

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

**PRELIMINARY DECISION  
CONVEYANCE OF LAND UNDER AS 29.65.010**

<b>KENAI PENINSULA BOROUGH MUNICIPAL LAND ENTITLEMENT SELECTIONS ALASKA DIVISION OF LANDS (ADL)</b>	
<b>Region 1</b>	<b>Hope:</b> <ul style="list-style-type: none"> <li>• ADL 227983</li> </ul>
<b>Region 5</b>	<b>Coastal Plain from Point Possession to the Kenai River:</b> <ul style="list-style-type: none"> <li>• ADL's 39308, 227995, 227980, 39309, 220458 and 55731</li> </ul>
<b>Region 8</b>	<b>Upper Kachemak Bay and Fox River Flats:</b> <ul style="list-style-type: none"> <li>• ADL's 217089, 227981 and 228340</li> </ul>
<b>Region 9</b>	<b>South Side Kachemak Bay and Chugach Islands:</b> <ul style="list-style-type: none"> <li>• ADL's 227990 and 227982</li> </ul>

**I. PROPOSED ACTION**

The Department of Natural Resource (DNR) proposes to *convey* approximately 2,437 acres of state owned vacant, unappropriated, unreserved (VUU)<sup>1</sup> general grant land to the Kenai Peninsula Borough (KPB or borough) in partial fulfilment of their municipal entitlement pursuant to AS 29.65.010. These land selections are in four geographical areas: Region 1: Hope, Region 5: Coastal Plain from Point Possession to the Kenai River, Region 8: Upper Kachemak Bay and Fox River Flats, and Region 9: South Side Kachemak Bay and Chugach Islands. DNR has determined that the interests of the borough in obtaining the land outweigh the interests of the state in retaining them; these selections were found to be consistent with the requirements of AS 29.65 for VUU land and with the management intent requirements of the Kenai Area Plan<sup>2</sup> (KAP or plan).

DNR proposes to *reject* approximately 272 acres of borough selections for the following reasons: the land is not owned by the state, a native allotment selection affect the state land, the selection is not properly classified or is inconsistent with the management intent requirements of the KAP, or, most importantly, a state interest exists that warrants retaining the land in state ownership. DNR also proposes to *postpone* adjudication on 471 acres of land selections where federal mining claims preclude the ability of the state to obtain ownership from the federal government, title issues remain unresolved, or where ownership issues cloud title.

<sup>1</sup>*Vacant, unappropriated, unreserved* (VUU) land is general grant land patent or tentative approved to the state from the United States, excluding minerals as required by 6(i) of the Alaska Statehood Act and is conveyable under the Municipal Entitlement Act.

<sup>2</sup> The *Kenai Area Plan* (KAP) adopted in 2000 determines the management intent, land-use designations, and management guidelines that apply to all state lands in the applicable planning area. This plan forms the basis for the land use classifications that constitute VUU land for purposes of determining the eligibility of state land for potential conveyance.

This Preliminary Decision (PD or decision) covers a total of 3,180 acres identified in the attached maps: Region 1 Map 1: City of Hope, Region 5 Map 1: Moose Point, Map 2: Salmon Lake, Map 3: Boulder Point, Map 4: Salamatof Site, Map 5: Sevena Lake, Region 8 Map 1: Eagle Lake, Map 2: Bear Cove, and Region 9 Map 1: Whisky Creek, and Map 2: Ismailof Island all located within the boundary of the KPB. The attached maps are part of this decision and provide a depiction of the general location of the KPB municipal entitlement land selections (selections).

**Description of Decision on a Regional and Management Unit Basis:**

Table 1 identifies the region and management units of the KAP that are part of this decision, the proposed action of the decision of unit basis, and an explanation of why units were approved for conveyance, postponed or rejected in this decision.

**TABLE 1**

<b>Region</b>	<b>Unit</b>	<b>Proposed Action</b>	<b>Reason(s) for Determination</b>	<b>Interest Determination /Comments</b>
1	285	Reject (5ac)	Parcel contains the State Airport at Hope.	A state interest exists that outweighs the interest of the borough in obtaining this parcel.
1	286	Convey (130ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
1	287A	Postpone (271ac)	Parcel is in state selection status, and is not owned by the state.	Parcel is state selected only at this time, and cannot be conveyed.
1	287B	Postpone (200ac)	Clouded title, federal mining claims present, not in state ownership.	Because of the presence of clouded title, the decision on this selection is to be postponed until the noted issues are clarified.
5	134	Reject (120ac)	Parcel is owned by Mental Health Trust.	Not state owned land.
5	165A	Convey (156ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
5	165B	Reject (66ac)	This parcel is to be retained by the state since it is a proposed addition to the Cook Inlet State Recreational Park (CISRP). The management intent for this unit in the KAP indicates that this unit to be retained in state ownership, and is recommended as an addition to the CISRP.	A state interest exists that outweighs the interest of the borough in obtaining this parcel. This parcel is important to the configuration of the Cook Inlet State Recreational Park, an important state resource.
5	194	Reject (40ac)	Parcel is owned by Mental Health Trust.	Not state owned land.
5	493	Convey (3ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.

5	No units	Convey (13ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	197A	Convey (175ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	197B	Convey (23ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	198	Convey (48ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	260B	Convey (360ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present. Field review in August 2014 did not indicate the presence of a critical access function as identified in the management unit for this unit. Unit 260B is, rather, a very large parcel occupying many other parts of the Caribou Hills area, and it is these areas that provide the more critical access function, rather than this small sub-parcel.
8	264A	Convey (280ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	270B	Convey (284ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	270C	Convey (40ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	270E	Reject (36ac)	Parcel provides access to Kachemak Bay State Park and is affected by an ILMA (ADL 228309) to DPOR for the purpose of recreation and public access management.	A state interest exists that outweighs the interest of the borough in obtaining this parcel. This unit functions as a public access point and its retainance by the state is essential to the management of the state park, an important state resource. It is currently administratively managed by DPOR as part of the KBSP.
8	271B	Convey (360)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	274	Convey (75ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.
8	275	Convey (20ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.

8	276A	Convey (160ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present. Field review in August 2014 did not indicate that this area functions as a critical recreation area. The management intent for this unit provides that the unit may be conveyed to the borough if not necessary for state park use. Review by the DPOR did not indicate an interest in the parcel.
9	202	Reject (5ac)	Parcel is affected by a Native Allotment selection, and state is unable to obtain land from BLM.	Not state land.
9	472	Convey (2ac)	VUU land, conveyable classification, absence of an overriding state interest.	A state interest in retaining this selection is not present.

**Stipulations of Decision (General):**

The beds of navigable waters from the ordinary high water mark to the Ordinary High Water Mark (OHWM) or Mean High Water Mark (MHWM) will remain in state ownership, including all gravel bars and islands in between. The location of the OHWM and MHWM on those navigable waters will be determined at the time of survey pursuant to 11 AAC 51, including the final acreages on those lands proposed to be conveyed.

Furthermore, the proposed borough’s land selections will be impacted by the requirements for a public access easement pursuant to AS 38.05.127, section line easements per AS 19.10.010 and 11 AAC 51.025, and notification to the State Historic Preservation Office of discoveries of culture sites in accordance to AS 41.35.070(d).

The acreage proposed to be approved for conveyance will be credited towards fulfillment of the KPB municipal land entitlement and management authority will be transferred receiving equitable title following the Final Finding and Decision (FFD) becoming effective.

The public is invited to comment on this DNR municipal entitlement decision. **The deadline for comments to be received is Oct. 17, 2014.** This decision under the heading PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES for details on how, when and where to submit your comments.

**II. AUTHORITY**

The proposed actions for this PD is authorized pursuant to the Alaska State Statues (AS) and under the Alaska Administration Code (AAC) and specifically to AS 29.65, AS 38.05.035(e), AS 38.05.125, AS 38.05.127, AS 19.10.010, 11 AAC 51 and 11 AAC 55.

### III. ADMINISTRATION RECORD

The administrative records for this PD are contained in case files Alaska Division of Lands (ADL) 227983, ADL 227990, ADL 227982, ADL 227981, ADL 228340, ADL 217089, ADL 227980, ADL 227995, ADL 39308, ADL 39309, ADL 55731 and ADL 220458, which includes, but not limited to the following: Kenai Area Plan (2000), Deep Creek Area Management Plan (1981), Map of the Alaska Anadromous Waters Atlas by the Alaska Department of Fish and Game and the Alaska Department of Environmental Conservation List of Contaminated Sites in Western Alaska map. Other sources were consulted and are contained in the case file.

### IV. SCOPE OF DECISION

The scope of this DNR review is limited to the determination of whether it is found appropriate to convey the aforementioned borough land selections or a portion of these selections to the KPB. This determination includes the identification of third party interest, stipulations necessary and appropriation to enable conveyance, and conformance of the borough land selections to the requirements of AS 29.65.

### V. DESCRIPTION

#### A. Location and Geographical Features

1. Geographic: Refer to the Overall Vicinity Map to get relative locations of the selections and regions on the Kenai Peninsula.

**Region 1** consists mostly of steep mountain sides and floodplains. There are a few relatively flat areas. Most of the tidelands are unsuitable for waterfront development because of extreme tidal range and mud flats.

**Region 5** is an outwash of the Kenai Mountains, and the dominant characteristics are flat, forested terrain interspersed with low-lying wetlands and lakes. The Kenai River forms the main drainage and the vegetation consists mainly of spruce forests on higher ground interspersed with grassy wetlands. Mudflats prevail along the northern coast, but some of the coast has deep water close to shore.

**Region 8** is dominated by small creeks with highly incised lower reaches in the northeast area, mountainous, steep areas in the east area and Fox River drainage in the central area. Grasslands and scattered spruce are found at all inland areas. All drainages feed at the head of Kachemak Bay and form marshy deltas and mudflats.

**Region 9** is characterized by steep mountains and a narrow coastal plain. Glaciers and rivers have incised deep valleys into the topography. Many bays contain mudflats. Vegetation consists of spruce forests at sea level, alder and brush at middle elevations and alpine tundra along the ridgelines.

2. Borough/Municipality: Kenai Peninsula Borough
3. Meridian: Seward Meridian (SM)
4. Regional Native Corp.: Cook Inlet Region Inc.
5. Native Village Corp.: Kenai Native Assoc. Inc., Ninilchik Natives Assoc. Inc., Point Possession Inc., Salamatof Native Assoc. Inc., Seldovia Native Assoc. Inc.
6. USGS Map Coverage:
  - Seward Quadrangle** (1:250,000)
    - Region 1, Map 1 City of Hope USGS Seward D-8
  - Kenai Quadrangle** (1:250,000)
    - Region 5, Map 1 Moose Point USGS Kenai D-2
    - Region 5, Map 2 Upper Salmon Lake USGS Kenai D-3
    - Region 5, Map 3 Boulder Point USGS Kenai D-4
    - Region 5, Map 4 Salamatof Site USGS Kenai C-4
    - Region 5, Map 5 Sevena Lake USGS Kenai C-3
  - Seldovia Quadrangle** (1:250,000)
    - Region 8, Map 1 Eagle Lake USGS Seldovia D-3, 4
    - Region 8, Map 2 Bear Cove USGS Seldovia C-3
    - Region 9, Map 1 Whisky Creek USGS Seldovia B-5
    - Region 9, Map 2 Ismailof Island USGS Seldovia C-4

**B. Legal Description – Land Status – Third Party Interest**

The Tables below identify the KPB land selections by the KAP region, map number, area name, meridian, Township (T), Range (R), Section (S), including title status, date(s), state case file and third party interests affecting those lands owned by the state. The state holds fee title to the land and mineral estate through a Patent (PAT), Quitclaim Deed (QCD) or Tentative Approval (TA) received from the BLM. The state will only convey the land estate on those lands approved for conveyance, and the mineral estate will be retained in state ownership.

**TABLE 2 -- REGION 1**

**Map 1: City of Hope**

**SM T9N, R2W, Sections 3, 4, 9, 10**

Title	Date	State Case File
ANILCA topfile	Oct 4, 1985	NFCG 54
State Selection	Sept 18, 1989	NFCG 270
Mineral Estate selection has been relinquished -- SOA does not own parcels		

**SM T10N, R2W, Sections 27, 33**

Title	Dates	State Case File
Tentative Approval: AA-17586	Dec 9, 1993	NFCG 54
Third Party Interest: Yes		

- ADL 222377 -- Interagency Land Management Agreement (ILMA), issued to DOT&PF (sec. 33)
- Federal mining claims: AA 061050 (excluded from TA), AA 060755, AA 066604 (both require title recovery) (sec. 33)
- RST 579 -- Resurrection Pass Trail, Right-of-Way, 100 feet wide (sec. 33)
- FAS-498 (aka: Hope Highway, Hope Road, Hope-Seward Highway) Right-of-Way, (row 66' and 60' – 94-25 RS, 1994) (row 50', USS 3390, 1955) (sec. 27)

**TABLE 3 -- REGION 5**

**Map 1: Moose Point**

**SM T10N, R8W, Section 11**

Title	Dates	State Case File
Patent: 50-65-0199	Sept. 21, 1964	GS 1199
Third Party Interest: Yes		
<ul style="list-style-type: none"> <li>• ADL 69354 – Pipeline Right-of-Way, issued to Tesoro Alaska Pipeline Co. Lease expires Jan. 29, 2031</li> <li>• ADL 392233 – Oil &amp; Gas Lease, issued to Cook Inlet Energy, LLC. Lease expires Apr. 30, 2023</li> </ul>		

**Map 2: Salmon Lake**

**SM T8N, R10W, Section 2**

Title	Dates	State Case File
Patent: 50-65-0199	Sept. 21, 1964	GS 1199
Third Party Interest: Yes		
<ul style="list-style-type: none"> <li>• ADL 37591 – Private Easement, 50 feet wide, issued to Phillips Gas Supply Corp. (Permanent)</li> <li>• ADL 69354 – Pipeline Right-of-Way, issued to Tesoro Alaska Pipeline Co. Lease expires Jan. 29, 2031</li> <li>• ADL 231291 – Private Easement, 80 feet wide, interim authorization, NordAq Energy Inc. Lease expires Nov. 20, 2015 (gravel road for access to leases)</li> <li>• ADL 231294 – Private Easement, upland fiber optic RWE (suspended)</li> <li>• ADL 391596 – Oil &amp; Gas Lease, issued to NordAq Energy Inc. Lease expires Feb. 28, 2018</li> <li>• Kenai Spur Highway Extension (North Kenai Road) – Right-of-Way 150 feet wide</li> </ul>		

**Map 3: Boulder Point**

**SM T8N, R11W, Section 20**

Title	Dates	State Case File
Patent: 50-2007-0313	Mar 22, 2007	MH 25
QCD: 82-0035	Nov 29, 2007	
Invalid Selection -- SOA does not own parcel		

**Map 4: Salamatof Site**

**SM T6N, R12W, Sections 14, 23**

Title	Dates	State Case File
Patent: 50-84-0537	June 1, 1984	GS 9
Patent: 50-65-0604	May 14, 1965	GS 9
Patent: 50-64-0495, supplemental	April 29, 1966	
Third Party Interest: Yes		
<ul style="list-style-type: none"> <li>• ADL 229788 – Public Easement Right-of-Way, 60 feet wide, issued to T.J. Crookston (sec. 23)</li> </ul>		

**Map 5: Sevena Lake**  
**SM T5N, R10W, Section 1**

Title	Dates	State Case File
Patent: 50-2007-0313 QCD: 82-0035	Mar 22, 2007 Nov 29, 2007	MH 25
Invalid Selection -- SOA does not own parcel		

**TABLE 4 -- REGION 8**

**Map 1: Eagle Lake**  
**SM T4S, R11W, Sections 2, 11, 12, 13, 14, 15, 22, 23, 27, 33**

Title	Dates	State Case File
Tentative Approval: A-050892 Modified Tentative Approval: A-050892 Modified Tentative Approval: A-050892 Patent: 50-73-0003	Oct 31, 1963 Sept 18, 1964 April 26, 1965 July 27, 1972	GS 42
Third Party Interest: Yes		
<ul style="list-style-type: none"> <li>• ADL 62348 – Public Easement Right-of-Way, 100 feet wide, issued (sec. 27) (<i>FAS 414, East End Road, transferred to state via QCD</i>)</li> <li>• ADL 63711 – Public Easement Right-of-Way, 60 feet wide, issued (sec. 14, 15, 22) (<i>access to USS 4721, reserved to the state</i>)</li> <li>• ADL 201371 – Public Easement Right-of-Way, 100 feet wide, issued to DMLW (sec. 14)</li> <li>• ADL 223865 – Public Easement Right-of-Way, 100 feet wide, issued to DMLW (sec. 33)</li> <li>• ADL 225703 – Public Easement Right-of-Way, 60 feet wide, issued (sec. 33)</li> <li>• ADL 62514 – Public Easement Access, 100 feet wide, issued to C.W. Rainwater (sec 23)</li> <li>• ADL 74174 -- Public Easement Utility, 20 feet wide, issued to Homer Electric Assoc. (sec 27, 33)</li> <li>• ADL 75474 – Public Easement Utility, 20 feet wide, issued to Homer Electric Assoc. (sec. 23)</li> <li>• ADL 200568 – Public Easement Pedestrian, 25 feet wide, issued to DMLW (sec. 27)</li> <li>• ADL 213146 – DLWM public use permit, 40 acres, issued, indefinite term (sec. 2)</li> <li>• ADL 228309 – Interagency Land Management Agreement (ILMA), 36 acres (sec. 33)</li> <li>• ADL 231248 – DMLW Permit Grazing, application received from W.F. Bruce, 320 acres (sec 13)</li> <li>• ADL 391144 – Oil &amp; Gas Lease, issued to Buccaneer Alaska Inc. assignment application denied Mar. 14, 2013 (sec. 2, 14, 15)</li> <li>• ADL 392388 – Oil &amp; Gas Lease, issued to Buccaneer Alaska Inc., expires Sept. 30, 2014 (sec. 12, 13)</li> <li>• ADL 392389 – Oil &amp; Gas Lease, issued to Buccaneer Alaska Inc., expires Feb. 28, 2018 (sec. 33)</li> </ul>		

**Map 2: Bear Cove**  
**SM T5S, R10W, Sections 17, 19, 20, 28, 29, 30**

Title	Dates	State Case File
Tentative Approval: A-050897 Patent: 50-65-0057 Patent: 50-72-0179, private Patent: 50-84-0514 Relinquishment, parcel Relinquishment, parcel Statutory Warranty Deed, parcel	July 10, 1964 Aug 7, 1964 Mar 1, 1972 May 18, 1984 Nov 23, 1987 Mar 31, 1988 Jan 4, 1989	GS 47 OSL 1038
Third Party Interest: Yes		

- ADL 49010 – Public Easement Right-of-Way, 50 feet wide, issued to DMLW (sec. 20)
- ADL 53386 – Public Easement Right-of-Way, 20 feet wide, issued to T. Pedersen (sec. 20)
- ADL 52941 – Public Easement Pedestrian, 25 feet wide, issued to D.H. Shufeldt (sec. 29)
- ADL 52796 – Public Access Easement, 50 feet wide and 25 feet wide, issued to DMLW (sec. 30)
- ADL 227288 – Public Easement Utility, application complete for R.W. Clements (2001) (sec. 29)

**TABLE 5 -- REGION 9**

**Map 1: Whiskey Creek  
 SM T8S, R14W, Sections 14, 23**

Title	Dates	State Case File
Tentative Approval: A- 057388	Jan 3, 1964	CG 1188
TA rescinded	Aug 16, 1977	CG 1188
State Patent: 4121 (private)	Mar 9, 1979	CG 1188
TA reinstated	Oct 31, 1980	CG 1188
QCD: 81-0147	April 30, 1981	OSL 747
Third Party Interest -- Yes		
<ul style="list-style-type: none"> <li>• ADL 39789 – Public Easement Right-of-Way, 100 feet wide, issued to Dept. Of Transportation</li> <li>• ADL 230493 – Reconveyance, Native Allotment to M.J. Colberg, active case file.</li> </ul>		

**Map 2, Ismailof Island  
 SM T7S, R11W, Section 6**

Title	Dates	State Case File
Tentative Approval: AA-050899	April 1, 1965	GS 50
Third Party Interest: None		

**VI. PRELIMINARY DECISION**

**A. Background**

The Kenai Peninsula Borough was granted 155,780 acres of municipal land entitlement under AS 29.65.010. To date, the borough has received title to approximately 99,078 acres of state land with a remaining balance of approximately 56,702 acres. This acreage consists of 30,057 acres approved for conveyance from a previous decision transferring equitable title to the KPB with a remaining balance of 26,645 acres to be adjudicated. A portion of this remaining acreage is the subject of this PD, and falls within Regions 1, 5, 8 and 9. Approximately 3,180 acres are adjudicated in this decision.

Following the adoption of the KAP, DNR allowed the Kenai Peninsula Borough to make new municipal entitlement land selections. These selections were affected by specific management units within the KAP. In the year 2000, the borough prioritized these selections along with their other remaining land selections creating four priority groups: Priority Group 1, 2, 3 & 4 (with 1 the highest). Priority Groups 1, 2 & 3 were adjudicated and approved for conveyance to the borough leaving Priority Group 4 remaining for adjudication. Priority Group 4 consists of 18,300 acres of state land scattered throughout the borough making it difficult for DNR to adjudicate in one conveyance decision. To expedite the adjudication process for this amount of acreage in Priority Group 4, DNR prioritized the land selection into subgroups. This was achieved by

dividing Priority Group 4 land selections into several Subgroups. One subgroup, Region 4, has been adjudicated with a recent Final Finding and Decision. This preliminary decision covers another subgroup which contains four regions in the KAP, specifically, Regions 1, 5, 8 and 9.

**B. Planning, Classification, and Mineral Estate**

**1. Planning**

The Kenai Area Plan (KAP) was approved in 2000 as the basis for decision making by DNR and ADF&G on authorizations that are issued by this department. The KAP determines management intent, land use designations, and management guidelines that apply to all state lands within the planning area. The designations of the plan convert to land use classifications through a Land Classification Order. The majority of the management units of the selected lands in this decision are designated Settlement (Se) or Resource Management (Gu, Rh) or Public Recreation (Rp, Rd) and can be conveyed to the borough, unless an overriding state interest exists. In almost all cases such an interest was not found to exist. The designation of Reserved Use (Pr) is intended to be retained by the state for public use. TABLE 6 identifies the management units, plan designations within each region, and the land use classification of these units.

**2. Land Use Classification**

TABLE 6 identifies the management units and land classifications that are applicable to these selections. There are also two parcels that have no assigned unit and are unclassified. These units are conveyable. The classifications of Settlement (STL), Resource Management (RMG) and Public Recreation (PUR) are conveyable and the classification of Reserved Use (RSU) is non-conveyable.

**TABLE 6**

**KENAI AREA PLAN MANAGEMENT UNIT DESIGNATION and CLASSIFICATION**

Region	Map #	Selected Acreage	Seward Meridian Township, Range	Section	Plan Designation	Land Classification	Management Unit
1	Map 1	433	T9N, R2W	03	Se	STL	287A
				04	Gu	RMG	287B
				09	Gu	RMG	287B
				10	Se	STL	287A
	150	T10N, R2W	27	Se	STL	286	
33			Gu Pr	RMG RSU	287B 285		
5	Map 1	9	T10N, R8W	11	None	None	None
	Map 2	219	T8N, R10W	02	Gu Rp	RMG PUR	165A 165B
	Map 3	120	T8N, R11W	20	Se	STL	194
	Map 4	6	T6N, R12W	14	None	None	None
				23	Se	STL	493
Map 5	40	T5N, R10W	01	Se	STL	134	

8	Map 1	1845	T4S, R11W	02	Rd Se	PUR STL	260B 264A				
				11 12 13	Rh	RMG	271B				
				14	Rh Rp	RMG PUR	271B 276A				
				15	Rp	PUR	276A				
				22	Se Gu	STL RMG	275 276B				
				23 27	Rh Se	RMG STL	271B 274				
				33	Se Se Rp	STL STL PUR	270B 270 270E				
	Map 2	307	T5S, R10W	17	Se	STL	198				
				19 20 28	Se	STL	197A				
				29	Se Rp	STL PUR	197A 197B				
				30	Se	STL	197A				
				9	Map 1	5	T8S, T14W	14 23	Se	STL	202
					Map 2	1	T7S, R11W	06	Se	STL	472

### 3. Mineral Order

The mineral estate is reserved to the state pursuant to AS 38.05.125. There were no known mineral orders affecting the proposed selections.

#### C. Traditional Use Finding

Disposal of state land with traditional uses are to be reviewed under to AS 38.05.830 in unorganized boroughs. The KPB is an organized borough under AS 29.65.10; therefore, a determination for traditional uses is not required. All of the KPB land selections are within their legal boundary.

#### D. Access

In all four KPB regions of this decision public access will be reserved in accordance to AS 19.10.010, AS 19.30.400, AS 38.05.125, AS 38.05.127 and 11 AAC 51. Most of the parcels can be accessed via the Seward or Sterling Highways to the local and secondary road systems such as Hope Road in Region 1, Kenai Spur Highway in Region 5, and East End Road and Eagle Lake Road in Region 8. Bear Cove of Region 8 and Region 9, both on the south side of Kachemak Bay, can only be accessed by float plane or boat. Trails are common throughout the area, and are used recreationally by hikers, hunters, campers and mountain bikers. Off road vehicles are often used on the trails.

## 1. Section Line Easement

Section line easements (SLE) are required in accordance with AS 19.10.010 and 11 AAC 51.025. On lands approved for conveyance to the borough, an SLE 100-foot wide centered on the section line (50 feet on each side) will be imposed on both surveyed and protracted section lines.

## 2. Trails, Roads and RST Rights-of-Way

Several of Alaska's most popular recreation trails cross this region. They are located primarily on U.S. Forest Service and rights-of-way. Resurrection Pass is a very popular public trail and because of the high public use of this trail and others in the area, ensuring legal access to existing and proposed trails, trail maintenance, management, and enforcement are high priorities. DNR will protect public access along these trails and ensure that easements or rights-of-way are filed on those trails that do not have protection. Rerouting of trails and legal access is allowed if the purpose is to provide for the needs of the long term maintenance of the trail, trail experience, habitat values, or public safety.

**Region 1:** Resurrection Pass Trail (RST 579) is about 35 miles long and was historically used as a transportation route from Hope to Seward. It is also called Resurrection Creek Road within the Hope city limits. This road falls within the boundaries of the postponed parcels and will be addressed in the future. The Hope Highway (aka: Hope Road) leaves the Seward Highway at a major junction in the mountains and is the main access into Hope.

**Region 5:** The Kenai Spur Highway runs near the coast northward and becomes the North Kenai Road creating access to local subdivisions. The North Kenai Road has a dedicated Right-of-Way of 150 feet.

**Region 8:** East End Road leaves the Sterling Highway and runs eastward becoming the main access to several subdivisions. Eagle Lake Road leaves East End Road and runs northward to popular recreation areas around Eagle Lake. Trails have been established with dedicated 60 foot rights-of-way in the Bear Cove area where a subdivision has been planned.

**Region 9:** The Seldovia Red Mountain Road runs near the north shore from Seldovia to Tuka Bay.

## 3. Navigable Waters and Public Waters

Waterbodies determined to be navigable or public are identified in TABLES 7 and 8. The state will retain ownership of the bed for navigable water, including all gravel bars and islands, and will convey the bed of public waters to the borough. A survey will determine the Ordinary High Water Mark (OHWM) of the navigable and public waters, the Mean High Water Mark (MHWM) on marine meandering shorelines, identify islands, and determine the specific areas to be retained by the state. At the time of survey, field work may find that a body of water or a waterway is different than identified in this decision. If this occurs, the results of the survey work will be reviewed further within DNR. If the field work is determined to be accurate, then the survey results will supersede the recommendation in this decision.

**Navigable Waters:** Pursuant to 11 AAC 51.035, a water body is navigable if it is at least 50 acres in size or a waterway at least 50 feet wide from OHWM to OHWM. A water body will also be considered navigable if it is found it is navigable for a useful public purpose in accordance with AS 38.05.965, otherwise, it will be considered public water in accordance to 11 AAC 51.035. Additionally, ownership of land adjacent to navigable water does not create any right of title in land below the OHWM of the navigable water.

All tidal waters are considered navigable under the Submerged Lands Act (67 Stat 29, PL 31, May 22, 1953). The MHWL is established at the time of survey.

**Public Waters:** Pursuant of 11 AAC 51.035, a water body is considered public water if it is at least 10 but less than 50 acres in size or at least 10 feet but less than 50 feet wide from OHWM to OHWM. Ownership of the land under or adjacent to public water does not grant an exclusive right to use of the water (AS 38.05.126).

On land approved for conveyance, legal public access is generally limited to easements typically 100 feet wide on section lines (SLE) and typically 50 feet wide along the OHWM and MHWL of navigable and public water bodies (the Along easement, see below).

#### **4. To & Along Easements**

A public access easement of 50 feet in width upland of the OHWM and MHWL will be reserved on all water bodies and waterways determined to be public or navigable waters in accordance with AS 38.05.127 and 11 AAC 51. This easement is referred to as the 'along' easement. The 'to' easement is to be established approximately once each mile and is often provided through section line easements of 50 feet in width adjacent to the section line on each side (AS 19.10.010 and 11 AAC 51.025). The 'along' easement applies to these waterbodies and the 'to' easement is intended to provide access to the 'along' easements.

#### **Protection of Riparian Areas to Anadromous and Public Waters**

The 2000 Kenai River Area Plan (KAP) includes guidelines for the maintenance of riparian habitat adjacent to anadromous and high-value resident fish waters (Table 2.4, pp. 2-53, 54). Lands conveyed out of state ownership are to include stipulations in the decision to ensure the protection of these areas. The plan provides a number of alternative ways that this can occur. This can come about by either retaining a corridor of state-owned land along the water body from the OHWM or by imposing a riparian easement or building setback. The plan specifies for a minimum corridor width of 200 feet landward from the ordinary high water on lands to be retained by the state along anadromous waters for riparian protection, and a building setback of 100 feet adjacent to these water bodies where reasonable and prudent. Alternatively, these areas can be protected by another management tool that is considered effective in achieving riparian production. In the case of this decision, DNR has determined that the borough's ordinance Title 17 and Kenai Peninsula Borough Comprehensive Plan (p. 6-13), constitute effective tool for the protection of riparian

areas and anadromous streams, and has chosen to use and rely upon this method as opposed to imposing specific state buffer requirements for the protection of these areas.

**TABLE 7**  
**NAVIGABLE WATERS, BUFFER AND EASEMENT REQUIREMENTS**

Region Map # Parcel Name	Township Range	Section	Waterbody Name	Determination of Navigability:	Riparian Buffers: 'anadromous' waters/streams	Shoreline Public Access Easement	Public Access Easement
Region 1 Map 1 City of Hope	T10N, R2W	27	Turnagain Arm	Yes: Tidal	none	50 feet	--
	T10N, R2W	33	Resurrection Creek (247-60-10150)	Subject to survey determination	none	n/a	50 feet
Region 5 Map 1 Moose Point	T10N, R8W	11	Gompertz Channel (Cook Inlet)	Yes: Tidal	none	50 feet	--
Region 5 Map 2 Salmon Lake	T8N, R10W	2	Upper Salmon Lake	Yes: 123 acres in size	none	n/a	50 feet
Region 5 Map 4 Salamatof Site	T6N, R12W	23	Cook Inlet	Yes: Tidal	none	50 feet	--
Region 8 Map 2 Bear Cove	T5S, R10W	17	Kachemak Bay	Yes: Tidal	none	50 feet	--
		19	Bear Cove	Yes: Tidal		50 feet	--
		29	Loon Lake	Yes: 77 acres in size		n/a	50 feet
Region 9 Map 2 Ismailof Island	T7S, R11W	16	Kachemak Bay	Yes: Tidal	none	50 feet	--

**TABLE 8**  
**PUBLIC WATERS, BUFFER AND EASEMENT REQUIREMENTS**

Region Map # Parcel Name	Township Range	Section	Waterbody Name	Determination of waterbody: 'Public'	Riparian Buffer adjacent to 'Public Water'	Public Access Easement
Region 8 Map 1 Eagle Lake	T4S, R11W	2	unnamed stream	Subject to survey determination	none	50 feet
	T4S, R11W	14	Eagle Lake	Yes: 18 acres in size		
		15	unnamed tributaries	Subject to survey determination		
	T4S, R11W	15 22	Swift Creek	Subject to survey determination		
	T4S, R11W	27	Falls Creek tributary	Subject to survey determination		
Region 8, Map 2 Bear Cove	T5S, R10W	29	unnamed stream	Yes: Outlet from Loon Lake to Bear Cove	none	50 feet
	T5S, R10W	30	North Lake	Yes: >10 acres in size		
Region 9 Map 1 Whiskey Creek	T8S, R14W	14 23	Whiskey Creek	Subject to survey determination	none	50 feet

### **E. Reservation of Mineral Estate**

A conveyance of general grant land to a municipality under AS 29.65 conveys no interest in the mineral estate. All mineral related permits, licenses, claims and leases affecting the subject parcels, if any, will remain under the authority of the state. 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.

### **F. Hazardous Substances and Contaminations**

It is the responsibility of management for the state to protect the overall public interest if there is a reasonable expectation that hazardous contamination may exist on land being proposed for disposal. Based upon the review of the Alaska Department of Environmental Conservation list of Contaminated Sites in Western Alaska, no hazardous material or contamination from hazardous material is known at this time to affect these selections. The environmental risk associated with this proposed conveyance should be minimal or nonexistent. The KPB is expected to inspect these selections and familiarize themselves with regards to the condition and quality of the land. The state makes no representations and no warranties expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed 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.

### **G. Survey and Appraisal**

A survey determination may be requested by the borough at any time subsequent to the FFD. An approved survey will be required prior to issuance of a conveyance document. If no approved survey exists, the one must be performed by an Alaskan Registered Land Surveyor under direction of the DNR Survey Section. The borough will be responsible for the expense of any survey. There is no requirement under AS 29.65.070 to appraise the land prior to conveyance.

### **H. Conditional Leases and Conditional Sales**

KPB will receive management authority and equitable title to all land approved for conveyance by this PD when the FFD becomes effective. This will allow the borough to approve conditional leases and make conditional sales pursuant to AS 29.65.070(b), but not to dispose of land approved for conveyance until the land has been surveyed and ownership transferred to the borough.

### **I. Unauthorized Use**

DNR has not physically inspected all areas of the land herein proposed for conveyance for unauthorized use, but it has reviewed department records and it is unaware of any existing

unauthorized use. The KPB is expected to and has been given the opportunity to inspect the selected parcels and familiarize itself with the condition and quality of the land.

#### **J. Disposition of Leases, Permits and Applications**

Administration of active leases, permits, and easements issued by DNR Division of Mining Land and Water on land to be conveyed will be transferred to the KPB when the FFD becomes effective, unless such authorizations are specifically excluded from the conveyance. Applications for authorizations that have not been adjudicated will be closed.

#### **K. Archaeological Resources**

The State Office of History and Archaeology (OHA) maintains the Alaska Heritage Resources Survey (AHRS), which is an inventory of all reported historic and prehistoric sites in the state. KAP states there are cultural resources within some of the units. OHA states there are cultural resources within a couple of the regions, such that once these lands are conveyed, the borough will need to take those actions required by law to protect the sites in accordance with AS 41.35.070(d).

#### **L. Form and Width Requirement**

All municipal entitlement land selections shall be compact in form with its length not exceeding approximately four times its width pursuant to AS 29.65.070(c). The review of the borough's land selections proposed for conveyance in this decision is determined to be consistent with this statute.

#### **M. Agency Review**

The intent of agency review is to solicit comments from agencies that may be affected by a municipal entitlement land conveyance. In the agency review process, agencies are given the opportunity to evaluate and comment on individual selections, recommend that all or a portion of the selection be rejected, and recommend stipulations that may be appropriate to protect state interests if the land is approved for conveyance. In all cases, adequate justification must be included with the agency's comments.

#### **State Agency Comments and DNR responses**

##### **Comments from the Land Survey Section (LSCAS):**

LSCAS does not have any comments on parcels within KPB Regions 1, 5 & 9. However, we do have some concern about the parcels around Bear Cove as shown on Map 2 within Region 8. The ±80 ac parcel shown in NW1/2 NW1/2 S30, T5S, R10W, S.M. is a small portion of Unit 197A. I encourage the parcel not be limited to a rectangular description, but to include the remnant parcel of State land that is within S24 between ASLS 78-64 & 79-2 and south of USS 4728. This remnant would become virtually land locked with the transfer of the municipal entitlement. I would also like to request a 60 ft. easement along the east side of this same parcel selection or to move the eastern boundary to a minimum of 60 ft. from the western point of ASLS 73-100 (corner No. 6). This would assure access from Bear Cove across a small portion of State settlement lands

located within S24 to the remaining portion of settlement lands within S30 south of the Borough's selection all part of Unit 197A.

***DNR Response:*** The piece of land the surveyor is referring to is in the southwest corner of section 19, not section 24, and the survey is ASLS 75-64, not ASLS 78-64. In this case, the parcel was part of the original borough selection for ADL 227981 and will continue to be so. A difference in recent surveys from the older federal surveys created a shift in the GIS land data layers so the lands fall among the sections a bit differently. A 60' access easement would not be necessary.

***Comments from the AK Dpt of Fish and Game (ADF&G), Division Wildlife Conservation:***

**Region 1-Hope/Turnagain Arm (ADL 227983):** These selections are generally located in the City of Hope. Resurrection Creek (AWC # 247-60-10150) runs through two parcels within this region. The creek is important to the spawning, migration, and rearing of coho, Chinook, chum, and pink salmon and is also important to Dolly Varden. This area is popular for sport fishing and small scale mining activities. The Resurrection Pass Trail appears to cross two of the parcels, and it receives a large amount to public recreation throughout the year.

ADF&G has no objection to the conveyance of these lands to the KPB, however, we recommend that DNR retain a 200-foot wide buffer along both sides of Resurrection Creek. This is consistent with the management intent and guidelines of the KAP.

**Region 5- Coastal Plain/Gompertz Channel of Cook Inlet (ADL 39308, 39309, 55731, 220458, 227980, & 227995):** These lands are generally located within one mile of the coast, except for one parcel (Unit 134), which is inland near Sevena Lake. No trails or anadromous fish streams were identified within any of these parcels.

ADF&G has no objection to the conveyance of these lands. We recommend a 50-foot wide public access easement adjacent to Upper Salmon Lake to allow the public to access this public water body.

**Region 8- Upper Kachemak Bay (ADL 217089, 227981, & 228340):** These selections are generally located at the eastern end of East End Road in Homer, and on the south side of Kachemak Bay near Bear Cove. The parcels near East End Road provide important moose habitat and access to State lands. The riparian corridors in the area provide moose habitat as well as bear travel corridors. The area also provides hunting opportunities for moose, spruce grouse, and ptarmigan adjacent to Basargin Road and the Caribou Lake trail system. The area also receives a high amount of recreation, which is evidenced by the large number of existing public snowmachine trails, which are part of the Alaska State Parks Snow-TRAC Grooming Pool. Unit 276A includes Eagle Lake. The KAP identifies that the area has the potential to support trailhead facilities, parking areas, and floatplane and boating opportunities. It also states that this area should be considered for inclusion in the State Parks system, and only the portions of the unit that are not suitable for these purposes should be conveyed to a municipality.

The selections near Bear Cove are located near or adjacent to the Kachemak Bay State Park and/or the Kachemak Bay Critical Habitat Area (KBCHA). The KBCHA includes the tide and submerged lands of Kachemak Bay. It is managed to protect and preserve habitat crucial to the

perpetuation of fish and wildlife and to restrict other uses not compatible with that purpose. Any development which includes these tide and submerged lands are subject to ADF&G's Title 16 permitting authority. The Bear Cove area is a popular area to access recreation and hunting opportunities such as wildlife viewing, waterfowl hunting, black bear hunting, and mountain goat hunting. ADF&G is aware that there may be public access trails in this area and near Loon Lake which access Kachemak Bay State Park.

ADF&G is not opposed to the conveyance of these lands, provided that there is a way to protect public access on existing trails and to adjacent State lands. There is some concern that if these lands are sold to private individuals, public access for hunting and general recreation may be lost. ADF&G recommends that DNR work with the KPB to identify existing access points and trails so that they can be protected and maintained. If public access cannot be reserved through this conveyance, then ADF&G recommends some of the parcels remain in State ownership.

Region 9- Southern Kachemak Bay (ADL 227990 & 227982): One of the selections is located near Halibut Cove, and the other selection is located near Barbara Point, south of Tutka Bay.

ADF&G has no objection to the conveyance of these parcels. We would like to note that ADL 227982 (Unit 427) on Ismailof island is adjacent to the KBCHA. Any development which includes these tide and submerged lands are subject to ADF&G's Title 16 permitting authority.

- **DNR Response:** Responses are addressed by region.  
Region 1: DNR has chosen to let the borough's Title 17 and their comprehensive plan provide protection for the riparian areas and anadromous creeks.  
Region 5: DNR is rejecting the selection of Unit 165B, so an access easement will be unnecessary.  
Region 8: DNR does not have an overriding interest in retaining the parcels, and therefore these selections must be conveyed to the borough.  
Region 9: Acknowledged

**Comments from the Alaska State Historic Preservation Office/ Office of History and Archaeology (SHPO/OHA):**

The AHRS database indicates there are multiple recorded cultural resources within portions of the proposed land conveyance areas:

Region 1 (ADL 227983)

**SEW-00366**, "Johnson Pass Military Road" a 27mi. long route reconstructed by the ARC in 1907-1908, determined to be eligible for the National Register of Historic Places.

**SEW-01410**, "Hope Drift Mining Site", a drift mine pit with an associated can dump.

**SEW-00661**, "Hope Mining Company Historic District", district encompassing buildings, mine tailings, ditches, abandoned equipment and trails, determined to be eligible for the National Register of Historic Places.

**SEW-01400**, "Hope Mining Co. Dragline", no further information available, likely to be associated with SEW -00661.

Region 5 (ADL 39308)

**TY0-00015**, "Possession" a.k.a "Nicholai Village and Cemetery" a.k.a "Tea'tliniq't" Village site with dwellings, sweathouse and a cemetery.

**KEN-00059**, Site consisting of seven house pits, cache pits, and a midden.

**KEN-00428**, "Moose Point", Site of where a cranium and associated trade bead were collected. May no longer have extant remains at the site.

**KEN-00611**, Site consists of a series of cache pits.

**KEN-00612**, Site consists of a cluster of features including cache pits and probable house pits.

**KEN-00382**, Reportedly a site where stone adzes can be found.

Region 5 (ADLs 227980, 227995, 220458, 39309 and 55371)

There are no recorded cultural resource sites within these selections.

Region 8 (ADLs 227981, 217089, 228340)

There are no recorded cultural resource sites within these selections.

Region 9 (ADLs 227990 and 227982)

There are no recorded cultural resource sites within these selections.

The regions shown in the documentation as a whole have a known rich prehistoric as well as historic era occupation, please note that only a very small portion of the State has been surveyed for cultural resources and therefore the possibility remains that previously unidentified resources may be located within the outlined areas. As such, should inadvertent discoveries of cultural resources occur during the duration of the project, our office shall be notified so that we may evaluate whether the resources should be preserved in the public interest (as specified at Section 41.35.070[d]).

**DNR Response:** DNR acknowledges OHA's comments and have asserted the importance of protecting cultural resources in the PD. The KAP mentions the presence of cultural sites in the following unit areas: Boulder Point (Region 5), Eagle Lake (Region 8), Bear Cove (Region 8) and Ismailof Island (Region 9), but does not give details to what they may be. Lands approved for conveyance will be subject to a notification stipulation contacting SHPO to protect the public interest in cultural resources pursuant to AS 41.35.070(d).

**Comments from the State Pipeline Coordinator (SPCO):**

The State Pipeline Coordinator's Office (SPCO) reviewed the proposed Kenai Peninsula Borough (KPB) municipal entitlement selections in regions 1, 5, 8, 9. Selections in Region 5 of the review packet overlap the Tesoro Nikiski Pipeline Right-of-Way Lease, ADL 69354. These are: ADL 39308 as depicted in KPB Region 5 Map 1 within Section 11, T10N, R8W, SM, and ADLs 227995 and 227980, as depicted in KPB Region 5 Map 2. Please exclude ADL 69354, the pipeline right-of-way lease for the Tesoro Nikiski Pipeline when conveying these parcels.

In general, AS 38.35 pipeline rights-of-way should be excluded from Municipal Entitlement conveyances. Currently, within KPB, the following leases should be excluded, when a municipal entitlement is conveyed:

ADL 69354 Tesoro Nikiski Pipeline Right-of-Way Lease  
ADL 228162 Kenai Kachemak Pipeline Right-of-Way Lease  
ADL 230928 North Fork Pipeline Right-of-Way Lease

There appears to be an overlapping private interest on parcel ADL 39308 (as depicted in KPB Region 5 map 1 within Section 11, T10N, R8W, SM).

In addition, the SPCO notes that the platted Kenai Spur Hwy extension crosses all three parcels discussed above. How will the municipal conveyance handle the platted highway right-of-way? Will it be excluded?

***DNR Response:*** DNR acknowledges the pipeline Right-of-Way lease, ADL 69354, in section 11, T10N, R8W (ADL 39308) and in section 2, T8N, R10W (ADL 227980), and this right-of-way will be excluded from conveyance to the borough when the FFD becomes effective. The Kenai Spur Highway Extension has a dedicated 150 foot right-of-way (Plat 84-65, Moose Point Subdivision), and will be excluded from conveyance.

## **VII. DISCUSSION AND ALTERNATIVES**

### **A. Discussion**

This decision approves for conveyance roughly 2,437 acres of state land, transferring management authority to the borough when the FFD becomes effective. DNR has determined that there are no overriding state interests in retaining these selections and the conveyance to the borough of these selections was consistent with the requirements of conveyance under AS 29.65, and the management intent requirements of the KAP. Additionally, the state proposes to reject 272 acres of its selections and to postpone 471 acres. The selections that are either postponed or rejected are described in TABLES 9 (Land Proposed for Conveyance), 10 (Land Proposed to be Postponed) and 11 (Land Proposed to be Rejected). For a more detailed explanation, see TABLE 1.

The acreage approved for conveyance will be credited towards fulfillment of the KPB municipal land entitlement and management authority will be transferred as equitable title once the Final Finding and Decision (FFD) is effective.

### **B. Alternatives**

1. Take no action to approval, reject or postpone the borough's land selections. This alternative would, in effect, preclude the borough's ownership of lands considered to be important to their land base. This action would be inconsistent with the purpose of the Municipal Entitlement Act and inconsistent with the basis for the disapproval of a municipal selection. Such selections can only be rejected when a state's interests outweigh the interest of the borough, and there is no basis for such a determination.
2. Reject the borough's selections in their entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the statutory basis for rejection of a municipal selection.
3. Approve in part with management authority transferred, postpone, reject in part, and retain in state ownership. This alternative is effective in meeting

the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to the Kenai Peninsula Borough.

## **VIII. RECOMMENDATION**

### **A. Recommended Alternative.**

DNR has determined that Alternative #3 is the preferred action and best fits the intent of the Municipal Entitlement Act. The Kenai Peninsula Borough land selections in Regions 1, 5, 8, and 9, in part, are approved for conveyance, subject to the recommended conditions, restrictions and reservations listed below.

### **B. Recommended Conditions, Restrictions and Reservations.**

The state land proposed for conveyance to the Kenai Peninsula Borough will have imposed applicable conditions, restrictions and reservations upon transfer of equitable title and issuance of conveyance documents.

#### **Conditions**

1. All valid existing rights, including reservations, easements, and exceptions in the U.S. Patent or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.
2. Reservation of a 50-foot wide easement adjacent to surveyed and protracted section lines on each side in accordance with AS 19.10.010 and 11 AAC 51.025.
3. The location of the ordinary high water mark (OHWM) of public waters will be determined at the time of the survey in accordance to AS 35.05.127 and 11 AAC 51 to determine where access easements will be placed.
4. The location of the mean high water mark (MHWM) will be determined at the time of survey in accordance to AS 38.05.127 and 11 AAC 51.
5. Management authority for public access easements is transferred to the Kenai Peninsula Borough when the Final Finding and Decision becomes effective. No such easements may be vacated, abandoned or otherwise extinguished or rendered incapable of reasonable use by the public without approval of the State of Alaska, unless an alternative means for reasonable public access is provided and approved by the state.
6. Management authority will transfer to the Kenai Peninsula Borough on those lands approved for conveyance when the Final Finding and Decision becomes effective.
7. Administration of state leases and permits pertinent to the surface estate will be transferred to the Kenai Peninsula Borough once the Final Finding and Decision becomes effective. Administration of issued state leases and permits, in the mineral estate will remain with the state.
8. Lands approved for conveyance, when the Final Finding and Decision becomes effective, the Kenai Peninsula Borough may execute conditional leases and make conditional sales prior to issuance of a state patent in accordance to AS 29.65.070(b).

9. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of the Kenai Peninsula Borough municipal land entitlement pursuant to AS 29.65.010.

**Reservations and Restrictions**

**Conveyance document will include the following as a subject to:**

1. Valid existing rights, including reservations, easements, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.
2. Reservation of a 50-foot wide easement on each side of all surveyed and protracted section lines in accordance with AS 19.10.010 and 11 AAC 51.025.
3. Reservation of a continuous public access easement, 50 feet wide upland of and adjoining the ordinary high water mark of all public waters and mean high water marks of all tidal shores pursuant to AS 38.05.127 and 11 AAC 51.
4. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and AS 38.05.125; and reservation of reasonably necessary access to the mineral estate in accordance with AS 38.05.130.
5. Notification to the Alaska State Historic Preservation Office in accordance with AS 41.35.070(d) is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains or objects.
6. Reservation of pipeline Right-of-Way for ADL 69354 as now or hereafter amended, including by any applicable unit agreement.

**C. LAND ACTION ON MUNICIPAL SELECTIONS**

The acreages in TABLES 9, 10 and 11 are estimates and the final acreage amount will be determined at the time of survey. The determined acreage is a net chargeable acreage that will be credited towards partial fulfillment of the boroughs land entitlement at such time.

**TABLE 9  
 LANDS PROPOSED FOR CONVEYANCE**

Region	Map # Parcel Name	Seward Meridian Township, Range	Section Legal Description	KAP Unit	Acres
1	1 City of Hope	T10N, R2W	Sec. 27: Gov. Lots 1 (14.71ac), 2 (30.12ac), 3(28.1ac), and 6 (36.4ac) USS 3390 Lots 3 (0.66ac) and 5 (1.44ac) That portion north of Hope Road in W1/4SE1/4 (18.2ac)	286 (Se)	130
5	1 Moose Point	T10N, R8W	Sec. 11: Portion of Gov. Lot 1 lying east of ASLS 74-154 (8.6ac), excluding pipeline right-of-way (ADL 69354)	Not classified	9

5	2 Upper Salmon Lake	T8N, R10W	<b>Sec. 2:</b> N1/2SW1/4 (80ac), excluding pipeline right-of-way (ADL 69354) Gov. Lot 3 (13.42ac) Gov. Lot 4 (22.43ac) Gov. Lot 5 (39.65ac), excluding pipeline right-of-way (ADL 69354)	165A (Gu)	156
5	4 Salamatof Site	T6N, R12W	<b>Sec. 14:</b> Gov. Lot 21 (2.5ac) <b>Sec. 23:</b> Lot 15 EPF 58-7 (3.16ac)	Not classified  493 (Se)	6
8	1 Eagle Lake	T4S, R11W	<b>Sec. 2:</b> NW1/4, N1/2SW1/4, N1/2S1/2SW1/2 (280ac) E1/2, S1/2S1/2S1/2S1/2 (360ac)	264A (Se) 260B (Rd)	1,888
			<b>Sec. 11:</b> SE1/4SE1/4 (40ac)	271B (Rh)	
			<b>Sec. 12:</b> SE1/4SE1/4 (40ac)	271B (Rh)	
			<b>Sec. 13:</b> NE1/4NE1/4 (40ac)	271B (Rh)	
			<b>Sec. 14:</b> NE1/4NE1/4 (40ac), W1/2E1/2 (160ac), E1/2E1/2NW1/4 (40ac) SW1/4 (160 ac)	271B (Rh) 276A (Rp)	
			<b>Sec. 15:</b> SE1/4 (160ac)	276A (Rp)	
			<b>Sec. 22:</b> NE1/4NE1/4 (40ac) N1/2NE1/4NS1/4 (20ac)	276B (Gu) 275 (Se)	
			<b>Sec. 23:</b> NE1/4NW1/4 (40ac) N1/2SW1/4 excluding ASLS 77-67 (98ac)	271B (Rh)	
			<b>Sec. 27:</b> Tract A-1 of Tract B (45.61ac)	274 (Se)	
8	2 Bear Cove	T5S, R10W	<b>Sec. 17:</b> N1/2NE1/4 (58.56ac) <b>Sec. 19:</b> Lot 4 Block 1 ASLS 85-225 (7.76ac) <i>Small pc falls in sec 20</i> Tract A Block 1 ASLS 85-225(1.19a) <b>Sec. 20:</b> E1/2W1/2 excluding USS 4727, 3355, 1773 (79ac) <b>Sec. 28:</b> Lot 9 Block 3 ASLS 85-225 (5.27ac) <i>Small pc falls in sec 29</i>	197A (Se)	175

			<b>Sec. 30:</b> Lot 10 Block 3 ASLS 85-225 (5ac) Lot 2 Block 6 ASLS 85-225 (8.77ac) N1/2NW1/4 excluding ASLS 79-2, 73-100, 75-64 and Project Area ADL 299508 (68.38ac)		
8	2 Bear Cove	T5S, R10W	<b>Sec. 29:</b> Tract 3A2 ASLS 88-95 (7.36ac) Tract E Block 2 ASLS 85-225 (4.2ac) Lot 3 ASLS 85-225 (11.55ac)	197B (Rp)	23
8	2 Bear Cove	T5S, R10W	<b>Sec. 17:</b> USS 3355 Lots 1A to 1L (48.28ac)	198 (Se)	48
9	2 Ismailof Island	T7S, R11W	<b>Sec. 6:</b> Unsurveyed parcel between ASLS 78-7 and ASLS 78-109	472 (Se)	2
				<b>Conveyance Total</b>	<b>2,437</b>

**TABLE 10**  
**LAND PROPOSED TO BE POSTPONED**

Region	Map # Parcel Name	Seward Meridian Township, Range	Section Legal Description	KAP Unit	Acres
1	1 City of Hope	T10N, R2W	<b>Sec. 33:</b> Lot 2 (34.94ac)	287B (Gu)	35
1	1 City of Hope	T9N, R2W	<b>Sec. 3:</b> SW1/4 (105.2ac) excluding USS 2761 <b>Sec. 9:</b> NE1/4 (10.9ac) excluding USS 2761 <b>Sec. 10:</b> NW1/4 (154.6ac) excluding USS 2761	287A (Se)	271
1	1 City of Hope	T9N, R2W	<b>Sec. 4:</b> SE1/4 (66.1ac) excluding USS 2761 <b>Sec. 9:</b> NE1/4 (98.6ac) excluding USS 2761	287B (Gu)	165
				<b>Postponed Total</b>	<b>471</b>

**TABLE 11**  
**LAND PROPOSED TO BE REJECTED**

Region	Map # Parcel Name	Seward Meridian Township, Range	Section Legal Description	KAP Unit	Acres
1	1 City of Hope	T10N, R2W	<b>Sec. 33:</b> E1/2SE1/4SE1/4, excluding Gov Lots 1, 3 (5.14ac)	285 (Pr)	5
5	2 Upper Salmon Lake	T8N, R10W	<b>Sec. 2:</b> Gov. Lot 6 (34.27ac) Gov. Lot 7 (31.36ac)	165B (Rp)	66
5	3 Boulder Point	T8N, R11W	<b>Sec. 20:</b> S1/2NE1/4, SE1/4NW1/4 (120ac)	194 (Se)	120

5	5 Sevena Lake	T5N, R10W	<b>Sec. 1:</b> NE1/4NW1/4 (40ac)	134 (Se)	40
8	1 Eagle Lake	T4S, R11W	<b>Sec. 33:</b> Milepost 18 East End Road (36ac)	270E (Rp)	36
9	1 Whisky Creek	T8S, R14W	<b>Sec. 14, 23:</b> Tract A ASLS 77-82 (4.86ac)	202 (Se)	5
				<b>Rejected Total</b>	<b>272</b>

## FINDINGS AND PRELIMINARY DECISION

The following are the findings for this Preliminary Decision:

1. That it is appropriate to convey approximately 2,437 acres of state land to Kenai Peninsula Borough. The interest of the state to retain the land does not outweigh the interests of the borough to obtain the land.
2. That it is appropriate to reject 120 acres in section 20 of Boulder Point (Region 5, Map 3) and 40 acres in section 1 of Sevena Lake (Region 5, Map 5), These parcels are in the ownership of the Mental Health Trust and do not belong to the state. They cannot be conveyed to the borough.
3. That it is appropriate to reject 5 acres within sections 14 and 23 (Region 9, Map 1) near Whisky Creek because this parcel is in the process of being reconveyed to private ownership. It cannot be conveyed to KPB.
4. That it is appropriate to reject 5 acres within section 33 in the City of Hope area (Region 1, Map 1) because this is a state airport.
5. That it is appropriate to reject 36 acres within section 33 in the Eagle Lake area (Region 8, Map 1) and 66 acres in section 2 of Upper Salmon Lake (Region 5, Map 2) because the state has an overriding interest in retaining the parcels.
6. That it is appropriate to postpone adjudication of 471 acres within sections 3, 4, 9, 10 and portion of section 33 of the City of Hope selection (Region 1, Map 1). These parcels are not state owned and have a clouded title.

This Preliminary Decision determines that Alternative #3 is the preferred alternative. I reviewed and considered the material in this preliminary decision and find that the recommended action may be in the best interest of the state and the Preliminary Decision is hereby approved to proceed to public notice.

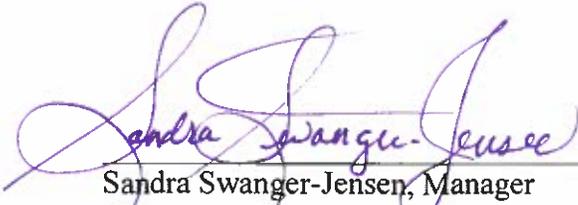
This is a preliminary decision and subsequent public review may result in changes to the preferred alternative or disapproval of the proposed action altogether.



Mary Hermon  
Natural Resource Specialist  
Municipal Entitlement Unit

9/16/14

Date



Sandra Swanger-Jensen, Manager  
Municipal Entitlement Unit

9/16/2014

Date

## **PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES**

The public is invited to comment on the Preliminary Decision propose to transfer ownership of the state land to the Northwest Arctic Borough. Any comments must be received in writing to the Division of Mining, Land and Water, Resource Assessment and Development Section, Municipal Entitlement Unit, Attention: Mary Hermon at 550 West 7<sup>th</sup> Avenue, Suite 1050, Anchorage, Alaska 99501-3579 or by fax (907) 269-8915 or by electronic email [mary.hermon@alaska.gov](mailto:mary.hermon@alaska.gov) and **must be received on or before Oct. 17, 2014** in order to ensure consideration.

A copy of the public notice, the Preliminary Decision and associated maps to the decision are available online under the heading 'DNR Public Notices and Proposed Regulations' on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>. The PD and associated maps are attachments to the public notice found at the bottom of the publication notice online under the heading 'Attachments, History, Details: Attachments'.

The postmasters in Anchor Point, Clam Gulch, Cooper Landing, Fritz Creek, Halibut Cove, Homer, Hope, Kachemak, Kasilof, Kenai, Moose Pass, Nanwalek, Nikiski, Nikolaevsk, Ninilchik, Port Graham, Seldovia, Seward, Soldotna, Sterling, and Tyonek will be asked to post the notice. Additionally, the notice will be sent to the Kenai Peninsula Borough and tribal governments in the area of this proposed land transfer.

Following the comment deadline, all written responses will be considered and this decision may be modified to incorporate public comments. Only persons who comment during the public comment period will be eligible to file an administrative appeal of the Final Finding and Decision (FFD). A copy of the FFD will be sent to any person who submitted comments on the preliminary decision. The final decision will include appeal instructions. Please direct any questions concerning this decision to Mary Hermon at (907) 269-6546, or by fax (907) 269-8915, or email: [mary.hermon@alaska.gov](mailto:mary.hermon@alaska.gov)

The Department of Natural Resources is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to this decision by telephone may call the department's Public Information Center in Anchorage between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, at TDD# 1-907-269-8411.

### **ATTACHMENTS**

Overall vicinity map

Vicinity Maps: 1, 5, 8, and 9

Maps: Region 1, map 1

Region 5, maps 1-5

Region 8, maps 1, 2

Region 9, maps 1, 2