

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

**Proposed Reconveyance of an
Alaska Native Allotment in the Kenai Peninsula Borough**

PRELIMINARY DECISION

**ADL 231552
BLM A 053444**

PUBLIC COMMENT PERIOD ENDS 3:00 P.M., TUESDAY, OCTOBER 22, 2024

I. Proposed Action

Preliminary Decision: Nester Chuitt Native Allotment – ADL 231552

Attachment A: Vicinity Map

Attachment B: Public Notice

Attachment C: U.S. Survey 3964

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 2, U.S. Survey No. 3964, containing 149.24 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. A 053444 claimed by Nester Chuitt (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 38.05.035(b)(9) Powers and Duties of the Director and the settlement authority of the Attorney General in accordance with *Aguilar*.

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III. Administrative Record

The DNR case file ADL 231552 and BLM case file A 053444, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Kenai Area Plan for State Lands (KAP, adopted January 7, 2000) and associated land classification files; and
- DNR case file MH 61.

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(b)(9) Powers 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 Southcentral Region and the Kenai Peninsula Borough, the subject parcel is approximately nine miles northwest of Tyonek and within Sections 29, 30, 31, and 32, Township 13 North, Range 11 West, Seward Meridian. The subject parcel consists of 149.24 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: Tyonek A-4

Borough/Municipality: Kenai Peninsula Borough

Native Councils and Corporations: The subject parcel is within the boundaries of Cook Inlet Region, Incorporated. Tyonek is within 25 miles of this proposed action. Notice will be sent to the Tyonek Native Corporation, the Native Village of Tyonek, and Cook Inlet Tribal Council, Incorporated.

VI. Legal Description

Lot 2, U.S. Survey No. 3964, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on September 15, 1964, containing 149.24 acres, more or less.

Situated in the Anchorage Recording District.

VII. Title

The State received title to the land on February 10, 1961, under a Tentative Approval. Patent 50-67-0289 was issued on November 30, 1966. The State file is MH 61 (BLM 052934). Title Report No. 20825 was issued on June 8, 2020. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in Patent 50-67-0289 dated November 30, 1966. The State of Alaska only holds title to the land estate. The mineral estate was deeded to the Mental Health Trust through Mineral Estate Quitclaim Deed No. 8000115, dated November 3, 2017. 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 MH 61 (BLM 052934) for Township 13 North, Range 11 West, Seward Meridian on August 29, 1960.

Restrictions: Any reservations in the patent the State received from BLM will merge with the title once the land is conveyed back to the United States.

VIII. Background

The following events for this case are:

- Nester Chuitt began his use and occupancy of the subject lands in November of 1934 according to documentation in DNR case file ADL 231552.
- The Native allotment application was signed on October 25, 1960, and filed on November 7, 1960.
- The State filed selection application MH 61 for Township 13 North, Range 11 West, Seward Meridian on August 29, 1960, and received title by Tentative Approval on February 10, 1961, and Patent on November 30, 1966.
- BLM surveyed the 149.24-acre parcel and issued plat U.S. Survey No. 3964 in 1961.
- BLM determined Native allotment application A 053444 valid on December 18, 2006.
- The State received a request for reconveyance on December 19, 2006.

IX. Planning, Classification, and Mineral Orders

1. *Planning:* The subject parcel is located within the Region 11 – West Side of Cook Inlet North of Redoubt Bay of the Kenai Area Plan adopted on January 7, 2000. The parcel is listed as Mental Health Land and was not given a designation. Therefore, the parcel is unclassified.
2. *Land Use Classification:* The State did not classify the subject parcel as the Kenai Area Plan does not apply to designated Mental Health Trust Lands. As this reconveyance falls under AS 38.05.035(b)(9) Powers and Duties of the Director, and 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 in the Kenai Peninsula Borough; therefore, a traditional use finding is not 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.**

Submission of 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 can be accessed over land.

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

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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.

Lone Creek and an unnamed tributary meander through the west corner of the subject parcel. These are anadromous water and therefore public water, requiring a 50-foot public access easement from ordinary high water (OHW) per AS 38.05.127 Access To Navigable or Public Water.

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-foot 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 section lines affecting this parcel are protracted section lines which have not been field surveyed or monumented on the ground. Therefore, the exact location of the section lines and attached section line easements are unknown. These section line easements cannot be used until the section lines and said easements have been surveyed and monumented by a licensed Professional Alaska Surveyor. If the section line is on or bordering State land the survey must be accomplished under instructions from the State of Alaska DNR. The estimated location of these easements is shown on *Attachment A: Vicinity Map*.

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) A right-of-way easement fifty (50) feet in width along each side of the unsurveyed section lines running east-west and common to Sections 29 and 32, and Sections 30 and 31, Township 13 North, Range 11 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;
- (b) A right-of-way easement fifty (50) feet in width along each side of the unsurveyed section lines running north-south and common to Sections 29 and 30, and Sections 31 and 32, Township 13 North, Range 11 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) An easement fifty (50) feet in width for public access, upland, abutting, and running in common with the ordinary high-water mark along each side of Lone Creek and its unnamed tributary within Lot 2, U.S. Survey No. 3964 in Sections 29 and 30, Township 13 North, Range 11 West, Seward Meridian, Alaska, pursuant to AS 38.05.127 Access to Navigable

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and Public Water, 11 AAC 51.045 Easements To and Along Navigable and Public Water; and

- (d) All other valid existing rights, including reservations, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions reservations, notes of the plat, and restrictions of record, if any.

XII. Reservation of the Mineral Estate

The mineral estate is no longer owned by the State of Alaska and therefore, cannot be reconveyed. The State will not 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 3964*.

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 March 5, 2024, to March 28, 2024. 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 Environmental Conservation, and Alaska Department of Transportation and Public Facilities.

DNR DMLW LCS response: Thank you for your review.

Comments from DNR Division of Oil and Gas: DOG has no objection. There have been oil and gas leases on the parcel in the past. The mineral estate has been deeded to Mental Health Trust.

DNR DMLW LCS response: Thank you for the information.

Comments from Department of Fish and Game: ADFG has no objection and has no structures or interests created on the parcel. However, Lone Creek contains important fish habitat that the applicant should be made aware of.

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Lone Creek (AWC # 247-20-10010-2020) supports all 5 species of salmon, including spawning Chinook salmon. ADFG has been counting salmon in the Chuitt River system, which Lone Creek feeds in to, since 1979. Chinook salmon numbers have plummeted and were at record lows last season. It is important for adjacent landowners to understand how important this habitat is for spawning Chinook salmon. Any work within the ordinary high-water mark of the stream will require a permit from ADFG's Habitat Section. Permit information can be found on the ADFG website or by contacting the office in Soldotna at dfg.hab.infosxq@alaska.gov or 907-714-2475. ADFG also supports the reservation of section line easements and public access easements as noted on the map.

DNR DMLW LCS response: Thank you for the information. The applicant will be made aware of ADFG's concerns and permit requirements through this decision. Section line and public access easements will be reserved as described in this decision.

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
- DNR State Historical Preservation Office
- US Fish and Wildlife Service
- Alaska Mental Health Trust Authority

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.

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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, OCTOBER 22, 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.

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. Chuit's Native allotment application to be valid on December 18, 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. 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.



September 19, 2024

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

Date



September 19, 2024

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

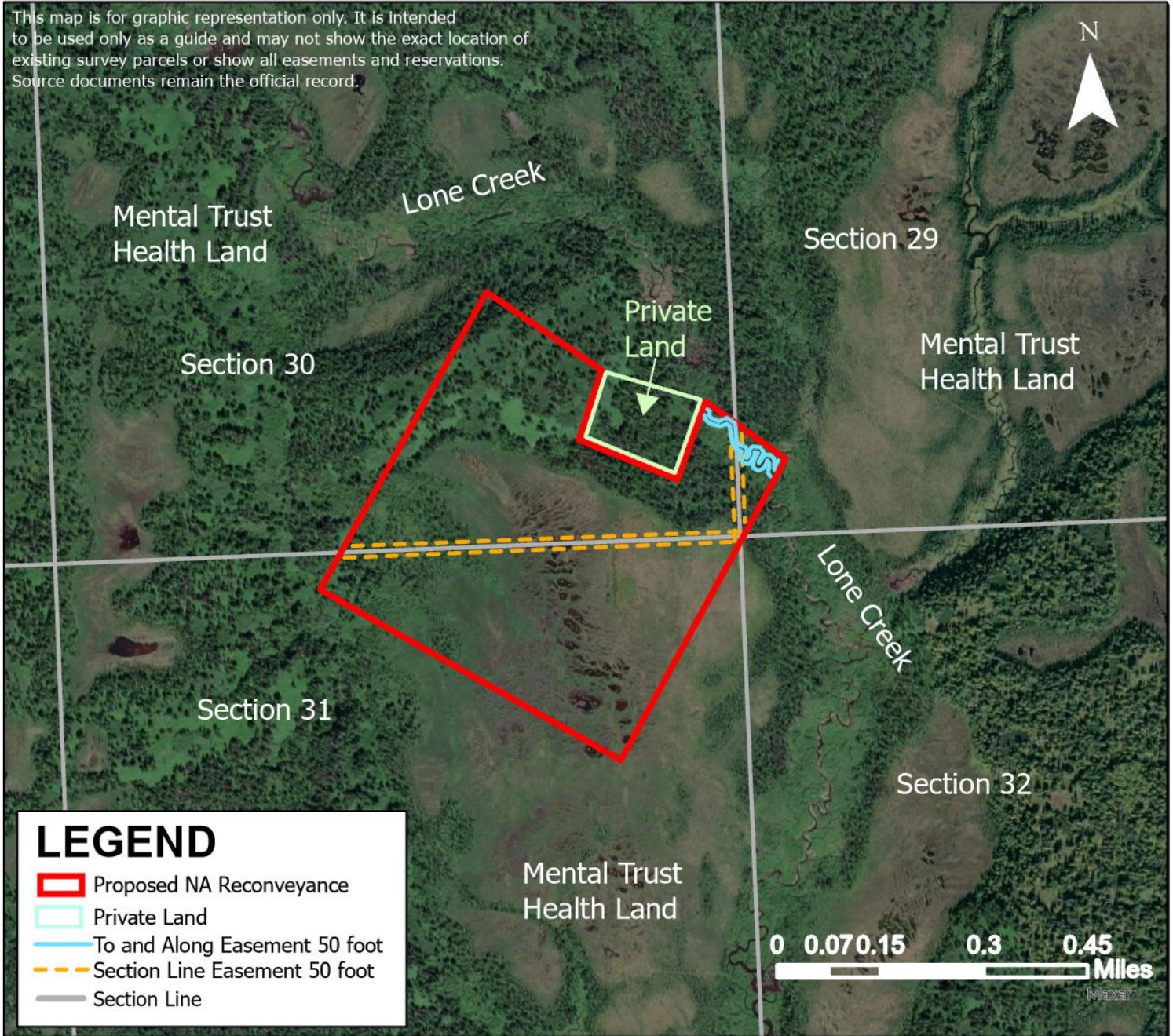
Date



Attachment A: Vicinity Map

Nester Chuitt Native Allotment, ADL 231552 / BLM A 053444

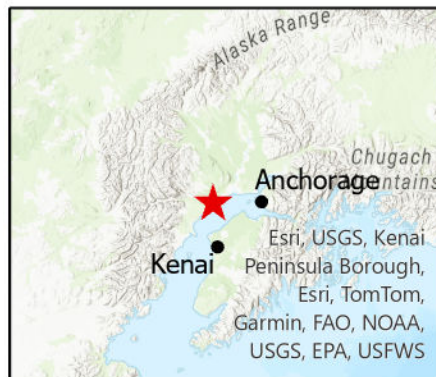
This map is for graphic representation only. It is intended to be used only as a guide and may not show the exact location of existing survey parcels or show all easements and reservations. Source documents remain the official record.



Sections 29, 30, 31, and 32, Township 13 North, Range 11 West, Seward Meridian

USGS Quad 1:63,360 Tyonek A-4

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



**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 231552
AS 38.05.035(b)(9)**

COMMENT PERIOD ENDS 3:00 P.M., TUESDAY, OCTOBER 22, 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 9 miles northwest of Tyonek. The legal description for the parcel is Lot 2, U.S. Survey No. 3964, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on September 15, 1964, containing 149.24 acres, more or less.

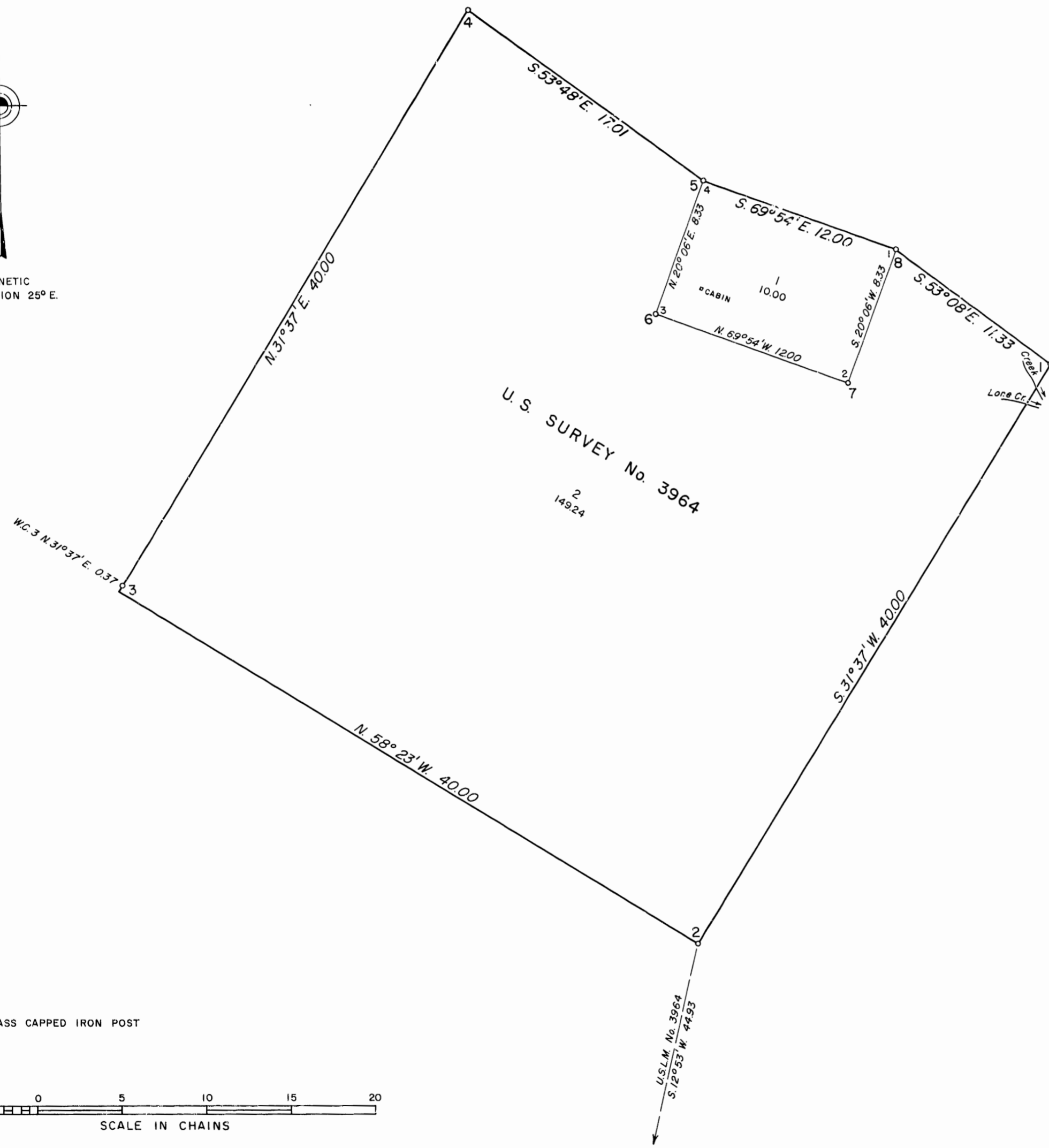
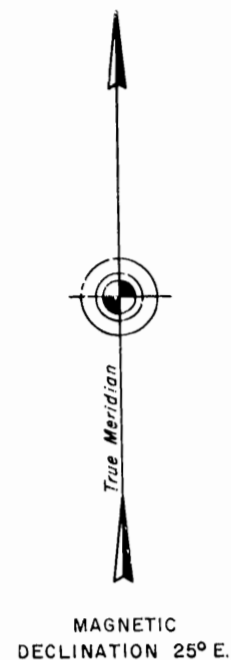
To obtain the notice, Preliminary Decision (PD), or instructions on submitting comment, go to <http://dnr.alaska.gov/mlw/landsales/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 8:30 a.m. and 4:00 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 3:00 p.m., Tuesday, October 15, 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, October 22, 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.

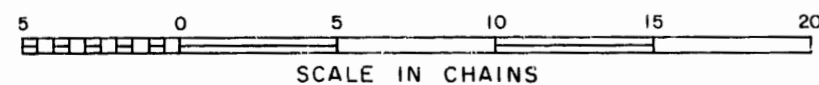
If no significant change is required, the PD, including any minor changes and a summary of comments and responses, will be issued as the FFD, without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

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

Attachment C



o BRASS CAPPED IRON POST



U.S. SURVEY NO. 3964, ALASKA

EMBRACING LOTS 1 AND 2
 SITUATED
 NEAR LONE CREEK
 APPROXIMATELY FIVE MILES SOUTHERLY OF FELT LAKE,
 BELUGA RIVER AREA
 AND
 DESIGNATION OF U.S. LOCATION MONUMENT NO. 3964

GEOGRAPHIC POSITION CORNER NO. 2, LOT 2
 LATITUDE 61°10'36 37" N., LONGITUDE 151°18'22.88" W.

AREA: 159.24 ACRES

SURVEYED BY:
 ORVILLE N. EGGEN, SUPERVISORY CADASTRAL SURVEYOR
 SEPTEMBER 20 TO 23, 1962

Under Special Instructions
 Dated August 29, 1961, and
 Approved September 11, 1961

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Washington, D. C. September 15, 1964

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Chief, Division of Engineering

Attachment C