

**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 421616
BLM No. FF014425, Parcel A**

PUBLIC COMMENT PERIOD ENDS 3:00 P.M., TUESDAY, APRIL 23, 2024

I. Proposed Action

Preliminary Decision: Brady Henry – ADL 421616

Attachment A: Vicinity Map

Attachment B: Public Notice

Attachment C: U.S. Survey 14026

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, U.S. Survey No. 14026, containing 80.00 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. FF014425, Parcel A, claimed by Brady Henry (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 421616 and BLM case file FF014425, 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 file GS 755.

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 in DNR's Northern Region and the Unorganized Borough, the subject parcel is approximately seven miles northwest of Tok and within Section 21, Township 19 North, Range 12 East, Copper River Meridian. The subject parcel consists of 80.00 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: Tanacross B-5

Borough/Municipality: Unorganized Borough

Native Councils and Corporations: The project area is within the boundaries of Doyon, Limited. Tok, Tanacross, and Tetlin are within 25 miles of this proposed action. Notice will be sent to the Tanacross Incorporated, Native Village of Tanacross, Native Village of Tetlin, Tetlin Native Corporation, and Tanana Chiefs Conference.

VI. Legal Description

U.S. Survey No. 14026, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on February 16, 2023, and officially filed on June 30, 2023, containing 80.00 acres, more or less.

Situated in the Fairbanks Recording District.

VII. Title

The State received title to the land on May 1, 1984, under a Corrected Tentative Approval. The State file is GS 755. Title Report No. 21613 was issued on March 9, 2021. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in the Corrected Tentative Approval dated May 1, 1984. An updated 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 GS 755 (BLM Serial No. F-027786) for Township 19 North, Range 12 East, Copper River Meridian on May 25, 1961.

Restrictions: The Corrected Tentative Approval contains a reservation for a right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945) and a reservation for the right-of-way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the centerline of any such road and twenty-five feet on either side of the centerline of any such telegraph or telephone lines under the Act of March 12, 1914 (38 Stat. 305, 43 U.S.C. 975d).

VIII. Background

The following events for this case are:

- Brady Henry began his use and occupancy of the subject lands in June of 1955 according to documentation in DNR case file ADL 421616.
- The Native allotment application was signed on December 7, 1970, and filed on October 27, 1971.
- The State filed selection application GS 755 for Township 19 North, Range 12 East, Copper River Meridian on May 25, 1961, and received title by Corrected Tentative Approval on May 1, 1984.
- BLM determined Native allotment application FF014425, Parcel A, valid on October 3, 2008.
- The State received a request for reconveyance on February 17, 2009.
- BLM surveyed the 80.00-acre parcel and issued plat U.S. Survey No. 14026 in 2023.

IX. Planning, Classification, and Mineral Orders

1. *Planning:* The subject parcel is located within the Upper Tanana Region of the Eastern Tanana Area Plan adopted on August 28, 2015, in Unit L-01. The recommended land use within this unit includes management for forestry. The plan designates the subject parcel as Forestry. This designation converts to the classification of Forest Land. The subject parcel is within the Tanana Valley State Forest under AS 41.17.400 Tanana Valley State Forest.
2. *Land Use Classification:* The State classified the subject parcel as Forest Land under Classification Order CL NC-85-065 based on ETAP, adopted August 28, 2015. As this reconveyance falls under AS 38.05.035(b)(9) Powers and Duties of the Director, 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:* This parcel does not exist within any local planning unit.

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 within 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**

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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 located along the Tanana River and therefore is accessed via a navigable waterway.

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 sits on the Tanana River, which has been determined to be navigable. A review of the subject parcel, the surrounding area, and land ownership shows that there is state land on either side of the parcel along the river. Therefore, a 50-foot public access easement is required per AS 38.05.127 Access To Navigable or Public Water. To decline a 50-foot public access easement on the subject parcel would create a discontinuous easement along the river.

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 subject parcel is unaffected by any section lines and the accompanying easements.

On USS 14026, a trail is shown to exit/enter this parcel at the north and south ends of the parcel. The 2007 BLM field report also shows this trail. There is no historical information on this trail, other than the allottee's use. How far the trail goes beyond the parcel is not known. This trail generally parallels the river and portions of the trail are within the 50-foot public access easement required by AS 38.05.127 Access To Navigable or Public Water. It has been determined that the 50-foot public access easement is an acceptable alternative to establishing an additional easement on this little used trail. Therefore, an easement on this trail will not be reserved.

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 Tanana River within USS 14023 of Section 21, Township 19 North, Range 12 East, Copper River Meridian, Alaska, pursuant to AS 38.05.127 Access to

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Navigable and Public Water, 11 AAC 51.045 Easements To and Along Navigable and Public Water; 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. See *Attachment C: U.S. Survey 14026*.

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 November 1, 2023, to November 22, 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 FFD.

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

DNR Division of Parks and Outdoor Recreation, Alaska Department of Fish and Game, 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. 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.

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

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- DNR State Historical Preservation Office
- Alaska Department of Environmental Conservation
- 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 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, APRIL 23, 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.

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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 Mr. Henry's Native Allotment application to be valid on October 3, 2008. 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.

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 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.



Recommended by: Kathryn Young Date 3/21/2024
Native Allotment Coordinator
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska



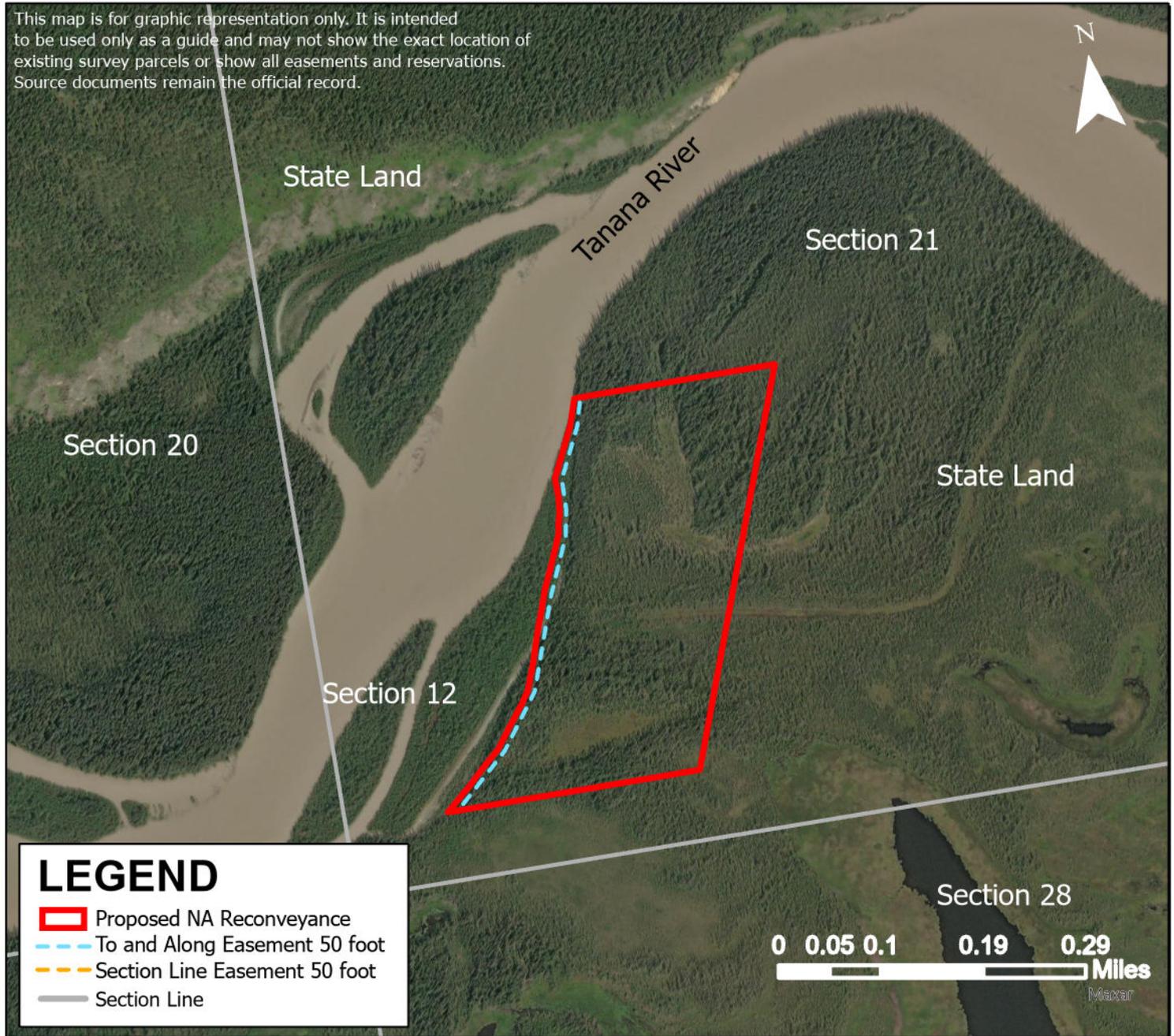
Approved by: Hannah Uher-Koch Date March 21, 2024
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska



Attachment A: Vicinity Map

Brady Henry Native Allotment, ADL 421616 / BLM FF014425-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.



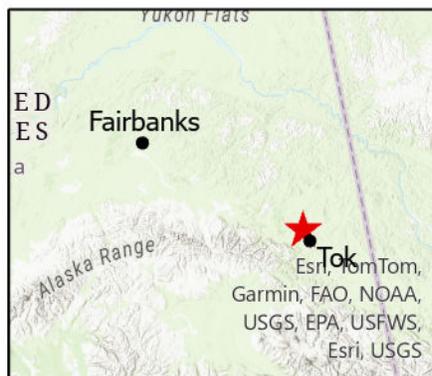
LEGEND

- Proposed NA Reconveyance
- To and Along Easement 50 foot
- Section Line Easement 50 foot
- Section Line

USGS Quad 1:63,360 Tanacross B-5

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

**Section 21, Township 19 North,
 Range 12 East,
 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 421616
AS 38.05.035(b)(9)**

COMMENT PERIOD ENDS 3:00 P.M., TUESDAY, APRIL 23, 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 seven miles northwest of Tok. The legal description for the parcel is U.S. Survey No. 14026, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on February 16, 2023, and officially filed on June 30, 2023, containing 80.00 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 PM, Tuesday, April 16, 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, APRIL 23, 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

ORIGINAL

DATE JUNE 30, 2023

Sheet 1 of 3 Sheets
**U. S. SURVEY
 No. 14026, ALASKA**
 INCLUDING
**THE ADJUSTMENT OF A PORTION OF
 THE RECORD MEANDERS OF THE LEFT BANK OF
 THE TANANA RIVER
 AND THE RETRACEMENT OF A PORTION
 OF THE WEST BOUNDARY
 OF TOWNSHIP 19 NORTH, RANGE 12 EAST,
 COPPER RIVER MERIDIAN
 AND THE RETRACEMENT OF A PORTION OF U.S.
 SURVEY No. 7303, WITHIN TOWNSHIP 19 NORTH,
 RANGE 12 EAST, COPPER RIVER MERIDIAN,
 ALASKA**

This plat (in three sheets) contains the entire survey record. See Sheet 2 for monumentation details and Sheet 3 for meander details.

The survey of the west boundary of Township 19 North, Range 12 East, Copper River Meridian, Alaska, was executed by Ray Harpin, Supervisory Cadastral Surveyor, in 1962 to 1964.

The dependent resurvey of a portion of the west boundary of Township 19 North, Range 12 East, Copper River Meridian, was surveyed by Eric Stahlike, Registered Alaska Land Surveyor, under contract, in 2010.

U. S. Survey No. 7303 was executed by Eric Stahlike, Registered Alaska Land Surveyor, under contract, in 1995.

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 the Interior, Bureau of Land Management, and the State of Alaska, Department of Natural Resources, dated September 5, 2000.

This survey was executed by Christopher E. Williams, Cadastral Surveyor, August 1 through August 6, 2022, in accordance with the specifications set forth in the Manual of Surveying Instructions (2009), Special Instructions dated October 15, 2008, approved October 20, 2008, Amended Special Instructions No. 1, dated August 6, 2021, approved September 15, 2021 and Assignment Instructions dated July 29, 2022.

Field assistants were:
 Kyle K. Hamilton, Land Surveyor
 Nolan D. Noh, Survey Technician
 Nevaeh L. Williams, Survey Aid
 Jarrett A. Willis, Student Trainee Survey Aid

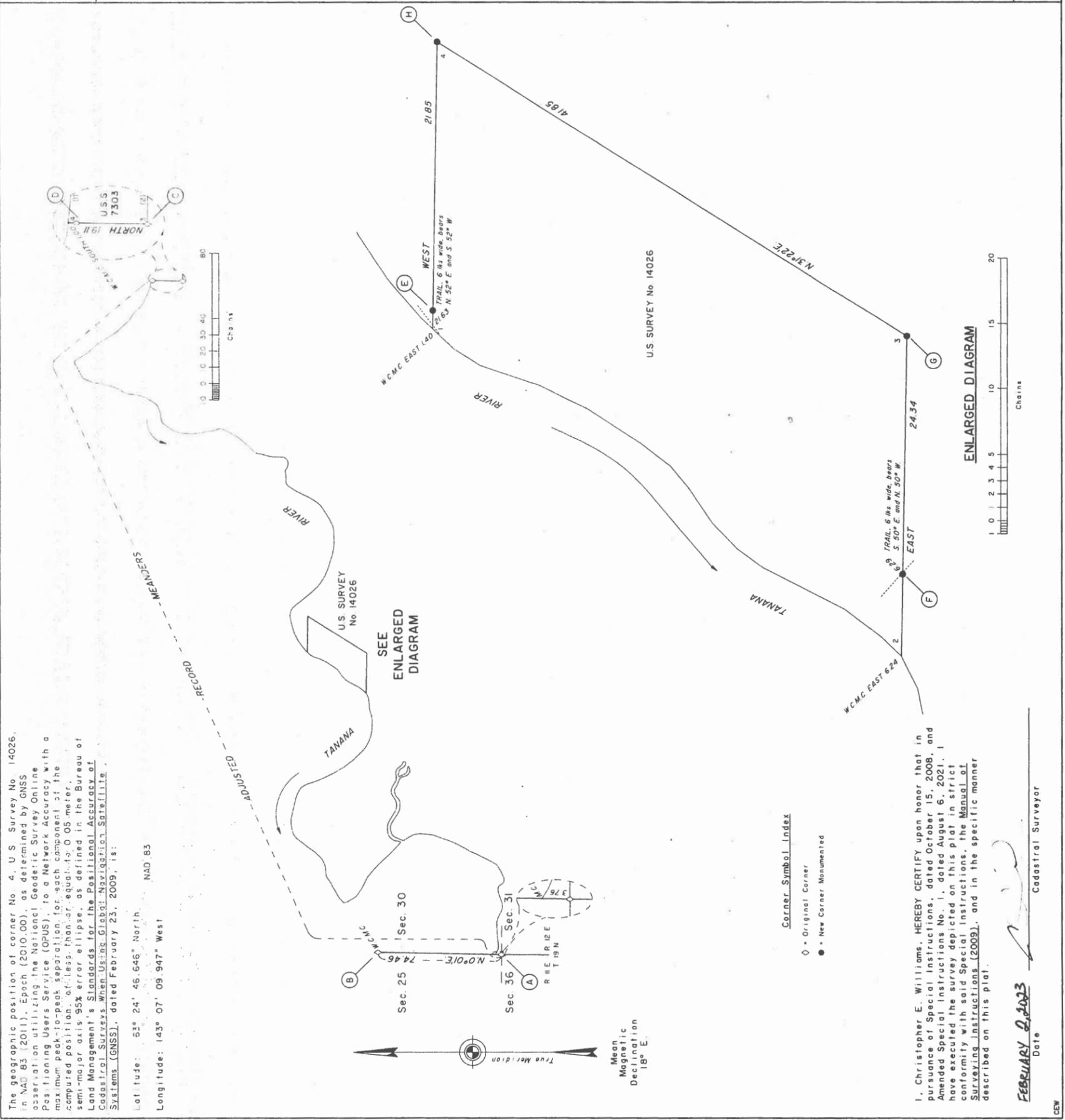
Area Surveyed: 80.00 Acres

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
Thomas B. Olosh February 16, 2023
 Date

Chief Cadastral Surveyor for Alaska



CEW

U.S. SURVEY No. 14026, ALASKA