

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

**FINAL FINDING AND 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. SUPPLEMENT STATEMENT**

This Final Finding and Decision (FFD or decision) supplements the Preliminary Decision (PD) issued on September 16, 2014 for the proposed actions, which is incorporated herein, except as modified or clarified by this FFD. Maps Region 1 Map 1 through Region 9 Map 2 depict the selections that are the focus of this decision; these are the same maps as included in the PD. Since many of the selections that were originally contained in these maps are affected by the recent relinquishment selections by the Kenai Peninsula Borough (borough), Maps City of Hope (Region 1 Map 1) and Eagle Lake (Region 8 Map 1) identify the relinquished selections. Borough relinquishment occurred between the date of the issuance of the PD and the FFD.

**II. RECOMMENDED ACTION**

The Department of Natural Resources (DNR) has determined in this decision that Alternative 3, described in the Preliminary Decision (PD), is the preferred action since it best fits the intent of and requirements of the Municipal Entitlement Act. The PD's recommended actions were to convey, postpone with management authority postponed, and reject certain lands as municipal entitlement selections by the borough. This decision generally follows the recommendations of the PD, conveying, postponing and rejecting certain municipal selections, but also modifies the PD slightly. The FFD approves for conveyance 693 acres (TABLE 1), postpone 271 acres (TABLE 2), and reject 272 acres (TABLE 3) of municipal selections. The KPB relinquished 1,944 acres of its selections as part of a separate action (TABLE 4). The latter action fundamentally affected the original recommendations in the PD.

**III. CONDITIONS, RESTRICTIONS AND RESERVATIONS**

This decision does not modify any of the conditions, restrictions, or reservations in the PD.

**IV. FINAL FINDING AND DECISION ACTIONS**

This FFD modifies the PD relative to the original recommendations of conveyance and postponement. This has occurred because the KPB has relinquished a portion of their land selections. The following tables list the land for conveyance to the borough (TABLE 1), lands that are postponed (TABLE 2), lands that are rejected (TABLE 3) and the lands the borough relinquished (TABLE 4).

**LANDS TO BE CONVEYED**

TABLE 1 lists those lands, totaling 693 acres for conveyance to the borough. The approved acreage for conveyance was modified from the amount in the PD; this resulted from the relinquishment of 1,744 acres of land selections by the borough. The final determined acreage is a net chargeable acreage that will be credited towards the partial fulfillment of the KPB municipal land entitlement. These lands are subject to the applicable conditions, restrictions and reservations as listed in the PD. The state will retain the beds including all the islands and gravel bars within any navigable waters and anadromous streams. The estimated acreages for conveyance does not account for any exclusions from navigable waters.

**TABLE 1**

Region	Map # Parcel Name	Seward Meridian Township, Range	Section(s) Legal Description	Acres
1	1 City of Hope	T. 10 N., R. 2 W.	Sec. 27: Gov. Lots 1 (14.71ac), Lot 2 (30.12 ac), Lot 3 (28.1ac) and 6 (36.4ac), USS 3390 Lots 3 (0.66 ac) & 5 (1.44 ac). That portion north of Hope Road in SW $\frac{1}{4}$ SE $\frac{1}{4}$ (18.2 ac)	130
5	1 Moose Point	T. 10 N., R. 8 W.	Sec. 11: Portion of Gov. Lot 1 lying east of ASLS 74-154 (8.6 ac), excluding pipeline right-of-way (ADL 69354)	9
5	2 Upper Salmon Lake	T. 8 N., R. 10 W.	Sec. 02: N $\frac{1}{2}$ SW $\frac{1}{4}$ (80 ac), excluding pipeline right-of-way (ADL 69354), Gov. Lots 3 (13.42 ac) and 4 (22.43 ac), Gov. Lot 5 (39.65 ac), excluding pipeline right-of-way (ADL 69354)	156
5	4 Salamatof Site	T. 6 N., R. 12 W.	Sec. 14: Gov. Lot 21 (2.5 ac) Sec. 23: Lot 15 EPF 58-7 (3.16 ac)	6
8	1 Eagle Lake	T. 4 S., R. 11 W.	Sec. 22: N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ (20 ac) Sec. 33: SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ (80 ac) excluding East End Road right-of-way S $\frac{1}{2}$ SE $\frac{1}{4}$ , excluding Unit 270E (44 ac)	144
8	2 Bear Cove	T. 5 S., R. 10 W.	Sec. 17: N $\frac{1}{2}$ NE $\frac{1}{4}$ (58.56 ac), USS 3355 Lot 1A to Lot 1L (48.28 ac) Sec. 19: Lot 4 Block 1 ASLS 85-225 (7.76 ac) (a small area falls within Sec. 20) Tract A Block 1 ASLS 85-225 (1.19 ac) Sec. 20: E $\frac{1}{2}$ W $\frac{1}{2}$ excluding USS 4727, 3355, 1773 (79 ac) Sec. 28: Lot 9 Block 3 ASLS 85-225 (5.27 ac) (a small area falls within Sec 29)	246

			Sec. 29: Tract 3A2 ASLS 88-95 (7.36 ac) Tract E Block 2 ASLS 85-225 (4.2 ac) Lot 3 ASLS 85-225 (11.55 ac) Sec. 30: Lot 10 Block 3 ASLS 85-225 (5 ac) Lot 2 Block 6 ASLS 85-225 (8.77 ac) N½NW¼ excluding ASLS 79-2, 73-100, 75-64 and Project Area ADL 299508 (68.38 ac)	
9	2 Ismailof Island	T. 7 S., R. 11 W.	Sec. 06: That unsurveyed parcel between ASLS 78-7 and ASLS 78-109 (2 ac)	2
<b>TOTAL: 693</b>				

**LANDS TO BE POSTPONED**

TABLE 2 lists those lands, totaling 271 acres that will be postponed by this decision until the current round of municipal selections has been completed. The amount of postponed acreage was modified from the PD as a result of the borough relinquishing 200 acres of its land selections. If these lands are eventually conveyed, the borough will receive equitable title at that time and, when surveyed, the determined net chargeable acreage will be credited towards their entitlement. These lands will be subject to the applicable conditions, restrictions and reservations as listed in the PD.

**TABLE 2**

Region	Map # Parcel Name	Seward Meridian Township, Range	Section Legal Description	Acres
1	1 City of Hope	T. 9 N., R. 2 W.	Sec. 03: SW¼ (105.2 ac) excluding USS 2761 Sec. 09: NE¼ (10.9 ac) excluding USS 2761 Sec. 10: NW¼ (154.6 ac) excluding USS 2761	271
<b>TOTAL: 271</b>				

**LANDS TO BE REJECTED**

TABLE 3 lists those lands totaling 272 acres are rejected for conveyance to the borough. The reason for this action include the land is not owned by the state, a native allotment selection affects 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.

**TABLE 3**

Region	Map # Parcel Name	Seward Meridian Township, Range	Section Legal Description	Acres
1	1 City of Hope	T. 10 N., R. 2 W.	Sec. 33: E½SE¼SE¼, excluding Gov. Lots 1 and 3 (5.14 ac)	5
5	2 Upper Salmon Lake	T. 8 N., R. 10. W.	Sec. 02: Gov. Lot 6 (34.27 ac), Gov. Lot 7 (31.36 ac)	66

5	3 Boulder Point	T. 8 N., R. 11 W.	Sec. 20: S½NE¼, SE¼NW¼ (120 ac)	120
5	5 Sevena Lake	T. 5 N., R. 10 W.	Sec. 01: NE¼NW¼ (40 ac)	40
8	1 Eagle Lake	T. 4 S., R. 11 W.	Sec. 33: Milepost 18 East End Road (36 ac)	36
9	1 Whisky Creek	T. 8 S., R. 14 W.	Sec(s). 14 and 23: Tract A ASLS 77-82 (4.86 ac)	5
<b>TOTAL:</b>				<b>272</b>

**LANDS RELINQUISHED**

TABLE 4 lists the lands that KPB relinquished. These lands will remain in state ownership.

**TABLE 4**

Region	Map # Parcel Name	Seward Meridian Township, Range	Section Legal Description	Acres
1	1 City of Hope	T. 10 N., R. 2 W.	Sec. 33: Lot 2 (34.94 ac)	35
1	1 City of Hope	T. 9 N., R. 2 W.	Sec. 04: SE¼ (66.1 ac) excluding USS 2761 Sec. 09: NE¼ (98.6 ac) excluding USS 2761	163
8	1 Eagle Lake	T. 4 S., R. 11 W.	Sec. 02: NW¼ (160 ac), N½SW¼ (80 ac), N½S½SW½ (40 ac), E½ (320 ac), S½S½S½S½ (40 ac) Sec. 11: SE¼SE¼ (40 ac) Sec. 12: SE¼SE¼ (40 ac) Sec. 13: NE¼NE¼ (40 ac) Sec. 14: NE¼NE¼ (40 ac), W½E½ (160 ac), E½E½NW¼ (40 ac), SW¼ (160 ac) Sec. 15: SE¼ (160 ac) Sec. 22: NE¼NE¼ (40 ac) Sec. 23: NE¼NW¼ (40 ac), N½SW¼ excluding ASLS 77-67 (98 ac) Sec. 27: Tract A-1 of Tract B (45.61 ac) Sec. 33: NE¼SW¼ (40 ac), N½NE¼ (80 ac), SW¼NE¼ (40 ac), NW¼SE¼ (40 ac)	1,746
<b>TOTAL:</b>				<b>1,944</b>

**V. AUTHORITY**

The authority for conveyance of state land is pursuant to AS 29.65 and the authority for the Final Finding and Decision is pursuant to AS 38.05.035(e).

**VI. PUBLIC NOTICE**

The public noticing requirements under AS 38.05.945 were met. The public notice announcing the Preliminary Decision (PD) and soliciting for public comments was published on the Alaska Online Public Notice System at: <http://dnr.alaska.gov/commis/pic/pubnotfrm.htm>, October 16,

2014. The PD and associated maps were attachments to the public notice for review and comments were to be received by October 17, 2014.

The public notice was also mailed to those post offices 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 and was asked to post the notice. Additionally, the notice was sent to the Kenai Peninsula Borough to various staff and to tribal governments.

## VII. RESPONSE TO COMMENTS

Note: The only entities to submit comments were those from the borough and the Mining Section of DMLW.

- **Comments from the Kenai Peninsula Borough, Mayor**

Please find following the Kenai Peninsula Borough's ("KPB") comments on the preliminary decision (PD) dated September 16, 2014. The KPB concurs with the result with regards to the various lands proposed for postponement, rejection, and conveyance in Regions 1, 5, 8, and 9. However, the KPB maintains the positions cited in its comments of August 19, 2014 to Commissioner Balash. In summary, the KPB has a vested municipal entitlement as of 1978 as set forth in AS 29.65 which cannot be diminished by application of conditions or designations in the KAP. The process applicable to municipal entitlement is set forth in AS 29.65, not AS 38.05. In accordance with AS 29.65 the KPB is entitled to patent without conditions or reservations that are not required by law. The letter to Commissioner Balash is incorporated by reference and included with this submittal.

Accompanying this submittal are nine DNR relinquishment forms for land addressed by the PD; these lands are specifically identified by the relinquishment document. It is the KPB's understanding that the relinquishments will not count against acreage to be conveyed to the KPB.

The Kenai Peninsula Borough Hope Sunrise Advisory Planning commission approved the proposed actions in the PD for Hope area (Region 1) on May 31, 2013.

**DNR Response:** Acknowledged.

- **Comments from the Alaska Division of Mining (DMLW)**

DNR received a comment from mining and they had no comments or objections.

**DNR Response:** Acknowledged

## VI. DISCUSSION AND FINAL FINDING AND DECISION

This Final Finding and Decision (FFD) determines that it is in the best interest of the state to convey 693 acres of state land, with management authority transferred to the borough on the effective date of this FFD. DNR has determined that there are no overriding state interests in retaining these selections, conveyance is consistent with statutory requirements under AS 29.65, and conveyance is consistent with applicable management intent requirements of the Kenai Area Plan.

This decision postpones the conveyance of 271 acres until it is determined that these lands are to be conveyed to the borough, this determination to occur within six months of the effective date of this decision.

This decision rejects the conveyance of 272 acres. The reasons for rejection vary: the land selections are either not state owned, a native allotment selection affects 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.

This FFD modifies the PD as outlined in the section recommended actions in this decision.

The following are the findings relative to this decision. I find that:

1. It is appropriate to convey approximately 693 acres of state land to the borough. The interest of the state to retain these lands does not outweigh the interests of the borough to obtain the land.
2. 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 owned by the Mental Health Trust. It is also 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 and 5 acres within Section 33 in the City of Hope area (Region 1, Map 1) because this is a state airport, and both 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 these parcels.
3. It is appropriate to postpone the conveyance of 271 acres within Sections 3, 9, and 10 of the City of Hope selection (Region 1, Map 1). This parcel is not state owned, it is only state selected. It is undetermined when, or the likelihood if the state will receive title. Until it is determined that the state selection can be conveyance to the state or received tentative approval, adjudication on this parcel will be postponed.

The findings presented above has been reviewed and considered. Public Notice has been accomplished in accordance with AS 38.05.945. The case files have been found to be complete and the requirements of all applicable statues have been satisfied. I find that it is in the best

interest of the State to proceed with the conveyances to the borough under the authority of AS 29.65.010, reject certain borough land selections for those reasons identified in this decision and postpone those certain selections that are as yet state selected.

Bruce Phelps  
Approved by:  
Bruce Phelps, Section Chief  
Resource Assessments & Development

1-23-2015  
Date

### **APPEAL PROVISION**

A person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received in writing within 20 calendar days after the date of the issuance of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to Marty Rutherford, Acting Commissioner, Department of Natural Resources, 550 West 7<sup>th</sup> Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov).

If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the department on the 31<sup>st</sup> day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court (11 AAC 02.020(a) and (b)). A copy of 11 AAC 02 may be obtained from any regional office of the Department of Natural Resources.

### **ATTACHMENTS**

Overall vicinity map  
Vicinity Maps: 1, 5, 8, & 9  
Maps: Region 1, Map 1\*  
Region 5, Maps 1-5  
Region 8, Maps 1\*, 2  
Region 9, Maps 1, 2

Note: \*identifies maps that indicate the KPB lands relinquished.