

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

**PRELIMINARY DECISION**

**ADL 416148**

**BLM No. F 000828**

**Proposed Reconveyance of a  
Alaska Native Allotment in the Unorganized Borough**

**PUBLIC COMMENT PERIOD ENDS 4:30 PM, THURSDAY, AUGUST 12, 2021**

**I. Proposed Action**

*Preliminary Decision: Noah Albert – ADL 416148*

*Attachment A: Public Notice*

*Attachment B: Dependent Resurvey and Subdivision*

*Attachment C: Vicinity & Easement Map*

*Attachment D: Ownership Map*

Proposed Action: The primary proposed action of this Preliminary Decision (PD) of the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) is to voluntarily reconvey to the United States of America, Lot 4a, NE1/4 SE1/4, Section 11 and Lot 4, N1/2 SW1/4 SW1/4, Section 12, Township 4 South, Range 6 West, Fairbanks Meridian, containing 131.86 acres of wrongfully conveyed state land. See *Attachment C: Vicinity & Easement Map* for a depiction of the project area.

The subject parcel is an Alaska Native allotment, Bureau of Land Management (BLM) Serial No. F 000828 claimed by Noah Albert (deceased). The claim is being settled in accordance with the Stipulated Procedures for Implementation of Order approved by the Court to implement the decision in Ethel Aguilar v. United States of America, 474 F. Supp. 840 (D. Alaska 1979) (herein cited as Aguilar) and Alaska Statute (AS) 38.05.035(b)(9) *Powers and Duties of the Director*.

Public Notice of Proposal: In accordance with AS 38.05.945 *Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal.

See **Section VII. Submittal of Public Comments** at the end of this document and *Attachment A: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, DNR DMLW LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

**II. Authority**

This reconveyance is being adjudicated pursuant to AS 38.05.020 *Authority and Duties of the Commissioner*, AS 38.05.035 *Power and Duties of the Director*, AS 38.05.830 *Land Disposal in the Unorganized Borough*, 11 Alaska Administrative Code (AAC) 67.930 *Purpose and Procedure* and the settlement authority of the Attorney General in accordance with Aguilar. The authority to execute this PD has been delegated to the Section Chief, LCS, DMLW, DNR, pursuant to AS 38.05.035(b)(1) *Power and Duties of the Director*.

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### **III. Administrative Record**

The DNR case file - ADL 416148 and BLM case file F 000828, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Yukon Tanana Area Plan for state lands (YTAP, adopted January 3, 2014) and associated land classification files; and
- DNR case files: GS 21.

### **IV. Scope of the Proposal**

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to DNR DMLW's proposal to voluntarily reconvey this land to the United States of America in accordance with the Stipulated Procedures for Implementation of Order approved by the Court to implement the decision in Aguilar and *AS 38.05.035 Power and Duties of the Director*, and whether the reconveyance should be made subject to any stipulations to best serve the interests of the public and the State.

### **V. Location**

Located within DNR's Northern Region, approximately 11 miles east of Nenana, the project area is within Sections 11 and 12, Township 4 South, Range 6 West, Fairbanks Meridian, within the Unorganized Borough (UB). The project area consists of approximately 131.87 acres identified for reconveyance by this proposed action. See *Attachment C: Vicinity & Easement Map* for a depiction of the project area.

*USGS Map Coverage:* Fairbanks C-4

*Borough/Municipality:* Unorganized Borough

*Native Councils and Corporations:* The project area is within the boundaries of the Doyon Regional Corporation. Nenana is within 25 miles of this proposed action and notice will be sent to the Toghoththele Corporation and the Tanana Chiefs Conference.

### **VI. Legal Description**

The legal description is Lot 4a, NE1/4SE1/4, Sec 11 and Lot 4, N1/2SW1/4SW1/4, Sec 12, T. 4 S., R. 6 W., Fairbanks Meridian, containing 131.86 acres, more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on June 7, 2005 and officially filed on June 22, 2005.

### **VII. Title**

The State received title to the land on June 15, 1961 under Patent 1220532. The State file is GS 21. Title Report 21612 was issued March 5, 2021. There are no third party interests or reservations contained in the patent.

*Acquisition:* The State filed selection application GS 21 (BLM Serial No. F 024583) for Township 4 South, Range 6 West, Fairbanks Meridian on November 25, 1959.

*Restrictions:* The Tentative approval contains a reservation for a right-of-way thereon for ditches and canals under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945 and a reservation for the right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the Act of March 12, 1914 (38 Stat. 305).

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### **VIII. Background**

Noah Albert began his use and occupancy of the subject lands before the year 1900 according to documentation in BLM case file F 000828. His native allotment application was submitted on September 2, 1916. The State filed selection application GS 21 for Township 4 South, Range 6 West, Fairbanks Meridian on November 25, 1959 and received title by Patent 1220532 on June 15, 1961. The BLM surveyed the 131.86-acre parcel and issued dependent resurvey and subdivision in 2005. On April 30, 1998, the BLM determined Native Allotment application F 000828 valid and the State received a request for reconveyance on April 23, 2021.

### **IX. Planning, Classification, and Mineral Orders**

1. *Planning:* The subject parcel is located within the Tanana Valley State Forest as part of the Lower Tanana Region of the Yukon Tanana Area Plan adopted on January 3, 2014. Recommended land use within this management unit/region includes the disposal of land for agricultural and settlement purposes and the retention of land with forestry values with the intent of incorporating them into the Tanana Valley State Forest. The plan designates the subject parcel as L-01 F Tanana Valley State Forest
2. *Land Use Classification:* The State classified the subject parcel as L-01 F Tanana Valley State Forest under CL NC-82-065 based on the YTAP adopted January 3, 2014. Land is intended to be managed in a way that is consistent with the Tanana Valley State Forest Management Plan.
3. *Mineral Order:* No mineral order exists for the parcel in question.
4. *Local Planning:* This parcel does not exist within any local planning unit.

### **X. Traditional Use Finding**

Before a sale, lease under *AS 38.05.070 – 38.05.105 Alaska Land Act*, or other disposal of state land in the unorganized borough, the Commissioner shall consider the effect that the sale, lease, or disposal may be expected to have on the density of population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the Commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter (§33 ch. 113 SLA 1981).

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. See the **Section XVI. Submittal of Public Comments** at the end of this document and *Attachment A: Public Notice* for details on how to submit comment.

### **XI. Access, including Access To and Along Public or Navigable Water**

*Public Access:* This parcel is adjacent to Tanana River which has been determined to be navigable waterway. Furthermore, this parcel is bordered by Tatlanika Creek and bisected by an unnamed stream both of which are considered to be public waterways under *AS 38.05.126, 127, 965 (14) and (21)*. This parcel is primarily accessed by boat in the summer and by dogsled and snow machine in the winter.

*Access To and Along Public or Navigable Waters:* In accordance with *AS 38.05.127 Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish

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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 Strips, Reserved Areas, and Public Easements*.

*Easements and Setbacks*: The reconveyance will except, reserve, or be subject to the reservations brought forth by the public notice, if any, and the following:

Subject to:

- (a) An easement fifty (50) feet in width for public access, upland, abutting, and running in common with the ordinary high water mark along both sides of the unnamed creek bisecting Lot 4 of Section 12, Township 4 South, Range 6 West, Fairbanks Meridian, Alaska, pursuant to AS 38.05.127 *Access to Navigable and Public Water*, 11 AAC 51.045 *Easements To and Along Navigable and Public Water*;
- (b) An easement fifty (50) feet in width for public access, upland, abutting, and running in common with the ordinary high water mark along the Tanana River within Sections 11 and 12, Township 4 South, Range 6 West, Fairbanks Meridian, Alaska, pursuant to AS 38.05.127 *Access to Navigable and Public Water*, 11 AAC 51.045 *Easements To and Along Navigable and Public Water*;
- (c) An easement fifty (50) feet in width for public access, upland, abutting, and running in common with the ordinary high water mark along Tatlanika Creek within Lot 4 of Section 12, Township 4 South, Range 6 West, Fairbanks Meridian, Alaska, pursuant to AS 38.05.127 *Access to Navigable and Public Water*, 11 AAC 51.045 *Easements To and Along Navigable and Public Water*;
- (d) An easement fifty (50) feet in width along each side of the surveyed section line in common with Sections 11 and 12, Township 4 South, Range 6 West, Fairbanks Meridian, pursuant to AS 19.10.010 *Dedication of Land for Public Highways*, 11 AAC 51.025 *Section Line Easements*, and AS 19.25.010 *Use of Rights-of-way for Utilities*; and
- (e) All other valid existing rights, if any.

## **XII. Reservation of the Mineral Estate**

The Division of Oil and Gas (DOG) and the DMLW have determined that it is not in the State's best interest to retain the mineral estate. The mineral estate will not be retained pursuant to AS 38.05.035(e) *Powers and Duties of the Director*. The State will receive an acreage credit for the lands.

## **XIII. Hazardous Materials and Potential Contaminants**

The Department of the Interior, BLM, is expected to inspect the parcel and familiarize itself with the condition and quality of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for reconveyance. The

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State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

### **XIV. Survey**

The parcel is adequately surveyed for reconveyance to the United States of America.

### **XV. DMLW and Agency Review**

Information and comments received from multiple sections with DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from April 16, 2021 to March 16, 2021. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision (FFD).

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

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

- Alaska Department of Fish and Game
- State Historical Preservation Office

### **XVI. Submittal of Public Comments**

**See Attachment A: Public Notice for specific dates and conditions.**

Pursuant to AS 38.05.945 Notice, LCS is issuing public notice inviting comment on this Preliminary Decision.

In accordance with AS 38.05.946(a) Hearings, a municipality or corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision, without further notice.

Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the 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/> or <https://aws.state.ak.us/OnlinePublicNotices/> and sent with an explanation of the appeal process to any party who provides timely written comment.

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DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information refer *Attachment A: Public Notice*.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS  
4:30 PM, THURSDAY, AUGUST 12, 2021**

**XVII. Discussion and Alternatives**

The following alternatives were considered:

Alternative 1: Reconvey

Reconvey the land to the United States subject to the reservations, exceptions, and restrictions as stipulated in **XI. Access, Including Access To and Along Public or Navigable Water, Easements and Setbacks**. This will allow the Native Allottee to obtain title to the land while the State will retain public access on the property as prescribed by statute and thus avoid title recovery litigation by the federal government. Therefore, it is in the best interest of the State to reconvey the parcel as proposed in this decision, and this is the preferred alternative.

Alternative 2: Retain

Retain ownership and withhold reconveyance. DNR currently does not have a persuasive reason to pursue this option. This alternative may lead to title recovery litigation brought by the United States on behalf of the Native Allottee, thus subjecting the State to an uncertain expenditure of resources and an uncertain result of litigation. This alternative is not preferred.

In accordance with the Stipulated Procedures for Implementation of Order in Aguilar, BLM reviewed and determined Mr. Albert's Native Allotment application to be valid on April 30, 1998. Based on documentation within BLM's case file and subsequent comments received from agency review, LCS has found no legal reason for denying this reconveyance subject to public notice and a final decision.

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

Recommendation follows.

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**XVIII. Recommendation**

This Preliminary Decision for the proposed reconveyance of state lands described throughout this document and its attachments may be within the State's best interest. Reconveyance under the conditions in Alternative #1 is preferable to title recovery litigation. The State's reconveyance will allow the BLM to transfer title of the land to the Native Allottee and will eliminate any further title recovery action. The PD 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.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed reconveyance of state lands. If the decision is approved, a Final Finding and Decision may be issued.



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

July, 12, 2021

Date

for → 

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

July 12, 2021

Date

## PUBLIC NOTICE

State of Alaska  
Department of Natural Resources (DNR)  
Division of Mining, Land and Water  
Land Conveyance Section  
550 W. 7<sup>th</sup> Ave., Suite 640  
Anchorage, Alaska 99501-3579

Notice is hereby given that the Division of Mining, Land and Water has made a preliminary decision under AS 38.05.035(e) to reconvey the following erroneously conveyed State land to the United States of America for conveyance to the Native allotment applicant noted below pursuant to AS 38.05.035(b)(9) and in accordance with the Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979):

Applicant: Noah Albert (deceased)  
BLM No.: F-000828  
ADL No.: 416148  
Location: Sections 11 and 12, T. 4 S., R. 6 W., Fairbanks Meridian  
Survey: Dependent Resurvey and Subdivision of June 22<sup>nd</sup>, 2005 containing 131.87 acres, more or less

The public is invited to comment on the proposals to reconvey the land. Copies of the Preliminary Decision are available from the address above. Comments must be in writing and received at the above physical address, faxed to (907) 269-8916, or submitted by email to [danny.hovancsek@alaska.gov](mailto:danny.hovancsek@alaska.gov) before 4:30 pm, August 12, 2021 in order to ensure consideration and appeal in accordance with 11 AAC 02.010(c). Public comments will be reviewed and considered in the Final Finding and Decision. The final decision will be issued on or about August 19, 2021, or thereafter, and will be sent to any person who commented during the thirty-day comment period. The Final Finding and Decision will provide additional information about the appeal procedures.

The State of Alaska, Department of Natural Resources, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may call 269-8411 TTY/TTD. Please provide sufficient notice in order for the Department to accommodate your needs.

The DNR, Division of Mining, Land and Water reserves the right to waive technical defects in this notice and will forgo an additional notice and comment period upon issuance of the Final Finding and Decision.

Date of Publication: July 12, 2021



# TOWNSHIP 4 SOUTH, RANGE 6 WEST, OF THE FAIRBANKS MERIDIAN, ALASKA DEPENDENT RESURVEY AND SUBDIVISION

A history of surveys is contained in the field notes.

This plat represents the retracement and dependent resurvey of portions of the east boundary and the subdivision lines, the survey of a portion of the subdivision lines in sections 11 and 12, and sections 11 and 12, and the adjusted 1918 meander line of the left bank of the Tanana River in sections 11 and 12, and the informational traverse of a portion of the Tanana River in sections 11 and 12, and the ordinary high water line of the Tanana River in section 12, Township 4 South, Range 6 West, Fairbanks Meridian, Alaska.

Except as indicated hereon the lottings and areas are as shown on the plat of survey accepted May 18, 1921. Lottings affected by erosion are shown in parts, denoting land and water areas, for informational purposes only.

This survey was executed by Kurt D. Huhta, Cadastral Surveyor, September 1 through September 24, 2003, in accordance with the specifications in the Certificate of Accuracy, No. 1873, and Supplemental Special Instructions for Group No. 753, Alaska, dated May 16, 2002, and Amended Special Instructions dated July 16, 2003.

Acceptance of this survey does not purport to transfer any interest in submerged lands to which the State of Alaska is entitled under the Equal Footing Doctrine, and Section 6(m) of the Alaska Statehood Act, P.L. 86-60, as amended, does not constitute a location, or absence of meander lines to depict water bodies.

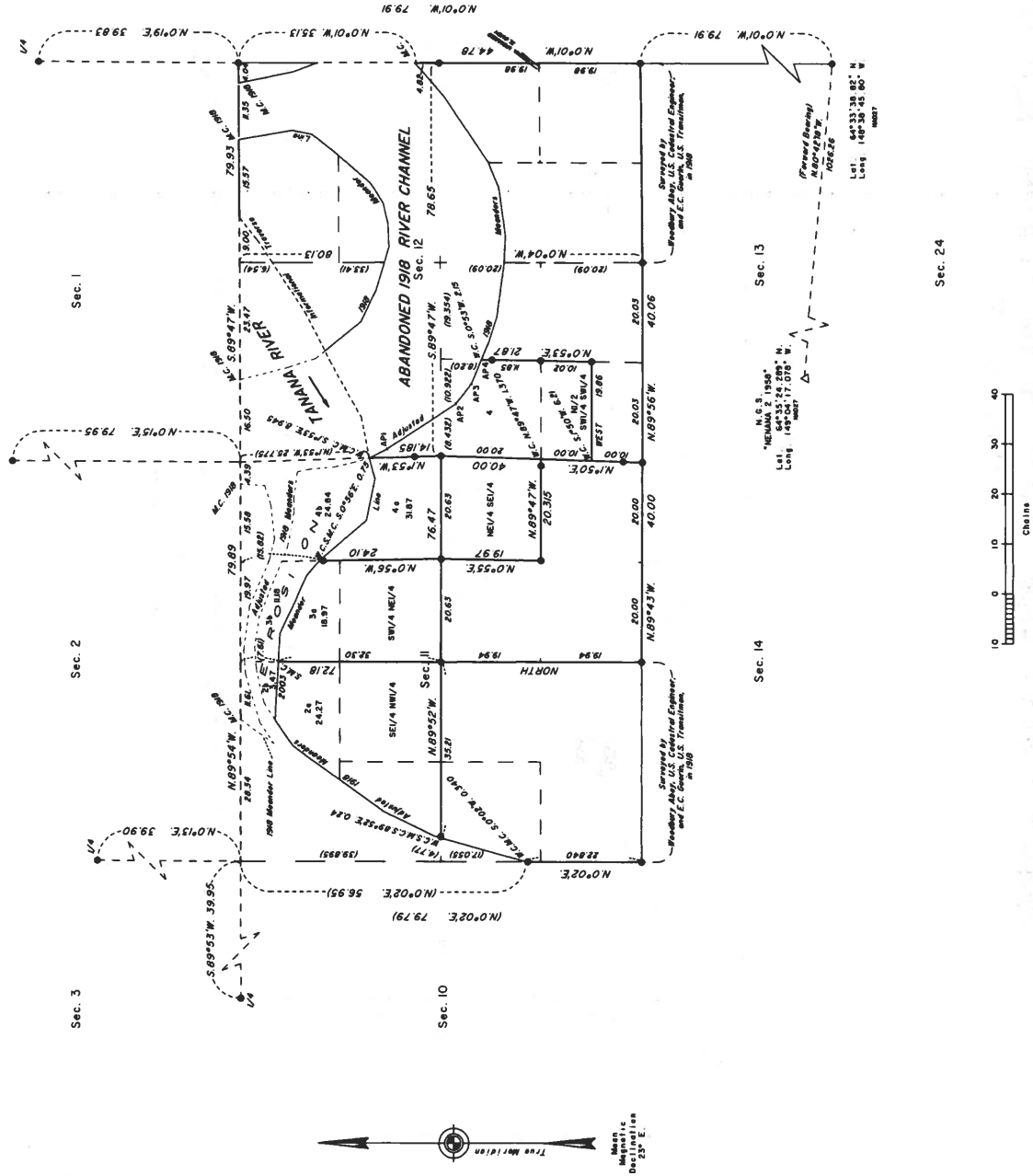
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Anchorage, Alaska

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

For the Director

*John Sumpf* 6/2/05  
Date

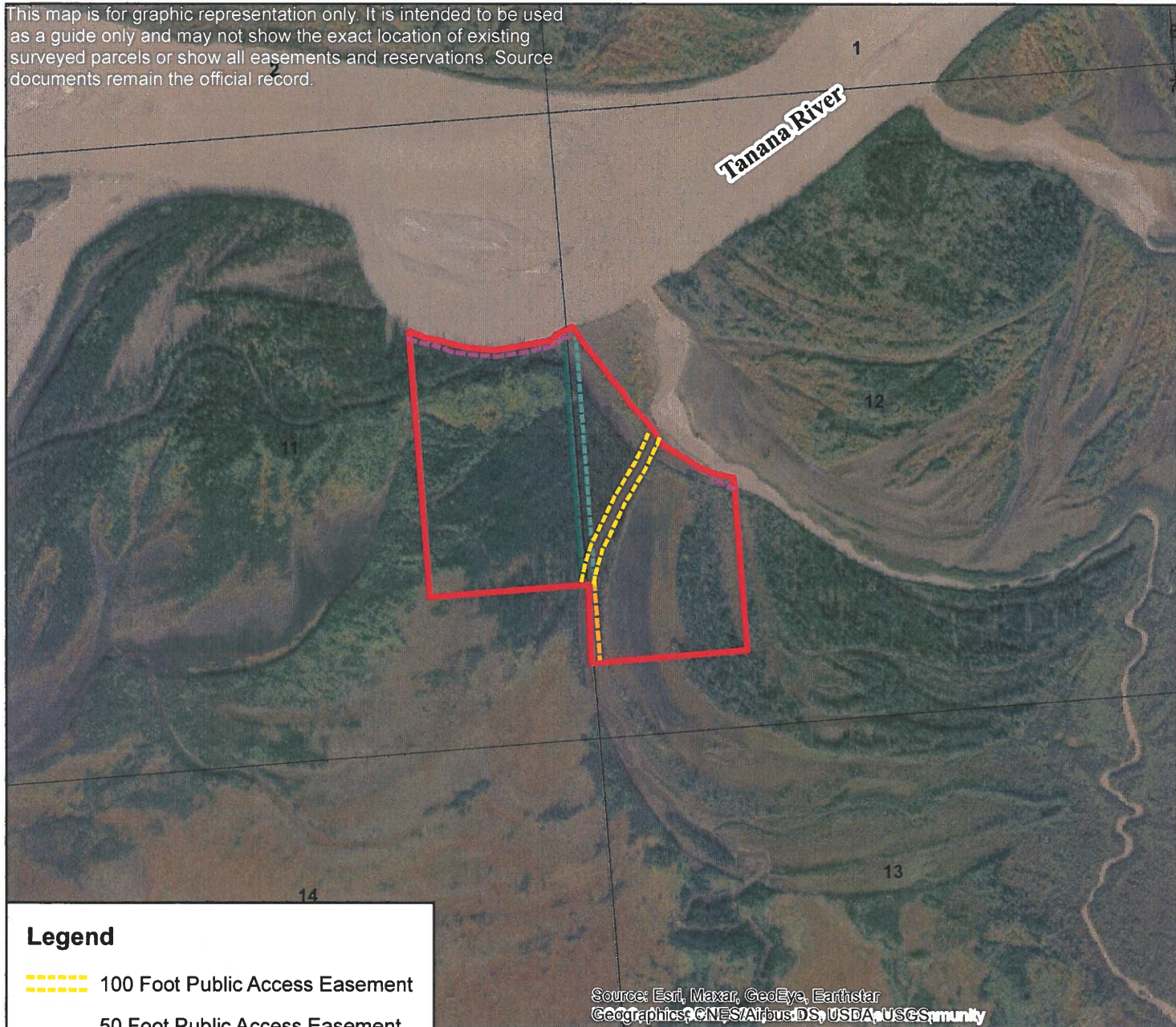
Deputy State Director for Cadastral Survey, Alaska



# Attachment C: Vicinity & Easement Map Noah Albert ADL 416148








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.



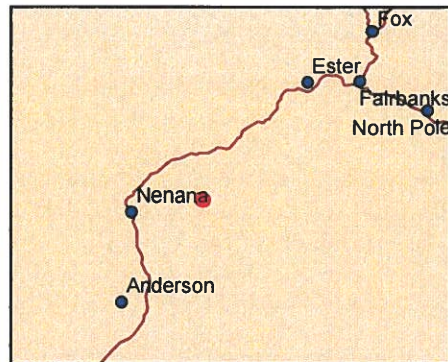
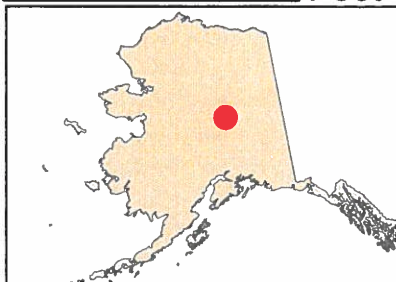
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, munty

**Legend**

-  100 Foot Public Access Easement
-  50 Foot Public Access Easement
-  50 Foot Section Line Easement
-  100 Foot Section Line Easement
-  Noah Albert Native Allotment

**Sections 11 and 12, Township 4 South,  
Range 6 West, Fairbanks Meridian**

DLH 5/5/2021



USGS QUAD 1:63,360, Fairbanks C-4  
For more information contact:  
Daniel Hovancsek  
Department of Natural Resources  
Division of Mining, Land and Water  
Land Conveyance Section  
Phone: 907-269-8574  
Fax: 907-269-8916  
Email: danny.hovancsek@alaska.gov

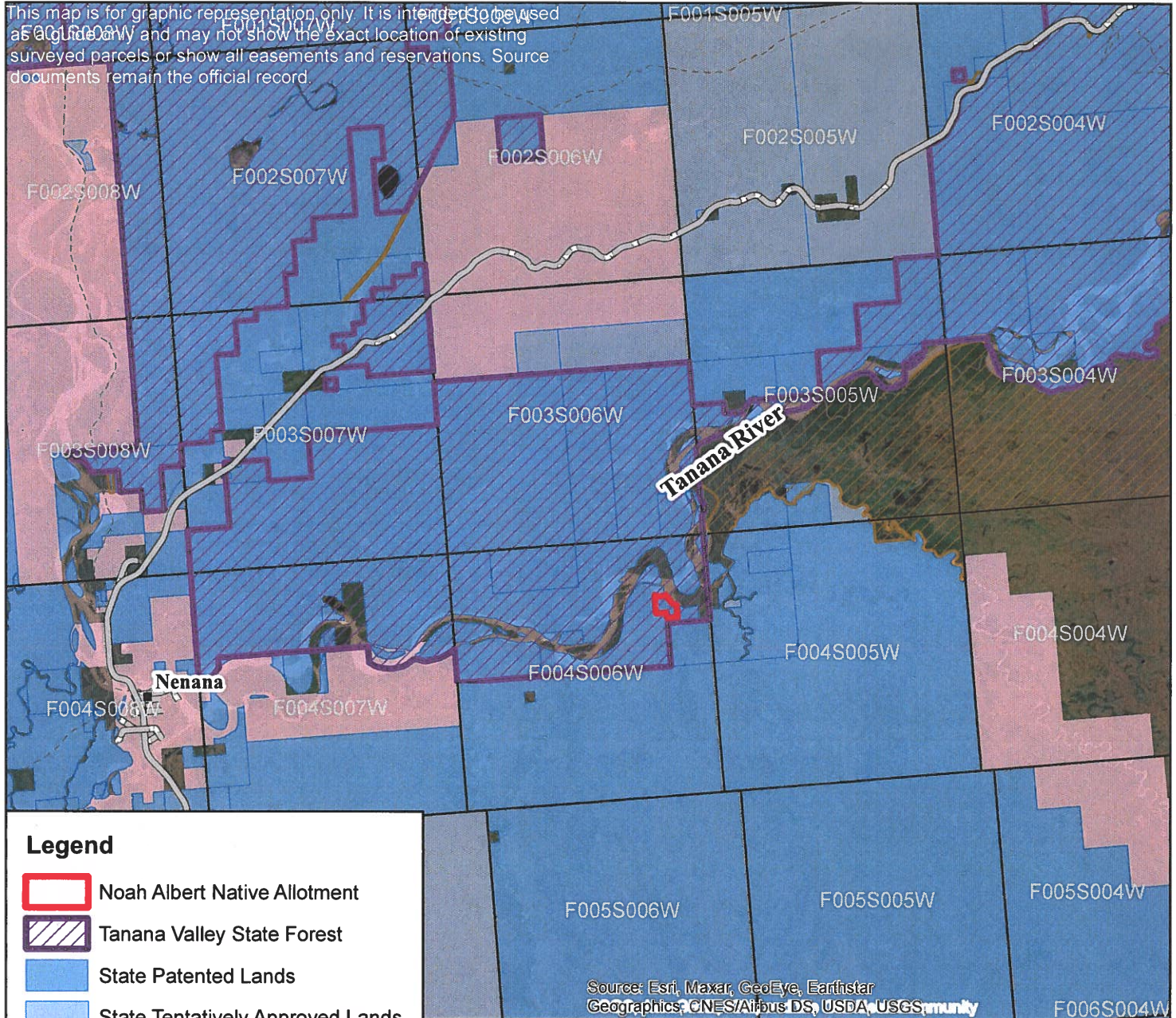




# Attachment D: Ownership Map Noah Albert ADL 416148



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.



### Legend

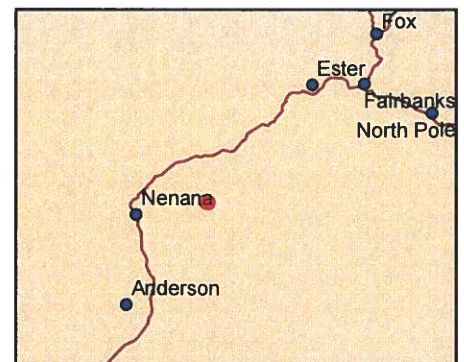
- Noah Albert Native Allotment
- Tanana Valley State Forest
- State Patented Lands
- State Tentatively Approved Lands
- ANCSA Patented Lands
- Federal Withdrawal
- Parks Highway

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, imagery

**Sections 11 and 12, Township 4 South,  
Range 6 West, Fairbanks Meridian**

DLH 5/5/2021

0 5 Miles



USGS QUAD 1:63,360, Fairbanks C-4  
 For more information contact:  
 Daniel Hovancsek  
 Department of Natural Resources  
 Division of Mining, Land and Water  
 Land Conveyance Section  
 Phone: 907-269-8574  
 Fax: 907-269-8916  
 Email: [danny.hovancsek@alaska.gov](mailto:danny.hovancsek@alaska.gov)

