

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 414826

PUBLIC COMMENT PERIOD ENDS 4:30 PM, FRIDAY, JANUARY 13, 2023

I. PROPOSED ACTION

Preliminary Decision: North Slope Borough Municipal Land Entitlement Selection – ADL 414826
Attachment A: East of Nuiqsut and Colville River
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: East of Nuiqsut and Colville River* 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 10,240 acres will be adjudicated in this decision.

LCS proposes to convey approximately 10,240 acres of state-owned vacant, unappropriated, unreserved (VUU²) general grant land. Regarding this parcel, 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*,

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).

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AS 19.10.010 Dedication of Land for Public Highways, 11 AAC 51 Public Easements, and 11 AAC 55 Land Planning and Classification.

III. ADMINISTRATIVE RECORD

The administrative record for this proposed action consists of case file Alaska Division of Lands (ADL) 414826. 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 Conservation (DEC) Contaminated Sites Database; and
- DNR case files: GS 1292, GS 1291, ADL 392351, ADL 392352, ADL 392947, ADL 392948, ADL 392950, ADL 392951, LAS 29523, LAS 30043, and LAS 31702.

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 parcel is located approximately 8 miles east of Nuiqsut, approximately 4 miles east of the Colville River, and approximately 18 miles south of the Beaufort Sea. The Kachemach River runs approximately 2 miles from the east border of the selection, and a tributary of the river runs through the middle of the parcel. The land is flat and marked with wetlands and numerous small lakes.

Borough/Municipality: North Slope Borough
Meridian: Umiat Meridian (U)
Regional Corporation: Arctic Slope Regional Corporation
Federally Recognized Tribe: Native Village of Nuiqsut
Village Corporation: Kuukpik Corporation
USGS Map Coverage: Harrison Bay Quadrangle (1:250,000)
Harrison Bay A-1, A-2 (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.

Table 1

Map Name	MTRS	State Case File	Title/Date	Third-Party Interests
East of Nuiqsut and Colville River	U009N006E 1-4	GS 1292	PA 50-74-0100 03-27-1974	ADL 392351, O&G Lease, issued (Sec 1, 2) ADL 392352, O&G Lease, issued (Sec 3, 4)
	U010N006E 21-28, 33-36	GS 1291	TA: 10-09-1964 TA (modified): 02-07-1969	LAS 29523, Misc Land Use Permit Issued (Sec 21-24) LAS 31702, Misc Land Use Permit Issued (Sec 35) ADL 392947, O&G Lease, Issued (Sec 23, 24) ADL 392948, O&G Lease, Issued (Sec 21, 22) ADL 392950, O&G Lease, Issued (Sec 25, 26, 35, 36) ADL 392951, O&G Lease, Issued (Sec 27, 28, 33, 34) LAS 30043, Water Right, Issued (Sec 24) TWUA A2018-50, Issued (Sec 23) TWUA A2020-75, Issued (Sec 24)

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 12,817 acres have been patented or approved for conveyance to NSB. Approximately 85,799 acres remain in their entitlement, of which about 44,121 acres have been selected. This decision covers about 10,240 acres between the Colville and Kachemach Rivers in the Central North Slope area.

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

With respect to planning, the NSAP is the controlling land management planning authority. 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.*). And, accordingly, is governed by the management intent and classifications found in the plan.

Management intent has the same level of authority as a plan designation under *11 AAC 55.030(c)(6)*. In all instances, whether it is a municipal selection affected by a non-conveyable classification or a management guideline/intent that requires the State to retain land, the effect is the same: the selection is not conveyable to NSB *unless* a plan amendment changes the classification, the management guideline/intent, or both.

2. Land Use Classification

The land selection proposed for conveyance in this decision is classified as Resource Management Land, which is a conveyable classification as municipal entitlement general grant land under *AS 29.65.130 Definitions*.

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

Table 2

Map Name	MTR	Section(s)	Approx. Acres	Unit	Classification	Plan Management Intent
East of Nuiqsut and Colville River	U009N006E	1-4	2560	C-18	RMG	Manage for multiple uses, such as hunting, fishing, material sales, and other public uses.
	U010N006E	21-28, 33-36	7680	C-18	RMG	

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.

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 in the North Slope area. However, this parcel is accessible via an ice road during the colder months. A trail traverses northwesterly to southeasterly across the parcel, and a gravel road crosses through the southeast corner of the selection. Nuiqsut has a small airstrip that allows some types of aircraft to land. All-terrain vehicles and snowmachines are used seasonally, and floatplanes may be able to land on the larger lakes within the parcel.

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 is bordered by section lines and has several section lines running through the middle of it.

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

A review of state records verifies that no rights-of-way (ROW) or easements are running through or adjacent to NSB’s land selection.

3. Navigable and Public Water

The State will retain ownership of the bed of navigable water, including all gravel bars and islands, and will convey the bed of public waters to NSB. A survey will determine the Ordinary High Water Mark (OHWM) of the navigable and public waters, the Mean High

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Water Mark (MHWM) on marine meandering shorelines, identify islands, and determine 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 what was identified in this 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 this decision.

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. Additionally, 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 MHWM is established at the time of survey.

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*).

On and along the bed of public water bodies or waterways, the State will reserve an access easement and convey title to NSB. Legal public access is generally limited to easements typically 100 feet wide on section lines (SLE) and typically 50 feet wide along the OHWM and MHWM of navigable and public water bodies (the 'along' easement, see below).

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 MHWM of navigable 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.

An alternative upland access route may be reserved if LCS finds that access along an easement reserved under 11 AAC 51.045(d)(1) *Easements To and Along Navigable and Public Water* is difficult because of topography or obstructions.

Table 3 lists several bodies of water that are either considered Public (between 10 and 50 acres in size) or Navigable (more than 50 acres in size) as determined by DNR Public Access Assertion and Defense Section (PAAD). Attachment B: PAAD Navigable and Public Waters depicts what PAAD has determined navigable, public, or neither. The Public lakes will have a public access easement established on the bed and along the shore (OHWM) upland 50 feet. The Navigable lakes will have a 50-foot public access easement established upland and along the shore (OHWM). The beds of the navigable lakes will not be conveyed out of state ownership.

Two streams and their tributaries run through this parcel's sections. A survey will determine if the waterways are considered public and require a public access easement as described above in 4.

Easements To and Along Navigable and Public Water. Other than the anadromous stream, they are not listed in the below table.

Table 3

Map Name	MTR	Section	Waterbody Type	Anadromous Water Catalog #	Public Access Easement (to & along)
East of Nuiqsut and Colville River	U009N006E	02	Public lake	None	On the bed & 50' upland
		03	Navigable lake		50' upland from OHWM
		03 04	Public lakes		On the bed & 50' upland
	U010N006E	21	Public stream	330-00-10700-2090-3032	On the bed & 50' upland
		21 22	Public lakes	None	On the bed & 50' upland
		23	Navigable lake		50' upland from OHWM
		23	Public lake		On the bed & 50' upland
		24 25 26	Navigable lakes		50' upland from OHWM
		28 33 35 36	Public lakes		On the bed & 50' upland

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.

Several active oil and gas leases cover these areas; see the table below.

Table 4

Map Name	MTR	ADL and Company
East of Nuiqsut and Colville River	U009N006E	ADL 392351 -- Oil Search (Alaska), LLC ADL 392352 -- Oil Search (Alaska), LLC
	U010N006E	ADL 392947 -- Oil Search (Alaska), LLC ADL 392948 -- Oil Search (Alaska), LLC ADL 392950 -- Oil Search (Alaska), LLC ADL 392951 -- Oil Search (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 contaminated sites with institutional controls. See DEC's comment in subsection **M. DMLW and Agency Review** for details.

NSB is expected to inspect this selection and familiarize itself with regard 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 the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor any liability for the remediation of the site should such substances ever be identified. NSB, by selecting these lands and requesting their conveyance through this PD, recognizes the surrounding areas of identified contaminated sites and will take the land "as is."

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 specifically excluded from the conveyance. Any pending applications that have not been adjudicated and issued will be closed and notified.

Currently, there are two Miscellaneous Land Use Permits (LAS 29523, ConocoPhillips Alaska, Inc. and LAS 31702, University of Alaska), one Water Right (LAS 30043, ConocoPhillips Alaska, Inc.), and two TWUA (A2018-50 and A2020-75) issued to ConocoPhillips Alaska, Inc.

K. Cultural Resources

The Alaska Office of History and Archaeology (OHA) maintains the Alaska Heritage Resources Survey (AHRs), 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

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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), the Alaska Mental Health Trust Land Office (MHTLO), DNR DMLW Statewide Abatement of Impaired Lands (SAIL).

Comments from DNR DMLW Northern Regional Office (NRO):

The DMLW NRO has reviewed the proposed land conveyance to the North Slope Borough (ADL 414826). The parcel is located east of the Colville River, south of the Alpine Pipeline, and west of the Tarn/Meltwater Road which is partially within the Kuparuk River Unit.

There is a research site that is part of a larger research permit located within the selected parcel. That permit (LAS 31702) is expired. Once DMLW NRO receives the completion report, the permit will be closed.

The selected parcel is near the Alpine Resupply Ice Road which is authorized under LAS 25360 and issued to ConocoPhillips Alaska, Inc (CPAI). See the attached map for a quick reference. The DMLW NRO has worked closely and cooperatively with CPAI on management of the long-term ice road to prevent long term tundra damage along the route. There are 5 permanent monitoring plots along the route that are visited during the summers for data collection and analysis. Though CPAI constructs the ice road to access the Colville River Unit (Alpine Development), it is used by multiple oil companies, contractors, and the local North Slope communities to travel to the graveled road system within the oil fields and beyond.

It is worth noting that the Alpine Resupply Ice Road is currently in a fixed location due to an agreement that DMLW NRO developed with CPAI. Since 2013, CPAI has been constructing the ice road utilizing methods and vehicles that are seasonally dependent. The process followed was heavily discussed and agreed to by DMLW and CPAI.

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During this summer's inspection and data collection activities, it was evident that the ice road is impacting the route more significantly than in years past. While we have not yet completed our analysis of the data collected, the ice road location may need to be relocated in the next year to prevent long term damage to the landscape. Due to lakes, ponds, and creek crossing restricting where the ice road could potentially be constructed, any reroute may require traversing the selected parcel. And if the ice road needed to be routed on a parcel conveyed to the NSB, management of construction, users, tundra damage, and long-term tundra impacts would require considerable coordination and work on the part of DNR and CPAI.

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

Comments from DNR DMLW Water Resources Section (Water):

The DNR DMLW Water Resources Section has no objection to the proposed conveyance of ADL 414826-Nuiqsut Colville area. A certificate of appropriation has been issued to ConocoPhillips Alaska Inc. under LAS 30043 for Lake M9605 and we understand all conveyances are issued subject to such existing rights.

Temporary Water Use Authorizations under TWUA A2020-75 and TWUA A2018-50 both to ConocoPhillips Alaska Inc are active on several lakes in this parcel as well.

DNR DMLW LCS Response to Water: Thank you for your review. Issued permits and authorizations will be transferred to the management of 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 414826, totaling approximately 10,240 acres, are located approximately 8 miles east of the Village of Nuiqsut, approximately 4 miles east of the Colville River, and approximately 18 miles south of the Beaufort Sea.

As noted in the Agency Review documents, the selected parcel is located entirely within Management Unit C-18 of the NSAP, which was adopted in 2021. The lands in this management unit are designated resource management (Rm) 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). Please note that the acreage listed in the NSAP Resource Allocation Table for Management Unit C-18 is 10,227, which differs from the acreage listed in Table 1 of the September 2, 2022 Agency Review memorandum, which totals 10,240.

Recommendation:

Based on RADS review of the subject lands, the proposed conveyance of the selected lands in ADL 414826, located within U009N006E and U010N006E, 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.

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

Thank you for the opportunity to review ADL 414826 - Nuiqsut Colville area. 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 392947, 392948, 392950, 392951, 392351, 392352. 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. PAAD recommends that easements are reserved for those lakes that are greater than 50 acres and between 10 – 50 acres.

DNR DMLW LCS Response to PAAD: Thank you for your review. Per AS 38.05.127, all waterbodies that are considered public or navigable (see above explanation in section **D. Access**, specifically subsections **3. Navigable and Public Water** and **4. Easements To and Along Navigable and Public Water**) based on size will require a 50-foot access easement along the shore from OHWM.

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

The North Slope Borough land selections identified in the above referenced document are both located within an area of significant oil and gas potential in conventional reservoirs. If these land selections are granted the State of Alaska should retain subsurface mineral rights (subsurface mineral estate) and the right to include these tracts in future lease sales.

DNR DMLW LCS Response to DGGS: Thank you for your review. Per AS 38.05.125 the mineral estate 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 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
 - DPOR, Office of History and Archaeology
 - Division of Forestry and Fire Protection
 - 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.

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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. All related actions will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without the approval of all actions.

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, JANUARY 13, 2023

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This Preliminary Decision for North Slope Borough's municipal entitlement land selection covers approximately 10,240 acres of state land. LCS proposes to approve for conveyance and transfer equitable title and management authority on approximately 10,240 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. These lands fall within a conveyable classification, and there is no indication that the State's interest in retaining this land selection outweighs the interest of NSB in obtaining it.

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:

Preliminary Decision

North Slope Borough, ADL 414826

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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, rejecting some parcels due to ineligibility for conveyance 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 provided by *11 AAC 51.035*, the State will retain in state ownership the bed of all navigable waters, including any waters determined to be navigable in fact, from the outermost OHWM, including all gravel bars and islands.
2. As required under *AS 38.05.127* and *11 AAC 51*, the location of the MHWM and OHWM of navigable waters, including any waters determined to be navigable in fact, will be determined at the time of survey to determine the specific area to be retained by the State.
3. 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.
4. Management authority will transfer to NSB on those lands approved for conveyance once the FFD becomes effective.
5. 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.
6. 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.
7. 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)*.
8. 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*.
9. 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:

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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 navigable, waters determined to be navigable in fact, and on the bed and 50 feet upland along public waters pursuant to AS 38.05.127 and 11 AAC 51.
4. 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.
5. Subject to Oil and Gas Leases ADL 392351, ADL 392352, ADL 392947, ADL 392948, ADL 392950, ADL 392951.

C. Recommended Action on Municipal Selections

This decision recommends conveying certain state-owned vacant, unappropriated, unreserved general grant land to North Slope Borough 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	Section and Legal Description	Acres
East of Nuiqsut and Colville River	U009N006E	Sec. 1: All Sec. 2: All Sec. 3: All, <i>excluding bed of lake</i> Sec. 4: All	2,560
	U010N006E	Sec. 21: All Sec. 22: All Sec. 23: All, <i>excluding bed of lake</i> Sec. 24: All, <i>excluding bed of lake</i> Sec. 25: All, <i>excluding bed of lake</i> Sec. 26: All, <i>excluding bed of lake</i> Sec. 33: All Sec. 34: All Sec. 35: All Sec. 36: All	7,680
PROPOSED CONVEYANCE: TOTAL APPROXIMATE ACRES			10,240

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The following are the findings for this Preliminary Decision:

1. That it is appropriate to convey approximately 10,240 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.

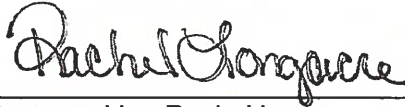
This Preliminary Decision, described above, represents the preferred alternative that has been reviewed and considered. After review and consideration of materials in this PD, LCS finds that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to Public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

12/5/22
Date



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

12/05/2022
Date

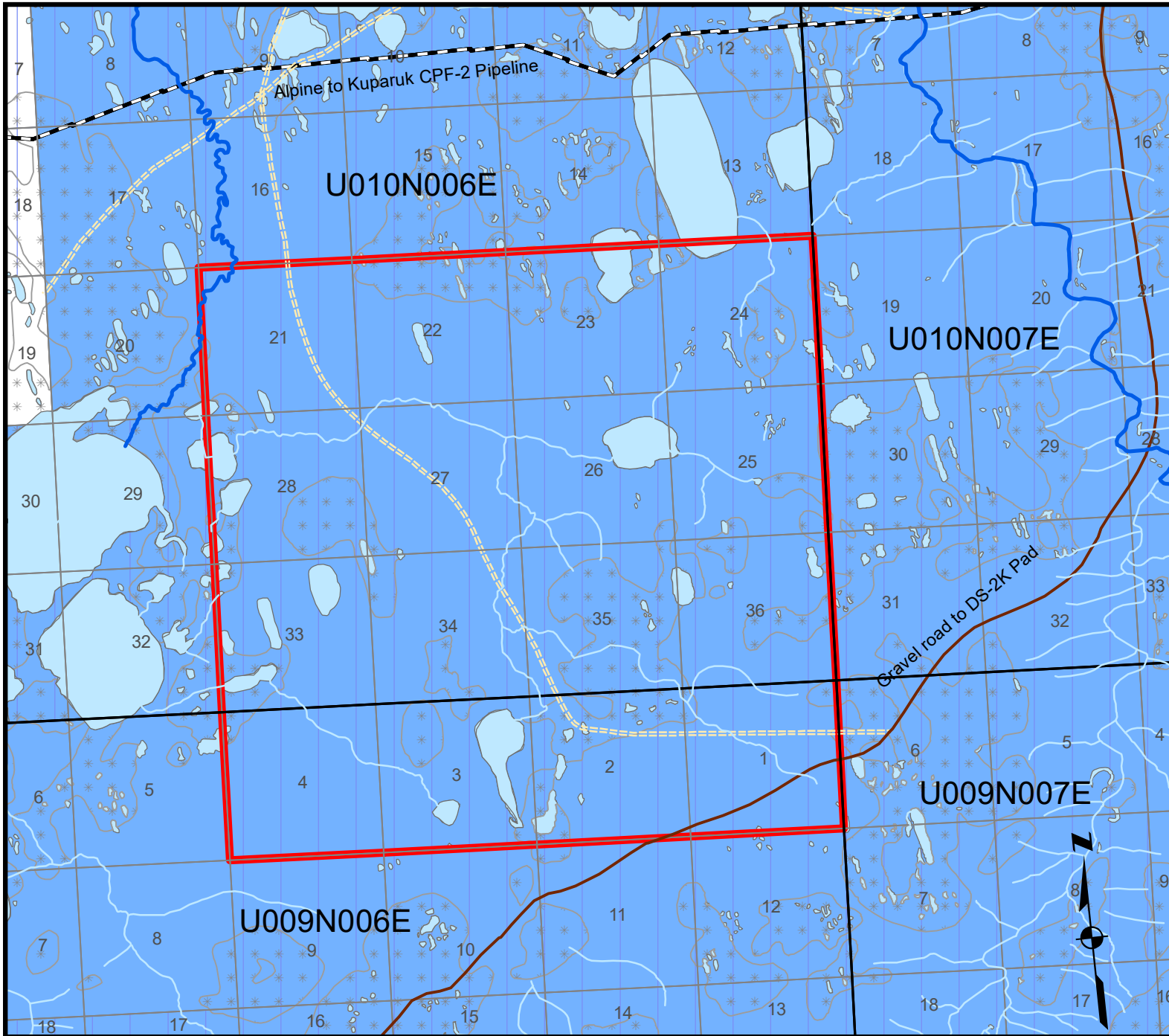
North Slope Borough

Municipal Selections

Preliminary Decision

ADL 414826

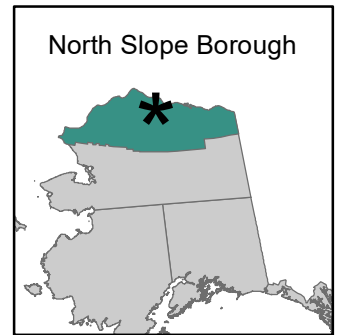
East of Nuiqsut and Colville River



Legend

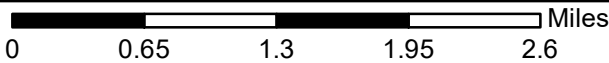
- Anadromous Stream
- Local Roads
- Pipeline
- Trail
- Proposed Approval
- State Land - TA or Patent
- Mineral Leases

NSAP Unit C-18



Created by DNR-DMLW-LCS-ME

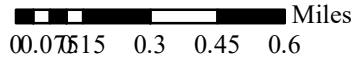

November 2022



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.

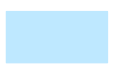
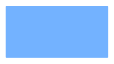
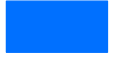



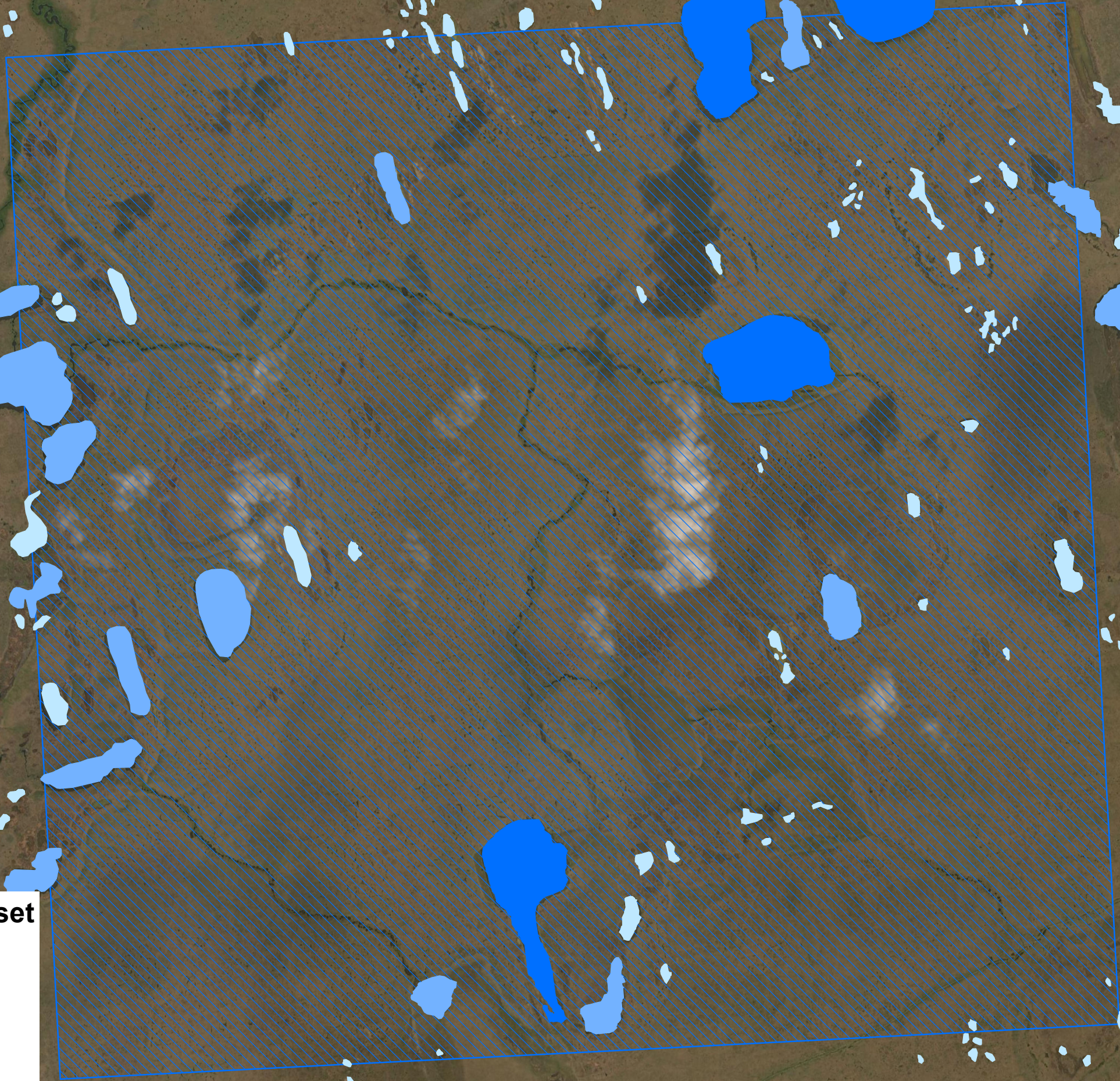
Municipal Entitlement
ADL 414826
For AS 38.05.126, 127
Determination Purposes only
National Hydrography Dataset
Projection: Albers Equal Area



Attachment B

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 B: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 29.65
North Slope Borough Municipal Land Entitlement Selection – ADL 414826

COMMENT PERIOD ENDS: 4:30 PM, FRIDAY, JANUARY 13, 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 10,240 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, January 13, 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.