

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

PRELIMINARY DECISION
CONVEYANCE OF LAND UNDER AS 29.65.010

KENAI PENINSULA BOROUGH
MUNICIPAL LAND ENTITLEMENT SELECTIONS
REGION 4 - COOPER LANDING
ALASKA DIVISION OF LANDS
ADL's 227984, 227965 & 201307

I. PROPOSED ACTION

Proposed conveyances: The Department of Natural Resources (DNR) proposes to convey approximately 1,710 acres of state owned vacant, unappropriated, unreserved (VUU)¹ general grant land to the Kenai Peninsula Borough (KPB or borough) in partial fulfillment of their municipal land entitlement pursuant to AS 29.65.010. These land selections in the Cooper Landing area of Region 4 were found to be consistent with the Kenai Area Plan² (KAP or plan). This decision also proposes to convey 40 acres by the means of a 'special exception' under 11 AAC 55.030(f)(1)(B), which allows for a one time limited variance of the plan's provision. This would allow the borough to relocate a community gun range out of its inappropriate site within a developed area of town to an undeveloped area, which is the area proposed for conveyance to the KPB. The interests of the borough outweigh the interest of the state in retaining this land. DNR proposes to convey in total approximately 1,750 acres to the KPB.

This Preliminary Decision (PD or decision) covers a total of 4,325 acres in three geographical areas: Jerome Lake Area (Map 1), Kenai River/Cooper Landing Area (Map 2), and Kenai Lake Area (Map 3), 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).

Proposed conditional conveyance: DNR proposes to conditionally approve for conveyance 1,080 acres of state land to the KPB in management unit 395 of the KAP. DNR will postpone the conveyance of this selection and its transfer of management authority until the state has determined the location for the designated Cooper Landing Bypass (Bypass/corridor), which affects this selected area (Map 2). Until this occurs, it would be imprudent of the state to convey these borough selected lands, since there has been no final decision on the alignment of the

¹*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.

²The *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.

Bypass corridor. The state's interests heavily outweigh the borough's interest in obtaining immediate equitable title and management authority to this land selection. When the Bypass corridor location has been established and its width determined, only then will it be appropriate to convey the selection.

Proposed to be rejected: DNR proposes to reject 1,495 acres of the KPB municipal entitlement land selections consisting of the following:

- 87 acres: This is a DOT&PF material site (Map 1). This action is consistent with the management intent of KAP of management unit 408A, which requires that this area be retained in state ownership for the purpose of using the materials for the construction of the Bypass and upgrade of the Sterling Highway.
- 30 acres: This selection occupies the area adjacent to the material site within management unit 408B of the KAP. This unit is classified as Habitat, which is a non-conveyable classification (Map 1). The exact location of the material site in this area is unknown, therefore, no area around the material site will be conveyed, except for that portion identified in the NE1/4, which is to be conveyed and is classified properly (Map 1 & Table 3).
- 8 acres: The Chugach Electric Association Power Project 2170 is partially located within the NE1/4 of Section 16 (Map 1).
- 750 acres: This acreage is located within management unit 408C of the KAP. Although this selection is classified as Public Recreation, a conveyable classification, the management intent for this unit indicates that because Sections 10 and 15 are too steep to develop, they should not be conveyed in an entitlement decision. Section 11 also has adverse topography and will not be conveyed (Map 1). Note, a portion in Section 15, the NW1/4NW1/4, is proposed to be conveyed (40 acres) by the means of a 'special exception' (Map 1). The identified 40 acres is adjacent to a borough land selection proposed for conveyance in Section 16. This area has favorable topography for a potential relocation of a community gun range.
- 150 acres: This acreage is located in the NW1/4 of Section 34 (Map 2). The state does not own land within this selection and will not receive the federal land that it has selected. The Bureau of Land Management (BLM) has indicated that the land north of the Sterling Highway is a 'suspended selection', and the area south of that location fails to meet federal selection criteria.
- 470 acres: This acreage is located in Section 36 below the Sterling Highway and is classified as Wildlife Habitat, which is a non-conveyable classification under AS 29.65 and will be retained by the state. Note; land in Section 36 is only selected by the state, and it is uncertain that the state will receive this land from the federal government. But, even if the state received title to this area, the selection is affected by a non-conveyable classification.

The acreages proposed to be approved for conveyance will be credited towards partial fulfillment of the KPB municipal land entitlement and management authority will be transferred. The KPB will receive equitable title, once the Final Finding and Decision (FFD) becomes effective. The acreages conditionally approved will not be credited towards the borough's municipal entitlement and management authority will not be transferred until the state has determined the location for the designated Cooper Landing Bypass. Once this occurs, the acreage will then be credited towards the borough's entitlement.

Other Related Actions: A portion of this decision is dependent upon a related, separate action involving a special exception to management intent text in the Kenai Area Plan. This action affects a 40 acre parcel within management unit 408C. See the 'special exception' attached.

The public is invited to comment on this municipal entitlement decision and the 'special exception'. **The deadline for comments must be received on or before June 2, 2014.** Refer to 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 are authorized pursuant to the Alaska State Statutes (AS) and under the Alaska Administration Code (AAC) and in particular to AS 29.65, AS 38.05.035(e), AS 38.05.125, AS 38.05.127, AS 19.10.010, AS 19.30.400, 11 AAC 51 and 11 AAC 55.

III. ADMINISTRATION RECORD

The administrative records for this PD are case files ADL's 227965, 227984 and 201307. It includes, but not limited to the review of: Kenai Area Plan (2000), Kenai River Comprehensive Management Plan (1997), Map of the Alaska Anadromous Waters Atlas by the Alaska Department of Fish and Game (ADF&G), and the Alaska Department of Environmental Conservation (ADEC) List of Contaminated Sites in Western Alaska map. Other sources were consulted and are contained in the case files.

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 selections to the requirements of AS 29.65.

V. DESCRIPTION

A. Location and Geographical Features

1. Geographic: Cooper Landing: Region 4. The landscape of the Cooper Landing Region is dominated by large lakes and forested valleys hemmed in by rugged mountain ridges. The largest water bodies, Kenai Lake, Skilak Lake and the Kenai River are all glacially fed and have a milky jade coloring. Quartz creek and the Russian River are clear water creeks that have high salmon productivity. The rocky slopes of the area are often sparsely forested and have thin soil cover. Many mountains in this region are prone to avalanches. Bark beetles have taken a significant toll on the spruce in the area.
2. Borough/Municipality: Kenai Peninsula Borough
3. Meridian: Seward (SM)
4. Regional Native Corp.: Cook Inlet Region Inc.
5. Native Village Corp.: None
6. USGS Map Coverage: Seward Quadrangle (1:250,000) and Kenai Quadrangle (1:250,000)

Map	Name	USGS
1	Jerome Lake Area	USGS C-7
2	Kenai Lake Area	USGS B-7
3	Kenai River/Cooper Landing Area	USGS C-4

B. Legal Descriptions - Land Title – Third Party Interest

Table 1 identifies the KPB land selections by 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 and which are recommended for conveyance in this decision. 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 1
 Leal Description – Land Status – Third Party Interest**

Map 1

Jerome Lake Area

T. 5 N., R. 2 W., Sections 10, 11, 15 & 16, SM

Title	Date	State Case File
TA No. AA-71614 (Sections 10, 11, 15)	11/24/1992 (Amended 10/12/2000)	NFCG 274
TA No. AA-57975 (Section 16)	07/11/1995	NFCG 193

Third Party Interest: YES
Surface Activity: <ul style="list-style-type: none"> • Access road to federal mining claim (Mastel Mine Road) located Section 16. • ADL 45003: Chugach Electric Association, an existing 40-foot wide public utility easement in Section 16. • ADL 219510: City of Seward, an existing 60-foot wide public utility easement in Sections 15 & 16 • Chugach Electric Association Power Project 2170 in Section 16.

Map 2

Kenai River/Cooper Landing Area

T. 5 N., R. 4 W., Sections 25, 26 & 27, SM

Title	Date	State Case File
TA No. AA-809836	03/02/1999	NFCG 275
Third Party Interest: YES		
Surface Activity: <ul style="list-style-type: none"> • ADL 225620: BLM active permit for a 1.5 mile long right-of-way located in the Juneau Creek/Bean Creek area in Section 27 on state selected land. This permit reserves undeveloped federal rights-of-way for existing forest roads and trails for continuous access to forest lands. • An existing 60-foot wide right-of-way, West Juneau Road, FS #1010, 2.5 miles in length located in Section 27. • An existing 60-foot wide right-of-way, Chunkwood Road, FS #1010500, 2.0 miles in length located in Sections 25, 26 and 27. • An existing 60-foot wide right-of-way, Westside Road, FS #1010300, 0.5 miles in length located in Section 27. • An existing 60-foot wide right-of-way, Hilltop Road, FS #1010320, 0.5 miles in length located in Section 27. • An existing 60-foot wide right-of-way, Bear Flats Road, FS #1010400, 0.3 miles in length located in Section 26. 		

T. 5 N., R. 4 W., Sections 34 & 36, SM

Title	Date	State Case File
BLM Land (Sec. 34)	Decision Suspended	NFCG 52
BLM Land-State Selected (Sec. 36)	02/02/1989	NFCG 256

Map 3

Kenai Lake Area

T. 4 N., R. 2 W., Sections 19, 30 & 31, SM

Title	Date	State Case File
PAT No. 50-96-0050	11/07/1995	NFCG 277
Third Party Interest: Yes		

<p>Surface Activity:</p> <ul style="list-style-type: none"> • Chugach Electric Association Power Project 2170, an existing 50-foot wide utility easement in Section 31. • ADL 231686-J: Application - Chugach Electric Association for a proposed public utility easement in Section 19.
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T. 4 N., R. 3 W., Sections 13, 24 & 25, SM

Title	Date	State Case Files
TA No. 50-96-0050	11/07/1995	NFCG 277
Third Party Interest: Yes		
<p>Surface Activity:</p> <ul style="list-style-type: none"> • Chugach Electric Association Power Project 2170, an existing 50-foot wide utility easement in Section 24. • ADL 231686-H & I: Application - Chugach Electric Association for a proposed public utility easement in Sections 13 and 24. 		

VI. PRELIMINARY DECISION

A. Background

The Borough was granted 155,780 acres of municipal land entitlement under AS 29.65.010. To date, the borough has received title to 99,078 acres of state land, leaving a remaining balance of approximately 56,702 acres. This amount consists of 28,347 acres approved for conveyance from previous decisions, which transferred equitable title to the borough, and a remaining balance of 28,351 acres left to be adjudicated. It is a portion of this remaining acreage that is the subject of this PD.

This area is collectively referred to as Region 4 – Cooper Landing, consisting of 4,325 acres. Following the adoption of the KAP, DNR compared the KPB land selections against the classifications of this plan. Since the borough can only select lands from a particular land use classifications (VUU/conveyable), and must be consistent with the management requirements, these land classifications and the intent statements related to plan management units are controlling and directly affect the borough selections in the decision-making process.

In 2000, the KPB prioritized their land selections along with the original land selections, creating four priority groups: Priority Groups 1, 2, 3 & 4 (with 1 being the highest). Priority Groups 1, 2 & 3 were adjudicated and approved for conveyance to the borough leaving Priority Group 4 remaining for adjudication. This Priority Group 4 consists of approximately 18,300 acres of state land scattered throughout the borough, which made it very difficult for DNR to adjudicate in one decision. To expedite the adjudication process for those parcels in Priority Group 4, DNR further prioritized these into subgroups, creating five subgroups that were formed about to the Regions within the KAP. The sub-groups in Region 4 are the subject matter of this PD.

Region 4 extends from the Seward and Sterling Highway Junction west to Skilak Lake and is composed of the upper Kenai River Valley, North Kenai Lake shoreline, and Quartz Creek drainage. The Seward and Sterling highways run through the middle of this Region and part of the Region is known as Cooper Landing at the outlet of Kenai Lake.

B. Planning, Classification, and Mineral Estate

1. Planning

There are two significant state plans of the Department that affect Region 4, and the specific selections that are under consideration in this PD.

Kenai Area Plan: The purpose of this plan, adopted in 2000, is to establish land use designations, management intent, and management guidelines for regions and specific management units within the Kenai Peninsula Borough. Table 2 identifies the borough land selections, the management units that corresponds to those selections, the land use classification, and the specific management intent or guidelines that might affect the particular selection.

Kenai River Comprehensive Management Plan: This plan, adopted in 1997, is the management tool the department uses in making its decisions on state land in the Kenai River Area and, particularly, that land within the Kenai River Special Management Area (KRSMA). A management plan is required by statute (AS 41.21.506) for the KRSMA, and the KRCMP fulfills that function. This plan also affects the KAP, and all of the relevant recommendations within the KRCMP are included in the KAP. The sections of this plan that are particularly pertinent include the guidelines for land disposals and for the protection of the riparian area where a disposal is under consideration. Plan recommendations in Chapter 4 indicate that the state should not dispose of its holdings within the KRSMA and if disposal is required, the disposal shall be subject to a vegetated conservation easement of 200-feet, as measured from the ordinary high water mark (OHWM). Both requirements affect the borough land selections within the jurisdictional boundary of the KRCMP.

2. Land Use Classification

The KAP designations and classifications for the borough land selections are essential since they identify land use categories that are conveyable or non-conveyable under AS 29.65. The classifications that affect the selections include Material (MAT), Wildlife Habitat (WHB), and Public Recreation Land (PUR), which are listed in Table 2 of this decision. The classification of WHB is not a conveyable classification, and therefore precludes conveyance to a municipality. In this instance, no further adjudication is required (or possible), since conveyance is precluded by statute. In some instances it is possible to reclassify to a conveyable classification and to modify the plan through a 'plan amendment' or 'special exception', but any such actions must be consistent with 11 AAC 55.030(f)(1)(B), which are the standards that affect such actions, and such actions are infrequent, particularly with a relatively recent area plan. This is particularly pertinent since one of the functions of an area plan is to determine whether a management unit is appropriate or inappropriate for conveyance to a municipality.

The KAP conducted such an analysis and provides specific direction as to whether a unit of state land may be conveyable to the borough. Similar to a plan amendment involving a reclassification of use, any deviation from a specific management stipulation would also require a plan amendment or special exception, and it is likely that both a plan amendment for a plan designation and management intent would be required. Note also that the requirements of both the KAP and KRCMP may affect a selection and both requirements apply. Deviation from these standards will require amendment of both the KAP and KRCMP. Table 2 also identifies management intent for each management unit in the KAP. This information is important since management intent has the same standing as plan designations or management guidelines. Deviation from management intent language is not allowed unless the requirements associated with it are amended by special exception or plan amendment.

Table 2 identifies, by selection, the applicable management unit and its corresponding designation and management intent. Management units 408B and 394B are affected by a WHB classification, which precludes their conveyance (Map 1 & 2), while management units 408A and 408C have land use classifications that are conveyable, but are affected by management intent requirements that preclude conveyance (Map 1). Finally, management unit 395 may not be conveyed until certain conditions are fulfilled in regards to the reroute of the Sterling Highway/Cooper Landing Bypass. The remainder of the units has appropriate designations and management intent text.

Table 2
Kenai Area Plan
Management Unit and Classification

Map # Area Name	Seward Meridian, Township, Range	Section(s)	Management Unit #	Classification	Management Intent/Guidelines
1 Jerome Lake Area	T. 5 N., R. 2 W.,	16	408B	Wildlife Habitat	Intent indicates that this unit has high recreation, scenic and environmental values and is to be retained by the state and is recommended for addition to KRSMA.
		16	408A ³	Material	Intent indicates that the unit is to remain in state ownership even after

³ This unit is occupied by a DOT&PF material site (ADL 227155). The KAP indicates that the state will require use of this site to accommodate future road projects. Once extraction has been completed, the site will be reclaimed and function as a fishery enhancement pond that will connect to those nearby anadromous stream. See also management intent column.

The section "Specific Management Intent for Units in Region 4" within the KAP indicates unit 408C may be conveyable to borough except that portions in Sections 10 and 15 are not to be conveyed. Note: A portion of this unit in section 11 also has adverse topography and DNR will treat this area in a similar manner as the other parts of this unit which are affected by adverse terrain and are not to be conveyed. See also management intent column.

					material extraction has been completed.
		10, 11, 15, 16	408C	Public Recreation-Dispersed	Intent indicates that, to avoid impacts to the view shed of the Seward Highway, the steep portions of Sections 10 and 15 are not to be conveyed to a municipality
2 Kenai River/ Cooper Landing Area	T. 5 N., R. 4 W.,	25, 26, 27	395	Settlement	Intent indicates that this unit is available for conveyance to a municipality after the Bypass is rerouted north of the Kenai River.
	T. 5 N., R. 4 W.,	34	No Unit #	Not State Land	n/a
	T. 5 N., R. 4 W.,	36	394B	Wildlife Habitat and Public Recreation-Dispersed	Intent indicates that the unit is to be retained in state ownership. Only if the Sterling Highway is <i>not</i> rerouted north of the Kenai River may this unit be conveyed to a municipality.
3 Kenai Lake Area	T. 4 N., R. 2 W.,	19, 30, 31	389	Public Recreation-Dispersed	Intent does not pertain to conveyances to a municipality.
	T. 4 N., R. 3 W.,	13, 24, 25			

3. Mineral Orders

The mineral estate is reserved to the state pursuant to AS 38.05.125. There were no orders found at this time that affected the KPB selections.

4. Local Planning

The KPB maintains a local comprehensive plan, but does not provide a detailed land use map that could provide guidance in the determination of appropriate land uses. Local Planning in Kenai has not classified the areas of conveyance in this decision, as it states in their borough code under 17.10.080(b).

17.10.010: *“It is the policy of the Kenai Peninsula Borough to manage all borough owned and municipal entitlement lands and resources”*

17.10.080: *“Only those lands for which the borough has received a state patent or has received a final decision for future title conveyance from the state under the Municipal Entitlement Act, or has otherwise received clear title may be classified or reclassified.”*

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 29.65.010; therefore, a determination for traditional uses is not required. All of the KPB land selections are within their legal boundary.

D. Access

The KPB land selections, subject of this PD, will provide public access reserved in accordance to AS 19.10.010, AS 19.30.400, AS 38.05.125, AS 38.05.127 and 11 AAC 51, where necessary. In this area of Region 4, the Sterling and Seward highways run through the middle of this unit area and the Department of Transportation & Public Facilities (DOT&PF) just completed restructuring the Sterling Highway just east of Cooper Landing. Now another area is being considered to construct a National Scenic Bypass that is going to affect some of the borough land selections (Map 2).

1. Section Line Easement s

Section line easement (SLE) will be reviewed in accordance with AS 19.10.010 and 11 AAC 51.025. SLE is typically 50 feet in width adjacent to surveyed and protracted section lines on each side on state owned land.

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

DNR will protect public access for those trails affected by borough selections approved for conveyance (11 AAC 51.045 and 11 AAC 51.015(d)(1)(e)). If the Cooper Landing Bypass is relocated into management unit 395, it may relocate the Resurrection Pass trail. Therefore, if the trail is relocated, DNR will impose a 60-foot wide easement or right-of-way overlaying the undeveloped trail to protect access for the public.

3. To & Along Easement s

There are no public or navigable water bodies impacting selections approved for conveyance. If, however, 'public' water bodies are found during survey, then a public access easement of 50-feet in width upland of the ordinary high water mark (OHWM) will be reserved in accordance with AS 38.05.127 and 11 AAC 51. This easement, referred to as the 'along' easement and the 'to' easement, will be provided through, for the 'to' easement, section line easements of 50-feet in width adjacent to the section line on each side (AS 19.10.010 and 11 AAC 51.045) and situated every one mile along the stream corridor. The 'along' easement is to be provided along every navigable or public water. The width of this easement is 50-feet and is to be measured from the OHWM upland.

5. Navigable and Public Waters

Water bodies determined to be navigable or public waters are determined based on the criteria in 11 AAC 51.035 and are defined and are described as follows:

Navigable water: a water body at least 50 acres in size or a waterway at least 50-feet in width from the OHWM to the OHWM. The state will retain the bed of navigable water in state ownership, including all gravel bars and islands. A water body will also be considered navigable if it is found navigable for a useful public purpose in accordance with AS 38.05.965(13).

Public water: a water body at least 10 acres but less than 50 acres in size or a waterway at least 10-feet but less than 50-feet in width from the OHWM to the OHWM. The state will convey the bed of public water to the municipality.

There were no navigable or public waters found within the borough selections approved for conveyance, therefore, no 'to' or 'along' easements will be imposed. If water bodies are found at the time of survey, then the location of the OHWM will be determined, which will identify the specific areas to be retained by the state for navigable waters and the determination of acreage proposed to be conveyed upland. Prior to transferring ownership, a survey is required on the unsurveyed approved lands by an Alaska Professional Licensed Surveyor hired by the municipality. At this time, the field work performed by the surveyor may determine that a body of water or waterway appears to be different than as identified in this decision, which were none, or has identified a water body, then the surveyor will be required to submit their findings for review by the state.

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 in this decision, 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 that 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, contaminates, 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, contaminates, or pollutants, nor for the remediation of the site should such substances ever be identified.

G. Survey

A survey determination may be requested by the KPB at any time subsequent to the Final Finding and Decision (FFD) becoming effective. 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 state survey department. 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 those lands approved for conveyance by this decision, and 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) maintain the Alaska Heritage Resources Survey (AHRs), which is an inventory of all reported historic and prehistoric sites in the state. The Alaska State Historic Preservation Office reported during agency review identifying those borough land selections on Map overlap with sites associated with the Squilantu Archaeological

District that is of a significant historic district. This area has been mentioned that it is eligible for the National Register of Historic Places. ASHPO also states that the district is made up of dozens of individually-eligible archaeological sites and some areas within the district have been identified by the Kenaitze Indian Tribe to be potential Traditional Cultural Properties. With this said, DNR will make a condition for notification to be made to the ASHPO in accordance with AS 41.35.070(d), which is required during any type of development, if any discovery of historic, prehistoric, or archaeological sites, locations, remains or objects to contact them immediately.

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 an 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.

1. Comments from the Alaska Department of Fish and Game (ADF&G), Division of Sport Fish:

ADL 227965:

ADF&G did not review these lands at this time since DNR has indicated that they are to be postponed until the Sterling Highway has been rerouted north of the Kenai River. If these lands become available for selection, ADF&G would like the opportunity to provide comments at that time.

DNR Response: This borough selection is proposed to be conditionally approved with management authority postponed until the state has established the route of the Bypass. Until this occurs, it is imprudent to convey this selection as the state's interest heavily outweighs the borough's interest in obtaining immediate equitable title this selected area. Only when the Bypass route has been established will it be appropriate to convey those remaining portions of the conditionally approved borough land selections. The transference of management authority to the KPB would also be deferred until then.

ADL 227984: KAP UNIT 389

This area is currently used by hunters and trappers and receives seasonal moose rutting and wintering concentrations. Other high recreational use and access areas are found mainly outside the unit. ADF&G has no objection to the conveyance of the lands, but we advise the KPB to consult ADF&G prior to development occurring in this area.

DNR Response: DNR will make a condition that if the KPB proposes any development in this area (Kenai Lake Area/Map 3), that they must contact ADF&G for consultation of the area status in wildlife habitat.

KAP UNIT 408A & C

This area is popular for local hunting, trapping, and wildlife viewing due to easy access from the Seward and Sterling Highways. The area is rich in wildlife including moose, bears, wolves, and other small fur bearers. ADF&G concurs with DNR's recommendation to reject these selections.

DNR Response: Acknowledged. DNR has determined that it is in the best interest of the state to reject all of the state land in management unit 408A and the vast majority of the selected area in 408C. The only exception occurs in the NW1/4NW1/4 of Section 15 in T. 5 N., R. 2 W., SM, within management unit 408C, where 40 acres is proposed for conveyance by means of a 'special exception' under 11 AAC 55.030(f)(1)(B). This is to allow for a one-time limited variance of the KAP's provisions to allow for a new community gun range so the existing range can be relocated out of the main town area.

KAP UNIT 394B

ADF&G concurs with DNR's recommendation to reject this selection as it is currently designated Habitat and Recreation.

DNR Response: Acknowledged.

2. **Comments from the Alaska State Historic Preservation Office/ Office of History and Archaeology (ASHPO):**

Our comment specifically concerns those parcels depicted on Map 2. These three parcels overlap with sites associated with the Squilantu Archaeological District, which is a significant historic district that is eligible for the National Register of Historic Places. The district is made up of dozens of individually-eligible archaeological sites. In addition, some areas within the district have been identified by the Kenaitze Indian Tribe to be potential Traditional Cultural Properties. We believe that all three of the parcels depicted on Map 2 should be withheld from the selection so that the significant archaeological and cultural sites located therein remain subject to review under the Alaska Historic Preservation Act (A.S. 41.35).

DNR Response: DNR acknowledges the concerns of the AHSPO. DNR will require notification to be made to this office in accordance with AS 41.35.070(d), which is required during any type of development, if any discovery of historic, prehistoric, or archaeological sites, locations, remains or objects to contact them immediately. DNR notes that these same selections are conditionally approved for conveyance and may only be conveyed after the route of the Bypass has been determined. ASHPO may want to contact DOT&PF on this project prior to any development for this new road construction Bypass due to the cultural significance.

3. **Comments from Alaska Department of Transportation:**

We have no comment or objection to Kenai Peninsula Borough municipal entitlement land selections within region 4 of the adopted Kenai Area Plan. These land selections were extensively reviewed by our Right of Way section, prior to their selection by the borough.

DNR Response: DNR is aware that, according to the KAP, one of the borough land selected areas (Map 2 / Sections 27, 26 & 25) is in the area identified for the Bypass. This borough selection has been conditionally approved, but until the Bypass has been established, final conveyance is premature and is precluded.

4. **Comments received from the Department of Parks and Recreation:**

The Division of Parks and Outdoor Recreation concurs with the tentative recommendations regarding the Kenai Peninsula Borough's municipal land selections summarized on the attached spread sheet.

DNR Response: DNR acknowledges this comment.

VII. DISCUSSION AND ALTERNATIVES

A. Discussion

This Preliminary Decision for the KPB municipal entitlement selections consist of 4,325 acres. This decision approves for conveyance in total 1,710 acres of state owned land and transfers management authority to the borough once the FFD becomes effective. It also approves 40 acres by means of a 'special exception' from the KAP provisions to allow for the potential development of a community gun range. This decision furthermore conditionally approves 1,080 acres with management authority postponed, if and when the relocation of the Sterling Highway has been established within management unit 395. Additionally, this decision rejects 1,495 acres of borough land selections for multiple reasons; because of the presence of land classifications that are non-conveyable under statute; constraining management intent requirements; or because the state does not own the borough selected land.

The Agency Review process identified some principle issues. Each has been dealt with in this decision. State agencies were concerned that the areas of state land that were classified as non-conveyable classifications, especially the Habitat classification, were being treated appropriately and that management intent text that precluded or modified conveyance, was maintained. This decision does not amend the area plan (with the exception of one 40 acre area), therefore, important Habitat areas were retained by the state.

Alaska State Historic Preservation Office: They noted that the land selections along the Kenai River/Cooper Landing area are in a high interest historical area by the state. This area of selection overlaps with sites associated with the Squilantu Archaeological District, which was noted as a significant historic district that is eligible for the National Register of Historic Places. DNR has conditionally approved this area of selection until the Bypass has been established. DNR has a condition that ASHPO is to be notified if any discoveries of historic, prehistoric, or archaeological sites are found in accordance with AS 41.25.070(d).

The acreage approved for conveyance will be credited towards partial 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. The acreage conditionally approved will not be credited to the borough's municipal land entitlement and management authority is not transferred until the state comes to a decision on the route and width of the Cooper Landing Bypass and its proper width.

B. Alternatives

1. Take no action to approve, conditionally approve, 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 interest outweighs that of the borough, and there is no basis for such a determination. This alternative is rejected.
2. Reject the KPB land selections in its 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. This alternative is rejected.
3. Approve in part with management authority transferred; reject in part those selections that have been identified in KAP management intent text as not appropriate for conveyance, are not state land or valid selections, or are not properly classified; and conditionally approve a parcel (management unit 395) that is affected by the Cooper Landing Bypass with

conveyance being delayed until the final route has been established. This alternative is supported.

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. That is, it conveys appropriately classified state general grant land to the Kenai Peninsula Borough, rejects those selections that are not properly classified or are inconsistent with management intent text, and only conveys state land in management unit 395 when the design of the Cooper Landing Bypass is defined. This decision also conveys by the means of a 'special exception' 40 acres within management unit 408C that has been proposed as a site for the relocated community gun range. These actions are subject to the recommended conditions, restrictions and reservations listed below.

B. Recommended Conditions, Restrictions and Reservations.

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

1. Conditions

- a. If applicable⁴, the location of the ordinary high water mark of public waters will be determined at the time of survey in accordance with AS 38.05.127 and 11 AAC 51.
- b. The administration of state leases and permits pertinent to the surface estate will be transferred to the KPBP, once the FFD becomes effective. Administration of issued state leases and permits in the mineral estate will remain with the state.
- c. Any active state application that has not been adjudicated affected by the conveyance of approved state lands to the KPBP must be closed and that the entity can then obtain authority from the KPBP.
- d. Management authority will transfer to the KPBP on those lands approved for conveyance once the Final Finding and Decision becomes effective.
- e. Conveyance and management authority are postponed on the conditionally approved lands (management unit 395) until the identified actions in this

⁴ This condition only applies if it is determined that at the time of survey, public waters exist. In this decision, no public waters are identified.

decision have occurred, at which time, those lands be conveyed with management authority transferred.

- f. The KPB must contact ADF&G prior to any proposed development(s) in Sections 19, 30 & 31 in T. 4 N., R. 2 W., SM and in Sections 13, 24 & 25, in T. 4 N., R. 3 W., SM, to determine the status of wildlife habitat.
- g. Management authority for lands approved for conveyance occurs once the Final Finding and Decision becomes effective. The KPB may then execute conditional leases and make conditional sales prior to issuance of a state patent in accordance to AS 29.65.070(b).
- h. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of the KPB municipal entitlement pursuant to AS 29.65.010.

2. Restrictions and Reservations

Subject to:

- a. 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.
- b. 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.
- c. If applicable, reservation of a continuous public access easement, 50-foot wide upland and adjoining the ordinary high water mark of all public waters pursuant to AS 38.05.127 and 11 AAC 51.
- d. Reservation of a route for the Cooper Landing Bypass within Sections 25, 26, & 27 in T. 5 N., R. 4 W., SM, with the alignment and width to be established through the DOT/PF planning and engineering processes.
- e. Reservation for a 100-foot wide scenic buffer easement along each side of the Cooper Landing Bypass in Sections 25, 26 & 27 in T. 5 N., R. 4 W., SM.
- f. Reservation of a 60-foot wide easement overlaying the relocation of a unimproved Resurrection Pass trail easement or right-of-way, to be retained by the United States Forest Service in possibly Section 25 in T. 5 N., R. 4 W., SM.
- g. 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.
- h. 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.

- i. ADL 45003: an existing 40-foot wide easement for Chugach Electric Association in Section 16 of T. 5 N., R. 2 W., SM (NW1/4 Map 1).
- j. ADL 219510: an existing 60-foot wide easement for Chugach Electric power line in Section 15 (NW1/4NW1/4) and Section 16 (NE1/4NE1/4) in T. 5 N., R. 2 W., SM (Map 1).
- k. ADL 225620: an existing 60-foot wide easement for West Juneau Creek Road No. 1010-300 in Section 27, T. 5 N., R. 4 W., SM (Map 2).
- l. Reservation for Forest Service Chunkwood Road No. 1010-500, 60-foot wide right-of-way in Sections 25, 26 & 27 in T. 5 N., R. 4 W., SM (Map 2).
- m. Reservation of Forest Service Westside Road No. 1010-300, 60-foot wide right-of-way in Section 27 in T. 5 N., R. 4 W., SM (Map 2).
- n. Reservation of a Forest Service Hilltop Road No. 1010-320, 60-foot wide right-of-way in Section 27, T. 5 N., R. 4 W., SM (Map 2).
- o. Reservation of a Forest Service Bean Flat Road No. 1010-400, 60-foot wide right-of-way in Section 27, T. 5 N., R. 4 W., SM (Map 2).
- p. A 60-foot wide easement on an unimproved dirt road lying in the NE1/4 of Section 16 in Lot 1 in T. 5 N., R. 2 W., SM (Map 1).

C. Recommended Actions on Municipal Selections

This decision recommends conveyance of state owned VUU general grant land to the KPB with management authority transferred, and conditionally approving lands with management authority postponed until the state (DOT&PF) has determined the corridor location for the designated Cooper Landing Bypass. Additionally, it recommends conveyance of a parcel by means of a special exception that would allow the borough to relocate a community gun range. It rejects those selections of land that are not owned by the state or will not be conveyed to the state by the federal government, are improperly classified, or are to be retained by the state, consistent with the management intent text and/or land use classifications in the KAP.

1. Proposed for Conveyance

Table 3

Map # Area Name	Seward Meridian, Township, Range	Section(s)	Acres
1 Jerome Lake Area	T. 5 N., R. 2 W.,	Sec. 15: NW1/4NW1/4 ('special exception')	40
		Sec. 16: Lot 1 in the NE1/4; that remaining portion within the NE1/4NE1/4, excluding management units 408A & B, and the federal access road to federal mining claim (Mastel Mine Road).	30

Map # Area Name	Seward Meridian, Township, Range	Section(s)	Acres
3 Kenai Lake Area	T. 4 N., R. 2 W.,	Sec. 19: NW1/4SW1/4, S1/2SW1/4 Sec. 30: W1/2,SW1/4E1/2 Sec. 31: W1/2	120 400 320
	T. 4 N., R. 3 W.,	Sec. 13: SW1/4SE1/4 Sec. 24: E1/2 Sec. 25: E1/2, E1/2W1/2	40 320 480
Total			1,750

2. Proposed to be Conditionally Approved

Table 4

Map # Area Name	Seward Meridian, Township, Range	Section(s)	Acres
2 Kenai River/ Cooper Landing	T. 5 N., R. 4 W.	Sec. 25: W1/2NW1/4, NW1/4SW1/4 Sec. 26: N1/2, N1/2S1/2 Sec. 27: N1/2, N1/2S1/2	1,080

3. Proposed to be Rejected

Table 5

Map # Area Name	Seward Meridian, Township, Range	Section(s)	Acres
1 Jerome Lake	T. 5 N., R. 2 W.,	Sec. 10: NE1/4, S1/2	480
		Sec. 11: NW1/4	160
2 Kenai River/ Cooper Landing	T. 5 N., R. 4 W.,	Sec. 15: NE1/4NW1/4, NW1/4NE1/4, that portion north of the Sterling Highway in the NE1/4NE1/4	110
		Sec. 16: that portion within: management unit 408B	30
		management unit 408A, and ADL 225852 - Chugach Electric	87 8
Total			1,495

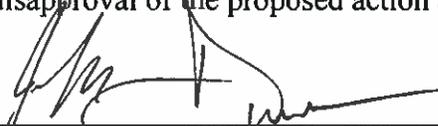
IX. FINDINGS OF THE PRELIMINARY DECISION

The following are the findings for this Preliminary Decision:

1. That it is appropriate to convey 1,710 acres of state owned VUU land to KPB. 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 approve that portion of management unit 408C of 40 acres by the means of a 'special exception' to the KPB for a potentially relocation of a community gun range. The interest of the state does not outweigh the interests of the borough to obtain the land.
3. That it is appropriate to conditionally approve 1,080 acres of state land in management unit 395, and with management authority postponed, until the determination of the route of the Bypass corridor has been established.
4. That it is appropriate to reject the majority of management unit 408C of 750 acres as the KAP has indicated that the adverse topography portion will not be conveyed to a municipality; similarly, management unit 394B, consisting of 470 acres is rejected, since it is affected by a non-conveyable classification of Wildlife Habitat.
5. That it is appropriate to reject management unit 408A, consisting of 87 acres, as this is a DOT&PF material site to be utilized for material on the Bypass corridor and upgrades of the Sterling Highway.
6. That it is appropriate to reject 150 acres in the NW1/4 of Section 34 in T. 5 N., R. 4 W., SM as it is an invalid selection.

This Preliminary Decision (PD) described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended actions may be in the best interest of the state and that it is hereby approved to proceed to public notice.

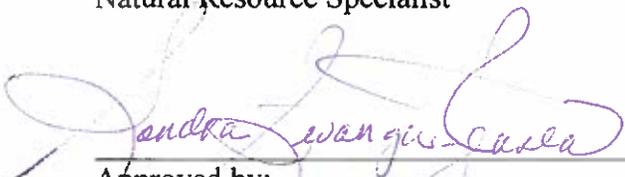
This is a PD and subsequent public review may result in changes to the preferred alternative or disapproval of the proposed action altogether.



Recommended by:
John Dwyer
Natural Resource Specialist

5-1-2014

Date



Approved by:
Sandra Swanger-Jensen, Manager
Municipal Entitlement Unit

5-1-2014

Date

PUBLIC NOTICE, DECISION AND APPEAL PROCEDURES

The public is invited to comment on this Preliminary Decision (PD or decision) proposed to transfer ownership of state land to the Kenai Peninsula Borough (KPB). The public is also invited to comment on the proposed 'special exception'. Any comments received must be in written form to the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Resource Assessment and Development Section, Municipal Entitlement Unit, Attention: John Dwyer at 550 West 7th Avenue, Suite 1050, Anchorage, Alaska 99501-3579, by fax (907) 269-8531 or electronic email to john.dwyer@alaska.gov and **must be received on or before June 2, 2014** in order to ensure consideration.

A copy of the public notice is available on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>, and a copy of the PD is available on the DNR DMLW, Municipal Entitlement website at: <http://dnr.alaska.gov/mlw/muni/>. The postmasters located in Sterling, Soldotna, Seward, Kenai, Nikiski, Homer, Ninilchik, Nikolaevsk, Nikiski, Moose Pass, Kasilof, Clam Gulch and Anchor Point and will be asked to post the public notice per AS 38.05.945. Additionally, notices will be sent to the KPB and those tribal governments in the area.

Following the comment deadline, all timely written responses received will be considered and this PD or the 'special exception' may be modified to incorporate public comments into a Final Finding and Decision (FFD) and the special exception. Only persons who comment on the municipal entitlement decision during the public comment period will be eligible to file an administrative appeal of the FFD. This requirement does not apply to the special exception. A copy of the FFD and special exception will be sent to any person who commented during the public notice period, and will include appeal instructions. Please direct any questions concerning this PD to John Dwyer at (907) 269-8531, by fax (907) 269-8915, or email: john.dwyer@alaska.gov.

The DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to the proposed actions 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# (907) 269-8411.

ATTACHMENTS

Vicinity Map

Map 1 Jerome Lake Area

Map 2 Kenai River/Cooper Landing Area

Map 3 Kenai Lake Area