STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

Proposed Non-competitive Public and Charitable Use Sale to Applicant, Moose Pass Sportsman's Club

PRELIMINARY DECISION – AS 38.05.810(a)
ADL 231084

AND RELATED ORDERS
Proposed Land Classification Order AS 38.05.300
Proposed Amendment to the Kenai Area Plan AS 38.04.065
Proposed Special Exception to the Kenai Area Plan AS 38.04.065
Proposed Amendment to the Kenai River Comprehensive Management Plan AS 38.04.065

Proposed Action, Non-competitive Sale: The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), has received an application for a disposal of state interest in a State-owned lot to be used for community purposes pursuant to Alaska Statute 38.05.810(a) Public and charitable use. The lot and associated improvements were used by the state as a highway maintenance facility until 2000, when the state ceased operations there. The site has been abandoned since and the remaining 2 buildings have not been maintained. This proposed decision will allow the lot and buildings to be sold through a non-competitive sale to the applicant, Moose Pass Sportsman's Club (MPSC). The lot is located in Moose Pass between the Seward Highway and Upper Trail Lake at approximately Milepost 29.5. The legal description of the lot is Block 7, USS 2676, Moose Pass Townsite, situated in Section 25, Township 5 North, Range 1 West, Seward Meridian. The lot is approximately 3.17 acres in size. See Attachment A.

The public is invited to comment on this Preliminary Decision of the proposed non-competitive sale and on the proposed related actions: revisions to the Kenai River Comprehensive Management Plan (KRCMP) and the Kenai Area Plan (KAP), and the proposed land classification order. **The deadline for comments is on or before Friday, September 28, 2012**; see page 16 for information on how to submit comments on this Preliminary Decision and related actions. When submitting comments, segregate your comments between the Preliminary Decision and the associated plan revisions.

Related Actions: The Preliminary Decision is dependent upon changes to the KRCMP and KAP and upon the enactment of a Land Classification Order (LCO). See the section on 'Proposed Related Orders', following, for details. Although the recommended decision outlined in this Preliminary Decision is dependent on concurrent, associated

action of the types noted above, the Preliminary Decision *only affects* the proposed disposal action. Separate authorities and procedures exist for the revisions of the KAP, KRCMP, and LCO.

Authority: The applicable authority includes, but is not limited to, the following Alaska Statute (AS):

AS 38.05.810(a). Public and charitable use

Administrative Record: The administrative record for the proposed action consists of the following case file: ADL 231084. Also incorporated by reference are GS 94, Leasehold Location Order 20, Classification SC-99-002, Kenai Area Plan (adopted 2000), Kenai River Comprehensive Management Plan (adopted 1986, updated 1997), ADL 228706 (Management Agreement between DMLW and the Division of Parks and Outdoor Recreation, 1997), and ADL 226527 (Designation of Special Use Lands).

Scope of the Decision: The scope of this decision is limited to determining if the applicant and the subject lot and buildings qualify under the public and charitable use statute, if it is in the state's best interest to dispose of the subject lot and buildings and if it is in the state's best interest to dispose of the lot and buildings to the current applicant (Moose Pass Sportsman's Club) pursuant to AS 38.05.810(a) Public and charitable use.

AS 38.05.810(a) authorizes the purchase price of the lot to be "less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interest of the public..." The applicant proposes to use the subject lot for the Moose Pass Volunteer Fire Company (MPVFC) and EMTs. The Department finds these uses to be consistent with the statutory requirements for a public and charitable use and therefore eligible for sale at less than appraised value. The Department has determined that the purchase price for state land to be sold pursuant to the public and charitable use statute can be set at a portion of the cost of adjudicating the case; this cost has been set at $3500.00. The applicant is responsible for bearing the cost of the public notice and survey (if required) as well as the purchase price.

AS 38.05.810(g) requires the state retain a reversionary interest in lands conveyed for a public or charitable use under AS 38.05.810(a) unless this reversionary interest is waived by the commissioner on a finding that a waiver is in the state's best interest. In this case, the state patent will contain a reversionary interest. Draft patent language is below.

- Pursuant to AS 38.05.810(g), if the Grantor determines that the Grantee, Moose Pass Sportsman's Club, or the Grantee's successors in interest, has used or is using the lot conveyed by this Patent for other than a valid public purpose the Grantor may declare a forfeiture of this conveyance and title hereby conveyed shall thereupon revert to the State of Alaska.

The final version of the reversionary language will be in the Final Finding and Decision and will be included in the State Patent.

Proposed Related Orders: The following associated actions will occur concurrent with the Final Finding & Decision: to reclassify the subject parcel from its dual classification of Public Recreation and Habitat to Settlement, to approve amendments to the Kenai Area Plan and the Kenai River Comprehensive Management Plan, and to approve a Special Exception to the Kenai Area Plan. These actions are described at more length in the section **Planning, Classification and Mineral Orders.**

Description:
Location: The lot is within the Moose Pass Townsite and is described as Block 7, United States Survey (USS) 2676, located in Section 25, Township 5 North, Range 1 West, Seward Meridian. The lot is at approximately Milepost 29.5 of the Seward Highway.

Geographic Features: The subject parcel is situated between the highway and Upper Trail Lake. The lot is slightly below highway grade and approximately 10-15 feet above Upper Trail Lake. The lot is largely cleared and leveled; the narrow northern portion of the lot is vegetated, mostly with mixed coniferous and deciduous trees. The southern boundary of the lot along the lake is also similarly vegetated. There are trees along the road right-of-way except at the access point and across a portion of the middle of the lot. See Attachment B.

Potential Flood Hazard: The Flood Hazard Boundary Map prepared by the Federal Emergency Management Agency designates Moose Pass as Zone C-areas outside the 500-year floodplain.

Municipality/Borough: The subject lot is located in the Kenai Peninsula Borough. Moose Pass is an unincorporated community.

Native Regional/Village Corporations/Councils: The Native regional corporation is Cook Inlet Region, Inc. There is no Native village corporation nor is there a local traditional governing body for Natives in the Moose Pass area.

USGS Map Coverage: The subject lot is located on USGS Quad Seward B-7.

Legal Description: The legal description of the lot is Block 7, United States Survey (USS) 2676, Moose Pass Townsite. Furthermore, the subject lot is located in Section 25, Township 5 North, Range 1 West, Seward Meridian. The lot is approximately 3.17 acres in size.

Title:
Acquisition Authority: Title report RPT #1742 was completed for the subject lot June 15, 2010. The State of Alaska received title to the subject lot under a general purpose grant from the federal government. The applicable state case file is GS 94.

Title Status: Block 7, USS 2676 is State land conveyed by federal patent #50-89-0457 issued August 1, 1989 to the State of Alaska. Title Report RPT #1742 was updated by title report RPT #3070 issued December 2, 2011 to address ownership of the buildings on Block 7, USS 2676. The buildings are owned by the Alaska Department of Transportation and Public Facilities.

Title Restrictions: The lot is subject to the reservations, easements, and exceptions contained in the federal patent.

State Retained 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).

Native Interest: The subject lot is within the boundaries of Cook Inlet Region, Inc. There are no Native interests identified with this lot.

School Trust Land: This is not School Trust Land.

Other Conflicts or Pending Interest: There are no third party interests of record that affect the subject lot.

Background: Block 7 of United States Survey 2676 was withdrawn from the Chugach National Forest by Public Land Order (PLO) 245 on September 12, 1944 for Townsite purposes. PLO 245 was partially revoked by PLO 6685 issued July 27, 1988 and Block 7 was subsequently deemed to be proper for selection by the state in a decision issued by the federal government in 1989. Block 7 was conveyed to the state by federal patent on June 9, 1989.

According to federal records, the Alaska Department of Highways applied to the federal government in 1963 to use the subject parcel as a highway maintenance site (federal case file A-059634). Aerial photography dated August 28, 1962 shows the lot had largely been cleared of vegetation, leveled and graveled, with several buildings and numerous pieces of construction equipment located on site. A decision was issued later that year approving issuance of a Right-of-Way to the Department of Highways for the construction and operation of a highway maintenance facility. In 1970 the federal Bureau of Land Management requested proof of construction from the Department of Highways. The Department of Highways in 1972 verified that construction of the maintenance facility began in 1963 and was completed sometime in 1964. BLM conducted a site visit in 1975 and confirmed the construction of the maintenance facility.

Aerial photography dated May 25, 1976 shows additional clearing in the northeast and southeast portions of Block 7.

The Alaska Department of Transportation and Public Facilities (DOT/PF) ceased operations at the site in November of 2000 as it consolidated highway maintenance facilities elsewhere in the region. DOT/PF hired an environmental consulting firm to perform an assessment of hazardous materials on the site. The firm (Shannon & Wilson) issued a report in June of 2001 noting potential soils contamination and the presence of lead-based paint and asbestos insulation in the maintenance building. Most of the soils contamination did not exceed levels that would require remediation. It appears DOT/PF intended to request funding to remediate the site but funding was not forthcoming. According to the Shannon & Wilson report, 3 underground storage tanks were removed by a DOT/PF contractor in 1994 and much of the remaining facilities and road maintenance materials had been removed by 2001. The only improvements remaining are the former maintenance building and a smaller garage.

The Moose Pass Volunteer Fire Company (MPVFC) wanted to use the larger maintenance building to store its vehicles and equipment. According to the applicant, DOT/PF issued a Right-of-Way Permit to MPVFC in 2003 for a period of 5 years. This permit (#318.150) authorized use of the former Moose Pass Maintenance and Operations Site for "the purpose of housing the Moose Pass Volunteer Fire Company firefighting equipment and training fire fighting personnel." DOT/PF renewed the permit for a term from October 1, 2008 through December 31, 2012.

According to the applicant and DOT/PF right-of-way personnel, DOT/PF intended to convey the buildings to the Moose Pass Volunteer Fire Company prior to expiration of the Right-of-Way Permit currently in effect. However, DOT/PF later claimed the buildings were owned by DNR and had been conveyed to DNR with the federal patent. Title report #RPT 1742 was updated on December 2, 2011 by title report RPT #3070 specifically to address ownership of the buildings. Federal case file AA-059634 documented issuance of a Right-of-Way permit by the Bureau of Land Management (BLM) in 1963 to the Alaska Department of Highways for a highway maintenance site at Block 7, USS 2676. The federal decision to issue this permit was based on an application from the Department of Highways dated July 10, 1963 for a maintenance site to be located at the subject parcel. The case file contained documentation submitted by BLM and the Alaska Department of Highways confirming construction of the maintenance facility in accordance with federal requirements and the right-of-way permit. Based on this documentation, it is DNR's belief that DOT/PF owns the remaining buildings on Block 7, USS 2676. DNR and DOT/PF will need to establish a mutually agreeable mechanism for transferring title to the buildings to the applicant if the application to purchase is approved.

The southern portion of the subject property was used by the Kenai Peninsula Borough as a waste transfer facility until March, 2010 when the transfer facility was relocated. A State of Alaska Telecommunications System (SATS) facility is currently located in the southeastern corner of Block 7. This facility is managed by the Alaska Department of

Administration (DOA) and serves the Alaska State Troopers, DOT/PF and the Alaska Railroad. DOA informed DNR it intends to relocate this facility to a site on the other side of Upper Trail Lake, The tentative schedule for the relocation is the summer of 2012.

The applicant, Moose Pass Sportsman's Club, is recognized by the Internal Revenue Service as a tax-exempt non-profit organization under Section 501(c)(4) of the Internal Revenue Code. The MPSC receives state revenue-sharing funds through the Kenai Peninsula Borough for community projects and needs. As Moose Pass is an unincorporated community, the MPSC functions in a very limited manner in lieu of an organized municipality. The MPSC has applied on behalf of the community of Moose Pass and the Moose Pass Volunteer Fire Company to purchase Block 7, USS 2676, for use by the fire department.

Planning, Classification and Mineral Orders:
DNR Area and Management Plans: There are two state plans that affect the subject property-the Kenai Area Plan (KAP), adopted by DNR January 7, 2000, and the Kenai River Comprehensive Management Plan (KRCMP), adopted by DNR October 1986 and updated December 15, 1997. Both plans were adopted by the DNR Commissioner, but under different authorities. Block 7, USS 2676, identified as Unit 382D, is located within Region 2 of the Kenai Area Plan. Unit 382D is designated as Public Recreation and Tourism-Dispersed Use (rd) and Habitat (ha). The area plan recommends that this unit be added to the Kenai River Special Management Area (KRSMA) and indicates that the unit is affected by the management requirements for a 'Nodal Development Area under the Seward Highway Scenic Byway" management plan, which addresses concentrated areas of business and commerce. The Seward Highway Scenic Byway management plan recommends retaining a buffer of 50 feet along the Seward Highway and since the KAP references this document, a minimum buffer of 50 feet from the Seward Highway will be imposed. The KAP also identifies a buffer of 200 feet adjacent to anadromous water bodies if land is to be conveyed out of state ownership.

The other plan affecting this unit, the KRCMP, similarly includes a recommendation for the addition of management unit 382D to KRSMA and the protection of riparian areas adjacent to the Kenai River and its anadromous tributaries by either retaining the parcel in state ownership or ensuring protection of an area 200 feet from anadromous water bodies through the use of easements or building setbacks if the unit is to be conveyed out of state ownership.

The disposal of this parcel will require plan amendments to the two plans and a special exception to the KAP. It will also require the reclassification of the management unit from Habitat and Public Recreation to Settlement. (Land can only be disposed of to a private or not-for-profit entity if it is classified Settlement.) The plan amendments and special exception are separate actions and the decision to dispose of Block 7 is contingent upon approval of both plan amendments and the special exception, as well as approval of the LCO. These are attached to this decision and should be consulted for more detailed information (Attachments C, D, E and F), but, in brief:

Kenai Area Plan: A plan amendment and special exception are required. The plan amendment to the KAP changes the plan designation for unit 382D to a designation of Public Facilities – Transfer (and a related Land Classification Order reclassifies the unit to Settlement). The plan amendment also changes the management intent which indicates that disposal for the purpose of a public facility is appropriate. It also voids the requirement that the land be retained by the state and eventually incorporated into KRSMA. A special exception to the requirement for a riparian width of 200 feet (Table 2-4 in the KAP) adjacent to anadromous streams is also included in order to reduce the width to 70 feet. See Attachments D and E for more detail.

Kenai River Comprehensive Management Plan: A plan amendment to this plan is required to reduce the required width of the riparian protection area from 200 feet to 70 feet and to delete the requirement that unit 382D be retained in state ownership and added to KRSMA. See Attachment F for more detail.

Land Classification: Land Classification Order SC-99-002 was issued pursuant to the KAP. Block 7, USS 2676 is co-classified Public Recreation and Wildlife Habitat. The subject parcel must be reclassified to Settlement for a sale to occur. See Attachment C for more detail.

Coastal Issues: The subject lot is located within the Kenai Peninsula Borough. The department will notify the Kenai Peninsula Borough's coastal management program of this proposed action.

Riparian Area: An area of riparian vegetation exists adjacent to Upper Trail Lake, which is considered a navigable water body by the state. Both the KAP and the KRCMP recognize the importance of protecting riparian areas and both recommend imposing a 200-foot non-disturbed vegetated buffer. However, both plans provide for deviation (both to increase or decrease widths) from this width on a site specific basis. Riparian protection issues are dealt with in more detail in the plan amendments. A 70-foot riparian buffer will be reserved along Upper Trail Lake.

Mineral Order: Leasehold Location Order 20 was issued effective January 30, 1998 limiting mineral entry to leasehold locations and prohibiting new mining claims. This decision does not recommend any changes to this subsurface management method.

Area plan subsurface management policy states that, in general, state land scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between surface and subsurface users.

Mineral orders for closure, where they have been established, close the area to exploration and development of locatable minerals such as gold, copper, platinum, etc. Mineral orders do not apply to leasable minerals, including oil and gas, coal, shallow gas, or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS

38.05.130). In this disposal, since the potential for either mineral leasing or locatable mineral development is low, no Mineral Order (Closing) is recommended in this decision. As indicated, a LLO currently exists and this will provide adequate protection.

Local Planning: The Kenai Peninsula Borough Comprehensive Plan was adopted in June, 2005. DNR is not required to follow local plans, but must consult them in order to determine if inconsistencies exist between the proposed action and local land use laws. In Chapter 4. Goals, Objectives and Implementation Actions, are the following pertinent goal, objective and implementation statements:

Goal 4.3: "To facilitate the provision of cost-effective fire protection and emergency medical services to residents and visitors throughout the Borough."

Objective 1: To minimize increases in the cost of fire and emergency services while ensuring a fair and equitable system of financing these services.

Implementation Actions:

A. Use fire and EMS department volunteers and local fund raising activities to support local programs where practical

B. Continue to take advantage of available state and federal grant programs to obtain capital facilities and equipment.

The MPVFC provides fire fighting and emergency medical services to a sizeable area in the central Kenai Peninsula. Upgrading the facilities and equipment available to the MPVFC would improve its ability to provide efficient and effective emergency services to central peninsula residents. The MPSC receives state revenue sharing funding on behalf of Moose Pass and nearby Crown Point and recently used a portion of that funding to purchase a new fire truck. The MPSC also sponsors a fair in the summer to raise funds for the community. Both the MPVFC and the MPSC are volunteer organizations and both are federally recognized tax-exempt organizations. Applying to purchase abandoned state land and buildings for use by the MPVFC, in conjunction with seeking capital funding from other sources, is in direct compliance with Implementation Action B.

The community of Moose Pass has an Advisory Planning Commission established pursuant to borough code to carry out local planning and to provide local input to the borough. The community adopted a comprehensive plan on December 15, 1992 by a community wide vote. The community is currently seeking funding to update it.

The Moose Pass Comprehensive Plan recognized the importance of the volunteer fire department to Moose Pass. In a community survey, 97% of the respondents expressed support for the fire department. The plan called for continued upgrading of equipment and training volunteers. Until DOT/PF issued the Right-of-Way permit to the MPVFC authorizing use of the former maintenance building, fire equipment and emergency medical equipment had been stored in the community center. Growth of the MPVFC eventually rendered the community center inadequate for that purpose.

The Kenai Peninsula Borough code (Chapter 21.18) established a 50-foot habitat protection zone around anadromous bodies of water, which includes Upper Trail lake. Most uses within that zone require a permit. The borough code requirements will apply to this parcel if sold, regardless of any other easements, buffers or setbacks imposed by the state.

Easements and Access: There are no easements of record affecting this parcel. Access to the subject parcel is from the Seward Highway.

Access To and Along Public or Navigable Water: The subject parcel is located on the western shore of Upper Trail Lake, at approximately Milepost 29.5 of the Seward Highway. Pursuant to AS 38.05.127 a public access easement 50 feet in width from the ordinary high water mark will be reserved.

Traditional Use Findings: A traditional use finding is not necessary because the subject parcel is located within an organized borough.

Reservation of Mineral Estate: In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, 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, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Hazardous Materials and Potential Contaminants: The Alaska Department of Transportation and Public Facilities retained an environmental consulting firm (Shannon and Wilson) to conduct an assessment of potential environmental hazards and contamination on the subject parcel. Shannon and Wilson issued a report in June 2001 noting potential hydrocarbon contamination above and below ground from former fuel storage tanks; as noted previously, the three underground tanks were removed by DOT/PF in 1994. The levels of contamination were generally below critical levels that would require remediation. The report also noted the presence of lead based paint and asbestos in the maintenance building. It is assumed these conditions remain.

The Moose Pass Sportsman's Club is expected to inspect the subject parcel and familiarize itself with the condition and quality of the land. The state makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State of Alaska does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants nor for the remediation of the site should such substances ever be identified. The subject land is sold on an "as is" basis and in the condition as of the date of sale.

Performance Guaranties and Insurance: Not applicable to this decision.

Survey: A Preliminary Survey Determination was issued on March 30, 2012. Based upon an initial investigation, the subject parcel has been determined to be unsurveyed due to possible encumbrance of the Seward Highway right-of-way on Block 7. The boundary of Block 7 on the Upper Trail Lake side may need to be reestablished by determining the ordinary high water line of the lake.

Compensation/Appraisal: An appraisal is not required. The Land Sales and Contract Administration has determined that the sales price for public and charitable use purchases will be based on the partial costs of adjudicating the application, which at the present time is $3,500.00. AS 38.05.810(a) authorizes the director to sell state land for a public and charitable use at less than fair market value.

Agency Review: Agency review was conducted prior to public notice for the Preliminary Decision. Agency comments were received from the DNR Division of Mining, Land and Water and the DNR Division of Parks and Outdoor Recreation, the Alaska Department of Fish and Game and the Alaska Department of Transportation and Public Facilities. The comments are summarized below and accompanied by the division's responses.

Division of Mining, Land and Water:
The Southcentral Region Office supported the sale, noting the site's historical use, the condition of the site and the demonstrated community need for the property and buildings. The Resource Assessment and Development Section identified the revisions needed to the state plans and current classification if the sale is to proceed.

Response: None necessary.

Division of Parks and Outdoor Recreation (DPOR):
DPOR recommended that other state land in the vicinity of Moose Pass be evaluated to determine if another parcel of state land might be more suitable for the proposed use. DPOR named four specific parcels, identified by Kenai Area Plan Unit designations-Units 376, 382B, 382C and 386.

If the proposed sale of the subject parcel proceeds, DPOR recommended:

1) all hazardous materials which could leach into surrounding waters should be removed;
2) establish by easement a 65-foot vegetative buffer along Upper Trail Lake; re-vegetate the buffer and require the vegetation be maintained and undisturbed;
3) establish a vegetative buffer along the Seward Highway by retaining existing vegetation and re-vegetating areas absent of vegetation except for areas of ingress/egress and where sight lines are to be preserved. The buffer should be as wide as the existing vegetation and the vegetative materials should be those normally associated with screening highways; and
4) the reversionary clause [AS 38.05.810(g)] should not be waived.

Response: As part of the overall review of land status, it was determined there are no suitable alternative sites. All four of the alternative parcels suggested by DPOR were evaluated and found to have been selected by the Kenai Peninsula Borough as part of its municipal entitlement. These parcels are to be held in reserve for potential conveyance to the borough and are not available for disposal to the applicant. The only other state lands near Moose Pass are on the eastern side of the Trail Lakes; there is no road access to these lands.

The applicant intends to renovate the former maintenance building to make it suitable for use, which will entail removal of hazardous materials. There are no other known hazardous materials on site. As noted in the **Background** section, the levels of soils contamination did not exceed the levels that would require remediation and the underground storage tanks and road maintenance materials were removed in 2001.

The reversionary provision will not be waived.

Easements and buffers are addressed in the **Planning, Classification and Mineral Orders** section. Furthermore, the applicant will be required to retain all existing vegetation on the subject parcel; no vegetation can be removed. A vegetative buffer is required by both the KAP and the KRCMP. A vegetative buffer 70 feet in width from the improved road edge will be required within which existing vegetation is to be retained and no structures can be constructed. Vegetation can only be removed if warranted at points of ingress and egress. The applicant will be required to re-vegetate those areas absent of vegetation within the 70-foot riparian buffer on Upper Trail Lake.

Alaska Department of Fish and Game (ADF&G):
ADF&G noted the parcel will have to be reclassified and the Kenai Area Plan amended to allow the sale. ADF&G had no objections to either action. The agency recommended reservation of a 50-foot public access easement along Upper Trail Lake pursuant to AS 38.05.127. ADF&G also recommended imposition of either a 100-foot building setback or a 100-foot riparian buffer along the lake. All easements should be depicted on survey plats and conveyance documents.

Response: A 50-foot public access easement will be reserved along Upper Trail Lake pursuant to AS 38.05.127. Furthermore, as noted above, a 70-foot vegetative buffer will be required along Upper Trail Lake and the applicant will be required to revegetate those areas devoid of vegetation.

The Kenai Area Plan and the Kenai River Comprehensive Management Plan call for reserving a 200-foot wide strip of land along Upper Trail Lake for riparian and habitat protection. See the section **Planning, Classification and Mineral Orders** for a more detailed discussion of setbacks. Easements and buffers will be depicted on the survey plat.

Alaska Department of Transportation and Public Facilities (DOT/PF):

DOT/PF requested reservation of a 77-foot wide easement on the subject parcel for future Seward Highway needs.

Response: No justification was provided to support this request. An easement of that width extends into the parcel such that the two buildings would fall within the easement. The northern portion of Block 7 is narrower than 77 feet and the two parcels to the north of Block 7 are considerably narrower than 77 feet. Thus the requested easement ends in Upper Trail Lake about halfway up Block 7. Reservation of an easement for future Seward Highway needs may be necessary, but a 77-foot easement appears to be excessive. Reservation of an easement for this purpose will be evaluated following public notice and further consultation with DOT/PF.

Additional comments received during the Public Notice period will be considered and addressed in the Final Finding and Decision.

Discussion: The Moose Pass Sportsman's Club has applied on behalf of the community of Moose Pass to purchase the subject parcel and buildings for use by the Moose Pass Volunteer Fire Company and emergency medical personnel. The community does not have a heated facility large enough and well suited for use by the fire department and emergency medical personnel. The maintenance building has been used for this purpose for nearly 10 years under a Right-of-Way Permit from DOT/PF originally issued in 2003. The service area of the MPVFC is considerable as previously described. The MPVFC is in need of a dedicated heated facility of sufficient size to store fire fighting and emergency vehicles, equipment and supplies. The MPVFC is also in need of space for offices and training. The community recognizes the building will require significant remodeling and remediation of potential hazardous materials.

The subject parcel was identified as suitable for potential inclusion in the Kenai River Special Management Area (KRSMA). The Kenai Area Plan designated *undisturbed* state lands along the shore of Upper Trail Lake as Special Use lands for that purpose. However, Block 7 of USS 2676 is clearly not undisturbed. This parcel has been cleared and improved since the 1960s. The parcel is arguably not valuable as wildlife habitat. Moreover, over 9,900 acres of shoreland have been designated for potential inclusion in KRSMA; removing the 3.17 acres of the subject parcel from this pool of state land would not represent a significant detriment to the overall intent of the KAP with respect to KRSMA. All of the property to the south of the subject parcel is privately owned and largely developed. Reserving this one parcel as wildlife habitat will be of negligible benefit. See Attachment B.

The community has expressed some degree of frustration at the lack of state oversight and management of the subject parcel as well as other state land in Moose Pass. The community feels its ownership of the subject parcel will allow the community to manage it for the benefit of the community and eliminate its reliance on an absentee owner.

Alternatives: The following alternatives were considered.

Alternative1: Sell

Offer the lot for disposal as proposed in this decision. If determined to be in the best interest of the State, AS 38.05.810(a) allows a tax-exempt nonprofit organization to purchase State land for public and charitable use. The disposal of the subject lot will meet identified local public needs, generate revenue for the State, and further stated goals and objectives of the community. The lot has improved public access and is centrally located within the area served by the Moose Pass Volunteer Fire Company. The community has carried out a public planning process to support its efforts and justify the request for state land. The subject parcel and buildings have been abandoned by the state and unmaintained since 2000. The state has not actively managed the property since. Ownership of the land and buildings will facilitate continued funding for building renovation and operation of the fire department. There is a clearly defined community need for the land and buildings. Continued state ownership does not further the goals of KRSMA as the subject parcel clearly does not meet the standards established in state planning documents for inclusion in the Kenai River Special Management Area. Alternative 1 is the preferred alternative.

Alternative 2: Lease

The Department will issue a Public and Charitable lease to the applicant. This alternative could eventually result in the state assuming ownership and management of a fire station, which is not within the department's mandate. The community has identified and prioritized the need for a fire fighting/EMT facility to serve residents of the area on a long term basis. Local ownership of the land and buildings is a more effective means of achieving local goals than continued state ownership. Future funding for operations and maintenance could be jeopardized if the land and buildings remain in state ownership. This alternative is less favorable than sale and is not preferred.

Alternative 3: Retain

The Department will take no action and retain the lot. The State would need to expend resources managing the lot, while forgoing the income that could have been generated by a sale. The state would also retain ownership of old buildings in poor condition, one of which has been determined to contain hazardous materials. The applicant will have to find other land for the volunteer fire department. The applicant may not be able to find a suitable sized lot, or a lot of sufficient size centrally located with adequate access. If the applicant must pursue a land purchase from the private sector, it may not be able to raise sufficient funds to pay fair market value and construct a new building. The applicant is utilizing the subject site and buildings because there are no suitable alternatives in Moose Pass. Retaining the subject parcel in state ownership is not in the best interests of the State. This alternative is not preferred.

Recommendation: The proposed action, Alternative 1, is believed to be in the overall best interest of the state and is consistent with the requirements of AS 38.05.810(a).

Alternative 1 provides accessible, quality land for public and charitable use and satisfies a demonstrated community need.

The state does not guarantee the condition or usefulness of the subject lot. The lot is offered "as is" with no guarantees, expressed or implied, as to its suitability for any planned or potential use, or as to the availability of any public or private services.

Stipulations: The applicant will be required to comply with the following stipulations:

1. Within six months from the date of notice that the Department has a signed Final Finding and Decision approving the purchase of the subject lot, the applicant must submit to the Department the following:

    - Reimbursement of the cost of publishing the Public Notice in the Anchorage Daily News and the Seward Phoenix Log. Public notice costs must be paid before the state will authorize the applicant to proceed to the next stage in the process.

2. If a survey is required, within six months from the date the Department has issued the notice to proceed to survey, the applicant must hire a surveyor and the surveyor must apply for Survey Instructions from the Department.

3. Within two years after issuance of the Survey Instructions, the applicant must submit a completed survey to the Department for review. The applicant must have the survey approved by the Kenai Peninsula Borough as set forth in the Survey Instructions.

4. Upon approval of the survey by the Department, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in this notice, the applicant must submit to the Department the following:

    - A completed Declaration of Intent Form and $100 document handling fee;
    - Payoff amount or minimum 5% deposit for the issuance of a contract for sale

Furthermore, the applicant must comply with the following:

5. No existing vegetation may be removed from within 70 feet of ordinary high water of Upper Trail Lake or from within the 70-foot scenic buffer along the Seward highway.

6. Within three years of receipt of title from the State of Alaska, the applicant is to revegetate those areas within the 70-foot riparian buffer along Upper Trail Lake and within the 70-foot scenic buffer along the Seward highway (except for areas of ingress and egress) with vegetation similar to the existing vegetation.

7. A building setback of 70 feet from ordinary high water of Upper Trail Lake is required, the purpose of which is to protect the riparian area adjacent to the lake. No structures may be constructed or vegetation removed within this setback.

All easements, vegetative buffers and setbacks required by this decision will be depicted on the plat of survey.

Failure on the part of the applicant to make a good faith effort to comply with the stipulations and terms of the Final Finding and Decision or an Amended Final Finding and Decision may result in the closure of the public and charitable use purchase case unless the delay and extenuating circumstances are approved in advance by the Department.

Proposed Action Approved for Public Review:
The proposed action may be in the best interests of the state and the Preliminary Decision is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

Prepared by:

Ed Busch, Natural Resource Specialist III
Land Sales and Contract Administration Section
Division of Mining, Land and Water

August 9, 2012
Date of Signature

Concurred by:

Kathryn Young, Manager
Land Sales and Contract Administration Section
Division of Mining, Land and Water

8/9/2012
Date of Signature

Submittal of Public Comments: Pursuant to AS 38.05.945, the public is invited to comment on the proposed action in the Preliminary Decision and on the related, associated actions involving changes to the Kenai Area Plan, the Kenai River Comprehensive Management Plan, and the land classification. Copies of the Preliminary Decision and the related actions are available at the following locations:

1. Division of Mining, Land and Water, Land Sales and Contract Administration Section, 550 West 7th Avenue, Suite 640, Anchorage, AK 99501-3576;
2. The Department's Public Information Centers in Anchorage and Fairbanks, and the Southeast Land Office in Juneau;
3. The Department's website at www.dnr.alaska.gov/mlw/landsale/;
4. by contacting Ed Busch by phone at (907) 269-8469, by email at edward.busch@alaska.gov, or by fax at (907) 269-8916.

Comments must be received in writing by the Division of Mining, Land and Water, Land Sales and Contract Administration Section, at the above address, on or before Friday, September 28, 2012 in order to ensure consideration. All written timely responses will be considered. Written comments may be submitted by electronic mail, regular mail or facsimile. Contact Ed Busch for more information about the proposed disposal action, and Bruce Phelps (269-8592 or bruce.phelps@alaska.gov) for information about the proposed plan revisions and land classification order.

Only persons who submit written comments during the public notice period will be eligible to file an administrative appeal of the Final Finding and Decision.

The State is prepared to accommodate individuals with disabilities who wish to participate in this review by providing auxiliary aids, services, or special modifications. Individuals who may need such assistance should contact the Department's Public Information Center in Anchorage between the hours of 10:00 am and 5:00 pm, Monday through Friday, at (907) 269-8400 by telephone or by TDD at (907) 269-8411, no later than Wednesday, September 5, 2012.

Seward Meridian, T5N, R1W, Section 25

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0 200 400 800 1,200 1,600 Feet

ADL231084
Railroad
Section
Mental Health Trust
Special Use Designation
KPB Municipal Entitlement Selection
Kenai Peninsula Borough
Easement
State land disposals

Attachment A
ADL 231084 - Moose Pass Sportsman's Club
Public & Charitable Use - AS 38.05.810(a)

Map created by L. Rouen July 18, 2012.

Attachment B
ADL 231084 – Moose Pass Sportsman's Club
Public & Charitable Use – AS 38.05.810(a)

Photos taken by Alaska Dept of Administration June 2007