be compatible with the management intent for the areas designated [Public Recreation-Dispersed], and it is determined that the authorization of the use would be in the best interest of the state.” (ETAP 3 – 9).

“Land designated Habitat is intended to remain in state ownership, and is intended to be maintained in an undisturbed, natural state except for improvements related to public health, safety, habitat restoration or rehabilitation, and public recreation.” (ETAP, 3 – 8). “Utilities, roads, and other types of uses may be authorized if habitat functions can be maintained, the use can be made to be compatible with the management intent for areas designated Habitat, and it is determined that the authorization of the use would be in the best interest of the state.” (ETAP, 3 – 8). “Authorizations within areas designated Habitat are to be considered inappropriate unless consistent with these stipulations and with the management intent for the management unit.” (ETAP, 3 – 8).

Under the ETAP, when material sales are requested from a specific location there is a preference given to existing material sources. (ETAP, 2 - 31). While ETAP recognizes specific land classifications for use, it also recognizes that, “the state may determine that the development of material resources is appropriate, with appropriate stipulations. It is also recognized that the development of specific material resources may take precedence over surface uses. Material sites are necessary to and are a type of use that is often associated with the construction and maintenance of roads, and therefore an essential component of the road construction process.” (ETAP, 2 - 31). The sale of materials for use in construction “are required for the development, maintenance, and expansion of critical infrastructure including roads, pipelines, airports,

businesses, residences, utilities, communication facilities, and similar types of projects.” (ETAP, 2 - 31). Expansion of the material site is consistent with ETAP.

### **Traditional Use Finding (AS 38.05.830)**

The subject material site and area of expansion are all located within the FNSB. A traditional use finding is not required for sites located within a borough.

### **Waterbodies**

The site is located near the Chatanika River. A 100' buffer zone and a “No Mine” zone were created on the western end of the existing material site to protect riparian resources and future erosion concerns. Two “No Mine” zones have been identified and provide a 50' buffer zone around three remnant sloughs at the site (see Attachment A, Site Map).

### **Access**

Access to the site is gained directly from the north side of the Elliott Highway, where it enters the south-central portion of the site. The Old Elliott Highway also provides access from the southern portion of the site (see Attachment A, Site Map).

### **Environmental Risk**

The DOT submitted an Environmental Risk Questionnaire with their material sale application for ADL 419200. There are no known environmental contaminants within the proposed material site. Other than fuels, coolant, lubricants and hydraulic fluids normally contained in a piece of equipment for its basic operation, the applicant will not generate, use, store, transport, dispose of or otherwise come in contact with any materials considered toxic or hazardous. Compliance with standard material sale contract stipulations regarding environmental operations and procedures will minimize environmental risks.

### **Survey and Appraisal**

A survey for this material site is not required per AS 38.04.045. The site is surrounded by state managed land and a survey is not necessary at this time. DMLW reserves the right to require a survey in the future, should conditions arise that warrant a survey. If a survey is required, the applicant will be responsible for the costs of the survey.

An appraisal is not required to sell materials to the DOT. 11 AAC 05.010(e) (16) requires government agencies to pay for materials used in construction, reconstruction or maintaining a public project as follows: a) for the first 5,000 cy of material to be used on a project per year, there is no charge; b) for materials in excess of 5,000 cy, the unit price is listed in the administrative base price schedule established under 11 AAC 71.090. This price is currently \$0.50/cy.

### **Agency Comments and Public Notice**

The DMLW conducted an agency review from February 20, 2018 through March 6, 2018. The following agencies were solicited for comments regarding this proposed material site designation and material sale:

AJ Wait, Permits and Easements Section, Division of Mining, Land and Water, DNR

Jack Kerin, Mining Section, Division of Mining, Land and Water, DNR  
Brooks Ludwig, Division of Parks and Outdoor Recreation, DNR  
Paul Keech, Fairbanks-Delta Area Forester, Division of Forestry, DNR  
Tim Dabney, State Regional Forester, Division of Forestry, DNR  
Office of History and Archeology, Division of Parks, DNR  
Statewide Pipeline Coordinator's Section, DNR  
James Durst, Division of Habitat, Alaska Department of Fish and Game (ADFG)  
Marla Carter, Division of Wildlife Conservation, ADFG  
Mark Fink, Division of Wildlife Conservation, ADFG  
Timothy Pilon, Waste Water, Alaska Department of Environmental Conservation (DEC)  
Charley Palmer, Drinking Water, DEC  
Bob Henszey, United States Fish and Wildlife Service (USFWS)  
Benjamin Soiseth, United States Army Corps of Engineers (USACE)  
Randy Scharfenberg, Fairbanks Soil and Water Conservation District  
Sandra Mota, FNSB Land Management

The following comments were received:

ADFG Comment: ADFG reviewed the agency review materials and has no objection to the proposed expansion. However, ADFG did recommend existing public access to the material site via the Old Elliott Highway be maintained.

*DMLW Response:* The proposed designation will not affect the existing Old Elliott Highway right-of-way through the material site.

DEC Comment: The proposed material site is not near an active registered public water system source.

*DMLW Response:* Comment noted.

SPCS Comment: As the material site which is proposed to be expanded includes a material site which is designated for extraction by SPCS for pipeline right of way ADL 63574, SPCS requests that DOT receive a letter of non-objection from Alyeska Pipeline Service Company (APSC). Additionally, SPCS request that DOT coordinate closely with APSC with activities within the material site.

*DMLW Response:* APSC will be solicited for public comment regarding the proposed designation.

No additional comments were received.

## **Public Notice**

Pursuant to AS 38.05.945(b)(3) public notice describing the proposed action will be posted on the State of Alaska Public Notice Website and notice will be sent to the Fox Postmaster for posting. Pursuant to AS 38.05.945(c)1, notice will be sent to the Fairbanks North Star Borough and Doyon, Limited. Notice will also be sent to Alyeska Pipeline Service Company.

The public is invited to comment on this proposed action. Comments should be submitted to DNR, DMLW, Northern Region Office (NRO), at 3700 Airport Way, Fairbanks, Alaska 99709. Harvey Templeton can be contacted for further information at 907-451-2727 or at [harvey.templeton@alaska.gov](mailto:harvey.templeton@alaska.gov). Additional copies of the decision may be obtained from the NRO

as well as a copy of a standard material sale contract. Interested parties have the right to comment during the public notice period and the commenters who are aggrieved by the Final Finding and Decision will have the right to appeal it. In order to be able to appeal the Final Finding and Decision, a person must provide written comments during the PD comment period. A copy of the decision will be sent to any person who comments on the PD, and will include an explanation of the appeal process.

The State 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 the Department's Public Information Center in Fairbanks between the hours of 10:00 am and 5:00 pm, Monday through Friday, at 907-451-2705 by telephone or by TDD at 907-451-2770.

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## **Discussion**

In 2014 DNR expanded ADL 420038 to incorporate a nearby SPCS material site and additional acreage. The expansion excluded the 11.4 acres now being requested in this decision. An acreage error was made in the 2014 decision. The location map attached to the 2014 designation decision erroneously listed the acreage of the existing material site as 224.3 acres. This acreage appears to be based on a totaling of the acreage in the area from the master title plat, which failed to exclude lands which fall outside of the designated material site, specifically lands which are south of the Elliott Highway. The correct acreage of the 2014 designation decision is approximately 198.3 acres. The proposed expansion area for the current decision is that portion of MS 2169 located north of the Elliott Highway. This area is approximately 11.4 acres in size. The acreage of the proposed expanded material site is approximately 209.7 acres.

The proposed expansion of the material site is to further DOT's goal of maintenance and construction of state infrastructure by ensuring the material site has sufficient materials available to it to meet the terms of the outstanding contract.

The proposed expansion area is an approximately 11.4 acre triangular area which is located between the existing material site on two sides, with the Elliott Highway on the other side. Given the location between an active material site and a major highway, other uses of the location are likely to be minimal. Failure to designate this area which is otherwise available may require DOT to either not perform under the already executed contract, or require them to obtain materials from multiple locations. Facilitating DOT to be able to extract materials under an existing contract, in an area that is immediately adjacent to an existing material site, serves the best interests of the state.

Although DMLW may continuously sell materials without further finding or notice once the site is designated, the DMLW must also ensure that state land and natural resources be available for the maximum use consistent with the public interest. To that end, the DMLW will continue to carefully review individual sale requests and operation plans once sites have been designated, to ensure resource consideration and multiple use issues are appropriately evaluated.

## **Recommendation**

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, regulations, and case files related to this application, the DNR, DMLW, NRO proposes expanding ADL 420038 by designating an additional 11.4 acres, and subsequently issuing contracts subject to the conditions described in this document, operating requirements

and standard contract terms. This decision considers ownership of the site, the need for reasonable access to material sources in the region and the project site, agency concerns, and project-specific needs. The use of this material site will assist with the state's maintenance of public infrastructure and facilitate economic activity along the Elliott Highway. Operations in the site will be consistent with the mining and reclamation guidelines developed by DOTPF and approved by DNR.

  
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Harvey Templeton  
Natural Resource Specialist

  
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Date

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**Preliminary Decision**

I find the proposed action as recommended above may be in the best interest of the State and approve it for public notice.

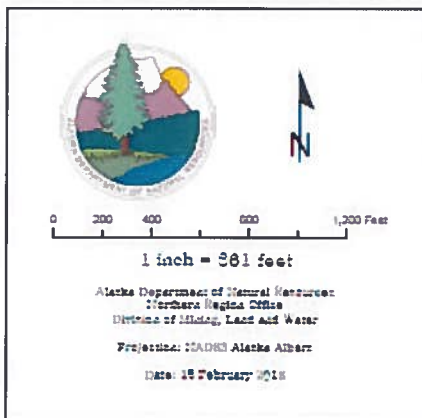
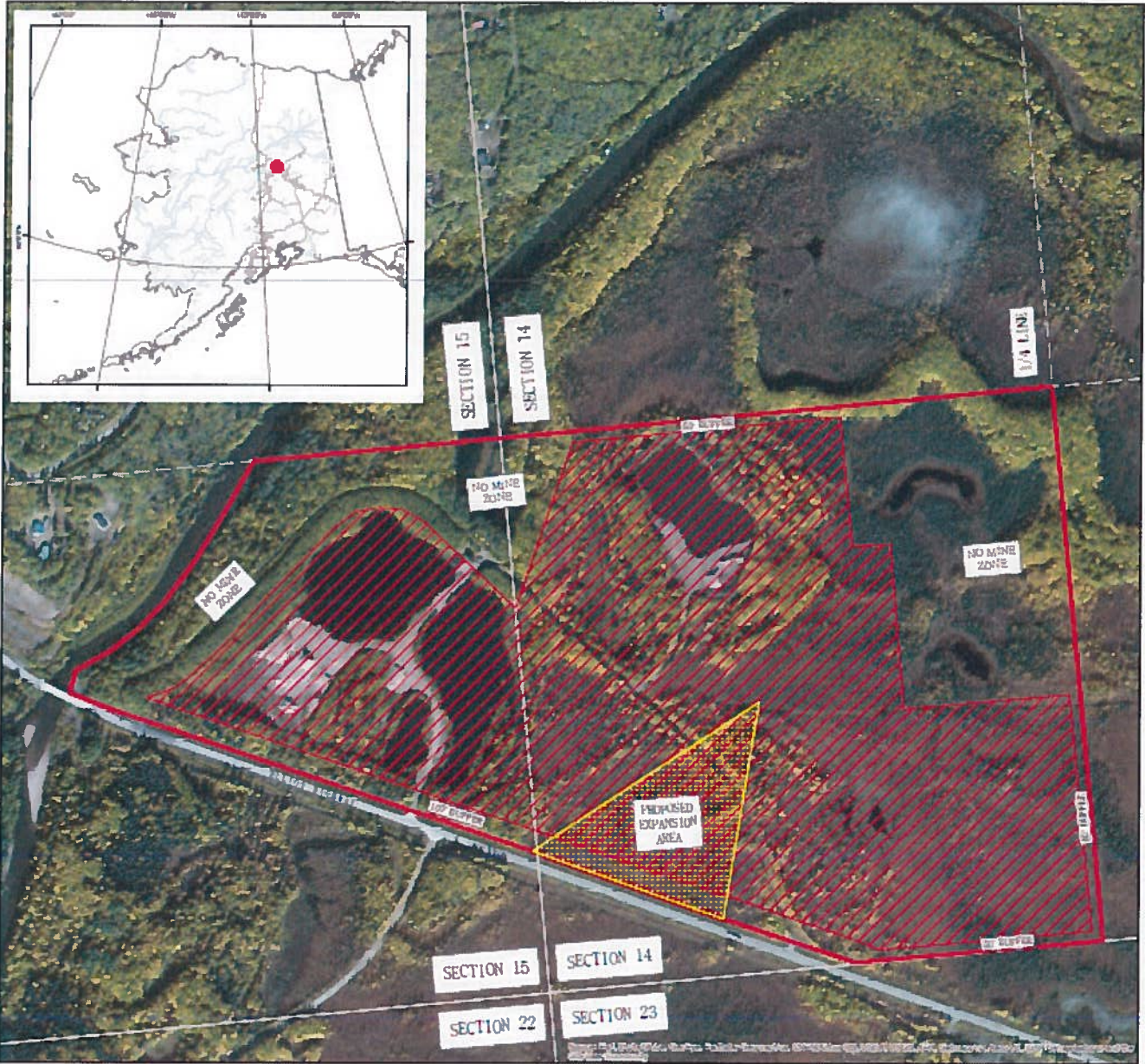
  
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Jeanne Proulx  
Northern Region Manager

  
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Date

**Attachments**

Attachment A—Site Map

**"Chatanika River Pit"**  
**DNR MMS ADL 420038; DOT MS 680-001-2**



**LEGAL DESCRIPTION**

T-1, R-1W, P-1A

**Section 14:** Lot 5: That portion lying north of the Elliott Highway subject to the 200' right of way for the Old Elliott Highway and mining claim ADL 654980; NW 1/4 SW 1/4 subject to the 200' right of way for the Old Elliott Highway; R 1/4 SW 1/4 subject to mining claim ADL 654980; and that portion of Mineral Survey No. 2188 situated in section 14, located above the Elliott Highway, subject to the 200' right of way for the Old Elliott Highway.

**Section 15:** Lot 8: Subject to 200' right of way for the Old Elliott Highway; Lot 7: that portion lying north of the Elliott Highway, subject to the 200' right of way for the Old Elliott Highway; Lot 10: that portion lying north of the Elliott highway; and that portion of Mineral Survey No. 2188 situated in section 15, located above the Elliott Highway, subject to the 200' right of way for the Old Elliott Highway.

Material site contains ~ 208.7 acres