

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

FINAL FINDING AND DECISION

of a
**Proposed Land Offering in the Kenai Peninsula Borough
Anchor Point Heights Subdivision – ADL 232197**
AS 38.05.035(e), AS 38.05.045

and its
RELATED ACTIONS:
Proposed Amendment to the Kenai Area Plan
AS 38.04.065
Proposed Land Classification Order
AS 38.04.065 and AS 38.05.300
Proposed Mineral Order (Closing)
AS 38.05.185 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated November 28, 2016, which is attached. The PD and related action have had the required public review.

I. Recommended Actions

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Land Sales Section (LSS) recommends offering for sale State-owned land for private ownership within the Anchor Point Heights Subdivision project area (ADL 232197), as described in the Preliminary Decision. Surveyed parcels will be offered for future sale by a method under AS 38.05.045 *Generally*.

For the purposes of providing land for settlement in the Anchor Point Heights Subdivision project area, DNR may develop a subdivision of no more than 20 parcels varying in size from 40,000 square feet to less than 5 acres. This project area is located within the Kenai Peninsula Borough and therefore survey, platting, and access to and within the project area will be subject to the relevant subdivision standards. The project may be subdivided and offered in multiple stages.

There are three related actions with this proposal:

Area Plan Amendment: DNR DMLW proposes to amend the Kenai Area Plan (adopted in 2000, updated 2001) to

- ✓ amend the designation of approximately 19 acres of Unit 333A from Water Resources to Settlement, and
- ✓ amend the designation of approximately 19 acres of Unit 333B from Settlement to Water Resources.

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Land Classification Order: In relation to the proposed Area Plan Amendment, DNR DMLW proposes to reclassify a portion of the project area in a Land Classification Order from Water Resources to Settlement and reclassify a portion from Settlement to Water Resources.

Mineral Order: DNR DMLW proposes to close the project area to new mineral entry through Mineral Order (MO) 1174.

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

II. Authority

DNR has the authority under *AS 38.05.045 Generally* to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska provides: "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest".

For related actions, *AS 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for amendments to area plans, land classifications, and mineral orders.

III. Public Participation and Input

All State requirements for public notice and public comment input have been met as covered in detail in Section **V. Summary of Public Notice and Comments**. Further information may lead to alterations of design of this project within the parameters set forth through this decision. Should this project move forward with State approval, final subdivision design and survey will be completed by an Alaska licensed surveyor. The surveyor will submit a platting application including a preliminary plat to the local platting authority prior to survey. This process will be subject to Kenai Peninsula Borough ordinances and codes. During the process the public will have opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

Subdivision design will be submitted to the Kenai Peninsula Borough for review in accordance with Title 20 *Subdivisions* of their ordinance.

Section 20.25.090. *Notice*. This section provides for notice of public hearing and notification to affected property owners at least 14 days prior to the public hearing.

Section 20.25.100. *Approval—Commission authority—Notification required*. Within 60 days from date of acceptance by planning director, the commission shall determine if plat complies with provisions and will approve or disapprove and shall notify the subdivider of its action.

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IV. Traditional Use Findings

In accordance with *AS 38.05.830 Land Disposal in the Unorganized Borough*, a traditional use finding is required for project areas located within the Unorganized Borough. This project area is within an organized borough; therefore, no Traditional Use Finding is required.

V. Summary of Public Notice and Comments

Pursuant to *AS 38.05.945 Notice*, public notice inviting comment appeared on the State of Alaska Online Public Notices website at <https://aws.state.ak.us/OnlinePublicNotices/> and was posted on the DNR DMLW LSS website at http://dnr.alaska.gov/mlw/landsale/public_notice/ for the entire public notice period.

Notification and decision copies were sent directly to area state legislators and to multiple state agencies. Public notice was sent to other interested entities including landowners in the vicinity of the offering; additionally, parties were notified via the DNR Land Sales subscribers lists by email. Information was also posted to Twitter and Facebook. Notices were mailed to the Kenai Peninsula Borough per *AS 38.05.945 (c) (1)*, as well as Cook Inlet Region Corporation (CIRI) regional corporation per *AS 38.05.945 (c) (2)-(3)*. Additionally, notices and a request to post were sent to postmasters and librarians in the vicinity of the offering.

The public notice stated that written comments were to be received by 5:00PM, January 10, 2017 in order to ensure consideration and eligibility to appeal. For more information, refer to the Preliminary Decision.

LSS received comments from other sections of DMLW, and has considered and included those comments in the preparation of this decision.

LSS received comments from five state agencies, and four comments from five private individuals. All comments received during the public comment period are summarized below.

Agency Comments: The following agencies all submitted comments of non-objection.

Department of Fish and Game, (ADF&G)
DNR, Division of Parks and Outdoor Recreation (DPOR)
DNR Division of Oil and Gas, State Pipeline Coordinator's Section (SPCS)
DNR DMLW DPOR Office of History and Archaeology (OHA)
DNR Division of Geological and Geophysical Surveys (DGGS)

DNR DMLW LSS Response: LSS appreciates your review and response.

Individual Comments:

Two individual comments inquired about parcel location data and mapping, and about who would be eligible to participate in the land sale purchase process.

DNR DMLW LSS Response: Interest in the project is welcome, and LSS provided the relevant information to the commenters.

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Three individual comments (two identical) offered information about and recommendations for the proposed project. LSS has addressed comments in the following categories:

Practical-Legal Access: The commenters described that Motor Way is often impassable due to the steep slope and icy conditions in the winter, and Alut Ave. is often impassible due to potholes or the road being too soft in the spring and summer. Additionally, emergency services, Homer Electric, and some land-owners have had to stage their vehicles across the highway from Motor Way due to the road being impassible. One comment expressed concern with adding more land-owners without upgrading the road or adding signs to disclose the conditions of the road and lack of maintenance, and recommended land owners be informed of the limited access on Motor Way. One commenter noted that both Motor Way and Alut Avenue are impassible without four-wheel-drive. One commenter questioned the legal status of Motor Way and asked who is responsible for it.

DNR DMLW LSS Response: As discussed in the Preliminary Decision, a portion of Motor Way is located on private property and will require a reciprocal easement to connect with that portion of the easement on state-owned land. The complete easement, if issued, will be of sufficient size and location to accommodate a road meeting KPB standards. Although DMLW is not proposing to reconstruct Motor Way, the proposed establishment of this easement in conjunction with the proposed land offering will provide sufficient legal access which will allow for future upgrading to meet current borough standards. Should this project move to approval and sale, the recorded plat will provide public notice that the road will not be maintained by the Borough until the construction is brought up to KPB Road Standards. Motor Way is currently an unauthorized road on that portion of State land, and there is currently no entity responsible to maintain the improvements. Until the dedication of Motor Way is complete, any maintenance activities beyond the scope of *11 AAC 96.020 Generally Allowed Uses* may require a permit. Offering materials will inform potential purchasers of the access limitations on Motor Way and Alut Avenue. LSS will consider the one-time installation of a sign noting limited status on Motor Way, outside of the DOT ROW. LSS will consider adding a note to the subdivision plat describing that emergency services may be limited within the subdivision until roads are upgraded to KPB standards. This will be dependent upon approval through the platting action.

Water drainage: One comment described issues with water runoff on and around Motor Way. The commenter noted that in 2002 a large portion of the hill slid down onto the highway and Motor Way. The commenter described that water now drains across the Sterling Highway and onto private property, creating hazardous conditions on the highway, and limiting the use of the private property. The commenter questioned where the water and septic from additional parcels would flow. The commenter recommended that the increase to the population in this area should be studied with agencies working together to solve infrastructure problems, and recommended that the subdivision not be developed until the issues are taken care of.

DNR DMLW LSS Response: Motor Way was constructed without authorization across state-owned land, and was not constructed to KPB standards. As discussed above, the establishment of an easement along Motor Way as proposed will allow for the construction of a road meeting KPB standards, and will assist in mitigating the drainage issues described. Only a portion of the proposed lots will be located on the bluff above Motor Way and the Sterling Highway, and all on-site waste-water disposal systems will be subject to the regulatory requirements of the Department of Environmental Conservation. DNR will continue to work with the KPB, land owners, and affected agencies through the

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development of this offering. Moving forward with development of the subdivision will provide a step toward assisting in addressing some of the issues presented by encouraging legal access and by bringing new land owners into the picture. While the current project decision cannot provide an immediate solution, affected parties would be free to work with appropriate governing agencies to coordinate action steps toward resolving the concerns expressed. One potential option is for affected private parties to form a local improvement district to assist in mitigating issues.

VI. Modifications to Decision and/or Additional Information

Pursuant to public comment, field inspection, additional information, and consideration of agency comments, the recommended actions have been modified from the original proposed actions described in the Preliminary Decision. Clarification on classification depiction and acreage is also provided:

Modifications DNR will not impose a 50-foot development setback from the top edge of the bluff. DNR will inform potential purchasers of potential considerations regarding the bluff, and will recommend that purchasers employ the appropriate best building practices, and consult with a geologic engineering firm prior to any construction.

DNR will not impose a 50-foot development setback from wetlands. Where parcels will be located adjacent to state-retained wetlands, DNR will retain a portion of state-owned non-wetland areas between private parcels and those wetlands retained in state-ownership. For parcels where the ROW will be located between the parcel and the wetland areas, the ROW will provide a buffer between private development and the wetland. DNR intends to propose a R-1 Local Option Zone for the subdivision. The R-1 Local Option Zone, if approved, will provide a setback for structures of 30-feet from the front yard line, 20-feet from the rear yard line, and 15-feet from side yard lines. The approval of the R-1 Local Option Zone will be a separate action through the KPB, and subject to KPB approval. Additionally, DEC regulations pertaining to the location of waste disposal systems will control the location of these systems relative to the bluff and wetland areas. The combined reservations above will provide protection for wetlands.

DNR will not impose a 200-foot building setback from the Anchor River or its tributary north of the project area since subdivision design will not include parcels within 200-feet of the Anchor River south of the project area. A small portion of the project area may be within approximately 200-feet of the tributary of the Anchor River north of the area. However, the project area is separated from the tributary by Alut Avenue, and the intent of a river buffer has been met. Additionally, R-1 Local Option Zone provides for structure setbacks as described above, and these combined factors will provide the equivalent protection to the 200-foot building setback.

Clarifications Attachment A-2 has been slightly modified to clarify that settlement classification will include a potential right-of-way easement along the southern boundary. This easement will allow for access through the project area to land beyond the project area. The present proposed land offering project does not include any construction of this possible easement.

The preliminary decision stated that approximately 25 acres were identified for disposal. The approximate acreage to sell is corrected to 24, with another 10 acres needed for rights-of ways and easements. Total acreage to develop is 34.

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The approximate 16 acres to be changed to a settlement designation and classification as listed in the preliminary decision is corrected to 19 acres. Also, acreage to be changed to water resources and uses designation and classification in the preliminary decision is corrected to 19 acres.

Recommendation and Approval of the Final Finding and Decision follow.

VII. Final Finding and Decision

The Department recommends proceeding with the proposed action as described in the Preliminary Decision and as amended herein. Offering these parcels for sale will help meet the State’s goal to provide land for settlement for sale to the public and raise revenue for the State.

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

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

/S/

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

March 28, 2017

Date

/S/

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

24 APRIL 2017

Date

/S/

Approved by: Andrew T. Mack
Commissioner
Department of Natural Resources
State of Alaska

5/19/2017

Date

Reconsideration Provision

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may request reconsideration, in accordance with *11 AAC 02*. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040(c) and (d)* and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Ave., Ste. 1400, Anchorage, Alaska 99501; faxed to 907.269.8918; or sent by electronic mail to dnr.appeals@alaska.gov.

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on the 31st day after issuance. Failure of the commissioner to act on a request for reconsideration within 30 calendar days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with *11 AAC 02* before appealing this decision to Superior Court. A copy of *11 AAC 02* may be obtained from any regional information office of the Department of Natural Resources.