ATTACHMENT E

SPECIAL EXCEPTION
KENAI AREA PLAN
ADL 231084

Name: Lake Front, Moose Pass Townsite (unit 382D in Kenai Area Plan), located in the community of Moose Pass.

Authority: The authority to revise plans derives from AS 38.04.065(b)**;** 11 AAC 55.030(f) defines when a revision constitutes a special exception. The authority to approve special exceptions has been delegated to DMLW section chiefs and regional managers (DO 03).

Current Plan: The KAP includes specific requirements for the protection of anadromous streams in those instances where the state (DNR) intends to convey state land to a non-state entity. Specifically, Management Guideline D in the 'Shorelines, Stream Corridors and Wetlands' section of Chapter 2 (pp. 2-52 to 2-54) includes requirements for easements, buffers, and public access to ensure consistency between authorizations along waterbodies. Table 2.4 identifies widths for a variety of waterbodies and provides that the minimum width of the retention area, buffer, or easement adjacent to anadromous streams should be 200 feet. The Management Guideline acknowledges, though, that widths can be narrower on a case-by-case basis if it is determined that the harm intended to be avoided by the requirement is not likely to occur because of site specific circumstances, although the width must be sufficient to allow for public access as well as to screen the waterbody from development.[1]

Proposed Special Exception: This special exception is pertinent to the minimum width requirement of 200 feet for anadromous streams and to the need for retention. The width that is to be applied for the purposes of riparian protection is 70 feet, measured from ordinary high water (OHW). This area is to be protected by a riparian buffer that specifically excludes most uses from within the buffer area. (See also Preliminary Decision, pg. 7)

Explanation: This special exception utilizes the determination language of Management Guideline D and the special discretionary guideline in Table 2-4 under 'Retention Areas' (p. 2-54) that provides that a conservation easement or similar management tool can be used in lieu of retention.

There is limited vegetation adjacent to Upper Trail Lake, and, at the maximum extent, is 70 feet in width. The area interior to that has been affected by previous development actions and vegetation is not present. Research on necessary minimums for riparian areas has indicated that the first 66 feet from OHW is

[1] Although this is the standard that is established in the KAP, DNR policy regarding riparian management has evolved since then and now the applicable requirement is that sufficient width must be retained (or established) to provide for the protection of riparian functions. This special exception will utilize this standard in the determination process.

particularly important to the maintenance of the functions of a riparian area. Further, in this instance the functions of the riparian area have already been compromised by development, and the maintenance of existing vegetation, which is usually possible and typical of state disposal decisions, cannot be accomplished through this decision. Table 2-4 already provides for the use of a conservation easement or "other management tool that meets the principal purposes of this buffer". DNR has determined the aforementioned width and method of protection are the most appropriate management strategies to create and maintain a riparian area for the protection of the anadromous water, Upper Trail Lake.

Assessment: Three alternatives exist: do-nothing, impose a requirement to retain 200 feet of state land adjacent to Upper Trail Lake, or utilize the protection methods described in the proposed Special Exception, above. The first alternative is inappropriate; DNR, as a matter of policy, protects riparian areas in its disposal decisions. The second alternative is also not appropriate since the area necessary for protection of the anadromous waterbody is 70 feet than 200 feet. The effect of retaining 200 feet of state land would infringe on areas of potential operation, and retaining state land, which mandates a static protection area on a parcel of land, is less desirable than imposing a buffer that utilizes setbacks. This approach is particularly appropriate in areas of the Kenai Peninsula Borough since the borough utilizes a protection mechanism adjacent to certain anadromous streams that applies building setbacks and that specifies allowed and not allowed uses within riparian areas. The third alternative is the most effective of the three alternatives and is considered 'preferred'.

It is determined that the third alternative meets the factors to be considered in making determinations of reduced width: that is, that the use of a 200-foot retention area is unnecessary and cannot be effectuated since most of the existing vegetation has been removed. In addition, the setback area (in combination with the easement established under AS 38.05.127) provides for effective public access and is effective in screening the area from development.

AS 38.04.065(b): The factors identified in this section of statute have been considered in this special exception and the proposed action is consistent with this portion of statute.

Decision: The standards for a special exception have been reviewed and have been met. I find that the special exception to the Kenai Area Plan, as described above, meets the criteria for special exceptions under 11 AAC 55.030(f) and is hereby approved subject to the criteria described in Effective Date of Decision, below.

Effective Date of Decision: This special exception becomes effective if there is an affirmative decision to convey land to a quasi-public entity for the purpose of providing public safety services, as provided for in the written decision for ADL

231084. It is also dependent on approvals of a plan amendment to the Kenai Area Plan, Land Classification Order SC-99-002A07, and a plan amendment to the Kenai River Comprehensive Management Plan. If an affirmative decision to dispose of state land for this purpose does *not* occur *or* if *any* related actions, including the plan amendments to KAP or the KRCMP *and* the land classification order, do *not* occur, this special exception is voided.

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

Date