

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

FINAL FINDING AND DECISION
AS 38.05.035(e), AS 38.05.600, AS 38.05.185, AS 38.04
2004 Land Offering: Teklanika II
Remote Recreational Cabin Sites Program
Mineral Closing Order No. 1019

This Final Finding and Decision is intended to complement and update and revise the Preliminary Finding and Decision issued January 21, 2004. The proposed finding for Teklanika II had the required public review and borough approval.

I. PROPOSED ACTION:

DNR intends to offer approximately 250 authorizations for staking in six to ten areas of the state in September 2004. The department has proposed eight Remote staking areas in the northern and southcentral regions to offer for staking under the Remote Recreational Cabin Sites program. The Teklanika II staking area approved by this decision will be offered in 2004.

Attachments: Mineral Order No. and a list of commenters whose written comments were received during the public review and comment period.

II. SCOPE:

The scope of this Final Finding and Decision is limited to DNR's authority to allow the staking of state land under AS 38.05.600, the Remote Recreational Cabin Sites program and eventual conveyance of the land into private ownership. Under this program, successful applicants will be authorized to stake parcels of land between five and 20 acres for a remote recreational cabin site within a certain time period, lease the site until the department completes survey and appraisal of the parcels, and then purchase the parcels at fair market value. The sites will be restricted to recreational use while under lease and purchase contract. The division does not intend to impose deed restrictions to control post-patent use. Local zoning governs any land use restrictions as with other private land. The numbers of stakings in each area do not exceed the net acres recommended for offering in the area plans.

The Teklanika II staking area was classified for settlement in the Tanana Basin Area Plan. The department will close the staking area to new mineral entry prior to the offering. The department may also identify and survey additional parcels in the staking area up to the total number of stakings authorized during the staking period, to be sold under this program at a later offering.

Summary of Modifications to the Preliminary Finding and Decision:

The number of staking authorizations that will be allowed within the Teklanika II staking area was reduced from 50 to 30, in order to lessen potential negative impacts on local landowners.

III. LAND TITLE

Title report SC-04-060 is current as of January 30, 2004. The Teklanika II area was acquired under Statehood entitlement, General Grant, under the Act of July 7, 1958, 72 Stat. 339, as amended. The state received patent under this entitlement on December 4, 1987; the patent number is 50-88-0016. The applicable State case file is GS 1043. Title restrictions in the patent are standard. State third party interests identified are: RST 346-Nenana-Kantishna Trail; LAS 24289-trail use permit application; ADL 390079-oil and gas exploration license. DNR will show RST 346 on staking maps, and include in brochures and staking packets pertinent information regarding trail use and subsurface exploration activities associated with LAS 24289 and ADL 390079.

IV. BACKGROUND:

In 1997, the legislature passed a new law, AS 38.05.600, the Remote Recreational Cabin Sites program. The program allows an individual to stake a parcel of state land for a cabin site in a designated remote settlement area and purchase the land at fair market value. The site is leased until a survey and appraisal are completed. Regulations to implement the new program went into effect February 9, 2001 (11 AAC 67.800 – 11 AAC 67.850).

The first land offering under this program was in 2001. Since 2001, 816 staking authorizations have been offered in 26 staking areas in the northern and southcentral regions of the state. Twenty-three of the staking areas were areas previously offered under the old open-to-entry, remote parcel or homestead programs. There were three brand new areas offered in 2003. The Remote Recreational Cabin Sites program does not offer lands in the southeast region because there is a limited amount of state land, most of which is not considered remote.

The 2004 offering will authorize a total of 291 stakings in the southcentral and northern regions. These areas will be Teklanka II, Appel II, and Snake River, which have never been offered under any program before; Far Mountain, which was previously offered in 1982 under the Remote Parcel program; Cannery Creek, which was previously offered in 1985 under the Homestead program; Dugan Hills, which was approved for this program in a Final Finding and Decision dated May 3, 2002; and Crosswind Lake, which was approved for this program in 2003, in the Final Finding and Decision dated April 30, 2003.

Teklanika II was first identified as an area appropriate for transfer to private ownership in the Tanana Basin Area Plan, adopted in 1985 and updated in 1991. This proposed staking area constitutes the second phase of the Teklanika area project; phase one, located immediately northeast of the currently proposed project, was originally offered under the Homestead program in 1985, and was subsequently reoffered in 2001 under the Remote Recreational Cabin Sites program. In 2002, the division began to research new project areas as part of a five year land sale plan. The Teklanika II area was identified as a possible remote recreational cabin site area based on review of the area plan and resource information, nomination by division staff familiar with the area, and the popularity of Teklanika I offerings. Additional research and preparation for the proposed area was conducted in 2003, including a public meeting in Nenana, field

inspection via air, agency review, and conceptual approval obtained from the Denali Borough.

The Preliminary Decision/Proposed Amended Final Findings and Decisions dated January 21, 2004 and color maps of each staking area can be viewed on DNR's public information web site at http://www.dnr.state.ak.us/mlw/landsale/remote_recsites.htm. Maps have not yet been edited to reflect all trail and other information obtained during the public comment period for this Final Finding and Decision. The maps should be only used for general reference for this decision and may be updated with new information at any time. The Preliminary Decision and Finding had the required public notice and Borough approval.

V. AUTHORITY:

The authority for the Remote Recreational Cabin Sites program and offering includes but is not limited to the following: Alaska Statutes (AS): AS 38.04.010, AS 38.05.020, AS 38.05.035, AS 38.05.057, AS 38.05.185, AS 38.05.600, AS 38.05.945, AS 38.05.946; Alaska Administrative Code (AAC): 11 AAC 67.005 through 11 AAC 67.240, 11 AAC 67.800 through 11 AAC 67.850.

VI. ADMINISTRATIVE RECORD:

The division's project file for the project area constitutes the administrative record for this proposed decision. Also incorporated by reference are the *Tanana Basin Area Plan*, Alaska Department of Fish and Game, Division of Subsistence, February 1984 Report: *Modern Foragers: Wild Resource Use In Nenana Village, Alaska*; *Interior Alaska-Riparian Management Zones-General Recommendations*, September 2002; and the following casefiles: RST 346, F89385, LAS 24289, ADL 390079.

VII .PUBLIC NOTICE/ PUBLIC COMMENTS:

Public Notice: Public Notice pursuant to AS 38.05.945 for the Preliminary Finding and Decision were published in the *Anchorage Daily News* on January 21, 2004, the *Peninsula Clarion* on January 21, 2004, the *Fairbanks Daily News-Miner* on January 21, 2004, in the *Bristol Bay Times* on January 22, 2004 and in the *Mukluk News* on February 5, 2004. Public notices were posted at post offices and libraries in the general area of the proposed offerings (see Attachment B of the January 21, 2004, Preliminary Finding and Decision).

Notices were mailed to state agencies, the National Park Service, Alaska Center for the Environment, Alaska Miner's Association, the Denali Borough, Soil and Water Conservation Districts, the community of Nenana, area legislators, Native Corporations and Tribal Councils in the vicinity of the proposed staking area, and to private landowners of record in the vicinity. The notice also appeared on the State of Alaska Online Public Notices web site at <http://notes3.state.ak.us/pn/pubnotic.nsf>. The public notices were also sent to post offices and libraries in the affected communities and selected locations throughout the state. The public notice stated that written comments must be received by 5:00 p.m., February 20, 2004, in order

to ensure consideration and to be eligible to appeal. All written comments received are on file, and have been reviewed and considered in this decision process.

Public Meetings: A public open house was held March 14, 2003 at the Nenana Senior Center, to provide local residents an opportunity to review 2003-2004 proposals, provide local information about the staking areas, and to comment on the proposals. Verbal comments noted at this meeting were addressed and summarized in the preliminary decision dated January 21, 2004.

Local Review of Staking Areas: In accordance with 11 AAC 67.810, notice was provided to the Denali Borough under the provisions of AS 38.05.945(c). DNR presented the Teklanika II staking area to the Denali Borough Assembly and Platting Board on January 8, 2003 for conceptual approval. The borough conceptually approved the proposal at the public meeting held on that same date. A formal response was received January 16, 2003.

Summary of Written Public Comments: Nine written comments were received regarding the Teklanika II staking area.

Most comments were by individuals who owned land near the staking areas or in the nearby communities, and expressed concern over the potential impact of the new offering on local resources and their lifestyles. They requested that DNR not offer the area, or reduce the number of staking authorizations. Some commenters indicated that the project area is difficult to access and navigate, and that DNR should inform potential stakers of these facts. A summary of the comment topics and responses is noted below.

The staking area is difficult to access and navigate:

Several commenters express concern that the upriver portion of the Teklanika which runs through the project area is difficult to access and navigate. Prop outboard engines will not work in this section of river, and overflow in winter can make river travel hazardous. Parking near the Nenana boat launch is limited, and the Nenana-Kantishna trail is not well maintained through the project area. They requested that DNR not offer the area, or should clearly inform potential stakers about trail and river conditions, staking area boundary locations, and other area specifics.

Response:

While DNR ensures the existence of legal access to staking areas, it does not guarantee that it be easy access. It is the policy of the state of Alaska to make lands available for purchase by private individuals. As DNR opens new, undeveloped lands for settlement, it is inevitable that some of these areas will have limited physical access. Brochures and staking packets will include information about the area, trail and river conditions. In addition, staking workshops will be conducted to further inform stakers about the Teklanika II area.

Offering 50 parcels in Teklanika II will reduce downstream landowners' wilderness experience:

Some commenters felt that since Teklanika I (downstream from the current project) was opened for homesteading in 1985 and reopened to remote recreational cabin site staking in 2001, there has been an increase in boat and snowmachine traffic, trespass, vandalism, and a general loss of solitude. They indicated that these incidents increase during hunting season, and many homesteaders/stakers in Teklanika I located there to enjoy a remote, peaceful lifestyle and weren't aware that DNR would be opening more land along the river. They felt that opening Teklanika II to 50 new stakers will increase the population density too much, and reflects lack of planning by the State of Alaska. They felt that DNR should not offer the area, should reopen the Salcha and Goodpaster Rivers instead, or should reduce the number of staking authorizations for Teklanika II. They believed that in the past, DNR did not inform Teklanika I homesteaders/stakers about the potential for more land sales in the area, and felt that future stakers should be informed of this possibility.

Response:

The Teklanika I area was offered under the homestead and remote recreational cabin site programs in accordance with guidelines established by the Tanana Basin Area Plan, adopted in 1985 and updated in 1991. The plan establishes density guidelines and identifies Teklanika I as the first phase of several potential land sale offerings on the river within subunit 4I1, which includes the area encompassing Teklanika I and II. Lands along the Salcha and Goodpaster Rivers, however, are designated for surface uses other than settlement, and therefore cannot be opened for remote recreational cabin sites. The Tanana Basin Area Plan was adopted after completion of an extensive research, interagency coordination, and public comment process. Published brochures for Teklanika I homestead and remote recreational cabin site offerings clearly noted that future offerings in the area may take place, thereby increasing density. Current brochures for the remote recreational cabin site program include a section titled "Is This Program For You?" which informs participants that the state can not guarantee that a staking area will always remain remote in character. Commenters noted that much of the increased traffic and other undesirable activities occur during hunting season, and that the area has generally become more familiar to recreationists in recent years. The loss of solitude is not likely to be due solely to new landowners; however, DNR realizes that offering more land for staking will have an impact on current residents. DNR will reduce the number of staking authorizations from 50 to 30 for this offering, thereby reducing the potential for negative impacts while still providing new land sale opportunities to Alaskan residents.

Offering 50 parcels in Teklanika II will increase hunting/fishing pressure:

Some commenters felt that increased river traffic and population density along the Teklanika has reduced the number of moose and fish, making it more difficult for downstream residents to harvest these animals. They were concerned that hunters may pose a safety problem to current residents, stating that some hunters shoot from the river into the woods, unaware of private property and

cabins in the area. They were concerned that opening Teklanika II to 50 cabin site stakers will compound these problems.

Response:

As noted in the previous section, increased activity along the Teklanika River has not been the result of new landowners exclusively, but also the presence of more non-resident hunters and recreationists. Now as in the past, residence in an area does not grant an individual exclusive use of local resources or a guarantee that resources will remain at constant levels. DNR realizes that offering more land for staking will have an impact on current residents. DNR will reduce the number of staking authorizations from 50 to 30 for this offering, thereby reducing the potential for negative impacts while still providing new land sale opportunities to Alaskan residents. As noted in the preliminary decision dated January 21, 2004, lands within the original project area identified by Alaska Dept. of Fish and Game as being most important for fish spawning were removed from the staking area. Brochures, staking maps, and workshops will inform potential stakers of the existence and location of private property in the area, to help them avoid local residents' private property while staking or recreating.

The following agencies responded: Alaska Department of Fish and Game; DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology, State Historic Preservation Office.

Alaska Dept. of Fish and Game comments: TBAP requirements and riparian habitat protection:

ADF&G commented that the Tanana Basin Area Plan requires a 200-foot publicly owned buffer (staking setback) to be established upland from the banks of the Teklanika River. They recommend that this 200-foot buffer be established to better protect public access and riparian areas, which are important for maintaining water quality, wildlife habitat, and riverbank stability.

Response:

Tanana Basin Area Plan management intent and guidelines noted for subunit 4I1 do not require publicly owned buffers along the river within the Teklanika settlement units. Areawide Land Management Policies (referenced by ADF&G) do recommend publicly owned buffers along most waterways, where the priority for surface use is on protecting public uses. The Plan states, however, that "the Department recognizes the strong demand for property along streams and will provide land for private purchase in some stream corridors." TBAP establishes settlement as the primary surface use in subunit 4I1. Most high-quality land in Teklanika II is located in the riparian zone between the Nenana-Kantishna Trail and the river. To protect access, a staking setback will be established from the centerline of the trail, in effect reducing the availability of quality land for staking. To establish an additional 200-foot setback from the river would significantly reduce the amount of quality staking sites in an already narrow band of desirable land. DNR will not establish a 200-foot setback from the Teklanika River. To protect public access and reduce potential for riparian habitat damage, DNR will establish a 50-foot public access easement and a 100-foot building setback from the river banks, and identify a limited number of public use corridors connecting the Nenana-Kantishna Trail to the river. These corridors will be depicted on the staking map as "no staking" zones. In addition, information from *Interior Alaska Riparian Management Zones-General*

Recommendations regarding limiting vegetation removal will be provided to stakers to guide them in protecting the riparian zone, but such recommendations will not be imposed by the state via title restrictions or survey, as the remote recreational cabin site program is not intended to control post-conveyance use.

Division of Parks and Outdoor Recreation, Office of History and Archaeology, State Historic Preservation Office (SHPO): Potential for cultural resources:

SHPO agreed with DNR's decision to remove two hills with high cultural resource potential from the staking area boundary (see preliminary decision) but recommended that high potential areas along the river be archaeologically surveyed.

Response:

As noted in the preliminary decision, DNR is not currently funded to conduct archaeological surveys on potential cultural sites. To protect any potential cultural resources, DNR will include language in the brochure, staking instructions, and lease regarding the Alaska Preservation Act. All stakers will be required to report any historic, prehistoric, or archaeological sites discovered in the area, and cease any activities that may damage the site.

VIII. MINERAL CLOSING ORDER

The Division of Mining, Land and Water will close all lands within the Teklanika II staking area to mineral entry and location in accordance with AS 38.05.185 for a land disposal. Mining activity would be incompatible with the past, current and proposed surface uses for land disposals in these two areas. To allow mineral location in the proposed staking area could create serious conflicts between surface and potential subsurface users.

IX. SURVEY AND APPRAISAL DEPOSIT:

In accordance with 11 AAC 67.825, 11 AAC 67.835(4) and 11 AAC 67.840, a deposit for the cost of surveying, platting and appraising the site will be required. Current regulations state the deposit may be either: 1) a quarterly payment towards the department's estimated cost of survey, platting and appraisal costs for the site, or 2) a cash performance bond of \$1,000 to ensure the lessee's completion of survey, platting and appraisal of the site, if the department determines that offering this option is in the state's best interest, and if the applicant chooses it.

It is not in the state's best interest to offer the second deposit option for this offering. The department will issue state survey contracts under the procurement code for the staking areas, and the costs will be prorated by acreage for each parcel. It would not be cost-effective for either the department or the applicants to allow individual surveys in the same staking area where state contracts are issued. An exception would only be if a state survey contract were not cost-effective, for instance, if only a few people actually staked parcels within a staking area. The department may also identify and survey additional parcels in a staking area up to the total number of stakings authorized during the staking period, to be sold at a later offering.

