

**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 228604
BLM AA000311**

PUBLIC COMMENT PERIOD ENDS 3:00 P.M., THURSDAY, AUGUST 21, 2025

I. Proposed Action

Preliminary Decision: Archie Wheeler Native Allotment – ADL 228604

Attachment A: Vicinity Map

Attachment B: Public Notice

Attachment C: U.S. Survey 11574

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. 11574, containing 159.97 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. AA000311 claimed by Archie Wheeler (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) Power 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 228604 and BLM case file AA000311 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 GS 1218.

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 on Kalgin Island in Cook Inlet, approximately 20 miles west of the Kenai Peninsula and within Sections 34 and 35, Township 5 North, Range 15 West, Seward Meridian. The subject parcel consists of 159.97 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: Kenai B-6

Borough/Municipality: Kenai Peninsula Borough

Native Councils and Corporations: The subject parcel is within the boundaries of Cook Inlet Region, Incorporated. Kenai and Salamatof are within 25 miles of this proposed action. Notice will be sent to the Cook Inlet Tribal Council Incorporated, Kenai Natives Association Incorporated, Salamatof Native Association Incorporated, Village of Salamatof, and Kenaitze Indian Tribe.

VI. Legal Description

Lot 2, U.S. Survey No. 11574, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on September 27, 1995, and officially filed on October 12, 1995, containing 159.97 acres, more or less.

Situated in the Anchorage Recording District.

VII. Title

The State received title to the land on September 18, 1963, under Tentative Approval. The State file is GS 1218 (BLM A 058734). Title Report No. 23624 was issued on June 4, 2025. No third-party interests have been identified. The parcel is subject to the reservations, easements, and exceptions contained in the Tentative Approval dated September 18, 1963.

Acquisition: The State filed selection application GS 1218 (BLM A 058734) for Township 5 North, Range 15 West, Seward River Meridian on February 18, 1963.

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Restrictions: Any reservations in the Tentative Approval 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:

- Archie Wheeler began his use and occupancy of the subject lands in May of 1957 according to documentation in DNR case file ADL 228604.
- The Native allotment application was signed on April 15, 1966.
- The State filed selection application GS 1218 for Township 5 North, Range 15 West, Seward Meridian on February 18, 1963, and received title by Tentative Approval on September 18, 1963.
- BLM determined Native allotment application AA000311, valid on April 17, 1989.
- The State received a request for reconveyance on April 17, 1989.
- BLM surveyed the 159.97-acre parcel and issued U.S. Survey No. 11574 in 1995.

IX. Planning, Classification, and Mineral Orders

1. *Planning:* The subject parcel is located within the Region 11H, Redoubt Bay and Kalgin Island, in Unit 120C, per the Kenai Area Plan adopted on January 7, 2000. The plan designates the subject parcel as General Use. This designation converts to the classification of Resource Management Land.
2. *Land Use Classification:* The State classified the subject parcel as Resource Management Land under Classification Order CL SC-99-002 based on KAP, adopted January 7, 2000. 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 Kenai Peninsula Borough; therefore, a traditional use finding is unnecessary. However, information on traditional use is welcome during the public comment period and if this proposal is approved, LCS will address the information received in a subsequent FFD. See the **Section XVI. Submittal of Public Comments** at the end of this document and *Attachment 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 accessed by boat via Cook Inlet or plane.

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

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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 Cook Inlet, which is navigable. A review of the subject parcel, the surrounding area, and land ownership shows that there is state land on one side of the parcel, and private land on the other side. This private parcel was originally state land and was made subject to a 50-foot public access easement from ordinary high water (OHW) as required per AS 38.05.127 Access To Navigable or Public Water. Therefore, a 50-foot public access easement from ordinary high water (OHW) 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 Cook Inlet.

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 line common to Sections 34 and 35, Township 5 North, Range 15 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) An easement fifty (50) feet in width for public access, upland, abutting, and running in common with the ordinary high-water mark along Cook Inlet within Lot 2, U.S. Survey No. 11574, Sections 34 and 35, Township 5 North, Range 15 West, Seward Meridian, Alaska, pursuant to AS 38.05.127 Access to Navigable and Public Water, 11 AAC 51.045 Easements To and Along Navigable and Public Water; and
- (c) 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.

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XII. Reservation of the Mineral Estate

The Division of Oil and Gas (DOG) and DMLW have determined that it is in the State's best interest to retain the mineral estate. The mineral estate will be retained pursuant to AS 38.05.035(e) Powers and Duties of the Director. 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 11574*.

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 July 2, 2024, to August 1, 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 Geological and Geophysical Surveys, DNR Division of Parks and Outdoor Recreation, Alaska Department of Fish and Game, and Alaska Department of Environmental Conservation.

DNR DMLW LCS response: Thank you for your review of this reconveyance.

Comments from DNR Division of Oil and Gas: DOG has no objection. This proposed reconveyance is within Lease Sale Tract (LST) CI0144. DOG requests reservation of the mineral estate due to oil and gas potential.

DNR DMLW LCS response: Thank you for the information. The mineral estate will 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 State Historical Preservation Office
- Alaska Department of Transportation and Public Facilities
- US Fish and Wildlife Service

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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., THURSDAY, AUGUST 21, 2025**

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

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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. Wheeler's Native allotment application to be valid on April 17, 1989. 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.

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.



July 15, 2025

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

Date



July 15, 2025

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

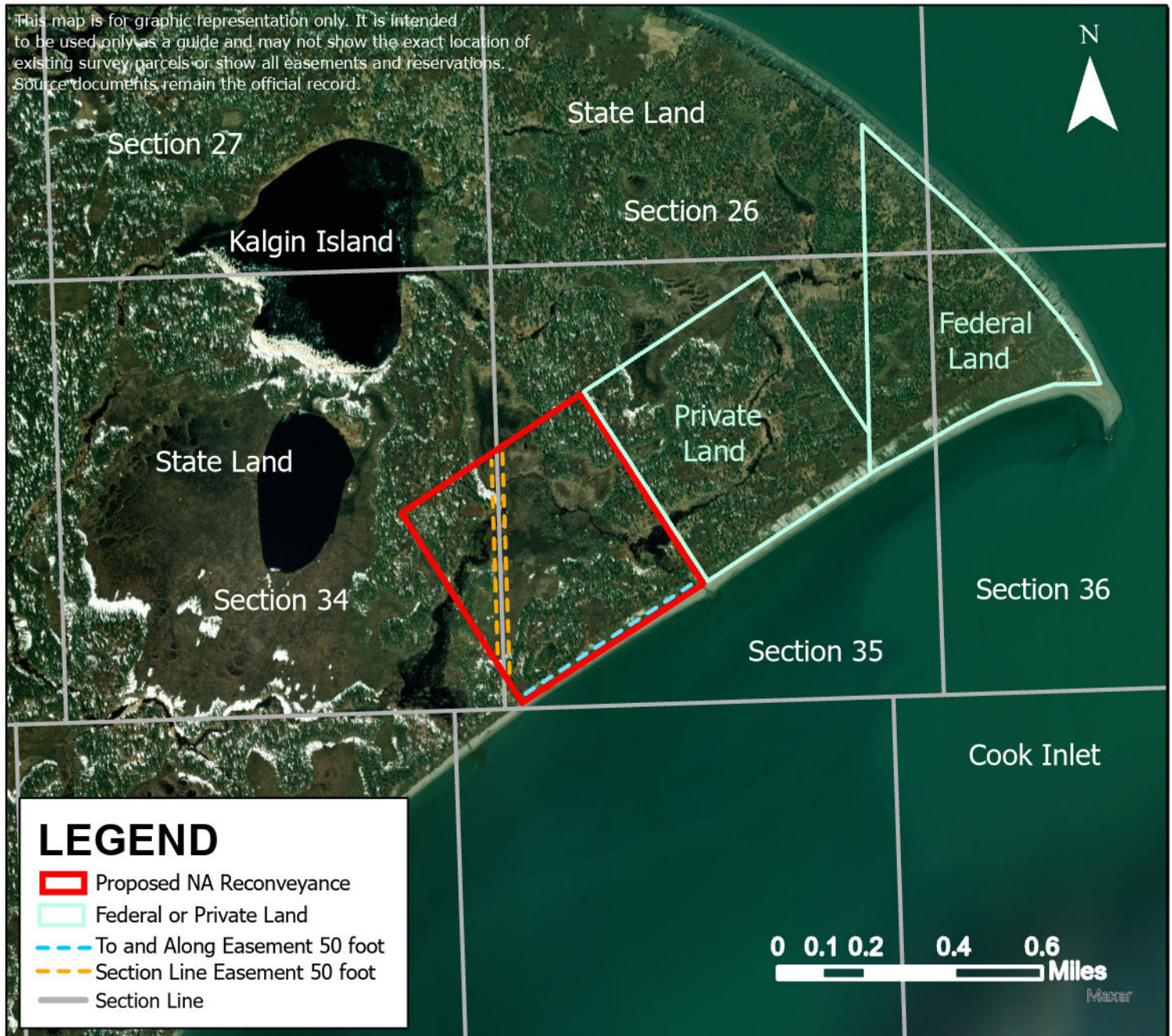
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Attachment A: Vicinity Map

Archie Wheeler Native Allotment, ADL 228604 / BLM AA000311

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.



Section 34 and 35, Township 5 North, Range 15 West, Seward Meridian

USGS Quad 1:63,360 Kenai B-6

For more information contact:

Kathryn Young

Department of Natural Resources

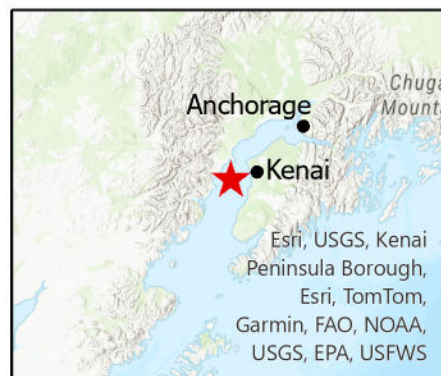
Division of Mining, Land and Water

Land Conveyance Section

Phone: 907-269-8574

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**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 228604
AS 38.05.035(b)(9)**

COMMENT PERIOD ENDS 3:00 P.M., THURSDAY, AUGUST 21, 2025

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 on Kalgin Island in Cook Inlet, approximately 20 miles west of the Kenai Peninsula. The legal description for the parcel is Lot 2, U.S. Survey No. 11574, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on September 27, 1995, and officially filed on October 12, 1995, containing 159.97 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., Thursday, August 14, 2025.

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., Thursday, August 21, 2025.** 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