

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

**PRELIMINARY FINDING AND DECISION
Regarding**

**Proposed Alaska Department of Natural Resources, Material Sites
Designations under AS 38.05.550(b) and AS 38.05.035(e)**

And

**Final Finding and Decision
Regarding
Interim Material Sites Designations under AS 38.05.550(b)**

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

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 (MLW), Department of Natural Resources (DNR) is proposing 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 MLW 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).

These are only locations for which existing material extraction operations have been previously established and use of these sites and the anticipated impacts of material removal have been previously considered and addressed in some form by the department. This decision does not amend or affect those existing material sale contracts that were issued prior to July 1, 2012.

A long-term designation means that the sites will be open continuously for the sale by the MLW and the extraction of material by purchasers until the site is closed by the division. Contracts for the sale of material may be issued by MLW either by negotiated, competitive, limited and public and charitable material sale methods. Contracts issued under AS 38.05.550-565 will be issued at a representative sale price per cubic yard determined by the commissioner or at fair market value determined by appraisal. Some sales under AS 38.05.565 may be without cost. Contracts issued under the authority of AS 38.05.810(a) Public and Charitable will be issued at less than the fair market.

Proposed decision regarding the Long-Term Designation of Material Sites and Locations for the Sale and Removal of Material

Scope of Review and Finding:

The scope of this proposed finding and decision is to designate existing material extraction locations identified in Appendix 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.

Justification for Action:

Background: Before July 1, 2012 Alaska Law provided for the sale and extraction of materials through AS 38.05 .110-135, DISPOSAL OF TIMBER AND MATERIALS. In the implementation of those statutes, MLW's approval process focused primarily on the individual sales which took place from given sites. On May 22, 2012, CHAPTER 27 SLA 12 was signed into law and became effective July 1, 2012. This Act, in part, substantially changed the authority and process the department is to use in selling materials from state land. Under AS 38.05.550(b) a material source or site must be designated as a location from which the ongoing sale and extraction of materials is in the best interest of the state. The new law provides DNR a more efficient method dealing with material sales, focusing on the location and creation of new material sites sources or sites, rather than the numerous individual material sales. State-wide, numerous existing material sites have been in operation at various times since statehood. This decision focuses on those sites that have been in continuous or intermittent operations as material sale and extraction sites since at least as recently as January 1, 2000. Many of these sites were in use under some authorization since before statehood, and many continue to be actively used to the present. This proposed decision seeks to designate those existing material sources or sites as Designated Material Sites under AS 38.05.550(b). They have all been previously determined suitable for material extraction, though the method/process previously used to document the designate the suitability of existing sites as material sites was different than the recently adopted statute. Sites may have been created through a previous material sale(s), the existence of an authorization to another state agency allowing for material extraction, or authorizations to other political subdivisions. This decision seeks to acknowledge the sites that are actively in use under some authorization since January 1, 2000 and to officially designate them in line with the current statutory requirements.

The Alaska State Constitution directs the DNR to provide for a variety of uses on state land while conserving natural resources. DNR is directed to establish a balanced combination of land available for public and private purposes. It directs that the land and natural resources be available for the maximum use consistent with the public interest. To that end, MLW will continue to carefully review individual sale requests and operation plans once sites have been designated, to ensure resource considerations and multiple use issues are appropriately evaluated.

Legal Description: See Attachment "A". Sizes of the existing listed Material Sites range from 2 to 920 acres. The vast majority of these site fall within 5-20 acres in size. DNR will work to document the size of the authorized areas for these sites before the final finding and decision is issued.

Authority:

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 55 Classifications

11 AAC 71 Timber and material sale

Administrative Records:

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 records contain background information on issues, existing resources, land status, land ownership patterns, management intent, and land classifications. The administrative records 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.

Land Planning:

These proposed designated sites have been determined suitable for material extraction. The sites are all consistent with and do not conflict with land use designations or land use classifications. However, under 11 AAC 55.040(i)(5)(a), classification of land is not required if the material is taken from an established source such as those listed in Attachment "A".

The following land plans cover one or more of the proposed designated sites areas:

AREA PLANS:

- Bristol Bay Area Plan
- Central / Southern Southeast Area Plan
- Copper River Basin Area Plan
- Juneau State Land Plan
- Kenai Area Plan
- Kodiak Area Plan
- Kuskokwim Area Plan
- Northern Southeast Area Plan
- Northwest Area Plan
- Prince of Wales Island Area Plan
- Prince of Wales Island Area Plan Amendment
- Prince William Sound Area Plan
- Southeast Susitna Area Plan
- Susitna Area Plan

- Susitna Matanuska Area Plan
- Tanana Basin Area Plan
- Eastern Tanana Area Plan
- Yukon Tanana Area Plan
- Upper Yukon Area Plan
- Yakataga Area Plan

LAND MANAGEMENT PLANS:

- Dalton Highway Master Plan
- Denali to Wrangell - St. Elias
- Fish Creek Management Plan
- Haines State Forest Resource Management Plan
- Hatcher Pass Management Plan
- Knik River Public Use Area Management Plan
- Matanuska Valley Moose Range Management Plan
- North Access Visitor Facilities Study
- Nushagak and Mulchatna Rivers Recreation Management Plan
- Scenic Resources Along the Parks Highway
- Susitna Basin Recreation Rivers Management Plans
- Susitna Forestry Guidelines
- Turnagain Arm Management Plan

BOROUGHES: The following Boroughs may be affected by one or more of the proposed designated material sites:

- Aleutians East Borough
- Bristol Bay Borough
- City & Borough of Juneau
- City & Borough of Sitka
- City & Borough of Wrangell
- City & Borough of Yakutat
- Denali Borough
- Fairbanks Northstar Borough
- Haines Borough
- Kenai Peninsula Borough
- Ketchikan Gateway Borough
- Kodiak Island Borough
- Lake and Peninsula Borough
- Matanuska-Susitna Borough
- Municipality of Anchorage
- Municipality of Skagway
- North Slope Borough

- Northwest Arctic Borough

Land Status: The surface estate of these sites are owned by the State of Alaska, and managed by DNR or the Department of Transportation and Public Facilities under an Inter-agency Land Management Assignment (ILMA). These sites have all been previously utilized for the sales and extraction of materials of various types at various times and all of the sites have a documented authorization for material extraction valid since January 1, 2000 and many continued to be used for active material extraction since that date.

Mineral Status: These proposed designated material sites have been in intermittently or continuous operations as operating material sale and extraction sites since January 1, 2000. They are all suitable for material extraction and generally do not conflict with mining rights and operations. In cases where material sites are located over active mining claims, MLW will resolve any issues with the mining claimant before issuing a material sale contract.

Access: As existing sources for the sale and extraction material, these sites all have established physical and legal access. If additional or alternate access as required for future operations on the sites, DNR will assess on a case by case basis.

Local land use and land planning: Many of these existing material sites are known to the local municipal or borough governments. Should a local municipality or borough require authorizations, MLW will require material sale applicants to obtain any relevant local/borough approvals prior to beginning operations. Should a local land use or planning issue arise with the use or operation of one or more of these proposed designated sites, the local municipal government the appropriate regional office of MLW will address their concerns. Once notified, DNR will consult with the local municipal or borough government prior to any future sales of material out of these sites to work with that local governmental body to develop specific stipulations or conditions for operation within the site, to minimize or eliminate the concern or conflict. If substantial reasons are raised that convinces DNR that a more thorough review of a site designation is warranted, then DNR reserves the right to modify this decision, in whole or in part, to limit or repeal this designation for that site and close the site pending the issuance of a more detailed designation review and decision. Designation of a site does not constitute an approval for any given new application or contract. MLW will continue to review individual sale/extraction application/requests, and the applicants will still be required to obtain any relevant local/borough approvals prior to beginning operations.

Resource Values, Current and Potential Uses: As stated above, these are existing material sites that have all been previously utilized by the state for the sale and extraction of materials of various types. These sites have been previously evaluated by the DNR to Topography soils, Water, Minerals, Materials, Improvements/Facilities, Access, Vegetation, Wildlife, Fisheries and Recreation resource issues, and used on one or more occasions as materials have been sold through individual material sales contract over that time. Through those individual material sale decisions or findings, MLW has found little to no impact or conflict to these resources or uses for these sites and has found that the individual sales of material out of these sites have been in the state's best interest. This decision is to conform these numerous site identification decisions to the new standard under AS 38.05.550(b).

Cultural and Heritage Resources: A number of these sites have been evaluation for Alaska Heritage Resources Values in the past. Numerous individual material sale findings and decisions have found little to no known historic property in those areas. Secondly, since these sites have been used intermittently or continuous operations as operating material sale and extraction sites, the sites have been heavily impacted. As part of this preliminary finding and decision, MLW has provided the DNR's Division of Parks, Office of History and Archeology (H&A) with the list of these proposed Designated Material Sites in Attachment "A" along with a request that they evaluate designated sites not previously surveyed for cultural or heritage resources. Further, DNR will include a standard stipulation in all material sale

contracts requiring material purchasers to cease operations and notify H&A should material extraction operations uncover any cultural or heritage resources. Should information become available that convinces DNR that an additional historic survey are required on one or more of these sites, then DNR reserves the right to modify this decision, in whole or in part, to limit the use or to close the Designated Material Site as may be appropriate to protect cultural or heritage resources.

This decision proposes to confirm those numerous individual findings and material sale decisions, and to confirm, under AS 38.05.550(b), that the use of the listed material sites as a Designated Material Site is in the state's best interest. Should information become available that convinces MLW that use of one or more of these sites as a Designated Material Site is no longer in the state's best interest, then MLW reserves the right to modify this decision, in whole or in part, to limit the use or to close the Designated Material Site as may be appropriate to protect other resource values, and current potential uses.

Public Notice:

Public notice according to AS 38.05.945 will be initiated and posted on the Alaska Online Public Notice System and the DNR/MLW websites. In addition, notice will be published in the Anchorage Daily News, Fairbanks Daily News Miner, Juneau Empire, as well applicable local newspapers. Notice will be sent to post offices located outside of a municipality, agencies, local governing authorities, and native organizations. This Preliminary Decision is subject to agency and public comments. If significant changes occur due to comments received in response to the notice, the Final Finding and Decision will address those changes and additional notice may be sent to those who provided written comments during this decision period. Only those who provided written comments during the comment period will be eligible to appeal the Final Finding and Decision.

Other Permits and Authorizations: It is the material sale applicant's responsibility to obtain other local, state or federal permits that may be necessary to extract materials under a sale contract once the sites are Designated Material Sites.

Traditional Use Finding: (AS 38.05.830) Some of the proposed Designated Material Sites are located in the unorganized borough. Traditional uses include of subsistence and recreational hunting. MLW has determined that the traditional existing uses for the sites listed or addressed in Attachment "A" are for the use and extraction of materials. For most of these sites, it is not expected, nor is there any evidence, that designation of these material sites will pose significant conflicts with other existing traditional uses of the lands, on or adjacent to, the proposed material sites. In some instances where conflict between traditional uses have been identified, mitigation measures will be stipulated in the individual sale contracts to reduce impacts. If further traditional uses become evident, they will be discussed in the Final Finding and Decision.

Method of Excavation: Methods for the excavation of the material from Designated Sites will be stipulated in the individual lands sale contracts issued under AS 38.05.550-565.

Performance Guaranty: The requirement of a performance guarantee will be determined on a case-by-case basis as ADNR issues individual material sales contracts under AS 38.05.550-565.

Water Quality: At the time a of the sale of material from a designated Material site or source, DNR will include in the material sale contract, stipulations that require the applicant to comply with the requirement of the Alaska Pollutant Discharge Elimination System (APDES), and if applicable, to maintain and operate the site in accordance with an approved Storm Water Pollution Prevention Plan (SWPPP).

Reclamation Plan: In accordance with AS 27.19, reclamation is required of all mining operations, including material extractions. Each applicant for a material sale purchase will be required to submit a reclamation plan with the material sale application, and will be made a part of that individual material sale file.

Environmental Risk Assessment: As part of each individual material sale contract application process, the applicant will be required to submit a signed environmental questionnaire. The questionnaire asks for information on potentially hazardous materials that may be stored or used on the designated site. Based on the information provided in the questionnaire, MLW will develop site-specific, sale-specific stipulations to be included in the material sale contract.

Insurance: The requirement of whether insurance will be required of the applicant and the amount of any required insurance will be determined on a case-by-case basis as MLW issues individual material sales contracts under AS 38.05.550- 38.05.565.

Preliminary Decision:

MLW has completed a review of the information available and an examination of the documents and associated information germane to the proposed action. This decision considers ownership of the Designated Material Sites and the need for reasonable access to material sources in the state. The use of this material will enhance the development of the state's natural resources, assist with maintaining public infrastructure and facilitate economic activity. The proposed classifications on these sites meet the requirements of AS 38.05.300, 11 AAC 55.040(i) and AS 38.04.065. Operations in the sites will be consistent with a mining and reclamation plans to be required by the MLW.

It is the determination of the Division of Mining, Land and Water that it may be in the state's best interest to designate existing material sites listed in Attachment "A" as Designated Material Sites under AS 38.05.550(b), and that and that the sale and extraction of materials from those locations under AS 38.05.550- 565 may be in the best interest of the state.

Special Stipulations and Project Specific Stipulations, if needed, will be included in the individual material sales contract. Site specific stipulations identified during the public notice period may also be included. This application shall now proceed to public notice.

Brent Goodrum,
Director, Division of Mining, Land and Water, DNR

Date

Interim Material Site Designations:

Although existing authorizations issued before July 1, 2012 remain valid and operations will continue under the authority that was valid at the time of issuance, the MLW is issuing this Interim Material Site Designation decision to allow new contracts to be issued until the division makes its final decision regarding the long-term designation of material sites under AS 38.05.550(b). MLW recognizes need for, the public interest in, maintaining reasonable access to and availability of state owned materials pending a final decision regarding long-term designations of material sites. Access to and then use of the materials these sites provide will enhance the development of the state's natural resources, assist with maintaining public infrastructure and facilitate economic activity.

MLW has determined it to be in the best interest of the public to facilitate the continued operation of the state's material sales program, and the support it provides the public, communities, non-profit organizations, and industry, and that it is necessary that material sales continue until such time that the division can adequately assess and designate individual existing material sites for long-term designation under the act.

The MLW believes it necessary to make this short-term, provisional designation to align with the new statutes under AS 38.05.550(b) to allow continuity of operations until the full long-term site designation process is completed. Accordingly, MLW designates, on an interim basis, the existing material sites listed and addressed in **Attachment "A"** as Designated Material Sites under AS 38.05.550(b) for the immediate and short-term use as sites for material sales and extractions. This interim designation of these sites is a provisional designation and will be valid only through December 31, 2012, or until a final finding and decision regarding the long-term designation of these sites becomes effective, whichever comes first. MLW anticipates that by that date the division will have completed its public review and evaluation process regarding the suitability of these sites as long-term Designated Sites under AS 38.05.550(b) and made its final finding and decision. MLW believes it to be in the public's best interest to make this interim designation to maintain the department's ability to sell material to the public from existing sites on state lands during Alaska's construction season. The public, state, federal and political subdivisions are encouraged to review these sites and provide comment regarding the suitability of these sites as material source. MLW reserves the right to remove a site from the interim designation list at anytime.

During this interim designation period, new sales and operations from the Interim Designated Material Sites will be subject to the following conditions:

- 1) MLW will follow the appropriate provisions of 11 AAC 71.005 – 71.910 when making new individual material sales decisions under these provisional Material Site Designations;
- 2) New sales and extractions from any Interim Designated Material Site will be limited to the working areas already impacted by existing material extraction operations and no expansion of the existing disturbed areas will be permitted, without expressly authorization by the division, regardless of the total size of the authorized material site area,
- 3) New individual sale contracts will not be authorized for more than 25,000 cubic yards without notice to the public,
- 4) No new contract shall be issued for a period beyond December 31, 2012, and
- 5) If information is received that provides MLW with significant reason why it is not in the public interest to sell material out of a specific Interim Designated Material Site, the division may withdraw that site as an Interim Designated Material Site pending final decision regarding the long-term designation of the site.

Decision to Designate Material Sites as Interim Designated Material Sites:

I find that it is in the best interest of the state to temporarily designate the existing material sites listed in Attachment "A" as interim Designated Material Sites under AS 38.05.550(b), and that the sale and extraction of materials from those locations under AS 38.05.550- 565 is in the best interest of the state.

Further I find that this decision shall expire at 12:00 a.m. December 31, 2012, or until a final finding and decision regarding the long-term designation of these sites becomes effective, which ever comes first.

Should information becomes available that convinces MLW that use of one or more of these sites as a Designated Material Sites is no longer in the state's best interest, then MLW reserves the right to modify this decision, in whole or in part, to limit the use of or to close a Designated Material Site as may be appropriate pending the issuance of a more detailed designation evaluation decision.

A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

Brent Goodrum,
Director, Division of Mining, Land and Water, DNR

Date

A person affected by the Interim Designation decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 days of issuance as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to The Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by e-mail to dnr.appeals@alaska.gov. This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court.