

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

**FINAL FINDING AND DECISION**

of a  
**Proposed Land Offering in an Organized Borough  
Two Ponds Subdivision - ADL 418281**  
AS 38.05.035 (e), AS 38.05.045

and its  
**RELATED ACTIONS:**  
**Proposed Amendment to the Tanana Basin Area Plan**  
AS 38.04.065  
**Proposed Land Classification Order**  
AS 38.04.065 and AS 38.05.300  
**Proposed Special Exception to the Tanana Basin Area Plan**  
AS 38.05.065

This Final Finding and Decision complements and updates the Preliminary Decision dated March 30, 2012. The proposed decision has had the required public review.

Attachment I: Preliminary Decision

**I. Recommended Action(s)**

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Land Sales and Contract Administration Section (LSCAS) recommends offering for sale State-owned land for private ownership within the Two Ponds project area (ADL 418281), as described in Attachment I: Preliminary Decision. Surveyed parcels will be offered for sale 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 [Land for Sale].

For the purposes of providing land for settlement in the Fairbanks and North Pole area, if deemed feasible, DNR may develop a subdivision of no more than 35 parcels varying in size but no smaller than 40,000 square feet. This proposed project area is located within the Fairbanks North Star Borough and therefore survey, platting, and road construction will be completed to the relevant subdivision standards. The project may be subdivided and offered in phases.

There are three associated actions with this proposal: an amendment to the Tanana Basin Area Plan, the related Land Classification Order, and a special exception to the Tanana Basin Area

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Plan.

Area Plan Amendment: DNR DMLW proposes to amend the Tanana Basin Area Plan (adopted 1985, updated 1991) to change the designation for the entirety of the project area from High Value Resource Management to Settlement.

Land Classification Order: In relation to the proposed Area Plan Amendment, DNR DMLW proposes to reclassify the project area in a Land Classification Order from Resource Management to Settlement.

Special Exception: DNR DMLW proposes a special exception to the Tanana Basin Area Plan to allow a reduction in width of the building setback from the man-made water bodies within the project area.

Public notice for these related actions was conducted concurrently with the notice for the primary action's Preliminary Decision.

## **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 (LSCAS) 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. If the parcels do not sell when offered at auction, DNR DMLW is authorized to offer the parcels through other methods under AS 38.05.045.

For related actions, AS 38.04.065 Land Use Planning and Classification and AS 38.05.300 Classification of Land allow for amendments and special exceptions to area plans and for land classifications.

## **III. Traditional Use Findings**

In accordance with AS 38.05.830 Land Disposal in the Unorganized Borough, a traditional use finding is required for project areas that are located outside an organized borough (within the Unorganized Borough). This project area is not within the Unorganized Borough, therefore no Traditional Use Finding is required.

## **IV. Summary of Public Notice and Comments**

Pursuant to AS 38.05.945 public notice inviting comment was published in legal notices of the statewide Anchorage Daily News and the local Fairbanks Daily News-Miner publications, on Sunday, April 8, 2012. The notice also appeared on the State of Alaska Online Public Notices website at <http://notes.state.ak.us/pn/> for the duration of the comment period. Notices were mailed to the Fairbanks North Star Borough per AS 38.05.945 (c) (1), as well as Doyon, Limited regional corporation per AS 38.05.945 (c) (2)-(3). Additionally, notices and a request to post for 30 days were sent to postmasters and librarians in the vicinity of the offering and the notice was posted on the DNR DMLW LSCAS website at [http://dnr.alaska.gov/mlw/landsale/public\\_notice/](http://dnr.alaska.gov/mlw/landsale/public_notice/) for the entire public notice period. The public notice stated that written comments were to be

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received by 5:00PM, May 15, 2012 in order to ensure consideration and eligibility to appeal. For more information, refer to Attachment I: Preliminary Decision.

DNR DMLW LSCAS received comments from the State of Alaska, Department of Fish and Game (DFG) and two other parties. All comments received during the public comment period are summarized below.

Department of Fish and Game, Division of Sport Fish (DFG) Comment: DFG has no concerns with this parcel being reclassified or redesignated as Settlement.

DNR DMLW LSCAS Response: DNR DMLW concurs.

DFG Comment: DFG requested that adequate, usable lands be reserved for public access and for access by DFG staff to stock the larger of the two ponds, known as “Nordale #2.” DFG requests that access capable of supporting a truck be reserved to the lake for continuance of stocking.

DNR DMLW LSCAS Response: Access to Nordale #2 will be reserved. As indicated in the attached Preliminary Decision, given the general topography, vegetation, and access within the project area, a portion of the lakeshore along Nordale #2 will be reserved in public ownership. In addition, DNR DMLW will reserve an access easement 50 feet in width, upland from the ordinary-high-water (OHW) mark for access to and along the pond.

DFG Comment: DFG requested that the building setback width remain at 100 feet to protect the shoreline and provide public access. DFG also requested the reservation of a 50-foot public access easement along the shore so the public can continue to fish.

DNR DMLW LSCAS Response: As discussed in the Preliminary decision, parcels will be subject to a building setback no less than 50 feet in width, upland from the ordinary-high-water mark (OHW) of Nordale #2. Parcels will also be subject to an upland public access easement in accordance with AS 38.05.127 Access to Navigable or Public Water. The reservation of a building setback of less than the 100-feet described in the Tanana Basin Area Plan will allow greater flexibility of lot design and on-site construction while still protecting the lakeshore. Other regulations govern the placement of septic systems in relation to the water body and are not affected by this reduction. As the public access easement along the OHW is 50 feet in width, the reservation of a setback of greater than 50 feet would not increase access along the shoreline, or recreational usage. Given that the ponds are man-made and the desire for flexibility in lot design and usage, this setback may be reduced beyond 100 feet. The final width of the building setback will be no less than 50 feet, will be established as part of the design and platting process, and will be depicted on the final plat.

Kurt Dinsmore and Lorraine Peterson (455 Keeling Road, North Pole, Alaska 99705) Comment: Mr. Dinsmore and Ms. Peterson indicated that they would not like to see all of the land in the vicinity of the project area subdivided into small lots and noted concern with construction noise echoing across the river. They also indicated that there are a number of lots in the Badger Road area which appear to be unsold.

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DNR DMLW LSCAS Response: The Two Ponds Subdivision project area consists of a comparatively small, 80-acre parcel considering the amount of undeveloped land in the vicinity and the unique characteristics and amenities of the project area make it suitable for development into smaller parcels. Lands adjacent to the project area are generally undeveloped or minimally developed land in private ownership; however development is the prerogative of the land owner or manager. Although additional noise would be expected from activities relating to development of these parcels, the increase in noise is likely to be limited primarily to construction and is not likely to exceed the noise of the other activities in the area.

Although there may be other opportunities for land ownership in the broader vicinity of the project area, the Two Ponds subdivision provides a unique opportunity for land ownership adjacent to a water body. DNR DMLW feels that the unique character of the area provided by the relatively short distance from the cities of Fairbanks and North Pole, along with the amenity of the ponds makes this a desirable area for private ownership.

Dinsmore and Peterson Comment: Mr. Dinsmore and Ms. Peterson indicated that migratory birds nest in the wetlands in the vicinity of the project area.

DNR DMLW LSCAS Response: DNR DMLW recognizes that this area as well as any land serves to a degree as wildlife habitat. The Alaska Department of Fish & Game did not identify any concern with waterfowl habitat either during the Agency Review period or the public comment period. The two ponds within the project area will not be transferred into private ownership and a portion of the lakeshore around both lakes will be retained. The retention of the lakeshore and imposition of building setbacks and easements as described in the preliminary decision will assist in retaining habitat values. There is other State-owned land in the vicinity of the project area, which also serves to a degree as wildlife habitat, and in particular, Section 36, Township 1 North, Range 1 East, north of the project area, is designated Wildlife Habitat. Additionally only a small portion of the wetlands to the north of the project area are within the project area. Authorization of the placement of dredged or fill material in wetlands is the jurisdiction of the US Army Corp of Engineers (ACOE). Potential purchasers will be instructed to contact the relevant authorities and get the appropriate permits prior to dredging or filling wetlands. Impacts to wildlife as a result of this disposal will be lessened given the large amount of contiguous wetlands in the area and the protections described.

Dinsmore and Peterson Comment: Mr. Dinsmore and Ms. Peterson indicated that the area is used by the public for recreating such as with snowmobiles and ATVs and that some State-owned land should be left untouched to allow for recreation, indicating that there is not much land for this purpose in the vicinity.

DNR DMLW LSCAS Response: Although this location may be in use presently for recreating on-site, access to the surrounding State-owned land would require access across privately-owned/managed property and permission from the relevant land owner/manager. Access to public lands within the vicinity will still be possible at the Chena River and several other locations along Nordale Road. Given that the ponds, large portions of the shoreline and a portion of the uplands within the project area will remain in public ownership, recreational opportunities will still exist within the area and on the ponds. Although this area is prone to some recreation at present, many of the uses of the former material site are beyond the scope of Generally Allowed Uses and are not authorized. Conveying a portion of these lands into

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private ownership will reduce many of the management issues for the area involving trespass and unauthorized activities.

Jeff Whipple (441 Keeling Road, North Pole, Alaska 99705) Comment: Mr. Whipple objected to the reclassification of the project area from High Value Resource Management to Settlement, indicating that there are better uses of the area.

DNR DMLW LSCAS Response: As discussed in the Preliminary Decision, this area is no longer being used for material extraction. DOT has ceased material extraction and requested that this material site be closed. As the project area is no longer used for material extraction, the change of classification and reversion to other uses is appropriate. Classifying the area Settlement and transferring lots into private ownership will provide unique land ownership opportunities and reduce land management issues within this area (such as trespass), within this former material site.

Whipple Comment: Mr. Whipple indicated that the small lot size (40,000 square feet) does not address septic system drainage issues with regard to permafrost and noted that the Fairbanks North Star Borough (FNSB) requires 20,000 square feet per lot for septic system drainage. It was also noted that 40,000–square-foot parcels are too small for development and that this size and the GU-1 zoning is incompatible with the current Rural Agriculture and Rural Farmstead zoning in the area.

DNR DMLW LSCAS Response: As described in the Preliminary Decision, the 40,000-square-foot parcel size is the minimal parcel size and parcels in the subdivision will range in size no smaller than 40,000 square feet. Although discontinuous permafrost may be present in the area, according to the USDA Soils report the dominant soil type in the area is part of the Jarvis-Salchaket complex, characterized by well drained sandy loam and gravelly sand. FNSB Title 17 Subdivisions requires each lot to have a minimum of 200,000 square feet if there is insufficient area within a lot to support a conventional on-site wastewater disposal system, or a minimum of 40,000 square feet with an alternative system approved by the State of Alaska, Department of Environmental Conservation (DEC). The regulation of septic systems and on-site wastewater treatment facilities is the jurisdiction of DEC and is beyond the scope of this decision. Given the amenities within the project area, location to utilities, soil conditions, and potential to construct roads, the area is suitable for a range of parcel sizes no smaller than 40,000 square feet. The approval of subdivision design and platting is a separate action with the FNSB and involves a separate public notice and comment period.

The project area is presently zoned GU-1 as well as most parcels in the immediate vicinity. A portion of the lands south of the Chena River in the broader vicinity of the area are zoned Rural Agricultural, however there do not appear to be any Rural Farmstead districts in the vicinity of the project area. The GU-1 zoning allows for parcels not less than 40,000 square feet in size. The FNSB is the zoning authority and any zoning action will be a separate process through the FNSB and require a separate public process.

Whipple Comment: Mr. Whipple noted that the project area has historically been used as a material site and is adjacent to an existing material extraction operation. He also commented

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that the development of a residential area next to an existing material site will jeopardize the existing operation and that the value of material is greater than the value of the subdivision lots.

DNR DMLW LSCAS Response: The area has historically been used as a material extraction site. As described in the Preliminary Decision and above, the site is no longer an active material site and the value of offering lots for sale is greater than the value of retention in State-ownership for material extraction. Offering materials will notify potential purchasers of the adjacent material site operation. Prospective purchasers will be made aware of the potential impacts to noise, viewshed, dust, etc. and should consider and accept these impacts in consideration of purchase of the property. The location of the adjacent material extraction operation may prove beneficial to property owners, as a material source for construction operations.

Whipple Comment: Mr. Whipple noted that the project area contains wetlands and riparian areas. He questioned whether an ACOE jurisdictional determination has been completed. He also noted that the ponds provide habitat to migratory waterfowl as well as raptors and questioned whether a bird study has been completed.

DNR DMLW LSCAS Response: Wetlands are present within the project area and are generally restricted to the northwest corner of the project area and the riparian area around the ponds. A jurisdictional determination will be required prior to placing fill associated with the construction of roads within the project area. This is a separate process associated with the survey and will be completed as required. As noted, DFG did not address any wildlife habitat concerns and the affect to habitat will be minimized via the reservations as described.

Whipple Comment: Mr. Whipple noted that FNSB's Title 17 Subdivisions requires constructed access and stated that if DNR will be constructing access to the subdivision as well as access to other properties where access is disturbed or eliminated, the development cost will exceed the property value. Mr. Whipple also indicated that not developing the project also addresses this issue.

DNR DMLW LSCAS Response: As discussed in the Preliminary Decision, approval of platting actions and the dedication of Right-of-Ways (ROWs) will require a separate public process through the FNSB. Construction of access will be completed as necessary and appropriate in consultation with the FNSB and in accordance with the relevant FNSB ordinance. At present no dedicated protected access exists across the Trans-Alaska Pipeline (TAPS) ROW or through the project area. The development of this subdivision and dedication of access will create legal protected access across the TAPS ROW and provide legal dedicated access to other properties within the area. Given the generally level terrain, suitable soils, and the vicinity relative to available material sources, the cost of road construction within the area is lessened. The final design and scope of road construction within the subdivision will be determined as part of the survey and platting process and will be completed in consultation with the FNSB and in accordance with the relevant FNSB ordinance.

Whipple Comment: Mr. Whipple noted fire was a concern, indicating there was a recent fire in the area which could have been worse with additional development.

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DNR DMLW LSCAS Response: Vegetation in the Two Ponds project area primarily consists of deciduous vegetation. As noted in the Preliminary Decision, the Division of Forestry noted that fire concerns were fairly minimal here. The area is within the North Star Volunteer Fire Department service area. Protection of private property from fire is the responsibility of the land owner.

Whipple Comment: Mr. Whipple indicated that there is a shortage of parks and recreational areas that are relatively close to town, that the project area is a trailhead to wintertime travel in the area, and that the area would be better suited to a recreational area.

DNR DMLW LSCAS Response: As noted above, other recreational opportunities and access to public land are present within the vicinity. As a significant portion of the shoreline of the two ponds will remain in public ownership, recreational opportunities will be retained. Dedication or transfer of lands for recreational designations is a separate process and beyond the scope of this decision.

### **V. Modifications to Decision and/or Additional Information**

The recommended action has not been modified from the original proposed action(s) described in Attachment I: Preliminary Decision.

Recommendation follows.

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**VI. Final Finding and Decision**

The Department recommends proceeding with the proposed action as described in Attachment I: Preliminary Decision and as supplemented, amended, changed, or deleted herein. This action is undertaken under relevant authorities. Offering these parcels for sale will help meet the State's goal to provide land for settlement for sale to the public and raise revenue for the State.

The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with AS 38.05.945 Notice and comments received were considered. The project file has been found to be complete and the requirements of all applicable statutes have been satisfied. The proposed actions are consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.

Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action(s) as described and referenced herein.

/s/

Recommended by: Kathryn Young  
Section Manager  
Land Sales and Contract Administration Section  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

July 12, 2012

Date

/s/

Approved by: Brent Goodrum  
Director  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

July 23, 2012

Date

/s/

Approved by: Daniel S. Sullivan  
Commissioner  
Department of Natural Resources  
State of Alaska

October 26, 2012

Date

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**Reconsideration Provision**

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may request reconsideration, in accordance with 11 AAC 02 Appeals. Any reconsideration request 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 Daniel S. Sullivan, Commissioner, Department of Natural Resources, 550 W. 7<sup>th</sup> Ave., Ste. 1400, Anchorage, Alaska 99501; faxed to 907.269.8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov).

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on the 31st day after issuance. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court and to the extent permitted by applicable law. An eligible person must first request reconsideration of 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.