

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### Division of Mining, Land and Water

#### NOTICE OF DECISION

#### RELEASE OF STATE INTEREST

#### State Selection File GS-5450

#### Partial Relinquishment of State Land Selection

*AS 38.05.035(a)(11), AS 38.05.035(e), ANILCA Sec. 906(f)(2), ALTAA Sec. 404(a)(4)(B)*

#### **I. Action**

Proposed relinquishment of State of Alaska (State) surface estate selection while retaining the State's subsurface selection on all minerals excluding sand and gravel in favor of Dingell Act allotment application AA-97814.

#### **II. Authority**

The 2019 John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act) (Pub. L. 116-9) provides that eligible Alaska Native Vietnam Veterans may request conveyance of Statehood Act land selections and that the State may voluntarily relinquish either fee title or surface estate interests to facilitate conveyance of the lands to the Native Veteran.

Lands were selected by the State under Sec. 6(b) of the Alaska Statehood Act (Pub. L. 85-508). The ability to relinquish Statehood Act selections was codified in Sec. 906(f)(2) of the Alaska National Interest Land Conservation Act (ANILCA) (Pub. L. 96-487). Sec. 404(a)(4)(B) of the Alaska Land Transfer Acceleration Act (ALTAA) (Pub. L. 108-452) provides that the State shall relinquish selections in excess of 125% of its remaining entitlement.

The provisions of Alaska Statute (AS) 38.05.035(a)(11) allow the Director of the Division of Mining, Land and Water (DMLW) to manage Statehood Entitlement selections. AS 38.05.035(e) provides authority for disposals of lands, resources, property, or interests in them. Article XIII of the Alaska Constitution provides guiding principles for maximum use of state lands and resources and authority for disposals of interests in lands and resources.

#### **III. Background**

The Dingell Act allows eligible Alaska Native Vietnam Veterans (applicants) to select up to 160 acres of federal land as an allotment. Available lands are those managed by the Bureau of Land Management (BLM), excluding lands withdrawn by Public Land Orders (PLOs), the Trans-Alaska Pipeline (TAPS) right-of-way, military withdrawals, Conservation System Units (CSU's) including the National Forests, and the National Petroleum Reserve-Alaska (NPR-A). Lands selected by the State or Alaska Native Claim Settlement Act (ANCSA) Corporations are classified as available

regardless of priority status. The State and ANCSA Corporations have the option to relinquish or deny relinquishment of selections for any reason within 60 days of receiving BLM's request.

#### **IV. Administrative Record**

The selection file for state selection GS-5450 constitutes the administrative record for this action.

#### **V. Location**

The allotment selection is located in DNR's Southeast Region, within Sections 9, 10, 15 and 16, Township 28 South, Range 59 East, Copper River Meridian.

*USGS Map Coverage:* Skagway B-2

*Platting Authority:* Municipality of Skagway

*Regional Corporation:* Sealaska Region, Inc.

*Federally Recognized Tribe:* Skagway Traditional Council (STC)

*Village Corporation:* Skagway Village

Please see Attachment A for a visual depiction of the allotment selection.

#### **VI. Legal Description**

Those lands including approximately 160 acres on the west banks of the Taiya Inlet, at the intersections of Sections 9, 10, 15 and 16, Township 28 South, Range 59 East, Copper River Meridian, Alaska.

#### **VII. Selection History**

- On Dec. 31, 1992, State selection GS-5450 was filed for all available lands within T. 28 S., R. 59 E., and T. 28 S., R. 60 E., C.R.M.
- Public notice of State selection was completed in Aug. 1993.
- In April 2006, BLM requested the State to reprioritize these lands amongst others, to a higher priority and inclusion in the Ownership Priority List (OPL) for conveyance to the State to facilitate easier management. In response to BLM's request, representatives for the State at the time responded with "The majority of these lands have been ranked as low priority dating back to 1993 and are part of those lands the State is considering for relinquishment. We have determined that it is not in the State's best interest to elevate these lands."
- On Aug. 4, 2023, Realty Services received a request from BLM to relinquish approximately 160 acres for a Dingell Act allotment serialized as AA-97814. The proposed allotment lands are located near Skagway within Secs. 9, 10, 15 and 16, T. 28 S., R. 59 E., C.R.M.
- The lands are currently selected under GS-5450 and are ranked as a priority 2.

#### **VIII. 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 decision. The proposed relinquishment documents were distributed to State agencies for review from September 27, 2023, through October 31, 2023. The intent of an agency review is to request comments from agencies that may be affected by the selection relinquishment. Agencies are given the opportunity to evaluate and comment on the relinquishment to determine if it is in the State's best interest to release the land selection and, if so, provide supporting reasons.

The following agencies or groups were included in the agency review:

- **DNR DMLW Southeast Regional Land Office:** No further comment from SERO. Thanks for the opportunity to review.
  - **DMLW Realty response:** Thank you for your comment.
- **DNR Division of Oil & Gas Leasing Section:**

The Division of Oil and Gas has no objection to relinquishing the State selection of the surface estate. I see Realty Services proposes to retain its selection on the mineral estates. I attached the Division's review of energy potential in GS 5450 from April 2023. The proposed Native Allotment lands in GS-5450 are located two miles west of Skagway, across the Taiya Inlet. The parcel does not lie within a sedimentary basin (Kirshner, 1988), and the surface bedrock is identified as Tertiary porphyritic granodiorite (Wilson and others, 2015). The lands have an igneous and metamorphic thermal maturity (Johnsson and Howell, 1996). No geothermal resources are indicated (Motyka and others, 1983). There is no expression of faulting and folding in the surface. There are not any oil source rocks or coal mapped near the area. Finding: No potential for oil or gas. No potential for geothermal.

References:

Kirschner, C.E., 1988, Map showing sedimentary basins of onshore and continental shelf areas, Alaska: U.S. Geological Survey Miscellaneous Investigations Series Map 1873, 1 sheet, scale 1:2,500,000. <http://www.dggs.dnr.state.ak.us/pubs/id/12926>

Johnsson, M.J., and Howell, D.G., eds., 1996, Thermal evolution of sedimentary basins in Alaska: U.S. Geological Survey Bulletin 2142, 131 p., 1 sheet, scale 1:2,500,000

Motyka, R.J., Moorman, M.A., and Liss, S.A., 1983, Geothermal resources of Alaska: Alaska Division of Geological & Geophysical Surveys Miscellaneous Publication 8, 1 sheet, scale 1:2,500,000. <http://doi.org/10.14509/671>

Wilson, F.H., Hults, C.P., Mull, C.G., and Karl, S.M., compilers, 2015, Geologic map of Alaska: U.S. Geological Survey Scientific Investigations Map 3340, pamphlet 196 p., 2 sheets, scale 1:1,584,000, <https://doi.org/10.3133/sim3340>

  - **DMLW Realty response:** Thank you for your comment. Realty intends to retain the State's selection on the subsurface estate, excluding sand and gravel. Under the Dingell Act, sand and gravel will be conveyed to the applicant.
- **Dept. of Transportation:** The Alaska Department of Transportation & Public Facilities has no comment at this time.
  - **DMLW Realty response:** Thank you for your comment.
- **DNR DMLW PAAD Section:**

Thank you for the opportunity to comment on this potential relinquishment. This parcel is crossed by accepted and codified RST 592 Chilkoot Trail. Within the RST file is a partial excerpt of "Chilkoot Trail, Historic Data Compiled by R. L. Spude", published by the Klondike Gold Rush National Historical Park (1980), attached. This document on page 30/42 (possibly page 177 of the original document) notes that the wagon road extended south of Dyea to the DKT Warf. The wharf and end of wagon road were at approximately (69.45525 N, -135.36607 W) according to the map on page 39/40 of the document. The warehouses associated with this dock and road were then rented to the military for barracks, warehouse location is not identified.

This trail is not in alignment with the 1973 DOT & PF Trails Inventory maps, map # 45 USGS Quad Skagway, Alaska-Canada and notated as trail #4. The 1973 DOT & PF Trail #4 describes Chilkoot Trail, From Skagway to Chilkoot Pass. This route follows the existing road system out of Skagway out the Klondike Highway, then out the Skagway-Dyea Road to the NPS Chilkoot Trailhead Then up the east side of the Taiya River. The 1973 DOT & PF Trail does not intersect the location of the original wagon roads through Historic Townsite on the west side of the Taiya River. According to the RST file and the NPS documents the historic Chilkoot Trail was on the west side of the Taiya River up to the historic crossing at West Creek (RST file).

A more general concern comes from reviewing the BLM Alaska Native Veterans Allotment Program of 2019 mapping system. It is noted that within T28S, R59E, CRM, five separate allotments have been selected running up the coast from the south edge of Section 33 to almost the mid-point of Section 10 without any kind of gap between them. These allotments if all are granted, in combination with USS 1560 will form a barricade of private and trust land along the coast for approximately 4.6 miles. Perhaps negotiations with the BLM could be made to place a pedestrian easement between these proposed allotments for public access to lands that may end up in State ownership. There were no waters to comment on within the parcel and the parcel is meandered from Taiya Inlet.

- **DMLW Realty response:** Allotments will be made subject to trails listed under DOT & PF 1973 Trail Inventory that pass through. Documentation in the form of "Chilkoot Trail, Historic Data Compiled by R. L. Spude" has been provided to BLM concerning the discrepancy of the location for RST 592. Public access to the lands behind is possible through a gap along the sections line between sections 21 and 28, as well as to the north is the allotment.
- **DNR DMLW Statewide Abatement of Impaired Land (SAIL) Section:** No comments. Thank you for the chance to review.
  - **DMLW Realty response:** Thank you for your comment.
- **DNR DGGs Geological Hazards Section:** The geologic hazards inventory for this allotment is similar to AA-97827; however, we would like to provide additional information regarding potential landslide hazards. The elevation data available for this allotment is not high quality. Google Earth says it's a 45 degree slope, but it looks less steep in Esri geospatial data. Our geologist doesn't see obvious landslide scars in Google Earth at the target property, but the bald patches of rock suggest rockfall is a definite possibility. Conditions at the allotment might be similar

to those along Skagway-Dyea Road, where bedrock is highly fractured/weathered and there are several areas of reoccurring rockfall.

Comment for AA-97827 follows: The proposed parcel is underlain by unit TKfgd - Ferebee Plutonic Complex, described as a multi-phase complex of hornblende-biotite granodiorite with lesser tonalite, quartz diorite, and quartz monzodiorite and a generally weak to moderate foliation (Gilbert and others, 1990). Interpretation of aerial photography suggests glacial till, unit Qd, in patches around the parcel, but not covering the parcel (March, 1982). Available 5-meter lidar does not show any obvious landslide features, but the hummocky pattern suggests typical downslope movement of material on steep terrain (Arctic DEM AK 5m Mosaics, <https://elevation.alaska.gov/>). Permafrost is absent from this area (Jorgenson and others, 2008). The parcel is located approximately 32 miles east of the mapped trace of the Dalton section of the Denali fault (active in the past 15,000 years), 91 miles inboard of the mapped trace of the Fairweather fault (active within the last 150 years), and 111 miles northeast of the mapped trace of the Yakutat fault (active within the last 150 years; Koehler, 2013). Recent noteworthy seismicity in the region includes the 5.5 M Skagway earthquake in 1907 and the 6.2 M Skagway/British Columbia earthquake in 2017 (National Centers for Environmental Information, <https://www.ncei.noaa.gov/maps/hazards>). Potential hazards associated with the Fairweather fault include local surface displacement, strong ground shaking, and earthquake-induced ground failure; ground failure is most likely to occur in water-saturated, fine-grained sediments and in unstable debris and sediments on steep slopes (Combellick and Long, 1983). The region's overall seismic hazard potential is moderate to high (Shumway, 2019). Standard best building practices should be used to accommodate the regional seismic hazard. This area has been subject to ash fall from erupting Cook Inlet and Alaska Peninsula volcanoes. Past ash events include Novarupta (Katmai) 1912 and multiple older tephra (Mulliken and others, 2018; Worden and others, 2018). Seven tsunamis have been reported in Skagway with a maximum height of almost 30 feet. The steepness of the parcel suggests that only its lowest portion would be affected by a tsunami wave (National Centers for Environmental Information, <https://www.ncei.noaa.gov/maps/hazards>). Radon, a naturally occurring cancer-causing radioactive gas, is modeled to be high in the vicinity of the parcel (<https://maps.dggs.alaska.gov/radon/>). Indoor radon tests around Skagway range from 1.1 to 39.9 pCi/L, with an average of 7.35 pCi/L. The Environmental Protection Agency's (EPA) Action Level for radon is 4 pCi/L; the EPA suggests homeowners consider radon mitigation for test results of 2–4 pCi/L. Any home, school, or building can have high levels of radon and should be tested.

- **DMLW Realty response:** Thank you for your comment. Realty intends to retain the State's selection on the subsurface estate, excluding sand and gravel. Under the Dingell Act, sand and gravel will be conveyed to the applicant. The applicant will be made aware of the radon concerns as well as seismicity, tsunami, and landslide potential. References are available upon request.
- **DNR DMLW Land Conveyances Section:** Thank you for the opportunity to review. LCS has no objection to the relinquishment.
  - **DMLW Realty response:** Thank you for your comment.

- **DNR DMLW Mining Section:** No objection.
  - DMLW Realty response: Thank you for your comment.
- **DNR DMLW Water Section:** The Water Section has reviewed this notice and has no concerns.
  - DMLW Realty response: Thank you for your comment.

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

- Department of Agriculture.
- Department of Fish & Game.
- DNR DMLW RADS Section

## **IX. Public Comment**

Public notice of the proposed relinquishment was conducted from September 27, 2023, to October. 31, 2023. The notice was posted to the State of Alaska Online Public Notice System. Copies of the notice were sent to the applicant, the Skagway and Haines Post Offices, Skagway Public Library, Haines Borough Public Library, Haines Borough Manager, Central Council of the Tlingit and Haida Indian Tribes of Alaska, Skagway Traditional Council, Bureau of Land Management (BLM), BLM Glenn-Allen Field Office, Bureau of Indian Affairs (BIA) Regional Realty Office and Title Services Center, Chilkoot Indian Association, Chilkat Indian Association, Skagway Village, Klukwan Incorporated, U.S. Forest Service Juneau Ranger District, Municipality of Skagway Borough, Alaska Department of Natural Resources Commissioners Office, Alaska State legislature, and adjacent landowners.

No public comments were received during the public comment period.

## **X. Discussion and Alternatives**

The State is supportive of the federal Dingell Act Native Veteran allotment program and will relinquish selections when it is in the State's best interests. In addition, the State's land selections are currently over-selected, under federal law the State is required to relinquish selections in excess of 125% of the remaining entitlement. To reduce over-selection, the State will consider relinquishing surface estate interests in lower-priority state entitlement lands to facilitate conveyance to Dingell Act applicants.

During the most recent State selection reprioritization, the lands in this township were ranked a priority 2 due to their proximity to Skagway, potential logging opportunities, and reduced management costs. After discussions with the Division of Forestry, it appears that the general area is neither economically conducive to logging nor valid for sequestration under the State's new carbon credit program. When the steepness of the slope, potential for landslides, and DGGS recommendation to avoid development of lands below 30 feet in elevation are considered, the overall development potential of the parcel is greatly reduced. Prior to 1993, the lands were ranked a lower priority but at BLM's request the priority ranking was increased.

Moderate to high levels of seismicity in the area combined with the steep slope of the selection and high rainfall could present substantial landslide risk to any development in the area. The likelihood of increased levels of radon presents additional potential risk.

There are currently five Dingell Act Native Allotment applications in this township along the west bank of the Taiya Inlet. The selections abut one another along Taiya Inlet and could potentially impact access to public or private lands behind the parcels.

The surrounding lands are owned by the State of Alaska, the Municipality of Skagway, the Mental Health Trust, the U.S. Forest Service, or have been patented to private landowners by the BLM. Skagway occupies sections 1, 2, 11, 12, and 14 in this township. The State relinquishing the surface estate of the parcel to facilitate conveyance to the applicant is keeping in character with the surrounding mixed private and public land ownership pattern. Relinquishment also supports the success of the Dingell Act Allotment program and provides an opportunity for a Native Vietnam War veteran to obtain an allotment that was denied due to circumstances related to military service.

The parcel is crossed by accepted and codified RST 592 Chilkoot Trail. This trail has its location improperly recorded in the DOT 1973 Trail Inventory. BLM has been provided with the correct trail location and the allotment will be made subject to RST 592.

There is public access to lands behind this allotment immediately to the north and approximately two miles to the south along the section line between sections 21 and 28.

The State considered the following alternatives in adjudicating the request for relinquishment:

Alternative 1: Relinquish the State's land selection in full (both surface and subsurface).

Alternative 2: Maintain State land selection.

Alternative 3: Relinquish the State's surface estate selection and maintain the State's subsurface selection on all minerals excluding sand and gravel.

## **XI. Decision**

This decision considers all public and agency review comments received. After considering the facts and input described above, the Department finds it is in the best interest of the State to choose Alternative 3 and relinquish the above-described state selection of the surface estate while maintaining the subsurface selection to facilitate conveyance of Dingell act allotment application AA-97814.

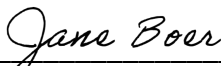
Recommended by:

Walter Zimmerman  
Walter "Z" Zimmerman

12/08/2023  
Date of Signature


Natural Resource Specialist 2  
Realty Services Section  
Division of Mining, Land and Water  
Department of Natural Resources

Approved by:

  
\_\_\_\_\_  
Jane Boer  
Realty Services Section Chief  
Division of Mining, Land and Water  
Department of Natural Resources

12/11/2023  
\_\_\_\_\_  
Date of Signature

Approved by:

  
\_\_\_\_\_  
Commissioner Boyle  
Department of Natural Resources

4/11/2024  
\_\_\_\_\_  
Date of Signature

### Reconsideration

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may request reconsideration to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any request for reconsideration must be received by the Commissioner's Office within twenty (20) calendar days after issuance of the decision under 11 AAC 02.040. The Commissioner may order or deny a request for reconsideration within thirty (30) calendar days after issuance of the decision. If the Commissioner takes no action on a request for reconsideration within thirty (30) days after issuance of the decision, the request for reconsideration is considered denied. The Commissioner's decision on reconsideration, other than a remand decision, is a final administrative order and decision of the department. An eligible person must first request reconsideration to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Reconsideration/appeal may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918 or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Reconsideration must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160(a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.