

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

PRELIMINARY DECISION
ADL 421142

Proposed Noncompetitive Sale to Public and Charitable Applicant
AS 38.05.810(e), and AS 38.05.810(a)(3)

RELATED ACTIONS

Proposed Mineral Order (Closing) - AS 38.05.185 and AS 38.05.300

PUBLIC COMMENT PERIOD ENDS 5:00 PM, FEBRUARY 24, 2023

I. Proposed Actions

Preliminary Decision: Approval of Noncompetitive Public and Charitable Use Sale ADL 421142

Attachment A: Vicinity Map

Attachment B: Public Notice

Public is invited to comment on the proposed related action:

Draft Mineral Order (Closing) MO 1233

Primary Proposed Action, Noncompetitive Sale: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has received applications to purchase state land pursuant to Alaska Statute (AS) 38.05.810(a)(3), and AS 38.05.810(e) *Public and Charitable Use*. This proposed decision will allow the parcel, ADL 421142, to be sold through a noncompetitive sale to the applicant, Golden Valley Electric Association (GVEA) pursuant to AS 38.05.810(e). DMLW LCS is proposing to waive the reversionary clause pursuant to AS 38.05.810(g). The parcel is located approximately 6 miles north of Salcha on the corner of Johnson Road and the Richardson Highway near milepost 332 and is approximately 5.96 acres in size. The legal description for the parcel is Alaska State Land Survey Number (ASLS) 80-63, recorded in the Fairbanks Recording District on January 22, 1981, as plat number 81-11, excluding the Richardson Highway (F-062-4(11)), and excluding Johnson Rd (A-80231), containing 5.96 acres, more or less.

Proposed Related Action: This related action will be developed separately; however, public notice is being conducted concurrently.

Mineral Order (Closing): DNR proposes to close the parcel to new mineral entry. There are no current mining claims located within the subject parcel. Refer to **Section VIII. Planning, Classification, and Mineral Orders** for more information on this proposed related action.

This related action will be developed separately. However, approval of the proposed actions is dependent upon one another in that one action will not proceed without the approval of all actions.

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

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 2 of 14

proposal. Public notice for all actions is conducted concurrently and will include the PD for the noncompetitive sale (ADL 421142) and draft Mineral Order (Closing) 1233.

See **Section VII. 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, LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. Authority

DNR has the authority under *AS 38.05.810(a)(3) Public and Charitable Use* to sell or dispose of state land to a tax-exempt, nonprofit corporation, association, club, or society organized and operated for the management of a cemetery or a solid waste or other public facility for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the applicant, and of the terms of the grant under which the land was acquired by the state. *AS 38.05.810(a)* states, "The commissioner shall ensure, by regulation, deed restriction, covenant, or otherwise, that disposals of land under this subsection serve a public purpose and are in the public interest."

DNR has the authority under *AS 38.05.810(e)* to negotiate a lease, sale, or otherwise dispose of state land at appraised fair market value with a licensed public utility or a licensed common carrier as determined by the director with the approval of the commissioner if the utility or carrier reasonably requires the land for the conduct of its business under its license.

For the related action, *AS 38.05.300 Classification of Land* and *AS 38.05.185 Generally* allow for mineral orders.

AS 38.05.810(g) states, "The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest."

AS 38.05.035(e) Powers and Duties of the Director gives DNR the authority to sell state land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the state. *Article VIII, Section 1*, of the Alaska Constitution states, "It is the policy of the state to encourage settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

III. Administrative Record

The project file for ADL 421142 constitutes the administrative records for this proposed action. Also incorporated by reference are:

- Eastern Tanana Area Plan (ETAP, adopted August 28, 2015) and associated land classification files;
- Land Classification Order NC-10-004D10 adopted April 24, 2019; and
- DNR case files: ADL 22462, ADL 412616, ADL 22692, and GS 546.

Also incorporated by reference are additional files and documents listed throughout this decision.

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 3 of 14

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 determining the following: (1) if the applicant and the subject parcel themselves qualify, (2) if it is in the state's best interest to dispose of the subject parcel, (3) if it is in the state's best interest to dispose of the subject parcel to the applicant, and (4) if it is in the state's best interest to waive the reversionary clause. The scope of this decision does not include the control of post-patent land use, and LCS does not intend to impose restrictions for this purpose by waiving the reversionary clause. Restrictions regarding land use will be handled by the local zoning authority, if any.

The proposed related action will be issued concurrently with the FFD. This action is described in more detail in the **Section VIII. Planning, Classification, and Mineral Orders**.

V. Description

- a. Location: The subject parcel is located within DNR's Northern Region, in the Fairbanks North Star Borough, approximately 6 miles north of Salcha on the corner of Johnson Road and the Richardson Highway near milepost 332. See *Attachment A: Vicinity Map*, for a depiction of the subject area.

USGS Map Coverage: Fairbanks C-1

Platting Authority: Fairbanks North Star Borough

Regional Corporation: Doyon, Limited

Federally Recognized Tribe: none

Village Corporation: none

- b. Legal Description: Alaska State Land Survey Number (ASLS) 80-63, recorded in the Fairbanks Recording District on January 22, 1981, as plat number 81-11, excluding the Richardson Highway (F-062-4(11)), and excluding Johnson Rd (A-80231), containing 5.96 acres, more or less.

The legal description of the proposed mineral order is the same as the subject parcel.

The parcel will need to be re-surveyed prior to disposal. See **Section IX. Survey** for additional information.

VI. Title

Title Report No. 22766, current as of November 25, 2022, indicates that the State of Alaska holds fee title to the land and mineral estate under Patent 50-64-0235, dated June 16, 1964. The applicable State case file is GS 546. The parcel is subject to the reservations, easements, and exceptions contained in the federal patent.

State Reservation of Title:

Retention of and Access to Mineral Estate: In accordance with *Section 6(i)* of the *Alaska Statehood Act* and *AS 38.05.125 Reservation*, the state retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper, silver, etc.) and leasable minerals (such as oil, gas, coal, etc.)

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 4 of 14

The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing, and producing these reserved mineral resources. Access reserved to these retained interests is superior to any, and all land uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, *AS 38.05.130 Damages and Posting of Bond* also provides that the surface owner will be compensated for damages resulting from mineral exploration and development. For more information, see **Section VIII. Planning, Classification, and Mineral Orders.**

Navigable Waters: Per *AS 38.05.126 (b) Navigable and Public Waters*, "...the state has full power and control of all of the navigable or public water of the state, both meandered and not meandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the state's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made, and access will be reserved per *AS 38.05.127 Access to and Along Public and Navigable Water*. For more information, see **Section X. Access, Including Access to and Along Public and Navigable Water.**

The Bureau of Land Management has made navigability determination for waters within the affected townships for title purposes; however, there are no waters determined navigable within the parcel.

Native interest: The subject lot is within the boundaries of Doyon, Limited. There are no Native interests identified within this parcel.

Other Conflicts or Pending Third-Party Interest: Currently, there are no known conflicts or pending interests. If conflicts or third-party interests are discovered during this public notice period, they will be discussed in the FFD.

VII. Background and Discussion

Background

The State received patent for the parcel on June 16, 1964. GVEA and DNR entered into a 55-year long-term lease agreement on September 23, 1964, pursuant to *AS 38.05.315(f) Public and Charitable Use*, serialized as ADL 22462. GVEA started construction of the substation in 1964 and then upgraded the 2,600-gallon transformer in 1976. In 2011, GVEA converted an old control shed into a communication building with antennas that provide communication back to GVEA headquarters in Fairbanks.

GVEA continues to rely on this site, known as the Johnson Road Substation, to deliver power in Interior Alaska. On February 28, 2019, GVEA applied to purchase the parcel under both *AS 38.05.810(e)* and *AS 38.05.810(a)(3)*. A two-year lease extension was issued on September 3, 2019, prior to the lease expiration date of September 22, 2019. The extension's purpose was to provide additional time to consider whether to renew the lease or convey the parcel as requested by GVEA. On January 24, 2020, GVEA sent a letter stating their land sale preference

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 5 of 14

is to be considered under *AS 38.05.810(a)(3)* for less than fair market value. On August 26, 2021, the lease was renewed under a 3-year Early Entry Authorization to complete survey and appraisal requirements under *AS 38.05.810(f) Public and Charitable Use*. During the lease adjudication period, DNR DMLW underwent a reorganization, and LCS developed the Noncompetitive Land Conveyance Unit. On January 27, 2022, LCS requested that GVEA provide updated public and charitable applications to be considered under *AS 38.05.810(e)* for fair market value and under *AS 38.05.810(a)(3)* for less than fair market value. On March 8, 2022, LCS considered the applications complete.

Discussion

GVEA has requested that this land sale application be considered under *AS 38.05.810(a)(3)* or *AS 38.05.810(e)* with preference for consideration under *AS 38.05.810(a)(3)*.

LCS considered GVEA's request under both Alaska Statutes. According to the criteria set forth in the statute, the proposed land sale application is being considered and adjudicated under *AS 38.05.810(e)*.

As this request was considered, it has been determined that GVEA does not qualify under *AS 38.05.810(a)(3)* because the Johnson Road utility substation is not considered a public facility, as stated in *AS 38.05.810(a)(3)* "...[o]perated for the management of other public facility". GVEA's utility substation provides electric power to those in the local community who pay for the service, but it does not provide public access and public benefits as set forth within *AS 38.05.810(a)(3)*, such as a youth center or an emergency services center that would serve the entire community, regardless of ability to pay.

GVEA is a licensed public utility cooperative association that relies on the Johnson Road substation to provide electric power to Interior Alaska. *AS 38.05.810(e)* allows the state to negotiate the lease, sale, or other disposal of state land to a licensed public utility or a licensed common carrier if the utility or carrier reasonably requires the land for the conduct of its business under its license. GVEA qualifies as a licensed public utility, and the use of the subject land for support of electric transmission meets the requirement of the statute. DNR DMLW has adjudicated leases to GVEA under *AS 38.05.810(f)*¹ and granted a previous *AS 38.05.810(e)* public and charitable land sale to GVEA in 2004 (ADL 67635).

AS 38.05.810(g) states that the commissioner shall retain a reversionary interest on each sale or other disposal granted under *AS 38.05.810(a)* or *(e)* unless the reversionary interest is waived. GVEA is currently leasing the subject parcel for the support of electric transmission, and according to the GVEA development plan, a transformer located on this site holds 2,618 gallons of transfer oil in the main tank and 219 gallons in the Load Tap Changer (LTC) tank. See **Section XII. Hazardous Materials and Potential Contaminants** for more information. Due to liability issues concerning GVEA's proposed use of the site, DNR will waive a reversionary interest in the parcel as allowed by *AS 38.05.810(g)*.

DMLW considered the alternative of denying this land sale and continuing with the long-term lease, but there is no contiguous state land and no additional uses lying within the parcel, such

¹ *AS 38.05.810(f)* states, "the commissioner shall lease state land for telephone or electric transmission and distribution lines for less than the appraised value of the land if the lessee is a nonprofit cooperative association organized under *AS 10.25*."

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 6 of 14

as a public trail or other public recreation uses. In the absence of current or anticipated multiple uses on the site, it is in the state's interest to sell the parcel for fair market value to GVEA.

VIII. Planning, Classification, and Mineral Orders

Planning

A request for determination of plan designation and classification was submitted to DNR's Resource Assessment and Development Section (RADS) as the parcel was inadvertently overlooked and not classified in the 2015 Eastern Tanana Area Plan (ETAP), adopted on August 28, 2015. As a result, on April 24, 2019, Determination NC-10-004D10 was issued by RADS, which added the parcel to ETAP Unit F-94, designated as Settlement which converts to a classification of Settlement Land.

The ETAP states that plan's management intent for Unit F-94 is as follows:

"Land disposals during the planning period is appropriate."

ETAP Chapter 2: Settlement identifies goals for land designated as Settlement including providing suitable public land for transfer to private ownership for settlement purposes by providing seasonal residences for recreation, year-round residences for community expansion, and industrial and commercial development. Unsettled or unsold land in the unit will be managed for uses compatible with settlement. This may include uses such as selling additional lots, laying out new subdivisions, identifying greenbelts through subdivisions, reserving materials sites for subdivision roads and building lots, placing easements on access routes, or reserving lots for community facilities and open space. "Areas designated Settlement should be closed to mineral entry prior to sale..." (ETAP p. 3-11). A public and charitable sale or lease of the subject parcel supports the management intent of ETAP and is consistent with this designation.

Land Classification Order

A request for determination of plan designation and classification was submitted to RADS as the subject parcel was not included in ETAP. Determination NC-10-004D10 modified ETAP and LCO NC-10-004 to reflect the determination of the subject parcel being included in Unit F-94 and classified as Settlement Land.

Mineral Order

DNR proposes to close the subject parcel to new mineral entry in accordance with AS 38.05.185 *Generally* and AS 38.05.300 *Classification of Land*. There are no current mining claims located within the subject parcel. Closing the parcel to new mineral entry is consistent with the management intent of the ETAP and minimizes the potential for conflict between the land estate and mineral estate users. If approved by the Commissioner, Mineral Order 1233 will close the subject parcel to new mineral entry. If the Department approves the public and charitable sale, the mineral order will accompany the FFD. The approval of the mineral order is a separate action occurring concurrently with the FFD.

Mineral orders which close an area to mineral entry, close the area to new exploration and development of locatable minerals such as gold, copper, platinum, etc. Such mineral orders do not apply to leasable minerals (such as oil, gas, coal, etc.), or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, AS 38.05.130 *Damages and Posting of Bond* stipulates that the land estate owner will be compensated for damages resulting from mineral exploration and development.

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 7 of 14

Local Planning

This area is zoned “General Use” by the Fairbanks North Star Borough.

Flood Risk

This parcel is in an area of minimal flood hazard, zone X.

IX. Traditional Use Findings

The subject parcel is located within the Fairbanks North Star Borough, and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. There are no anticipated significant changes to traditional uses of the land and resources of this area as a result of the proposed action. Additional 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, if one is issued. See the **Section VII. Submittal of Public Comments** and *Attachment B: Public Notice* for details on how to submit comment.

X. Access, Including Access To and Along Public and Navigable Water

Public Access

Physical and legal access is via road, off Johnson Road, by way of the Richardson Highway. Driveways are considered permitted and are included in the DOT&PF As-Built survey for the road.

Access Along Navigable and Public 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 trips, reserved Areas, and public easements*.

DNR has not identified any public, navigable, or anadromous water bodies within the project area. If any such water bodies are discovered, parcels will be subject to access reservations in accordance with *AS 38.05.127 Access To Navigable or Public Water*, and a 100-foot building setback from the ordinary high water of the water body.

The proposed land sale does not require reservation of public access along navigable and public waters pursuant to *AS 38.05.126(a) Navigable and Public Water*.

Easements and Setbacks

- GVEA easements for the electric transmission lines that run to and from this substation parcel are serialized by DNR as ADL 412616, and ADL 22691. Department of Transportation and Public Facilities (DOT&PF) right of way easement for Johnson Road is ADL 403197.
- A 5-foot survey easement from the nearest practical point on the property boundary to control monuments within the parcel and an easement with a radius around the control monument, and as applicable, a 5-foot direct line-of-sight easement from the control station to an azimuth mark or other control monument.
- Additional reservations and/or restrictions required through the local platting authority.

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 8 of 14

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

XI. Reservation of Mineral Estate

In accordance with *section 6(i)* of the Alaska Statehood Act and *AS 38.05.125 Reservation*, the state, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with *AS 38.05.130 Damages and Posting of Bond* and other applicable statutes and regulations.

XII. Hazardous Materials and Potential Contaminants

GVEA has a Spill Prevention, Control, and Countermeasure (SPCC) Plan. According to the GVEA development plan, a transformer located on this site holds 2,618 gallons of transfer oil in the main tank and 219 gallons in the Load Tap Changer (LTC) tank. There is no secondary containment. The tank is equipped with low-level oil and overpressure alarms.

On May 12, 2003, there was a spill reported for 25 gallons of transformer oil. According to the GVEA Spill Notification Report to the Alaska Department of Environmental Conservation (DEC), 25 gallons of transformer oil were spilled on site. The crew on-site during the spill used absorbent pads and dug up the contaminated soil and gravel. The absorbent pads and soil and gravel were all transferred into a drum and then to GVEA headquarters for cold storage and thermal treatment. One hundred square feet of area was affected. The case was closed by DEC on May 14, 2003, with no further action required. They indicated that there were no other known environmental contaminants within the proposed site.

The historic Haines-Fairbanks pipeline is located on the west side of the Richardson Highway at this location and is, therefore, not expected to impact the GVEA parcel.

The State of Alaska makes no representations and no warranties, expressed or implied, as to the presence or absence of hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State of Alaska 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. GVEA, by requesting this property for conveyance through this PD, recognizes the surrounding areas of identified contaminated sites the subject land is sold on an "as is" basis and in the condition as of the date of sale. Given that this land is now designated as Settlement for transfer into public ownership and a high degree of interest in transferring state-owned land into public and private ownership, LCS is of the opinion that the benefits outweigh the potential risks.

The applicant will be required to submit an affidavit acknowledging the condition and history of the site prior to purchase.

XIII. Survey

This lease parcel has been surveyed as Alaska State Land Survey Number (ASLS) 80-63, recorded in the Fairbanks Recording District on January 22, 1981, as plat number 81-11, containing 5.96 acres, more or less. During the adjudication process for this conveyance, the

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 9 of 14

DMLW Survey Section determined that the ASLS 80-63 survey contains an error and needs to be resurveyed. Due to this error, GVEA will be required to resurvey the parcel.

In accordance with *AS 38.04.045 Survey and Subdivision*, the applicant must complete an approved survey according to the requirements and standards of DMLW's Survey Section prior to the land sale. If DMLW accepts the submitted survey, the measurements identified will be used to calculate the total acreage accurately. An Alaskan registered Land Surveyor must perform the survey under survey instructions issued by the DMLW Survey Section. The applicant's survey must be approved by DMLW and the local platting authority, if any, as set forth in the Survey Instructions. Upon approval and recordation of the survey, a notice to proceed to appraisal will be issued. The applicant is responsible for the cost of the survey.

XIV. Compensation and Appraisal

DNR may convey land to a licensed public utility at appraised fair market value. LCS has evaluated the applicant's licensed utility status and the proposed project and has determined that the proposed project is consistent with the intent of *AS 38.05.810(e)*. Selling the parcel for fair market value will support the public utility services and provide remuneration to the state.

If the purchase is approved, the subject parcel will be sold at fair market value pursuant to *AS 38.05.810(e)*. At the appropriate time, LCS will notify the applicant to begin the appraisal process and will provide a list of approved appraisers. The DMLW Appraisal Unit will provide appraisal instructions to an approved appraiser. The applicant bears the cost of the appraisal. The date fixed for sale under *AS 38.05.840(a) Appraisal* and the valuation date of the appraisal will be set as the date of inspection by the appraiser.

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 PD. Agency review was conducted between April 3, 2019, through May 3, 2019, and from May 25, 2022, through June 25, 2022. Comments pertinent to the proposed actions 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, if one is issued.

Agency review was conducted between April 3, 2019, through May 3, 2019.

DNR DMLW LCS received brief comments of non-objection from the following agencies: Department of Transportation and Public Facilities (DOT&PF).

DNR DMLW LCS Response: LCS appreciates your preview of the proposal.

Alaska Department of Fish and Game (ADF&G): ADF&G noted the applicant has been leasing the site for over 50 years and stated that the Division of Habitat has no concerns or comments.

DNR DMLW LCS Response: LCS appreciates your review of the proposed noncompetitive sale.

DNR DMLW Mining Section Northern Region: DNR DMLW Mining section state that it is highly unlikely that there is any locatable mineral occurrence, and the Mining Section

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 10 of 14

does not have any concerns with a potential conveyance or for a mineral closing order on this parcel.

DNR DMLW LCS Response: LCS appreciates your review of the proposed noncompetitive sale, and your comment is noted.

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

- DNR State Historic Preservation Office, DNR Division of Forestry and Fire Protection, DNR Permits and Easements, DNR Division of Agriculture, and DEC.

Agency review was conducted between May 25, 2022, through June 25, 2022.

DNR DMLW LCS received brief comments of non-objection from the following agencies:
DNR Division of Forestry and Fire Protection.

DNR DMLW LCS Response: LCS appreciates your preview of the proposal.

DOT&PF: DOT&PF, ROW notes that a driveway permit will be needed to access the properties from the highway right of way. Please direct the applicant to consult with our Northern Region Right-of-Way Group in Fairbanks.

DNR DMLW LCS: LCS appreciates the review of this proposed noncompetitive sale. The applicant will be informed to contact DOT&PF to inquire about a driveway permit.

DNR DMLW Mining Section Northern Region: DMLW Mining Section reviewed this application and mineral order in 2019 and their comments are still valid that the parcel is not in an area of known locatable mineral occurrence and the Mining Section does not have any concerns with a potential conveyance.

DNR DMLW LCS: LCS appreciates the additional review of this proposed noncompetitive sale.

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

- DNR State Historic Preservation Office, DNR NRO Regional Manager, DNR Permits and Easements, DNR Leasing and Materials, DNR SAIL, DNR Water, ADF&G, and FNSB – Land Management Section.

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 and draft mineral order.

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 11 of 14

In accordance with *AS 38.05.946(a) Hearings*, a municipality or corporation entitled to receive notice under *AS 38.05.945(c) Notice* 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 PD or proposed related action, 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 proposals are approved and no significant change is required, the PD and draft mineral order, including any deletions, minor changes, and a summary of comments and LCS responses, will be issued as a subsequent FFD and Mineral Order 1233 without further notice. All related actions will be developed separately. However, approval or any action is dependent upon one another. One action will not proceed without approval of all actions.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the FFD and Mineral Order 1233. Upon approval and issuance of these actions, a copy of the decision and order will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration 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
5:00 PM, FEBRUARY 24, 2023**

XVII. Stipulations, Restrictions, and Reservations

Stipulations

The applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. A notice to proceed to survey will be issued if no requests for reconsideration are received, or when any requests for reconsideration are resolved, after the issuance of a Final Finding and Decision. Within six months from the date of the notice to proceed to survey, the applicant must hire a surveyor, and the surveyor must apply to DMLW's Survey Section for Survey Instructions.
2. Within two years after issuance of the Survey Instructions, the applicant must submit a completed survey to DMLW's Survey Section for review. The applicant's survey must be approved by DMLW and the local platting jurisdiction, if any, as set forth in the Survey Instructions. Survey costs shall be borne by the applicant.
3. Upon approval and recording of the survey, a notice to proceed to appraisal will be issued. Within two years from the date of the notice to proceed to appraisal, the applicant must hire

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 12 of 14

an appraiser from DNR's Approved Appraiser List. The appraiser must apply for appraisal instructions issued by DMLW and then must submit a completed fair market value appraisal to DMLW in accordance with appraisal instructions. DMLW must approve the appraisal. Appraisal costs shall be borne by the applicant.

4. Upon approval of the appraisal by DMLW, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in the notice, the applicant must submit the following to LCS:
 - A signed and notarized affidavit acknowledging the condition of the land and releasing the State from related liability;
 - A completed and signed Declaration of Intent Form;
 - A signed and notarized Relinquishment of Land Lease Form; and
 - Payoff amount plus patent application and recordation fees OR a minimum 5% of the purchase price as a deposit plus land sales contract application and recordation fees. Fees are established under *11 AAC 05.100 Land Disposals* and *11AAC 05.200 Recorder's Office* and are subject to change. Some fees have been reduced by Director's Fee Order Number 3.
5. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Lease Agreement or Early Entry Authorization, and the Contract for the Sale of Real Property throughout its term, if such a contract is issued. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying LCS and receiving approval from LCS for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

Restrictions and Reservations

Conveyance document will be issued subject to the following restrictions and reservations:

1. Valid existing rights, including reservations, easements, 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 on the plat, and restrictions of record, if any.
2. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and *AS 38.05.125 Reservation*; and reservation of reasonably necessary access to the mineral estate in accordance with *AS 38.05.130 Damages and Posting of Bond*.
3. *AS 38.05.810(g)* states that the commissioner shall retain a reversionary interest on each sale or other disposal granted under *AS 38.05.810(a)* or *(e)* unless the reversionary interest is waived. In this case, DNR will waive the reversionary interest for this land sale.

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 13 of 14

XVIII. Alternatives

The following alternatives were considered:

Alternative 1: Sell

Approve the proposed conveyance of the subject parcel to GVEA as proposed in this decision in accordance with *AS 38.05.810(e)*.

Alternative 2: Lease

Continue leasing the subject parcel to GVEA.

Alternative 1 will allow a licensed public utility to purchase state land at fair market value to serve a public purpose. This sale will generate revenue for the State, support a local licensed public utility, is compatible with area plan management intent, and provides stability and assurance for future planning to the applicant. Therefore, it is in the best interest of the State to sell the parcel as proposed in this decision. This is the preferred alternative.

Article VIII, Section 1 of the Alaska Constitution states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Alternative 1 provides a method for DNR to meet the obligations laid out in the Constitution and statute and maximizes public interest. This is the preferred alternative.

The related action is necessary to allow for the offering of the subject parcel. The primary action and related action are dependent upon one another, and if DNR does not approve the primary action, the related action will not be processed.

Under Alternative 2, DNR will continue with the current lease that was recently renewed under an Early Entry Authorization for a public and charitable purpose under *AS 38.05.810(f)*. Under this option, the State earns revenue from the leasehold, but also incurs future management costs related to ensuring performance under the lease agreement and administrative costs related to lease administration. The revenue generated from a sale at fair market value may not generate more revenue for the state than a long-term lease. This alternative will allow GVEA to continue operating their substation property that has been on-site and leased from DNR since 1964; however, this alternative is not preferred.

For the reasons outlined above, Alternative 1 is the preferred alternative.

Recommendation follows.

Preliminary Decision

AS 38.05.810 Public and Charitable - ADL 421142

Page 14 of 14

XIX. Recommendation and Preliminary Decision

This Preliminary Decision for the proposed disposal of state lands and Mineral Order 1233 described throughout this document and its attachments are consistent with the overall management intent for state-owned land and consistent with the requirements of AS 38.05.810(e) *Public and Charitable Use*. Alternative 1 is the preferred alternative because it is the maximum best use of state land and is in the best interest of the public, and will allow a licensed public utility to utilize this parcel for the public purpose of providing utility services to the local community.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of state lands and Mineral Order 1233. A Final Finding and Decision will address any significant issues or concerns raised during the public review process. If the applicant is unable to complete the stipulations, DMLW may decide to close this purchase application or require the continued annual renewal of the lease to allow additional time to complete the purchase process.

The Preliminary Decision, described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.



1/24/2023

Prepared by: Nicole Swensgard
Natural Resource Specialist 3
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

Date of Signature



1/24/2023

Approved by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

Date of Signature



**GVEA Johnson Road Substation
ADL 421142**

Attachment A: Vicinity Map

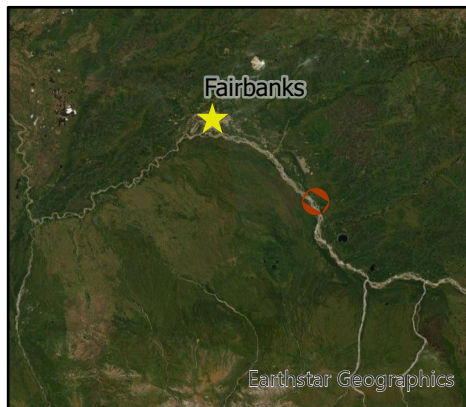
Proposed Public and Charitable Land Sale
Pursuant to AS 38.05.810(e)



Section 30, Township 4 South, Range 4 East, Fairbanks Meridian, Alaska

For more information contact:
Nicole Swensgard
Department of Natural Resources
Division of Mining, Land and Water
Land Conveyance Section
Phone: 907-451-5235
Email: nicole.swensgard@alaska.gov

Projection WGS 1984 Web Mercator
Created 9/27/2022



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

ATTACHMENT B: PUBLIC NOTICE

Requesting Input for
a Proposed Public and Charitable Use Conveyance:

Public and Charitable Use Conveyance - ADL 421142
AS 38.05.035(e), AS 38.05.810(e)

COMMENT PERIOD ENDS 5:00 PM, FEBRUARY 24, 2023

The Alaska Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) is conducting a public notice for a proposed noncompetitive public and charitable use land sale located within DNR's Northern Region, Fairbanks North Star Borough, approximately 6 miles north of Salcha on the corner of Johnson Road and the Richardson Highway, near milepost 332.

Legal Description: Alaska State Land Survey Number (ASLS) 80-63, recorded in the Fairbanks Recording District on January 22, 1981, as plat number 81-11, excluding the Richardson Highway (F-062-4(11)), and excluding Johnson Rd (A-80231), containing 5.96 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 AM and 5:00 PM 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, February 24, 2023.

Pursuant to *AS 38.05.945 Notice*, the public is invited to submit comments on the Preliminary Decision. **The deadline for public comment is 5:00 PM, FEBRUARY 24, 2023.** 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 Nicole Swensgard by mail at: ATTN Nicole Swensgard, DNR DMLW LCS, 3700 Airport Way, Fairbanks, AK 99709 or by fax at (907) 451-2751 or by email at nicole.swensgard@alaska.gov. If you have questions, call Nicole Swensgard at (907) 451-5235.

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.

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

DRAFT MINERAL ORDER No. 1233

 X Closing Lands to Mineral Entry _____ Opening Lands to Mineral Entry

I. Name of Mineral Order: Public and Charitable Noncompetitive Land Sale - ADL 421142.

II. Reason for Mineral Order: This Mineral Order is based upon the attached *Commissioner's Administrative Finding*, applicable statutes, and the written justification contained in the following: Preliminary Decision, Public and Charitable Noncompetitive Land Sale – ADL 421142, January 24, 2023, and the subsequent Final Finding and Decision.

III. Authority: *AS 38.05.185 Generally* and *AS 38.05.300 Classification of Land*.

IV. Location and Legal Description: The subject parcel is located within DNR's Northern Region, Fairbanks North Star Borough, approximately 6 miles north of Salcha on the corner of Johnson Road and the Richardson Highway near milepost 332, more specifically described as:

Alaska State Land Survey Number (ASLS) 80-63, recorded in the Fairbanks Recording District on January 22, 1981, as plat number 81-11, excluding the Richardson Highway (F-062-4(11)), and excluding Johnson Rd (A-80231), containing 5.96 acres, more or less.

V. Mineral Order: This order is subject to valid existing rights and is issued under the authority granted by *AS 38.05.185 Generally* – *AS 38.05.275 Recognition of Locations* and *AS 38.05.300 Classification of Land* to the Alaska Department of Natural Resources. In accordance with *AS 38.05.185(a) Generally*, I find that the best interests of the State of Alaska and its residents are served by closure of the land described in this mineral order to entry under mineral location and mining laws of the State of Alaska. The above-described lands are hereby **closed** to entry under the locatable mineral and mining laws of the State of Alaska.

Concur:

Christianna Colles, Director
Division of Mining, Land and Water
Department of Natural Resources

Date

Approved:

John Boyle, Commissioner
Department of Natural Resources

Date

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

ADMINISTRATIVE FINDING
DRAFT MINERAL ORDER NO. 1233
Closing Lands to Mineral Entry

PUBLIC AND CHARITABLE NONCOMPETITIVE LAND SALE

Pursuant to *AS 38.05.035 Powers and Duties of the Director*, the State of Alaska, Department of Natural Resources, Division of Mining, Land, and Water proposes to issue a Final Finding and Decision to convey State-owned land into private ownership within the Noncompetitive Public and Charitable Sale area, ADL 421142. As noted in the Preliminary Decision – Public and Charitable Noncompetitive Land Sale – ADL 421142, issued January 24, 2023, the project area is designated settlement within unit F-94 of the Eastern Tanana Area Plan. In accordance with the area plan, DMLW proposes to close the entire project area to mineral entry. The attached mineral order includes the legal description of area to be closed to mineral entry.

The Division of Mining, Land, and Water requests that the mineral estate of approximately 5.96 acres, identified in the attached mineral order, be closed to mineral entry and location, in accordance with *AS 38.05.300 Classification of Land* for a land disposal. Mining activity on the parcel would be incompatible with the current and proposed land estate use. The land does not contain any known mineral deposits and was not selected for mineral values. There are no mining claims on the land.

Public notice of the comment period for the proposed mineral order is conducted in accordance with *AS 38.05.945 Notice*. Review of comments will be addressed in the final document.

In accordance with *AS 38.05.185(a) Generally* and *AS 38.05.300 Classification of Land*, I find that the best interests of the State of Alaska and its residents are served by closure of the land to entry under the mineral location and mining laws of the State of Alaska as described by Mineral Order (Closing) No. 1233.

Approved:

John Boyle, Commissioner
Department of Natural Resources

Date

**DETERMINATION OF PLAN DESIGNATION AND LAND CLASSIFICATION
for STATE LANDS INADVERTENTLY MISSED in the
EASTERN TANANA AREA PLAN**

DETERMINATION NC-10-004D10

Background: The Eastern Tanana Area Plan (ETAP) and associated Land Classification Order (LCO) NC-10-004 were adopted in August 28, 2015. The ETAP superseded the major portions of the Tanana Basin Area Plan (TBAP) and the ETAP and LCO NC-10-004 superseded all existing land classification orders within the planning boundary.

This determination affects approximately 5.96 acres of state-owned uplands located approximately 16 miles south of North Pole, within the Fairbanks North Star Borough (FNSB). More specifically located on the northeast corner of the Richardson Highway and Johnson Road within the community of Salcha, Alaska (also see legal description section) and Alaska State Land Survey (ASLS) 80-63.

On March 1, 2019 the Northern Region Land Office received an application from Golden Valley Electric Association (GVEA) (file number: ADL 421142) for a public and charitable land sale in accordance with AS 38.05.810(e). GVEA has been leasing this parcel since 1964 (under ADL 22462) and the current lease is set to expire in September 2019. GVEA has requested to purchase the above described land at fair market value under the AS 38.05.810(e) authority.

At the time the ETAP was prepared, it appears this parcel was inadvertently overlooked and thus not classified in the ETAP planning process. This parcel should have been designated and classified during the process.

Authority: The authority to make minor changes to area plans is derived from 11 AAC 55.030 (f)(2):

“A minor change to a land use plan is not considered a revision under AS 38.04.065. A "minor change" is a change that does not modify or add to the plan's basic intent, and that serves only to clarify the plan, make it consistent, facilitate its implementation, or make technical corrections.”

The ETAP provides for the determination of a missed area in the Chapter 4 Section titled, ‘Applicability of Plan Designations/Classifications to State Lands not Identified in the Plan Text or Plan Maps’. These procedures provide guidance on how missed areas are to be designated and classified without the need for a formal plan amendment and land classification process. The applicable part of this section reads as follows:

“Parcels in or near Existing Communities. If the parcel is in or is immediately adjacent to an existing community or past state land offering, the designation of Settlement and classification of Settlement Land apply. Such land can be considered for disposal use unless it is appropriate as a site(s) for schools, material sites, roads, parks, or other similar public use. Unsold lots identified for disposal in existing subdivisions and lots that return to state ownership will be available for lease, sale, or conveyance.”

Determination:

Map 3-2b in Chapter 3 of ETAP does not depict this parcel and the associated Resource Allocation Table makes no mention of these lands, thus it appears that the subject land was inadvertently missed and is currently unclassified.


ETAP Planning Unit F-94 is comprised of two near-by parcels classified as Settlement Land. Due to the proximity to ETAP unit F-94 and the similar properties of the missed lands to F-94, it is appropriate to include the subject parcel into Unit F-94.

Based upon review of the ETAP and information above, it is my determination that the overlooked parcel will be included within ETAP Management Unit F-94 which is designated as Settlement and classified Settlement Land. The ETAP and Land Classification Order NC-10-004 are also hereby modified to reflect this determination/decision.

Additionally, the ETAP Map 3-2b and the Resource Allocation Table for the Fairbanks Region are appended to include the missed parcel within unit F-94 and the plan designation, management intent, and management guidelines for unit F-94 shall apply to the subject lands:

Inadvertently Missed Lands Legal Description:

F004S004E Sect 30
Alaska State Land Survey No. 80-63
Containing 5.96 acres, more or less.



Monica Alvarez
Chief, Resource Assessment & Development Section
Division of Mining, Land and Water

4/24/19

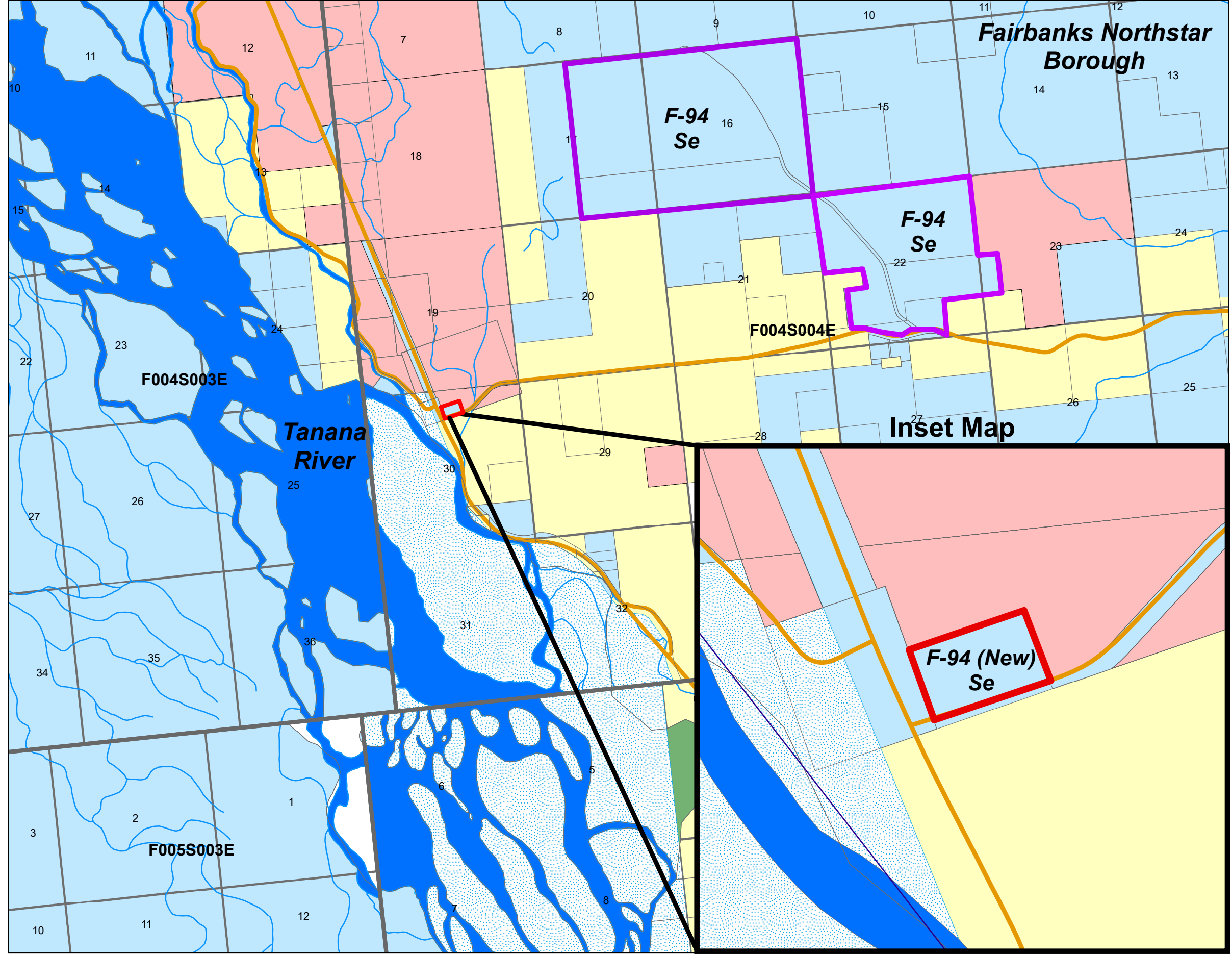
Date








Attachments: ETAP DET 10 Map
Plat 80-63

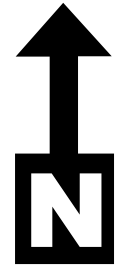
A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov . If no appeal is filed by that date, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

Eastern Tanana Area Plan

Map: Determination 10 (LCO: NC-10-004D10)

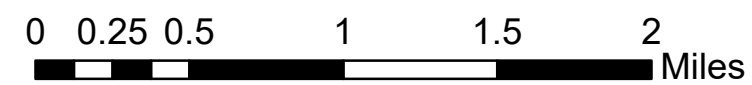


-  **Determination Area**
-  **ETAP Unit F-94: Se**
-  **State Land**
-  **Legislatively Designated Area**
-  **Municipal/Borough Land**
-  **Mental Health Trust Land**
-  **Private Land**



Created By: SOA-DNR-DMLW-RADS-RJK

April 2019



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