STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND & WATER

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# FINAL FINDING AND DECISION

## DISHNA SUBDIVISION

**Proposed State Land Sale -** AS 38.05.035(e)
**Proposed Mineral Closing Order -** AS 38.05.185

This Final Finding and Decision is intended to complement and update the Preliminary Finding and Decision issued on November 17, 2005 for the proposed action; see Attachment 2.

### Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (Division), proposes to survey and offer for sale through a public sealed bid auction, parcels within the proposed Dishna Subdivision in order to provide land for settlement in the City of McGrath. In addition, this project will generate revenue for the State. The project is located within the City of McGrath; north of Anderson Park, south of USS 3140, Tract B, Blocks 7 and 10, west of McGrath Townsite First Addition, and east of ASLS 83-199. To prevent potential conflicts between surface and subsurface users within the project area, the Division proposes to close the area, 55 acres, to mineral entry. No mineral activity has been identified within the proposed project boundary.

### Authority

Alaska Statutes: **38.04.005** – Public and Private Land Use Policy, **38.04.010** – Making Land Available for Private Use, **38.04.020** – Land Disposal Bank, **38.04.035** – Criteria for Program Selection, **38.04.045** – Survey and Subdivision, **38.04.050** – Access to Private Use Areas, **38.04.055** – Access Through Private Use Areas, **38.05.005** – Division of Lands, **38.05.035** – Powers and Duties of the Director, **38.05.045** – General Provisions for the Sale of Land, **38.05.050** – Disposal of Land for Private Ownership, **38.05.055** – Procedures for Sale by Auction, **38.05.125** – Reservation of Rights, **38.05.127** – Access to Navigable or Public Water, **38.05.185** –General policy on Mineral Location, **38.05.840** – Appraisal Policy, 38.05.910 – Policy of the State to Encourage Settlement, **38.05.940** – Land Purchase Price Discount for Veterans, **38.05.945** – Requirements for Notice.

Alaska Administrative Code: Title 11, Chapter 51 – Public Easements, Chapter 53 – Records, Surveys and Platting Standards, Chapter 67 – Disposal of Land, and Title 6, Chapters 50, 80, and 85 Alaska Coastal Management Program.

### Public Notice/Discussion

Summary of comments received pursuant to AS 38.05.945; see Attachment 1.

**Traditional Use Finding**
The proposed project area is located entirely within the City of McGrath and is adjacent to residential properties. Therefore, there are no anticipated significant changes to the traditional uses of fish and wildlife resources as a result of the proposed action. The project area has been designated and classified for settlement (land disposals) through the Kuskokwim Area Plan, and one of the considerations in designating settlement areas was minimizing impacts on traditional uses, including fish and wildlife harvest.

**Modifications to Decision and/or Additional Information**
The project area is designated as settlement and public recreation per the Kuskokwim Area Plan, SC-88-001-05. The management intent for this designated area, known as 5c, is being met by the reserving of a tract of land for recreational purposes to be kept in public ownership, which will be identified at the time of sale. The Area Plan also states that the City of McGrath must determine a need for the area to be offered for sale, which has been met by working closely with the City Planning Commission, and as well as with the City Administrator.

**Final Finding and Decision**
The Department recommends proceeding with the proposed action as outlined. Offering these parcels for sale through a competitive, sealed bid auction will help meet the State's goal to provide quality, accessible land to the public for private ownership and will raise revenue for the State.

**Recommend Approval:**

Holly Roberson Hill, Natural Resource Manager III
Land Sales and Contract Administration Section

6/01/06
Date

**Approval:**

Public Notice has been accomplished according to AS 38.05.945 and the comments received have been considered and summarized; see Attachment 1. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. This Final Finding and Decision is intended to complement the Preliminary Finding and Decision dated November 17, 2005. I have reviewed and considered the above decision and it is my finding that this action is in the best interest of the State and is hereby approved.

Richard Mylius, Acting Director
Division of Mining, Land & Water

6/1/06
Date

**Appeal Provision:**

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to Mike Menge, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr_appeals@dnr.state.ak.us. If no appeal is filed by that date, this decision goes into effect as a final order and decision on the 31st day after the date of "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.

Attachment 1: Summary of Public Comments

Attachment 2: Preliminary Finding and Decision dated November 17, 2005

## Attachment 1

## FINAL FINDING AND DECISION

**Proposed State Land Sale - Ridgeview Alaska Subdivision**
AS 38.05.035(e)

**Proposed Mineral Closing Order**
AS 38.05.185

## SUMMARY OF PUBLIC COMMENTS

**Notice provided under AS 38.05.945:** A public notice announcing the Preliminary Finding and Decision for the proposed subdivision project and mineral closing order along with the solicitation for public comment was published and distributed in compliance with the above statute in the following manner:

- Published in two newspapers, including the Anchorage Daily News on 11/17/2005 and12/29/2004, and the local paper, Tundra Drums on 11/17/2005;
- Published a display ad in two newspapers, including the Anchorage Daily News on 11/6/2005 and the Tundra Drums on 11/10/2005;
- Open House held in McGrath on 11/17/2005;
- Posted under State of Alaska Online Public Notice from 11/17/2005 – 12/19/2005;
- Mailed, with a request to post for 30 days, to three postmasters (McGrath, Nikolai, Takotna) per AS 38.05.945(c)(4);
- Mailed, with a request to post for 30 days, to one library (McGrath Community Library);
- Mailed to one regional corporation per AS 38.05.945(c)(2)-(3);
- Mailed to adjacent land owners, communities, villages and other state and local agencies.

**Comments Received:** We received three official written comments during the public comment period. These comments are summarized and addressed as follows:

**State Pipeline Coordinator's Office (SPCO):**
The State Pipeline Coordinator's Office finds no AS 38.35 pipeline rights-of-way in the vicinity.

**Mr. Theodore S. Kardos, McGrath Resident:**
Mr. Kardos has used the subject land for dog sledding and does not want to lose this access route to get in and out of town safely. He would like his sled dog route to be accommodated.

> **Division Response:** The Department will not be reserving all trails within the surveyed subdivision due to the implementation of platted rights of way to provide legal, guaranteed access, to and through the subdivision. However, the subdivision design for this project will greatly incorporate all existing trails or current access routes into the location for the platted rights of way. The rights of way will be constructed and managed per city code and a homeowner's association once incorporated.

**Mr. Mike Tierney, McGrath Homeowner and Planning Commission Member:**
Mr. Tierney wanted to express his appreciation for the open house the Division held. He feels that McGrath is "a bit of an undiscovered outdoors paradise" and hopes that the subdivision will draw some new people to the area for growth.

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**ATTACHMENT 2**

# PRELIMINARY FINDING AND DECISION

## DISHNA SUBDIVISION

**Proposed State Land Sale - AS 38.05.035(e)**
**Proposed Mineral Closing Order - AS 38.05.185**

### Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (Division), proposes to survey and offer up to 40 parcels of state land into private ownership. The proposed Dishna Subdivision Project consists of approximately 55 gross acres within the City of McGrath; see Attachment A. The surveyed parcels will have a minimum size of one to ten acres which will be offered for sale through a public sealed bid auction. This area has not been offered under any previous land sale program. The purpose of the sale is to provide land for settlement within the McGrath area. The sale of these parcels will meet the State's goals of making quality, accessible State land available for private ownership and will also generate revenue.

To prevent potential conflicts between surface and subsurface users within the project area, the Division proposes to close the area, 55 acres, to mineral entry. No mineral activity has been identified within the proposed project boundary.

### Authority

Alaska Statutes: **38.04.005** – Public and Private Land Use Policy; **38.04.010** – Making Land Available for Private Use; **38.04.020** – Land Disposal Bank; **38.04.035** – Criteria for Program Selection; **38.04.045** – Survey and Subdivision; **38.04.050** – Access to Private Use Areas; **38.04.055** – Access Through Private Use Areas; **38.05.005** – Division of Lands; **38.05.035** – Powers and Duties of the Director; **38.05.045** – General Provisions for the sale of Land; **38.05.050** – Disposal of Land for Private Ownership; **38.05.055** – Procedures for Sale by Auction; **38.05.125** – Reservation of Rights; **38.05.127** – Access to Navigable or Public Water; **38.05.185** – General Policy on Mineral Location; **38.05.840** – Appraisal Policy; **38.05.910** – Policy of the State to Encourage Settlement; **38.05.940** – Land Purchase Price Discount for Veterans; and **38.05.945** – Requirements for Notice.

**Administrative Record**

The administrative record for the proposed action consists of the Dishna Subdivision project file, known as ADL 229492. Also incorporated by reference is the Kuskokwim Area Plan dated May, 1988, and the casefiles known as ADL 81565, ADL 202971, ADL 202976 and ADL 221617.

**Scope of the Decision**

The Division proposes to survey and offer for sale State land, referred to as the Dishna Subdivision, through a public, sealed bid auction. This is in keeping with the general recommendations from the Kuskokwim Area Plan. The Division will survey up to 40 parcels, containing at least one acre each. The Division will retain a tract of land for future growth and recreational purposes. A minimum bid for each parcel will be set at the appraised fair market value. Bidders will be required to provide a deposit of no less than 5% of their bid amount. The state will refund deposits to unsuccessful bidders. The Division does not intend to impose deed restrictions to control post-patent use. Restrictions regarding land use will be handled by the local zoning authority, if any.

The Division proposes to close the project area, containing approximately 55 acres, to mineral entry to prevent potential conflicts between surface and subsurface users.

**Location**

Geographic: The Dishna Subdivision project is located within the City of McGrath; north of Anderson Park, south of USS 3140, Tract B, Blocks 7 and 10, west of McGrath Townsite First Addition, and east of ASLS 83-199.

Municipality: City of McGrath; a Second Class City

Alaska Coastal District: None

Regional/Village Corporations/Councils: Doyon, Limited; MTNT (McGrath, Telida, Nikolai, and Takotna) Limited; Lime Village

USGS Map Coverage: USGS Quad McGrath (D-6)

Legal Description: Township 33 North, Range 33 West, Section 17, Seward Meridian, USS 2646, containing 55 acres, more or less.

**Title**

Acquisition Authority:
On May 18, 1966 the United States recorded a deed to the State of Alaska under the provisions of the Alaska Omnibus Act of June 25, 1959 (73 Stat. 152, section 45 (a), which provides, that if any function performed by the federal government in Alaska which can be performed in a similar manner by the State, then the President may convey federal property, held in connection with that function to the State of Alaska, the assumption of which is pursuant to said Act or the Alaska Statehood Act of July 7, 1958 (72 Stat. 339). By prior related correspondence between the federal government and the State of Alaska, Department of Public Works, Division of Aviation, (predecessor to the Department of Transportation and Public Facilities), it is implied that the

Alaska Department of Lands assigned such management jurisdiction to the Department of Public Works, Division of Aviation. The subject land was granted to the state for several purposes, one of which was the McGrath Airport.

Title Status:
OSL 335 - State Patented Land as per Title Report SC-06-009, current as of September 26, 2005.

Title Restriction:
The following conditions contained in the conveyance document apply to the subject area.

1. existing easements, recorded and unrecorded, for the public roads, highways, public utilities, railroads, and pipelines.
2. a clause against discrimination on the ground of race, color or national origin. This covenant runs with the land and contains a reverter clause to the Federal government.

There is an excepted and reserved from the conveyance:

1. all existing power and cable lines, utility lines, and service lines of any kind or description on the herein conveyed premises and rights-of-way to service such lines.
2. the right to use established streets, highways, or trailways, as they presently exist, and may be modified hereafter, or as the may exist in the future.

Other Conflicts and Pending Interest:
The State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125). The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing and producing these reserved mineral resources. Under common law, this access reservation is superior to any and all surface uses. The State may also lease them to mineral developers or allow mining locations to be staked. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

Subject to Easement Application ADL 221617, located within SW ¼ Section 17, Township 33 North, Range 33 West, Seward Meridian.

**Background**

Chronological Background and History

1966 – State receives deed for land under State of Alaska Omnibus Act.
1977 – Department of Public Works, Division of Aviation relinquishes management jurisdiction to Department of Natural Resources.
1980 – City applies for three parcels to be used for Public and Charitable purposes.
Parcel #3 is retained by State for possible fire suppression operations site.
1985 - City of McGrath obtains 20-foot easement for water line, ASLS 83-199.
1984 – Joint City/State land sale of Village land adjacent to project area.
1986 – City discontinues request for additional joint land sale.
1988 – Classified as Recreation and Settlement under Kuskokwim Area Plan.
2005 – Division of Mining, Land, and Water, Land Sales Unit targets the Dishna Subdivision project area for future development to be included in a future State land offering.
2005 – Agency review for Dishna (aka McGrath Project), May 20-June 20.

## Planning and Classification

DNR Land Use Plan: The project area is located within the Kuskokwim Area Plan, Management Unit 5: Kuskokwim River, Subunit 5C: McGrath Townsite. This Plan requires a portion of the project area to be retained for public recreation. From observations made from aerial photos as well as a field investigation, the park described and referenced in the Area Plan exists outside of this proposed project area boundary. Therefore, the Division will retain a tract of land for future growth and public recreational purposes.

Land Classification: The land use classification for the project area is settlement and public recreation per the Kuskokwim Area Plan, SC-88-001-05.

Mineral Closing Order: There is currently no mineral closing order for this project area. The Division of Mining, Land and Water proposes to close the project area to mineral entry in accordance with AS 38.05.185 for a land disposal. Mining activity would be incompatible with the past, current, and proposed surface uses for land disposals. To allow mineral location in the proposed project area could create serious conflicts between surface and potential subsurface users. Area plan subsurface management policy states that, in general, areas scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between surface and subsurface users. However, a mineral closing order does not close the project to oil and gas exploration and development. The project area may still be subject to potential oil and gas leasing and exploration.

Municipal Zoning and Comprehensive Plan: The project area is subject to (local) municipal platting and zoning requirements for the City of McGrath.

Easements and Setbacks: Surveyed parcels will be subject to a 50-foot public access easement along surveyed and protracted section lines (per AS 19.10.010) and a 20-foot water line easement within the proposed project area.

Traditional Use Finding: In accordance with AS 38.05.830, a traditional use finding is required because this potential action is considered a disposal of state land in an unorganized borough. The project area has been designated and classified for settlement (land disposals) through the Kuskokwim Area Plan, and one of the considerations in designating settlement areas was minimizing impacts on traditional uses, including fish and wildlife harvest. The proposed project area is located entirely within the City of McGrath and is adjacent to residential properties. Therefore, there are no anticipated changes to the traditional uses of fish and wildlife resources as a result of the proposed action.

## Access to the Parcel

Primary access to the proposed subdivision will be via existing public platted right-of-ways within the City of McGrath. Access to individual parcels within the proposed subdivision will be through platted right-of-ways, which will be established at the time of survey and will be in accordance with the McGrath Municipal Code. Where feasible, any existing roads and trails within the project area will be incorporated with the right-of-ways. Parcels adjacent to surveyed or protracted section lines are subject to a 50-foot section line easement reserved for public access.

**Public and Navigable Water Body Determination**

Waters Determined Public or Navigable: None
Access to and along Public or Navigable Water: None

Lakes larger than 50 acres in size or streams larger than 50 feet in width are considered navigable for title purposes. A 50-foot public access easement and 75-foot building setback will be reserved upland from the ordinary high water mark on all public and navigable water bodies within the project area, in accordance with AS 38.05.127 and 11 AAC 51.035.

**Survey and Appraisal**

Survey: Depending on agency and public feedback, physical conditions of the land, and access issues, the Division proposes to survey the project area into a subdivision of up to 40 parcels containing 1 to 10 acres each or as a single parcel depending on site requirement needs. The survey project is located within the city boundaries of McGrath and is subject to the second class city as the platting authority. The cost for surveying will be paid for from funds allotted for new settlement area development.

Appraisal: Parcels will have a current, fair market value appraisal completed prior to sale. Parcels will be offered through a competitive, sealed bid auction where the minimum bid price is the appraised fair market value. Cost for appraisal will be paid for from funds allotted for new settlement area development.

**Agency Comments**

Agency review was conducted from May 20, 2005 through June 20, 2005. Comments received during the Public Notice period will be considered and addressed in the Final Finding and Decision. Comments received during agency review have been considered and addressed as follows:

Alaska Department of Transportation- Right of Way Section:

> All future State subdivision shall acquire permits **AND CONSTRUCT** driveway/approach road access from the adjacent State road, through the right of way, to the subdivision boundary. This is the minimum that ADOT&PF will accept. (However, DNR should be encouraged to do even more, i.e. construct at least one or more interior "starter" roads.)
>
> Right of Way issues concerning access and State subdivisions
> Permitted AND CONSTRUCTED access to State subdivisions
>
> - Is critical to maintaining the safety and integrity of the roadway for the traveling public and private landowners.
> - Is critical for efficient ADOT&PF maintenance of the intersections of State Roads with subdivision roads.
> - Will ensure that ADOT&PF approach road design standards are met.
> - Will increase lot values within State subdivisions. (defer to Appraisal Supervisor regarding an appraiser who reduces values on State parcels due to poor or no access)
> - Will prevent many neighborhood feuds (Chena Hot Springs II, Delta Homesites—see Pete and Darla for other examples, etc.)

- Will provide better access for fire protection. (West Fork 2002 and Wolf Creek 2004—each year this costs the State millions of dollars, can't drive engines in for structure protection, etc.)

Besides constructing the approach through the right of way, the State DNR should consider providing a DML&W (subdivision) lot near the State road for subdivision parking and staging (e.g. City of Valdez and Robe Lake). (Even if interior roads are not constructed right away, property owners will still have safe (but not necessarily secure) place to park while they visit or work their properties.)

The State, by not constructing road access from the State road to the subdivision boundary (and/or beyond), places a huge and unequal financial burden on individual lot owners who are forced to construct these subdivision roads at their own expense if they want road access. (Seiferts are up to $35,000 for the approach road to their DNR lot.) This situation also invites neighborhood feuds—late buyers in the subdivision rarely offer to reimburse the early buyer for his road construction costs, and hard feelings result. These hard feelings often fester and manifest themselves for years. The State should just build some 'starter' roads in the subdivision, and recoup the cost through higher lot prices.

Plat notes need to be added to the subdivision plats regarding access

- There shall be no driveway access from any subdivision lot directly onto the State road. All lot access shall be via interior subdivision roads **only**.
- There should be some note saying that ADOT&PF approval of the plat comes only with the concurrent construction of the approaches.

Response: The proposed subdivision will be designed and developed according to the City of McGrath's platting and subdivision requirements as a second class city.

Alaska Department of Fish and Game:

There is no specific concern from the Division of Wildlife Conservation. However, a general concern with land disposals, particularly in remote areas, is the potential influence on the wildfire suppression regime. For instance, an area designated for modified or limited suppression, with an objective of wildlife habitat enhancement, may be changed to full or critical suppression status in conjunction with a disposal. The concern is that the particular designation will extend far beyond the boundary of the development, thus, affecting a large area of potential habitat. ADF&G encourages ADNR to be cognizant of this scenario and provide information on wildfire suppression status of an area in the description of the disposal project.

Response: DNR concurs and will take this under consideration. The proposed Dishna Subdivision project is entirely within the City of McGrath where the Southwest Area Forestry Office is located. The Division does include fire protection information, and other resources to learn more, within the Land Auction Brochure.

Office of Economic Development:

The land is considered non-mineral. There could be some potential for sand and gravel deposits on some of the parcels, however. The extensive existence of sand and gravel in the state makes this a non-issue.

Response: As the project area is located within the City of McGrath, use of the land for gravel and sand material use would not be feasible nor would it be the best use for the land in that location.

Department of Commerce- Community &Economic Development:

The State has a Governor's Administrative Order 175 that brings the State into compliance with the National Flood Plain Insurance Program. AO 175 also requires State agencies to evaluate erosion hazards. I looked at a few of the subdivision descriptions but could not tell if there were setbacks from water bodies. I have attached below the AO 175 requirement that pertains to DNR Land Disposals:

*4. State agencies responsible for the leasing or disposal of lands or properties shall, to the extent the action is economically feasible, evaluate flood and erosion hazards in connection with lands or properties proposed for disposal and , in order to minimize future state expenditures for protection and disaster relief, shall consider including within all new subdivisions proposals and other proposed developments greater than 50 lots or 5 acres, whichever is lesser, base (100) year flood elevation data, or information on approximate flood risks.*

FNSB Title 17 is the same as all other cities and boroughs that are in the NFIP in that they have this requirement in their local code:

*within Zone A on the community's FHBM or FIRM; (3) Require that all new subdivisions proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood plain elevation date; (4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from Federal, State, or other source.*

DNR should be including this Base Flood Elevation data on their proposed new subdivision plats if the areas have been determined by the city(ies) or borough(s) to be within a flood hazard, i.e. mapped by FEMA as within an Unnumbered A Zone, a special flood hazard area that does not have BFEs determined.

Response: The entire City of McGrath is subject to flooding on a periodic basis. Any potential buyers will be made aware of this inherent possibility prior to purchase.

Department of Natural Resources- Mining Section:

The mining section has reviewed these disposal areas and there are no conflicts with current mineral rights. The mineral potential for these areas are low, therefore we have no problem with the disposal areas being closed to mineral entry.

Response: The project area will be subject to a mineral closing order prior to being made available for sale, to reduce potential for surface and subsurface use conflicts. However, this decision (see Mineral Closing Section) and the auction brochure will inform potential purchasers about the potential impacts caused by subsurface mineral exploration and/or development, and that Alaska law provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

Department of Natural Resources- Northern Region Land Section

Access issues need to be better defined and legitimized before disposal of the areas.

Impact on a local community/village needs to be evaluated before repeated disposals in the vicinity. The Disposals program and the other sections can work together to determine how to quantify this impact. An example of an impacted community is Minto, which is in proximity to current (Tatlina) and projected (Hulitakwa) disposal areas along the Elliot Highway.

Response: During recent years, the City of McGrath has been subject to erosional effects along the Kuskokwim River. The proposed offering will make lands available to those being displaced by the loss of land due to the river. Any impacts to the local economy should be positive.

Department of Transportation- Aviation:

The proposed locations do not appear to be near any state owned airports so we do not have any comments.

Response: An airport exists within two miles of the current project; any restrictions to building construction should be met by local enforcement codes.

Department of Natural Resources- Division of Oil and Gas

The Division of Oil and Gas is asking that all conveyances/reconveyance actions in which the state retains the mineral estate make the mineral (and access) reservations very clear as early in the adjudication process as possible.

Most decisions inform the applicant of the reservation by citing the statute. However, they do not give the exact reservation language to be used, especially the portion reserving to the State and its successors the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved minerals. Under common law, this access reservation is superior to any and all surface uses. Surface owners are only entitled to damage (AS 38.05.130) resulting from surface access by the mineral owner/lessee, and does not have the legal ability to deny reasonable access.

Many surface disposals also include a Mineral Closing Order for the disposal area, but fail to fully explain the effect of the MCO- specifically that the MCO is for locatable minerals and does not cover oil and gas and access to the same.

The division deals with surface owners, including native allottees and municipalities, on a regular basis when reviewing plans of operations for state oil and gas licenses. The division would prefer that the grantee be well aware of the mineral reservation and the reservation of access to the surface. An informed surface owner is much easier for the state and its mineral entrants/lessees to deal with at such time as surface access becomes necessary.

All State-owned subsurface (with the exception of some Legislatively Designated Areas) is currently leased/licensed for O&G or offered for either competitive O&G leasing or O&G exploration licensing annually.

Response: The project area will be subject to a mineral closing order prior to being made available for sale, to reduce potential for surface and subsurface use conflicts. The Division has specified in this preliminary decision document under the section of "Planning and Classification" and "Mineral Closing Order", that "the project area may still be subject to potential oil and gas leasing and exploration". In addition the land sale brochure will state the following:

> "The state retains ownership of all oil, gas, coal, ore, minerals, fissionable materials, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125). The State reserves the right to enter onto the land to explore for and develop these mineral resources. The State may lease them to mineral developers or allow mining locations to be staked. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130). "

**Open House**

An Open House will be held on November 17, 2005 from 6:00 p.m. until 8:00 p.m. at The Assembly Room of the Cap'n Snow Center on the corner of Takotna and "F" Street, McGrath. The public is invited to come to submit comments and get additional information regarding this and other proposed State land sales.

**Environmental Risk Assessment**

There are no major environmental risks associated with the proposal to survey and offer for sale parcels within the Dishna Subdivision project area. Other impacts as a direct result of the proposed offerings would be as follows:

The anticipated changes as a result of offering areas under this program are an increase in private land ownership in McGrath area. There will be a potential increase in related private and recreational activities over time, including access and housing construction. Associated changes may be summer and winter recreational activities in the area. In addition, as this subdivision will be created within McGrath City limits, all activities or facilities will be required to follow all applicable regulations and ordinances, especially as they relate to protecting local water resources.

The division will identify and consolidate access corridors to minimize the impacts of road or trail development.

**Alternatives**

The following alternatives were considered:

Alternative 1: Do not offer the Dishna Subdivision for sale. No mineral closing order would be required.

Alternative 2: Sell the parcel as-is. However, a survey may be required to exclude any existing easement, park, or water body from the parcel.

Alternative 3: The Division may consider offering the project area as part of a subdivision that consists of several to many, surveyed parcels. The project area is adjacent to State and village lands. It is most cost effective to survey the area into at least several parcels.

Alternative 1 is not the preferred choice. It does not offer Alaskans and opportunity to purchase State land. The current need in McGrath for private land to alleviate losses from erosion would not be addressed. In the past and again recently, the City of McGrath contacted the State to seek possible acquiring lands for private ownership. Also, by not offering the project area, revenue will not be generated for the State.

Alternative 2 is not preferred or feasible, since the project has been determined to be unsurveyed. A survey is necessary and would be needed to meet local platting and subdivision requirements. A single parcel reduces the number of Alaskans given the opportunity to purchase land within McGrath.

Alternative 3 is the preferred alternative. By making this project area available, DNR will provide an opportunity for Alaskans to purchase quality, accessible State land. The Alaska Legislature as well as private citizens indicated a desire for DNR to offer for sale accessible, quality State land for private ownership. In addition, the City of McGrath has seen a great loss of private lands due to erosion from the Kuskokwim River. By making this land available for private ownership, DNR will provide an opportunity for Alaskans to purchase quality, accessible State lands. The request to offer the proposed parcel as a subdivision with several to many parcels as presented is the preferred alternative.

**Recommendation**

The proposed action is consistent with the overall management intent for State land and the action may be in the State's best interest, as it satisfies a demand for accessible, quality land for private ownership. The proposed action is consistent with the Kuskokwim Area Plan and will generate revenue for the State. I recommend that the decision to survey the proposed Dishna Subdivision and offer it for sale be approved consistent with Alternative 3.

November 17, 2005
Date

Jennifer M. Smith,
Natural Resource Specialist II
Subdivision Sales Program

I find that the proposed action may be in the State's best interest and it is hereby approved and should proceed to public notice in accordance with AS 38.05.945.

for Clifford E Newell

November 17, 2005
Date

Holly Hill
Section Manager
Land Sales and Contract Administration

**Public Notice**

Pursuant to AS 38.05.945, public notice of this action will be conducted. The public is invited to comment on the proposed action. Copies of the preliminary decision are available at the Division of Mining, Land, and Water, Land Sales and Contract Administration Section, 550 West 7th Avenue, Suite 640, Anchorage, AK 99501-3576. Copies are also available at the Department's Public Information Offices in Juneau, Fairbanks, and Anchorage or at http://www.dnr.state.ak.us/mlw/landsale/index.htm. Comments must be received in writing by the Division of Mining, Land, and Water, Land Sales and Contract Administration Section, Attention: Jennifer Smith, 550 West 7th Avenue, Suite 640, Anchorage, AK 99501-3576 on or before **5:00 p.m. Monday, December 19, 2005** in order to ensure consideration. Comments may also be sent via e-mail to jennifer_smith@dnr.state.ak.us or by fax at (907) 269-8916.

All written responses will be considered. Only persons who comment during the comment period will be eligible to file an administrative appeal of the final finding and decision.

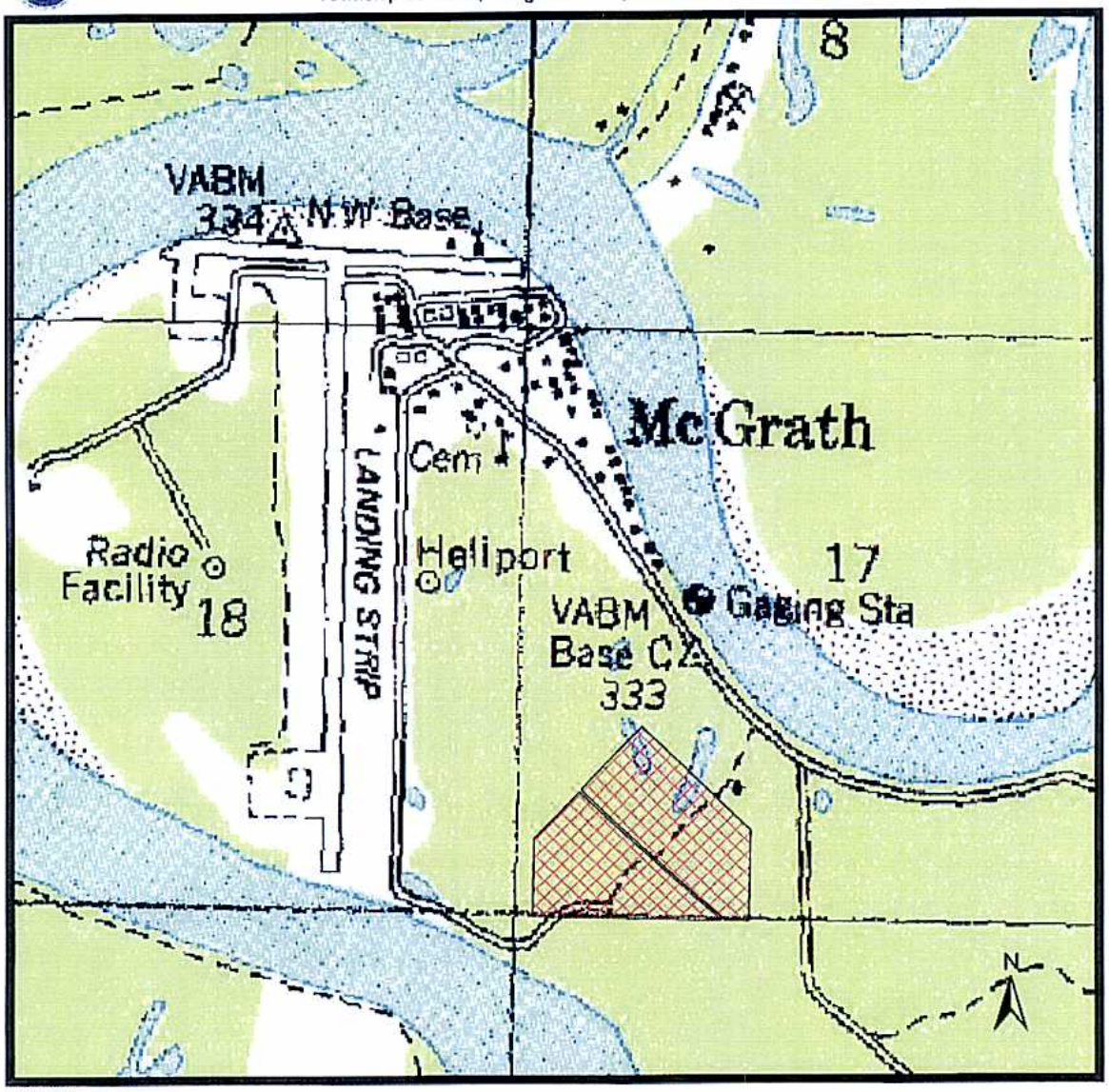
If public comment in response to this notice indicates the need for significant changes in the above decision, additional public notice for the affected decision will be given on or about the beginning of January, 2006. The State reserves the right to withdraw a parcel from consideration at any time. Withdrawing a parcel will not be considered a significant change requiring public notice. If no significant change is required, the Preliminary Finding and Decision, including any minor changes and a summary of comments and responses, will be issued as the Final Finding and Decision of the Department of Natural Resources, without further notice. The final decision will set out the applicable process for appealing the decision under AS 38.05.035 (i)-(m). A copy of the final decision will also be available at the address above and will be sent to any person who comments on the preliminary decision. If you have any questions concerning this proposed action, please contact Jennifer Smith at (907) 269-8591. Individuals with audio impairments may call the department's Public Information Center in Anchorage between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, at TDD# (907) 269-8411.

# Attachment A

*Southcentral Region*

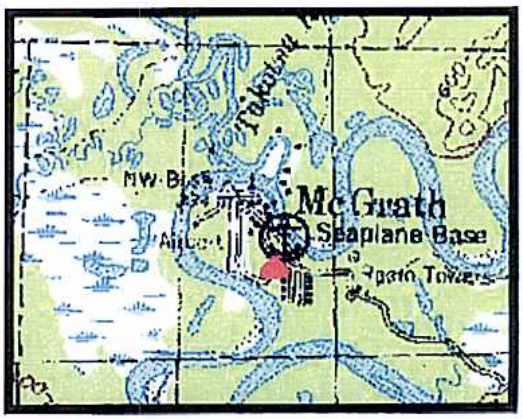
**PROPOSED SUBDIVISION SALES PROJECT**

USS 2646 within the SW1/4 Sec. 17
Township 33 North, Range 33 West, Seward Meridian




Miles

Proposed Project Area




***USGS QUAD 1:63,360***
*McGrath D-6*
*For more information contact:*
*Jennifer Smith*
*DNR Division of Mining, Land, and Water*
*550 W. 7th Ave. Ste 640*
*Anchorage, AK 99501*
*Phone (907)269-8591*
*Fax (907)269-8916*
*Email jennifer_smith@dnr.state.ak.us*