

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND & WATER**

**FINAL FINDING AND DECISION  
Regarding**

**Material Sites Designations  
AS 38.05.550(b) and AS 38.05.035(e)**

**Designations of Material Sites and Locations for the Sale and Removal of Material**

This Final Finding and Decision (FFD) is intended to update and complement the Preliminary Finding and Decision (PFD) dated 8/6/2012. The Preliminary and Final Decisions together constitute the final agency decision for this action. In the event of any conflict, this FFD supersedes the PFD.

**Proposed Action:**

In accordance with AS 38.05.550 - AS 38.05.565, and AS 38.05.035(e), the Division of Mining, Land and Water (DMLW), Alaska Department of Natural Resources (ADNR) proposes to designate the sites listed or identified in Attachment "A" of this decision as Designated Material Sites under AS 38.05.550(b) for the long-term use as sites for the sale and extraction of materials as defined under AS 38.05.965(10). These sites are all existing material extraction locations on state-owned lands for which DMLW has:

- 1) since January 1, 2000, issued, or have had in place, a material sale decision on, or a sale contract for, the extraction of various amounts, quantities and types of materials under previous statutory authorities,
- 2) in place a valid existing authorization allowing another state or federal agency to use or manage a site as a material extraction source, or
- 3) in place a valid existing authorization allowing a state, federal, or political subdivision to use the site as a material extraction source under AS 38.05.810(a).

The Designated Material Sites will be for continuous sale and extraction of materials, including sand, gravel, and rock, as defined under AS 38.05.965(10). Upon designation, the DMLW may sell materials continuously, without further finding or notice, from these designated sites. The sites are located on state land located throughout various parts the state. Attachment "A" of this Final Finding and Decision identifies each site.

**Changes or Updates to the Preliminary Finding and Decision:**

There were no significant changes to the PFD which warranted additional public notice. Updates to the list of identified sites (Attachment "A") have been made to reflect legal description and contact number technical corrections, to include 14 existing sites which meet the aforementioned criteria, but were inadvertently left out of the original list and to delete one site.

**Scope of Review and Finding:**

The scope of this finding and decision is to designate existing material extraction locations identified in Attachment "A" as Designated Material Sites under AS 38.05.550(b) for the use and operation as material sites for the long-term sale and extraction of materials until closed by the division. This decision does not designate any new material sites beyond those that meet the criteria stated above nor does it authorize the

expansion of the legal boundary of any existing material sites. New material sites, or legal boundary expansions to existing material sites require a separate finding and decision under AS 38.05.550 and AS 38.05.035.

**Authority:** The applicable authorities for this decision include, but are not limited to:

AS 38.05.020 Duties of the commissioner  
AS 38.05.035 Duties of the director  
AS 38.05.550 - .565 Disposal of Materials  
AS 38.05.810(a) Public and Charitable  
AS 38.05.945 Public Notice  
AS 27.19.030-.050 Reclamation Plan  
11 AAC 71 Timber and material sale  
11 AAC 97.100 Reclamation

The Commissioner of Natural Resources has delegated to the Director, Division of Mining, Land and Water, the authority to designate material sites and sell material.

**Administrative Record:** The administrative record contained in the following are incorporated by reference in this decision:

- a) Administrative ADL and LAS case files for material sales or material site opening decisions, sales or valid authorizations issued since January 1, 2000 by reference, See Attachment "A",
- b) DNR's ADL and LAS case files for ILMAs and AS 38.05.810(a) material sites/conveyances in force as of January 1, 2000,
- c) Federal authorizations that remain valid on state land,
- d) DNR's material sale receipts issued by DNR's Financial Services Section of the Division of Support Services issued since January 1, 2000,
- e) Land Use Plans listed below by reference,
- f) Site-specific plans as applicable to material sites and sales issued since January 1, 2000 by reference,
- g) Alaska Constitution, Public Trust Doctrine, Submerged Lands Act of 1953, Alaska Statutes Title 38, and Alaska Administrative Code Title 11 by reference,
- h) US Department of Interior 962 NAV July 12, 1984 navigable bodies report by reference.

The administrative record contains background information on issues, existing resources, land status, land ownership patterns, management intent and land classifications. The administrative record also contains background information for each material use site, such as: size, location, available type of material, history of previous material sale adjudications or site establishment decisions, title, agency comments and typical forms and requirements for bonding and insurance. This assimilated administrative record for all the sites listed or addressed in Attachment "A" is incorporated in this decision by reference. The administrative record also includes documentation of review by the ADNR Office of History and Archeology (OHA)/State Historic Preservation Office (SHPO).

**Public Notice:** Beginning August 6, 2012, public notice of the Preliminary Finding and Decision was posted on the State of Alaska and the ADNR Online Public Notice system, as well as the DMLW Hot Topics web site, for 46 consecutive days. Public notice was posted in the Anchorage Daily News, the Fairbanks Daily News Miner, Juneau Empire, Frontiersman, Skagway News, Delta Wind, Seward Phoenix, Petersburg pilot, Ketchikan Daily News, Peninsula Clarion, and Valdez Star newspapers. The public notice was also sent for posting in the 219 Post Offices located throughout the state.

**Public Comments Received:** A total of five comments were received.

**Comment:** Three similar public comments were received by email opposing the designation of 31 material sites for the continuous sale and extraction of materials on the Tsaina River, in Thompson Pass, and along the Richardson Highway corridor. The comments state that these areas are scenic recreational areas and are an international tourist destinations that should be preserved unspoiled for their scenic, recreation, fishing, and wildlife habitat values. Each comment also requested an extension of the public comment period for at least 30 days and asked to announce and hold public hearings in the affected communities.

**Response and Discussion:** Of the 31 areas opposed by the commenters that were proposed for designation as Material Sites for the continuous sale and extraction of materials under AS 38.05.550(b), 30 have been under continuous use at least since construction of the Trans-Alaska Pipeline System (TAPS) over 35 years ago. The exception is OMS 41-3, the Donnelly Pit located at Richardson Highway milepost 238, which is 26 miles south of Delta Junction. The Donnelly Pit has been used since 2003 for TAPS purposes, but was previously used for the sale of materials by the State Department of Transportation and Public Facilities. Though the scenic and recreation value of the lands along the Richardson Highway corridor is recognized, there is and will continue to be a need for material sources for public and private use. This includes the need to upgrade and maintain the safety and integrity of TAPS or for the development and construction of a future common carrier pipeline system, as well as the public transportation system and other public facilities operated by the Department of Transportation. Designating these sites is required by the new statutes in order to sell materials in the future. If the sites are not designated, DMLW will be unable to sell material to for public or private purposes, which would have a severe and negative impact on the ability to operate and maintain the public transportation infrastructure and the common carrier pipelines and related facilities in a safe manner.

The continued sale of material from the sites does not conflict with any existing recreational use. Excavating these material sites does not produce any additional substantive environmental impacts because the sites are part of the existing operating material site system developed during construction of TAPS and/or sites that have already been excavated for maintenance and operational activities for TAPS. An approved Mining and Reclamation Plan is on file with DMLW for each site and was made part of the file for each previous material sale contract. These plans include consideration of impacts on cultural/historic resources, animal populations and habitats, water quality, visual and aesthetic attributes, and contractual assurances of site specific reclamation. Specific development and measures that will be taken to lessen impact to the environment are included. The reclamation of these sites will be to a standard equal to or greater than stipulated in Alaska Statute (AS) 27.19, and will be to the entire area disturbed under these contractual agreements.

The DMLW denies the request to extend the comment period an additional 30 days and declines the request to hold public hearings. DMLW advertised public comment period was for 46 days and closed on September 20, 2012 providing the commenter the majority of the additional time they requested. Public hearings for proposed decisions under AS 38.05.035(e) are not required and are not warranted for this proposed decision.

**Comment:** One comment was received that questioned whether several sites proposed for designation as Material Sites for the continuous sale and extraction of materials under AS 38.05.550(b) had been in fact transferred to the Denali Borough under its Municipal Land Entitlement. These included all sites along the Parks Highway from Mile Post 271 to 274, Mile Post 252.5 (Panguingue Creek), and Stampede Trail mile 5.2.

**Response and Discussion:** The land ownership of these sites was reviewed and it was verified that the sites remain in state ownership. Many of the sites noted by the commenter were selected by the Denali Borough

as potential municipal entitlement lands, however, DNR reserved these sites in state ownership in the final municipal entitlement conveyance decision.

**Comment:** One commenter identified three sites proposed for designation as Material Sites for the continuous sale and extraction of materials under AS 38.05.550(b) that were of interest to the corporation, Kolganek (ADL 231517), Lliamna Lake (ADL 231525) and Nushagak River – New Stuyahok (ADL 231606). They stated that they had no objection to the continued use of these sites.

**Response and Discussion:** DMLW appreciates the support for the designation of these material sites for continuous sale and extraction of material under AS 38.05.550(b).

**Final Finding and Decision:** It is the finding of the Director, DMLW that approval of the designation of existing material sites listed or identified in Attachment “A”, dated November 29, 2012, as Designated Material Sites under the authority of AS 38.05.550(b) and AS 38.05.035(e) for the ongoing sale and extraction of materials under AS 38.05.550-565 best serves the interests of the State of Alaska. DMLW will continue to review individual sales requests and operation plans to ensure that resource considerations and multiple use issues are appropriately evaluated. Project specific stipulations, if needed, will be included in individual material sale contracts. This decision is based on: ownership of the designated sites, the continuous need for the material to support public and private projects and infrastructure, as well as a future need for material for the development of Alaska’s economy, a reasonable DMLW-approved plan for site development and rehabilitation, and the minimal and acceptable additional impact on the environment. This finding together with the August 6, 2012 Preliminary Finding and Decision, incorporated by reference, constitutes the Final Finding and Decision which has been reviewed and considered. Public notice has been accomplished in accordance with AS 38.05.945. The administrative record has been found to be complete and the requirements of all applicable statutes have been satisfied.



Brent Goodrum  
Director, Division of Mining, Land and Water

11/29/2012  
Date

**Appeal Procedures:** A person affected by this decision who provided timely written comments on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 days after the date this decision is signed. If day 20 falls on a weekend or a holiday, the deadline is the next workday. The appeal may be mailed or delivered to Daniel S. Sullivan, Commissioner, Department of Natural Resources, 550 W. 7<sup>th</sup> Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to: [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). If no appeal is filed by that date, this decision goes into effect as a final order and decision on the 31<sup>st</sup> day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

**Attachments:** 1) Preliminary Finding and Decision, Designation of Material Sites Under AS 38.05.550(b), dated August 6, 2012  
2) Attachment “A”  
3) Public Notice (1 page)