

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND, AND WATER
LAND SALES & CONTRACT ADMINISTRATION SECTION**

PRELIMINARY DECISION

of a
**Proposed Change in the Method of Conveyance
for the Future Sale of 133 Parcels Statewide**
AS 38.05.035 (e), AS 38.05.045

COMMENT PERIOD ENDS 5:00 PM, THURSDAY, DECEMBER 20, 2012

I. Proposed Action

The State of Alaska, Department of Natural Resources, Division of Mining, Land, and Water proposes to change the method of conveyance for the future sale of the 133 parcels of State-owned land detailed on Attachment A: Statewide Map of Parcel Locations and Attachment B: List of Parcels. This Preliminary Decision serves as an amendment, update, and complement to prior Final Finding and Decisions for the project areas within which these parcels are located, so as to change the method of conveyance (where needed for uniformity and to conform to current statutes and regulations) and to provide notice to the public of the State's intention to dispose of these parcels in a future, public auction. If the parcels do not sell when offered at auction, they may be offered by another method under AS 38.05.045 Generally [Sale of Land].

Attachment A: Statewide Map of Parcel Locations

Attachment B: List of Parcels

Attachment C: Public Notice

The parcels are located throughout the State and vary in size up to 40 acres. Many of the parcels encompassed by this decision were offered and contracted for sale through previous State land disposal programs, but were subsequently returned to State ownership through relinquishment or by contract termination. The remaining parcels were identified and surveyed either administratively or after a relinquished or terminated lease period under another land disposal program. All of the parcels in this proposal have previously been through a complete decision process that included public notice and review. For more specific information on each parcel, refer to Attachment A: Statewide Map of Parcel Locations and Attachment B: List of Parcels.

Pursuant to AS 38.05.945 Notice, the public is invited to comment on this proposed action. See Section VIII Submittal of Public Comments section 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, this proposed action is approved, the Department will issue a Final Finding and Decision without further notice, except to those that provide timely, written comment.

There are no associated actions with this proposal.

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II. Authority

The State of Alaska, Department of Natural Resources (DNR) has the authority under AS 38.05.035 (e) Powers and Duties of the Director and AS 38.05.045 Generally [Sale of Land] to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State. The Land Sales and Contract Administration Section of the Division of Mining, Land, and Water (DMLW) is delegated authority to offer parcels through public auction under AS 38.05.050 Disposal of Land for Private Ownership and AS 38.05.055 Auction Sale Procedures. Additionally, if the parcels do not sell when offered at auction, DNR DMLW is authorized to offer the parcels through other methods of sale under AS 38.05.045.

III. Administrative Record

The administrative record for the proposed actions consists of the individual case files for each parcel identified with a separate Alaska Division of Lands (ADL) number in Attachment B: List of Parcels, as well as relevant area plans, Preliminary Decisions, and Final Finding and Decisions for each parcel's project area.

IV. Scope of the Decision

The scope of this proposal, under AS 38.05.035 (e) Powers and Duties of the Director, is limited DNR DMLW's decision to change the method of conveyance by which the parcels listed in Attachment B: List of Parcels will be offered for future sale. All of the parcels of land encompassed by this proposal have been through previous decision processes, which included public notice and review, but there may have been statutory, regulatory, or other policy changes since those reviews, including the discontinuation of various land sale and disposal programs. This Preliminary Decision serves as an amendment, update, and complement to prior Final Finding and Decisions for the project areas within which these parcels are located, with the specific focus of this decision intended only to amend the method of conveyance for uniformity and to conform to current statutes and regulations. The new method of conveyance for these parcels will be through a future, public auction or another method under AS 38.05.045 Generally [Sale of Land]. The reader is referred to the Proposed Amendments section of this document for more information.

DNR DMLW does not intend to impose deed restrictions to control post-patent land use. DNR DMLW will not be in charge of controlling or preventing such uses, which would be governed by local zoning, where it exists, and civil laws, regulations, and ordinances.

V. Proposed Amendments

All of the parcels of land encompassed by this proposal have been through previous decision processes, which included public notice and review. This Preliminary Decision serves as an amendment, update, and complement to prior Final Finding and Decisions for the project areas within which these parcels are located, so as to change the method of conveyance (where needed for uniformity and to conform to current statutes and regulations) and to provide notice to the public of the State's intention to dispose of these parcels in a future, public auction. If the parcels do not sell when offered at auction, they may be offered via another method of offering.

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History: The following descriptions summarize the programs under which the parcels may have been offered in the past:

- Public Outcry Auctions: In the 1960s and early 1970s, DNR leased or sold subdivided parcels of land, mostly by public outcry auction.
- Sales of Future Borough Land: From 1964 to 1975, DNR subdivided and sold parcels for land proposed to go to new boroughs to jump start the new boroughs' income streams.
- Open-to-Entry Staking Program: Between 1968 and 1973, the State's first "stake-it-yourself" program allowed people to stake, survey, and purchase their own parcel of land in designated staking areas.
- Homesite Program: Started in 1977, the State's first "prove-up" program allowed Alaskans to build a dwelling and occupy the land for a certain number of years. If they completed the requirements, they only paid the costs to survey and plat the parcel to complete the purchase of the parcel from the State.
- Lottery Sales: In the late 1970s, DNR was directed by the legislature to sell State-owned land by lottery.
- Remote Parcel Program: In the late 1970s, the Open-to-Entry Staking Program was restructured and became the Remote Parcel Program. This program has since been discontinued and the statutes that authorized this program were repealed. Therefore, the possibility of reoffering parcels as originally intended under the remote parcel program is no longer an option.
- Homestead Program: In 1984, this program replaced the Remote Parcel Program. The Homestead Program allowed participants to stake larger parcels and included an agricultural "prove-up" option.
- Long-Term Residential Lease/Preference Right Parcels: Some parcels were originally issued for long-term residential lease with a preference right to purchase. DNR no longer offers this type of residential lease.
- Remote Recreational Cabin Sites: In 2001, DNR began offering this current "stake-it-yourself" program. Under AS 38.05.600 Remote Recreational Cabin Sites authorizes Alaskans to select and stake Remote Recreational Cabin Sites in designated areas at designated times. Authorizations are awarded through a drawing that gives all eligible participants an equal chance at acquiring a staking authorization for an area. Occasionally, parcels surveyed under this program return to State ownership through relinquishment or termination. Additionally, administrative parcels were identified and created by DNR DMLW staff during Remote Recreational Cabin Sites offerings to:
 1. reduce per-parcel survey costs by increasing the number of parcels included in a State-issued survey contract;
 2. survey desirable parcels bounded by existing parcels and natural features where the additional parcel does not increase mobilization costs or costs associated with setting additional monuments;
 3. complete survey of previously staked parcels when monuments have been set; and
 4. maximize the number of parcels allowed under the decision to offer the staking area.

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Sales of parcels under the related regulations, 11 AAC 67.815 (b) Offering Remote Recreational Cabin Sites, would require the purchaser to reimburse DNR for the cost of surveying, platting, and appraising the site within 30 days of being notified of a successful purchase, in addition to paying the down payment, which sometimes creates an unrealistic burden upon purchasers and hinders the marketability of the property. The proposed amendment in this Preliminary Decision seeks to eliminate this potentially cumbersome requirement and create uniformity across the offerings.

VI. Description

Background: Many of these parcels were previously under contract for purchase, but for a variety of reasons, were terminated or relinquished and returned to State ownership and are now available for reoffer. The remaining parcels were identified through other offerings, such as administratively surveyed parcels from other land disposal programs. Any known anomalies on a parcel will be clearly noted in the brochures.

Geographic Locations: See Attachment A: Statewide Map of Parcel Locations and Attachment B: List of Parcels for parcel-specific information.

Legal Descriptions: See Attachment B: List of Parcels for parcel-specific information.

Boroughs/Municipalities: See Attachment B: List of Parcels for parcel-specific information.

Native Regional and Village Corporations: Relevant Native Regional Corporations will be notified of this proposal during the statewide public notice process.

Parcel-Specific Data: Due to the varied nature, broad geographic reach, and limited scope of this proposal, we will not delineate parcel-specific data for items such as USGS map coverage, coastal issues, topography, geologic hazards, seismic activity, soils, vegetation, fire hazards, flood zones, tides, anadromous waters, and other constraints. Where available, pertinent information will be part of the brochures in which individual parcels are advertised. DNR DMLW strongly encourages any persons interested in purchasing a parcel to first visit the site so that they have a good understanding of the unique features and characteristics of each parcel.

Title: All parcels will have a current title report completed before they are offered for sale. This will ensure that all parcels are free and clear from any cloud on title at the time of offering.

Tentatively Approved Lands: The State of Alaska may not yet have received final patent from the Federal government for some of the land in these offerings. Such lands are designated as “tentatively approved” and notated appropriately in Attachment B: List of Parcels.

Title for parcels on tentatively approved lands will be conditioned upon the State of Alaska receiving patent from the Federal government. In accordance with 11 AAC 67.015 Land Available, in addition to selling, leasing, or granting patented land, DNR DMLW may conditionally sell, lease, or grant land that has been tentatively approved by the Federal government for patent to the State, but that is not yet patented. DNR regulations provide that if for any reason the State of Alaska is denied patent to the land, a sale, lease, or grant

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on this conditional basis will be canceled and the money paid to purchase the land will be refunded. The State of Alaska has no further liability to the purchaser, lessee, or any third party for termination of the contract. Money paid to the State to purchase such land will be refunded, or may be applied to the purchase of another parcel. Additionally, the State is in no way liable for any damage that may be done to the land by the purchaser, lessee, or grantee, or liable for any claim of any third party or for any claim that may arise from ownership. If the State does receive title to the land, as anticipated, the conditional sale, lease, or grant then has the same effect as other sales, leases, or grants.

Title to tentatively approved lands will be conveyed via quitclaim deed. Ordinarily, there is little risk of loss of title associated with tentatively approved lands, however, there may be practical problems including:

1. title insurance companies might not provide title insurance unless this contingency is "excepted" from coverage; and
2. banks might not loan money for construction on, or the purchase of tentatively-approved lands.

DNR DMLW strongly encourages any persons interested in purchasing a parcel first fully investigate these matters.

Retention of and Access to Mineral Estate: In accordance with Section 6 (i) of the Alaska Statehood Act and AS 38.05.125 Reservation [of Rights to the State], the State retains ownership of the mineral estate that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals, such as gold, copper, and silver; and non-locatable minerals such as oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils.

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. Access reserved to these retained interests is superior to any and all surface uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, AS 38.05.130 Damages and Posting of Bond also provides that the owner of the land estate will be compensated for damages resulting from mineral exploration and development.

Planning and Classification: The parcels are spread throughout the State and are classified by, and subject to, a variety of area plans and management units within those plans. See Attachment B: List of Parcels for parcel-specific area plan information. The proposed offering is consistent with area-wide land management policies and general management intent of the area plans and their specific management units. The parcels have been classified as Settlement lands or an equivalent classification according to 11 AAC 55.277 Existing Classifications.

Mineral Orders: All parcels have been closed to mineral entry via mineral orders. Mineral orders that close an area to mineral entry, where they have been established, close that area to new exploration and development of locatable minerals such as gold, copper, platinum, etc. Such mineral orders do not apply to non-locatable minerals, including oil and gas leasing, coal

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leasing, shallow gas leasing, or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, AS 38.05.130 Damages and Posting of Bond stipulates that the owner of the land estate will be compensated for damages resulting from exploration and development. See Attachment B: List of Parcels for specific mineral order information.

Mining activity would be incompatible with the past, current, and proposed uses of the land estate. To allow new mineral location within the boundaries of the parcels encompassed by this decision could create serious conflicts between users of the land and mineral estates. 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 land and mineral estate users.

Reservation of Mineral Estate: In accordance with Section 6 (i) of the Alaska Statehood Act and AS 38.05.125 Reservation [of Rights to the State], 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, that could occur, would be consistent with AS 38.05.130 Damages and Posting of Bond and any other applicable statutes and regulations, which provide that the owner of the land estate be compensated for damages resulting from mineral exploration and development.

Traditional Use Findings: For those parcels located within an organized borough, a traditional use finding is not necessary.

For those parcels located within the Unorganized Borough, a traditional use finding is required under AS 38.05.830 Land Disposal in the Unorganized Borough. The proposed disposal and use of these parcels is consistent with past land uses within and around the proposed parcels and all of the parcels in this proposal have been through a previous, complete notice, review, and decision process. It is anticipated that the sale or resale of these parcels will not change the traditional uses. Should we identify any conflicts through the new public notice process but still find this proposed action to be in the best interests of the State, we will address these issues and proposed mitigation measures in the subsequent Final Finding and Decision.

Access: Access to individual parcels varies. Pertinent access and location information will be part of the brochures in which individual parcels for sale are described. DNR DMLW will ensure that all parcels have legal access prior to sale, yet the access may not be developed. It is the responsibility of the interested party to investigate the existing and allowable access before purchase. DNR DMLW strongly encourages any persons interested in purchasing a parcel to first visit the site so that they have a good understanding of any potential issues concerning the parcel's access.

Easements, Setbacks, and Reserved Areas: Parcels may be subject to a variety of easements, setbacks, and reserved areas. Pertinent information regarding these types of restrictions will be part of the brochures in which individual parcels for sale are described. DNR DMLW strongly encourages any persons interested in purchasing a parcel to visit the site and review all

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associated documents so that they have a good understanding of any potential issues concerning the parcel.

Hazardous Materials and Potential Contaminants: Interested parties are encouraged to inspect the property and familiarize themselves with the condition and quality of the land. There are no known environmental hazards present within the parcels encompassed by this proposal. However, the State of Alaska makes no representations or warranties, expressed nor implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed for conveyance. The State further assumes no liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances be eventually found.

DNR DMLW recognizes there are potential environmental risks when previously vacant land is occupied. Many of the activities increasing these potential risks are regulated by other agencies. Given that this land was specifically designated Settlement for transfer into private ownership, and given the high degree of interest from both the legislature and citizens in transferring State-owned land into private ownership, DNR DMLW is of the opinion that the benefits outweigh the potential risks.

Surveys: All parcels have been surveyed. See Attachment B: List of Parcels for parcel-specific information.

Appraisals: In accordance with AS 38.05.840 Appraisal, an appraisal meeting Department standards will be required within two years of the date fixed for the sale for each parcel. Parcels for which there are improvements that have been appraised at \$10,000 or more will be identified in the brochure. Such parcels will be managed under AS 38.05.090 Removal or Reversion of Improvements Upon Termination of Leases (including those relinquished or terminated from land sale contracts). Purchases of these parcels will require that the successful bidder pay for the improvements, in full, upon notification of apparent high bid or application drawn.

VII. Agency Comments

Agency review is being conducted concurrently with the public notice for this Preliminary Decision. If, after consideration of timely written comments, this proposed action is approved, the Department will issue a Final Finding and Decision, addressing all comments received therein. A copy of the Final Finding and Decision will be provided to those that provide timely, written comment.

As discussed throughout this document, all of the parcels encompassed by this proposal have been through previous decision processes, which included a public notice and review. This Preliminary Decision serves as an amendment, update, and complement to prior Final Finding and Decisions for the project areas within which these parcels are located, so as to change the method of conveyance (where needed for uniformity and to conform to current statutes and regulations) and to provide a notice to the public, during a period in which agencies may also comment.

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VIII. Submittal of Public Comments

See Attachment C: Public Notice for specific instructions and conditions regarding notice and how to submit comment for consideration.

Pursuant to AS 38.05.945 Notice, a public notice inviting comment on this Preliminary Decision will be published on the State of Alaska Public Notice website at <http://notes.state.ak.us/pn/> and in newspapers in statewide circulation and newspapers of general circulation in the vicinity of the land offering, if available. Notices will be made available to relevant postmasters of permanent settlements; relevant municipalities if the land is within the boundaries of a municipality; relevant regional corporations if the land is within their corporation boundary; relevant village corporations if the land is within 25 miles of the village for which the corporation was established; and relevant soil and water conservation districts.

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

DNR DMLW will consider all timely, written comments received. If said comments indicate the need for significant changes to the Preliminary Decision, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to the proposed action will not be considered significant changes requiring additional public notice.

If the proposed action is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and Division responses, will be issued as a subsequent Final Finding and Decision without further notice. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at <http://dnr.alaska.gov/mlw/landsale/> and sent to any party who provides timely written comment. Only persons from whom the Department receives timely, written comment during the identified comment period will be eligible to file an appeal thereof.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
5:00 PM, THURSDAY, DECEMBER 20, 2012**

IX. Alternatives and Discussion

DNR DMLW is considering the following alternatives:

- Alternative 1: Change the method of conveyance for the parcels (where needed to conform to current statutes and regulations) to offer at a future, public auction or by another method under AS 38.05.045 Generally [Sale of Land] if the parcels do not sell when offered at auction.
- Alternative 2: Do not change the parcels' method of conveyance.

Article VIII, Section 1 of the Alaska Constitution states, in part, that "...it is the policy of the State to encourage the settlement of its land..." Furthermore, AS 38.05.045 has placed this charge with the Commissioner of DNR. Alternative 1 provides an equitable method for DNR to help

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meet the obligations laid out in the Constitution and statute. The lands affected by this decision have been deemed appropriate for settlement through a previous best interest finding with related public process wherein these parcels were previously identified as appropriate for sale. DNR is now conducting a new notice to the public under this proposed action simply to change the method of conveyance. Alternative 2 would not allow the sale of these lands due to changes in statutes, regulations, and policies and thus the lands would be retained. Retention of these parcels would be contrary to the previous processes that identified these lands as appropriate for disposal and would inhibit DNR DMLW from meeting its Constitutional and legislative obligations. For the aforementioned reasons, Alternative 1 is the preferred alternative.

Recommendation follows.

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X. Recommendation

This Preliminary Decision for the proposed actions described throughout this document and its attachments are consistent with the overall management intent for State-owned land; potential changes to public resources and the public interest as a result of the proposal are acceptable; and these actions are in the best interest of the State. It is thereby recommended to proceed to public notice.

/s/

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Department of Natural Resources
State of Alaska

November 2, 2012

Date

/s/

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Department of Natural Resources
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Date