

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

PRELIMINARY DECISION
PROPOSED CONVEYANCE OF STATE LAND UNDER AS 29.65.010

NORTH SLOPE BOROUGH MUNICIPAL LAND ENTITLEMENT SELECTION ADL 414833
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PUBLIC COMMENT PERIOD ENDS 4:30 PM, FRIDAY, JULY 28, 2023

I. PROPOSED ACTION

Preliminary Decision: North Slope Borough Municipal Land Entitlement Selection – ADL 414833
Attachment A: Kavik River Confluence
Attachment B: PAAD Navigable and Public Waters
Attachment C: Public Notice

Primary Proposed Action: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) proposes to convey lands selected by the North Slope Borough (NSB) in partial fulfillment of their general grant land entitlement under AS 29.65.010 *Determination of Entitlement of Boroughs and Unified Municipalities*. See *Attachment A: Kavik River Confluence* for a depiction of the project area.

NSB has selected a parcel in the Central Slope Region (the Western Planning area) as identified in the North Slope Area Plan¹ (NSAP). Approximately 1,508 acres will be adjudicated in this decision.

LCS proposes to convey approximately 1,508 acres of state-owned vacant, unappropriated, unreserved² (VUU) general grant land. Regarding these parcels, DNR has determined that no overriding state interests merit retaining this selection in state ownership.

Public Notice of Proposal: In accordance with AS 38.05.945 *Notice*, during a period of at least 30 consecutive days, the public is invited to submit written comments on this Preliminary Decision (PD).

See **Section VII. Submittal of Public Comments** at the end of this document and *Attachment C: 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

The proposed actions in this PD are authorized pursuant to Alaska Statute (AS) and Alaska Administrative Code (AAC), particularly AS 29.65 *General Grant Land*, AS 38.05.035(e) *Power and Duties of the Director*, AS 38.05.125 *Reservations*, AS 38.05.127 *Access to Navigable or Public Water*, AS 19.10.010 *Dedication of Land for Public Highways*, and 11 AAC 51 *Public Easements*.

¹ The North Slope Area Plan (NSAP) adopted March 2021 determines the management intent, land-use designations, and management guidelines that apply to all state lands in the applicable planning area. This plan forms the basis for the land use classifications that constitute vacant, unappropriated, unreserved land for purposes of determining the eligibility of state land for potential conveyance to a municipality under AS 29.65 *General Grant Land*.

² *Vacant, unappropriated, unreserved* (VUU) land is general grant land patented or tentatively approved to the State from the United States, excluding minerals as required by 6(i) of the Alaska Statehood Act, and is conveyable under the Municipal Entitlement Act (AS 29.65).

III. ADMINISTRATIVE RECORD

The administrative record for this proposed action consists of case file Alaska Division of Lands (ADL) 414833. Also incorporated by reference are:

- North Slope Area Plan (NSAP, adopted March 2021) and associated land classification files;
- Alaska Department of Fish and Game (ADF&G) Alaska Anadromous Waters Catalog & Atlas to the Catalog;
- Alaska Department of Environmental Conversation (DEC) Contaminated Sites Database; and
- DNR case files: GS 1611, ADL 393853, ADL 393856, ADL 393857, and LAS 32817.

IV. SCOPE OF DECISION

The scope of this proposal under the statutes described in the preceding **Section II. Authority** is limited and specific to determine whether it is appropriate to convey the subject parcel to NSB. This decision includes a review of third-party interests, stipulations necessary to effectuate this decision, and an evaluation of whether the public interest in retaining state ownership of the land outweighs NSB's interest in obtaining the selected land as provided in *AS 29.65.050 Fulfillment of Land Entitlement*. In this decision, LCS will also determine whether NSB's municipal entitlement land selection meets the requirements under *AS 29.65.070(c) Selection and Conveyance Procedure* and whether it is appropriate to allow NSB to exercise immediate management authority for conditional sales and leases on land approved for conveyance.

V. DESCRIPTION

A. Location and Geographical Features

NSB was incorporated as a Home Rule Borough in 1974. The area is characterized by treeless undulating hills north of the Brooks Range blending into vast tundra plains. Numerous ponds, lakes, and marsh areas dot the landscape. Vegetation consists of small scrubby alders and lichens.

The selected parcels are located between the confluence of the Kavik and Shaviovik Rivers. The land is flat, covered with wetlands, and marked with many old channels.

Borough/Municipality: North Slope Borough
Meridian: Umiat Meridian (U)
Regional Corporation: Arctic Slope Regional Corporation
Federally Recognized Tribe: None
Village Corporation: None
USGS Map Coverage: Beechey Point Quadrangle (1:250,000)
Beechey Point A-1 (1:63,360)

B. Legal Description, Land Status, and Third-Party Interests

Table 1 below identifies the NSB land selection adjudicated in this decision by location name, Meridian (M), Township (T), Range (R), Section (S), and includes state case file, title status, date, and any third-party interest affecting those state-owned. The State holds fee title to the land and mineral estates through Patent (PA) received from the U.S. Department of Interior, Bureau of Land Management (BLM). The State will only convey the land estate on lands approved for conveyance to NSB. *AS 38.05.125* requires the State to retain the mineral estate. Pursuant to *AS 29.65.070(b)*, the State may not issue patent to a municipality until the land has been first patented to the State. Information from Title Report No. 22820, current as of April 6, 2023, indicated the State of Alaska received title to the land and mineral estate under Patent 50-2021-0028 (*Table 1*).

Table 1

Map Name	MTRS	State Case File	Title/Date	Third-Party Interests
Kavik River Confluence	U008N019E 14, 23-27	GS 1611	PA 50-2021-0028/ 4-30-2021	LAS 32817 Land Use Permit issued (Sec 14) ADL 393853 O&G lease, issued (Sec 14, 23) ADL 393856 O&G lease, issued (Sec 25, 26) ADL 393857 O&G lease, issued (Sec 27)

VI. PRELIMINARY DECISION

A. Background

In 1972, NSB was certified as an incorporated home rule borough and was granted 89,850 acres of municipal entitlement under *AS 29.65.010*. Approximately 23,057 acres have been patented or approved for conveyance to NSB. Approximately 66,093 acres remain in their entitlement, of which about 44,635 acres have been selected. This decision covers about 1,508 acres between the Kavik and Shaviovik Rivers.

The NSAP was adopted in March 2021, and NSB resumed submitting their selections under *AS 29.65.050(d) Fulfillment of Land Entitlements*. The NSAP supersedes any previous classifications and reclassifies all state lands within the planning area.

B. Planning, Classification, and Mineral Orders

1. Planning

The land selection falls within the Central Slope Region within the NSAP. The management intent and area plan designation for each management unit is described in the NSAP. These plan designations convert to land use classifications, which establish what land the State may convey under the Municipal Entitlement Act (*see AS 29.65.010 et seq.*). NSB's land selection falls within the planning boundary of the NSAP and is governed by the management intent and classifications found in the plan.

2. Land Use Classification

The land selection proposed for conveyance in this decision is classified as Wildlife Habitat Land (WHB) and Oil and Gas Land (OG), which are not conveyable classifications as municipal entitlement general grant land under *AS 29.65.130 Definitions*.

The NSAP states that the plan's management intent for Unit C-19 is as follows:

Management Intent:

"[...] Lands within this unit have been selected or identified by the NSB as potential municipal entitlement selections. If a subsequent municipal entitlement decision determines that it is otherwise appropriate to convey all or some of the state land to the borough, then the Ha/Og designations are extinguished and replaced by Rm [Resource management] designation that converts to a conveyable classification. [...]"

Table 2 below shows the land use designations derived from the NSAP for the land selection adjudicated in this decision.

Table 2

Map Name	MTR	Section(s)	Approx. Acres	Unit	Designations
Kavik River Confluence	U008N019E	14, 23 -27	1508	C-19	Habitat (Ha), Oil and Gas (Og)

3. Mineral Orders

The mineral estate is reserved to the State pursuant to *AS 38.05.125 Reservation*.

There are no mineral orders covering this parcel.

4. Special Use Lands

The NSB land selection adjudicated in this decision is part of the North Slope Special Use Lands (ADL 50666) defined under *11 AAC 96.014*. This Special Use Land encompasses all land within the Umiat Meridian.

C. Traditional Use Finding

In an unorganized borough, disposal of state land with traditional uses is to be reviewed under *AS 38.05.830 Land Disposal in the Unorganized Borough*. NSB is an organized borough under *AS 29.05.031 Incorporation of a Borough or Unified Municipality* and eligible for municipal entitlement. Therefore, a determination for traditional uses is not required. NSB's municipal entitlement land selection in this decision is located within NSB's legal boundary.

D. Access

Public access will be reserved in accordance with *AS 19.10.010*, *AS 19.30.400 Identification and Acceptance to Rights-of-Way*, *AS 38.05.125*, *AS 38.05.127*, and *11 AAC 51*.

The Dalton Highway terminating in Deadhorse, is the only major public road to the North Slope area. However, this parcel can be accessed via boat along the rivers, ATVs, snowmachines, aircraft with skis, or by helicopters.

1. Section Line Easements

As required under *AS 19.10.010* and in accordance with *11 AAC 51.025 Section Line Easements*, a public access easement 100 feet wide will be reserved along each section line on lands approved for conveyance. If a section line forms a boundary of a selection being conveyed, then the easement will be 50 feet wide measured from the section line. If a section line runs through a selection being conveyed, then the easement will be 50 feet wide, measured on each side of the section line, for a total width of 100 feet.

The parcel has several section lines running through it.

2. Trails, Rights-of-way, RS 2477, and Easements

A review of state records verifies that there are no rights-of-way (ROW) within or adjacent to NSB's land selection.

3. Navigable and Public Water

Throughout most of the state, the State of Alaska retains ownership of the beds of navigable water bodies, including all gravel bars and islands, and conveys the beds of public waters through municipal entitlement when public waters are included in a municipal entitlement selection. A survey determines the Ordinary High Water Mark (OHWM) of the navigable and public waters, the Mean High Water Mark (MHWM) on marine meandering shorelines, identifies islands, and determines the specific areas to be retained by the State. At the time of survey, fieldwork may find that a body of water or a waterway is different than identified in the decision. If this occurs, the results of the survey work will be reviewed further within DNR. If the fieldwork is determined to be accurate, then the survey results will supersede the recommendation in the adjudication decision. However, navigable and public waters on the North Slope are different.

Per Public Land Order (PLO) 82 of 1943 and Original 84 (Original: United States V. Alaska, 521 U.S. 1 - Docket number 84, June 19, 1997), there are no inland navigable waters (including tidally influenced waterbodies) on the North Slope; other than the Colville River, which had been determined navigable by the courts to the community of Umiat³. The Equal Footing Doctrine and Submerged Lands Act do not apply to the North Slope because the waters were withdrawn at statehood.

The North Slope is generally defined (per the PLO 82 and Original 84) as the watershed that drains north of the Brooks Range, including the marine lagoons and waters bounded by barrier islands less than 3 miles from shore within the National Petroleum Reserve-Alaska (NPR-A) and Arctic National Wildlife Reserve (ANWR). The boundaries for NPR-A and ANWR describe which offshore lands and waters were withdrawn at statehood, title to which did not vest with Alaska at statehood.

Meanderable Waters: Lakes greater than 50 acres and rivers averaging greater than three chains (198 feet) as measured OHWM to OHWM are considered meanderable. The waterbed belongs to the upland owner, also known as Riparian Rights, but they are not charged for the acreage. Riparian rights extend from the shoreland to the center of the river or the very middle of a lake.

Navigable Waters: Pursuant to 11 AAC 51.035 *Determination of Navigable or Public Water*, a water body is navigable if it is at least 50 acres in size or a waterway at least 50 feet wide from OHWM to OHWM. A water body will also be considered navigable if it is found navigable for a useful public purpose in accordance with AS 38.05.965 *Definitions*; otherwise, it will be considered public water in accordance with 11 AAC 51.035. With state-owned navigable beds, ownership of land adjacent to navigable water does not create any right of title to land below the OHWM of the navigable water.

All tidal waters are considered navigable under the Submerged Lands Act (67 Stat 29, PL 31, 5/22/1953). The MHW is established at the time of survey. There are no tidal or tidal-influenced waters in this land selection.

Public Waters: Pursuant to 11 AAC 51.035, a water body is considered public water if it is at least ten but less than 50 acres in size or at least ten feet but less than 50 feet wide from OHWM to OHWM. Ownership of the land under or adjacent to public water does not grant an exclusive right to use the water (AS 38.05.126 *Navigable and Public Water*).

4. Easements 'To and Along' Navigable and Public Water

A public access easement on the bed and 50 feet in width upland of the OHWM will be reserved on all water bodies and waterways determined to be public, and 50 feet in width upland of the OHWM of meanderable and navigable (based on size) waters, in accordance with AS 38.05.127 and 11 AAC 51. This easement is referred to as the 'along' easement. The 'to' easement is to be established approximately once each mile and is often provided on section line easements of 50 feet in width adjacent to the section line on each side (AS 19.10.010 and 11 AAC 51.025). The 'along' easement applies to these water bodies, and the 'to' easement is intended to provide access to the 'along' easements.

³ The State used Statehood Entitlement acreage to secure ownership of the bed of the Colville River since title did not transfer to the State at statehood. A court-negotiated settlement with the Arctic Slope Regional Corporation provides public access easement along the river since it is considered navigable.

An alternative upland access route may be reserved if LCS finds that access along an easement reserved under *11 AAC51.045(d)(1) Easements To and Along Navigable and Public Water* is difficult because of topography or obstructions.

DMLW Public Access Assertion and Defence Section (PAAD) commented that there are no inland navigable waters for title purposes; however, based on the size of both the Kavik and Shaviok Rivers (50' wide or greater) and the lake (50 acres or more) are considered meanderable and will thus require a 50-foot public access easement established upland and along the shore (OHWM). Both rivers are also anadromous, which requires a 'to & along'. PAAD did not list any public lakes within the selection. The NSAP states in the Chapter 2 guidelines for anadromous waters and high-value fish streams and lakes that a 100-foot riparian buffer be established for the protection of habitat (see Table 2-1. Page 2-14).

Tributaries of the Kavik and Shaviok Rivers run through most of the sections within this parcel. A survey will determine if the streams are considered public and require a public access easement as described above in **4. Easements To and Along Navigable and Public Water**. They are not listed in the below table.

Table 3

Map Name	MTR	Section(s)	Waterbody Name	Anadromous Water Catalog #	Public Access Easement ('to & along')
Kavik River Confluence	U008N019E	26	Unnamed lake	None	Along the bed and 50' upland
		14, 23 - 26	Kavik River	330-00-10310-2041	
		14, 23, 26, 27	Shaviok River	330-00-10310	

E. Reservation of Mineral Estate

A conveyance of VUU general grant land to a municipality under AS 29.65 conveys no interest in the mineral estate. All mineral-related permits, licenses, claims, and leases affecting the land for conveyance, if any, will remain under the authority of the State.

In accordance with Section 6(i) of the Alaska Statehood Act and AS 38.05.125, 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.

There are three active oil and gas leases covering these areas; see the below table.

Table 4

Map Name	MTR	ADL and Company
Kavik River Confluence	U008N019E	ADL 393853 – Lagniappe Alaska, LLC ADL 393856 -- Lagniappe Alaska, LLC ADL 393857 -- Lagniappe Alaska, LLC

F. Hazardous Materials and Potential Contaminants

It is the responsibility of the State to protect the overall public interest if there is a reasonable expectation that hazardous contamination may exist on land being proposed for disposal. Based on a review of DEC's list of contaminated sites and comments received, there are no active

hazard sites on this parcel. See DEC's comment in subsection **M. DMLW and Agency Review** for details.

NSB is expected to inspect this selection and familiarize itself with regards to the condition and quality of the land. The State of Alaska makes no representations and no warranties, expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State assumes no liability for removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor any liability for the remediation of the site should such substances ever be identified.

G. Survey

A state-approved survey is required prior to the issuance of a conveyance document. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under the direction of the DNR DMLW Survey Section. NSB is responsible for the expense of any survey. NSB may request a survey determination at any time subsequent to the FFD. There is no requirement under *AS 29.65.070* to appraise the land prior to conveyance.

H. Conditional Leases and Sales

NSB will receive management authority and equitable title to all land approved for conveyance in this decision once the FFD is effective. This will allow NSB to approve conditional leases and make conditional sales pursuant to *AS 29.65.070(b)*, but not to dispose of land approved for conveyance until the land has been surveyed and ownership transferred to NSB.

I. Unauthorized Use

LCS has not physically inspected all areas of the selected lands for the presence of unauthorized use but has reviewed department records and is unaware of any existing unauthorized use within the land selection.

NSB is expected to inspect all of its land selections to familiarize itself with the condition and quality of the land.

J. Disposition of Leases, Permits, and Applications

Administration of any active leases, permits, and easements for the surface estate issued by the State on land to be conveyed will be transferred to NSB when the FFD becomes effective unless such authorizations are expressly excluded from the conveyance. Any pending applications that have not been adjudicated and issued will be closed and notified.

A LAS 32817 Miscellaneous Land Use Permit is issued to the University of Alaska for research projects.

K. Cultural Resources

The Alaska Office of History and Archaeology (OHA) maintains the Alaska Heritage Resources Survey (AHRs), which is an inventory of all reported historic, prehistoric, and archaeological sites in the State. At this point, no historical cultural resources have been found in the selected area.

However, it should be noted that only a very small portion of the State has been surveyed for cultural resources. Therefore, the possibility remains that previously unidentified cultural resources may be located within the selected land. While the conveyance of this parcel will have no direct effects on cultural resources, future projects that NSB may propose on selected lands could affect unidentified cultural resources. Should any cultural resources be encountered, NSB will need to take those actions required by law to protect such resources in accordance with *AS*

41.35.070(d) Preservation of Historic, Prehistoric, and Archeological Resources Threatened by Public Construction.

L. Form and Width Requirement

Each municipal entitlement land selection is required to be compact in form with its length not exceeding approximately four times its width pursuant to AS 29.65.070(c). A review of the NSB's land selection proposed for conveyance in this decision indicates that the selection is consistent with this statute.

M. 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 September 2, 2022, through September 23, 2022. The intent of an agency review is to request comments from agencies that may be affected by a municipal entitlement land conveyance decision. Agencies are given the opportunity to evaluate and comment on the municipality's land selection to determine if the State should retain all or a portion of the selected lands, and, if so, provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the land is to be conveyed out of state ownership.

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

Alaska Department of Environmental Conservation (DEC), DNR Division of Parks and Outdoor Recreation (DPOR), Alaska Mental Health Trust Land Office (MHTLO), DNR DMLW Water Resources Section, and DNR DMLW Statewide Abatement of Impaired Lands (SAIL).

DNR DMLW LCS Response: LCS appreciates your review.

Comments from DNR DMLW Northern Regional Office (NRO):

Thank you for the opportunity to review. DMLW NRO has no objection to the proposed conveyance at the confluence of the Kavik and Shaviovik Rivers (ADL 414833). There is a permitted UAF research site north of the parcel that should not be impacted by the conveyance or impact the conveyance itself.

DNR DMLW LCS Response to NRO: Thank you for your review. Any issued permits will transfer to the NSB.

Comments from DNR DMLW Resource and Development Section (RADS):

Thank you for the opportunity to review and comment on the proposed Municipal Land Entitlement conveyance to the North Slope Borough (NSB). The Resource Assessment & Development Section (RADS) has reviewed the available data, satellite imagery, and the applicable regional land use plan – North Slope Area Plan (NSAP) and provides the following comments.

Background & Discussion:

The NSB has selected the subject lands for potential conveyance in partial fulfillment of its municipal entitlement under AS 29.65.010. The lands selected under ADL 414833, totaling approximately 1,615 acres, are located at the confluence of the Shaviovik and Kavik rivers, approximately 10 miles south of the Beaufort Sea within U008N019E.

The selected parcel is located entirely within Management Unit C-19 of the NSAP, which was adopted in 2021. The lands in this management unit are designated Habitat (Ha) and Oil and Gas (Og), which convert to land classifications of Wildlife Habitat Land and Oil and Gas Land. These land classifications are not appropriate for conveyance under AS 29.65. However, as noted in the Agency Review memorandum, the management intent language for Unit C-19

includes a provision that allows for the Ha/Og designation to convert to a Rm designation, which converts to a land classification of Resource Management Land. This land classification is appropriate for potential conveyance to a municipality, as defined under *AS 29.65.130(10)*. This "converter" language would only apply to lands within the unit selected by a municipality for potential municipal entitlement conveyance. The management intent for unit C-19 also states that if a parcel within the unit is not conveyed to the NSB as part of its municipal entitlement, it will be incorporated into the adjacent unit and will be retained in state ownership.

Recommendation:

Based on RADS review and taking the above area plan recommendations into account, the proposed conveyance of the selected lands in ADL 414833, located within U008N019E, is a viable application that should move forward. Thank you for the opportunity to review.

DNR DMLW LCS Response to RADS: Thank you for your review.

Comments from DNR Division of Oil and Gas Leasing and Permitting (DOG):

Thank you for the opportunity to review ADL 414833 - Kavik River Confluence. The Division of Oil and Gas (DOG) does not have any objection to the proposed disposal. Please note that the parcel is situated within active oil and gas leases, ADLs 393853, 393857, 393856. DOG requests that if whole or partial conveyance of this selection is found to be in the State's interest, that it be subject to those leases.

DNR DMLW LCS Response to DOG Thank you for your review. Any lands approved for conveyance to NSB will be made subject to any active Oil and Gas leases.

Comments from DNR DMLW Public Access Assertion and Defense (PAAD):

The Land Conveyance Section submitted Agency Review Notice for PAAD Section review. There are no waters on the North Slope that are considered navigable for title purposes under *AS 38.04.062* as the court decisions in Original 84 and Kukpowruk River made clear the North Slope was a valid withdrawal for military purposes at the date of statehood. That being said, if it is the intention of the State to retain ownership of the beds of the Kavik and Shaviiovik Rivers that needs to be explicitly stated in the decision and the deed conveying the lands. If this clause is not included, then the NSB will hold title to the center of the river adjacent to the parcel by riparian rights. I am not advocating one path above another, just stating the options. Realty Services may have an opinion regarding this topic.

Please find attached a map I created identifying the waters in the area by size. This map was created for determining navigable and public waters per *AS 38.05.126, 127* for the reservation of 'to and along' easements [Attachment B]. It shows the one lake greater than 50 acres that is meandered from the parcel, it is recommended that a 'to and along' be placed along this lake. As well 'to and along' easement need to be placed along both the Kavik and Shaviiovik Rivers. No further waters within or adjacent to the parcel require to and along easement.

DNR DMLW LCS Response to PAAD Thank you for your review. NSB did not select the waters of the Kavik or Shaviiovik Rivers, nor the large lake on the south end of the parcel (see Attachment A). Even though the rivers are not navigable for title purposes, they are meanderable and anadromous and will have a 'to & along' public access easement, as well as a 100' riparian buffer per the NSAP.

Comments from DNR Division of Geological & Geophysical Surveys (DGGs):

The land selection in the above referenced document is in an area with significant oil and gas potential. If this selection is granted, the State of Alaska should retain all subsurface rights, including the right to hold oil and gas lease sales in the future.

DNR DMLW LCS Response to DGGGS: Thank you for your review. Per AS 38.05.125, all mineral estates will be reserved to the State.

Comments from the Department of Transportation & Public Facilities (DOT&PF):

Thank you for the opportunity to review the proposal. The Alaska Department of Transportation & Public Facilities (DOT&PF) notes that any State-owned right of ways, material sites, airports, and public facilities within the proposed disposal area shall be retained in State ownership.

DNR DMLW LCS Response to DOT&PF: Thank you for your review.

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

- Department of Commerce, Community & Economic Development
- Alaska Department of Fish & Game
- Department of Natural Resources
 - Division of Forestry and Fire Protection
 - DPOR, Office of History and Archaeology
 - State Pipeline Coordinator Section

VII. SUBMITTAL OF PUBLIC COMMENTS

See *Attachment C: Public Notice for specific date 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), a municipality or corporation entitled to receive notice under AS 38.05.945(c) 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, 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 LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at <http://landsales.alaska.gov/> and <http://dnr.alaska.gov/mlw/muni/> 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 the attached Public Notice.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, FRIDAY, JULY 28, 2023**

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This Preliminary Decision for North Slope Borough's municipal entitlement land selection covers approximately 1,508 acres of state land. LCS proposes to approve for conveyance and transfer equitable title and management authority on approximately 1,508 acres of state land, identified in *Table 5* below.

This decision determines that the municipal selection adjudicated in this decision for which the State currently has title is appropriate for conveyance to NSB. Although these lands do not fall within a conveyable classification, the management intent for NSAP Unit C-19 recommends that certain parcels are appropriate as municipal entitlement conveyance if the State determines that the State's interest in retaining this land selection does not outweigh the interest of NSB in obtaining it. The Ha/Og designations assigned to this unit will convert to the designation of Rm, which converts to the conveyable classification of Resource Management Land for the selections adjudicated within this decision.

This decision further determines that, for those lands to be conveyed to NSB, certain conditions and restrictions are appropriate and necessary to ensure the protection of important resources and public access. This decision, therefore, imposes restrictions and reservations that are to be part of the conveyance document to ensure adherence to state statutes and administrative code. Restrictions and reservations are listed in **Section IX. Recommendation and Preliminary Decision**.

B. Alternatives

The following alternatives exist:

1. Take no action to approve or reject NSB'S land selection. This alternative would, in effect, preclude NSB's ownership of lands considered to be important to their land base. This action would be inconsistent with the purpose of the Municipal Entitlement Act and inconsistent with the basis for the disapproval of a municipal entitlement selection. Such selections can only be rejected when a state's interests outweigh the interest of the borough, and there is no basis for such a determination.
2. Reject NSB's selection in its entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the statutory basis for rejection of a municipal selection.
3. Approve with management authority transferred, under the requirements of AS 29.65. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to NSB.

IX. RECOMMENDATION AND PRELIMINARY DECISION

A. Recommended Alternative

This decision determines that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. NSB's land selection is approved for conveyance, subject to the conditions, restrictions, and reservations listed below.

B. Recommended Conditions, Restrictions, and Reservations Conditions

1. As required under AS 38.05.127 and 11 AAC 51, the location of the OHWM of public waters will be determined at the time of survey.
2. Management authority will transfer to NSB on those lands approved for conveyance once the FFD becomes effective.

3. Management authority for public access easements is transferred to NSB once the FFD becomes effective. No such easements may be vacated, abandoned, or otherwise extinguished or rendered incapable of reasonable use by the public without the approval of the State of Alaska unless an alternative means for reasonable public access is provided and approved by the State.
4. Administration of state leases and permits pertinent to the surface estate will be transferred to NSB once the FFD becomes effective. Administration of issued state leases and permits on the mineral estate will remain with the State.
5. Once the FFD is effective, NSB may execute conditional leases and make conditional sales on lands approved for conveyance, prior to issuance of a state patent in accordance with AS 29.65.070(b).
6. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of NSB's municipal land entitlement pursuant to AS 29.65.010.
7. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains, or objects.

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 a 50-foot wide easement on each side of all surveyed and unsurveyed section lines in accordance with AS 19.10.010 and 11 AAC 51.025.
3. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the OHWM of all meanderable waters and on the bed and 50 feet upland along public waters pursuant to AS 38.05.127 and 11 AAC 51.
4. Reservation of a 100-foot riparian buffer upland of and adjacent to the OHWM of the Kavik and Shaviovik Rivers.
5. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and AS 38.05.125; and reservation of reasonably necessary access to the mineral estate in accordance with AS 38.05.130.
6. Subject to Oil and Gas Leases ADL 393853, ADL 393856, ADL 393857

C. Recommended Action on Municipal Selections

This decision recommends the conveyance of certain state-owned vacant, unappropriated, unreserved general grant land to North Slope Borough located in the Umiat Meridian of Northern Alaska.

LANDS PROPOSED FOR CONVEYANCE

Table 5 lists those lands proposed to be approved for conveyance in this decision. The estimated acreages for conveyance do not account for any exclusions, and exact acreages would be determined by survey. The final acreage amount will be credited towards partial fulfillment of North Slope Borough municipal land entitlement.

Table 5

Map Name	MTR	Sections and Legal Description	Acres
Kavik River Confluence	U008N019E	That portion of Tract C located west of the OHWM of Kavik River and located east of the OHWM of Shaviovik River within the protracted sections of: Sec. 14: 24 ac. Sec. 23: 418 ac. Sec. 24: 13 ac. Sec. 25: 73 ac. Sec. 26: 587 ac. Sec. 27: 393 ac.	1508
PROPOSED CONVEYANCE: TOTAL APPROXIMATE ACRES			1508

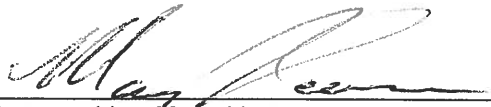
D. Preliminary Decision


The following are the findings for this Preliminary Decision:


1. It is appropriate to convert the Ha/Og designation on the selected parcel that falls within U008N019E and is within Unit C-19 to Rm and therefore change to the conveyable classification of Resource Management Land.
2. It is appropriate to convey approximately 1,508.05 acres of state-owned land to North Slope Borough. This decision determines that the interest of the State to retain this land does not outweigh the interests of the borough to obtain it.

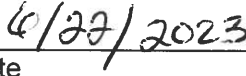
This Preliminary Decision, described above, represents the preferred alternative that has been reviewed and considered. After review and consideration of materials in this PD, LCS finds that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

After public notice, the subsequent review process may result in changes to the preferred alternative(s) or disapproval of the proposed action altogether. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.


 Prepared by: Mary Hermon
 Natural Resource Specialist 2
 Land Conveyance Section
 Division of Mining, Land and Water
 Department of Natural Resources
 State of Alaska


 Date


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


 Date

North Slope Borough





Municipal Selections

Preliminary Decision

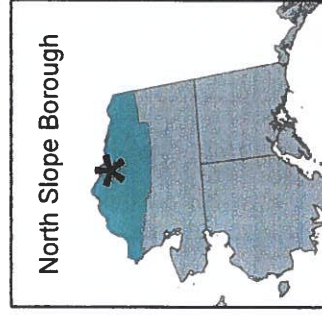
ADL 414833

Kavik River Confluence

Legend

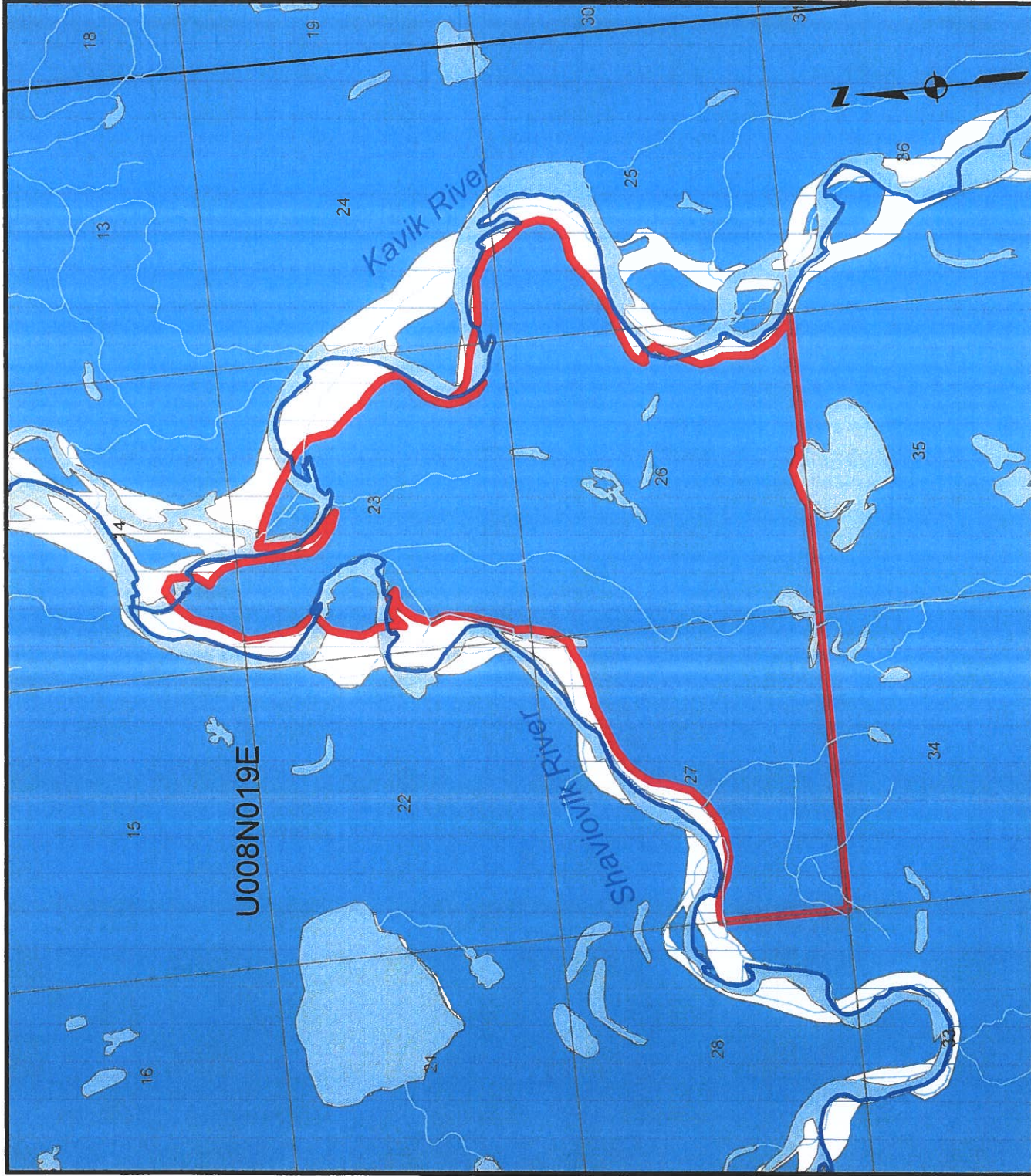
-  Anadromous Stream
-  Proposed Approval
-  State Land - TA or Patent
-  Mineral Leases

NSAP Unit C-19



Created by DNR-DMLW-LCS-ME

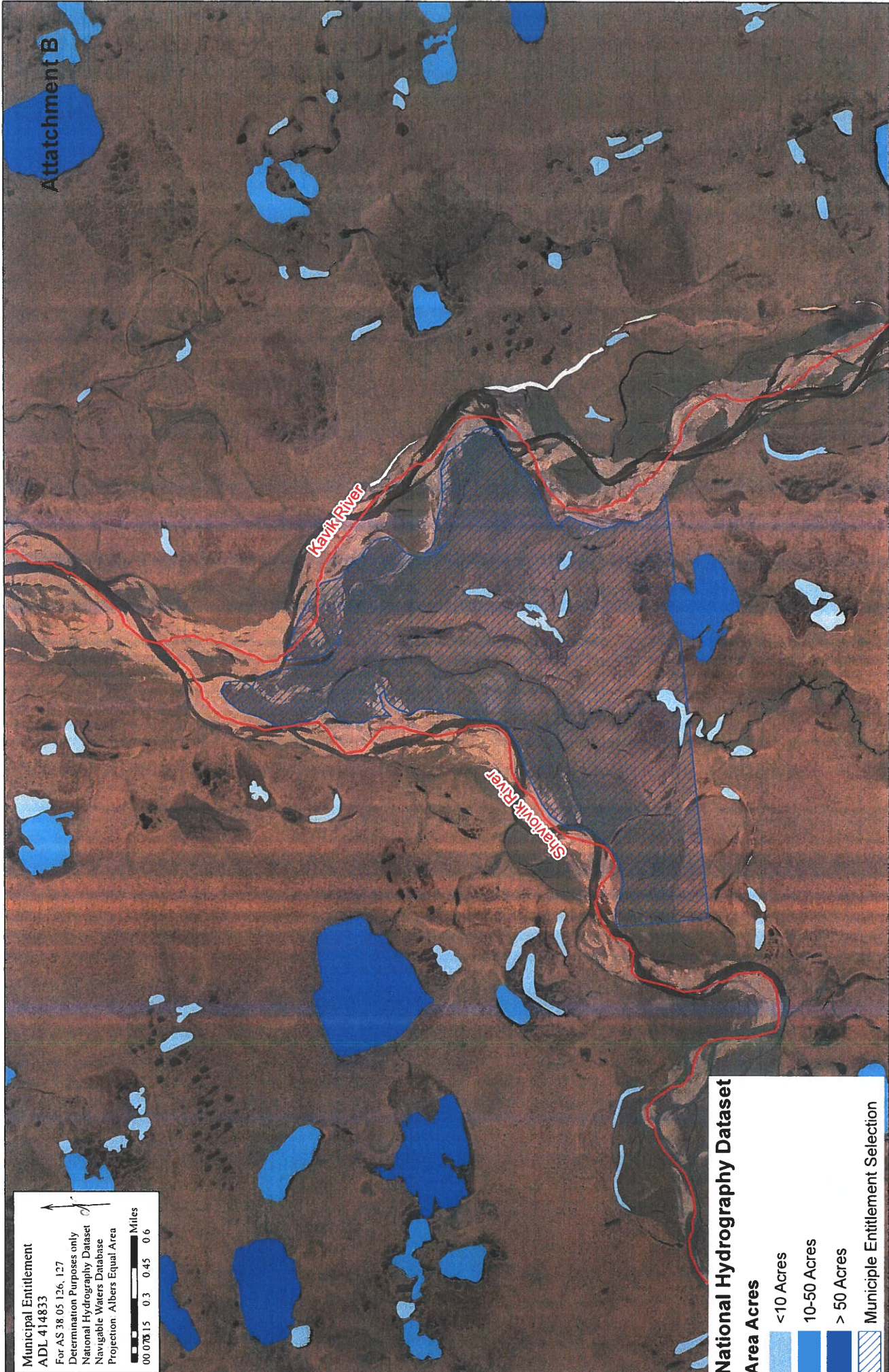
June 2023



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



Municipal Entitlement
ADL 414833
For AS 38 05 126, 127
Determination Purposes only
National Hydrography Dataset
Navigable Waters Database
Projection: Albers Equal Area
0 0.75 1.5 0.3 0.45 0.6
Miles



National Hydrography Dataset

Area Acres

- < 10 Acres
- 10-50 Acres
- > 50 Acres

Municipal Entitlement Selection

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

Attachment C: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 29.65
North Slope Borough Municipal Land Entitlement Selection – ADL 414833

COMMENT PERIOD ENDS: 4:30 PM, FRIDAY, JULY 28, 2023

The Department of Natural Resource (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has prepared a Preliminary Decision (PD) for a proposal to convey approximately 1508 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land to North Slope Borough (NSB) in order to partially fulfill their municipal land entitlement under AS 29.65.010. Located within DNR's Northern Region, this land selection falls within the Central Slope Region (the Western Planning area) as identified in the North Slope Area Plan. LCS finds that the proposed conveyance is consistent with the requirements of AS 29.65, and that NSB's interest in obtaining these state lands outweigh the State's interest in retaining them.

Pursuant to AS 38.05.945 Notice, the public is invited to comment on this PD which proposes to transfer ownership of state land to the North Slope Borough. **The deadline for submitting public comment is 4:30 PM, Friday, July 28, 2023.** Only persons from whom LCS receives timely written comment during the identified comment period will be eligible to file and appeal of the Final Finding and Decision (FFD). Comments must be received in writing to the Division of Mining, Land and Water, Attention: Mary Hermon, at 550 West 7th Avenue, Suite 640, Anchorage, Alaska 99501, by fax at (907) 269-8916, or by email at mary.hermon@alaska.gov. If you have questions, call Mary Hermon at (907) 269-6546.

The public notice is available on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>. The Preliminary Decision is available on the DMLW Municipal Entitlement web site at: <http://dnr.alaska.gov/mlw/muni/> and on the DMLW Land Sales website at: <http://landsales.alaska.gov>.

Following the comment deadline, those written responses received will be considered and the decision may be modified to incorporate public comments in the FFD. Only persons who comment during this public comment period will be eligible to file an administrative appeal of the FFD. A copy of the FFD will be sent to any person who comments on the PD. The FFD will include the appeal instructions. Please direct all inquiries or questions to Mary Hermon, at the above address, electronic mail, phone or by fax.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to this decision by telephone may call the DNR, Public Information Center in Anchorage between the hours of operation: 10:00 AM to 5:00 PM, Monday through Friday at TTY: 711 for Alaska relay or 800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/>

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.