

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

FINAL FINDING AND DECISION

of a
**Land Offering in the Unorganized Borough
El Capitan West Subdivision – ADL 108376**
AS 38.05.035(e), AS 38.05.045

and its
RELATED ACTION:
Mineral Order 1192 (Closing)
AS 38.05.185 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated August 24, 2018. The PD (attached) and related action have had the required public review.

I. Recommended Action(s)

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 El Capitan West project area (ADL 108376), as described in the PD. 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 El Capitan West project area, DNR may develop a subdivision of up to 3 commercial parcels, and no more than 20 parcels for other settlement purposes. This project area is located within the Unorganized 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 is one related action with this proposal:

Mineral Order: DNR DMLW proposes to close the project area to new mineral entry through Mineral Order (MO) 1192.

Public notice for this related action 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

Final Finding and Decision

El Capitan West Subdivision – ADL 108376

Page 2 of 4

use consistent with the public interest”. Pursuant to AS 38.05.055 Auction Sale or Sealed Bid Procedures, bidders for commercial land are not required to be Alaska residents. Bidders can be businesses or non-residents. In addition, if it is deemed appropriate, DNR has the authority to develop and offer parcels larger than 5 acres under the allowances listed in AS 38.04.020 (*h*) *Land Disposal Bank*.

For related actions, AS 38.05.300 *Classification of Land*, and AS 38.05.185 *Generally* allow for 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 be approved, final subdivision design and survey will be completed by an Alaska licensed surveyor.

Within an organized borough or local platting authority, platting ordinances typically provide for an additional opportunity for review and comment on proposed platting actions. The scope of such a review is limited and specific to review of the project’s adherence to the local platting ordinance, and is the sole prerogative of a political subdivision of the State which establishes platting authority and the applicable ordinances governing such actions.

The El Capitan West project is within the Unorganized Borough and outside of any local platting authority. However, in an effort to provide additional opportunity for public participation and input, if it is determined to be feasible and practical, DMLW may hold courtesy meetings during the development of a project. DMLW conducted Public Scoping Meetings in Craig on January 12th, and Whale Pass on January 13th, 2016 to gather information about the potential El Capitan West project.

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 within the Unorganized Borough. This project area is within the Unorganized Borough. As discussed in the PD, there are no anticipated significant changes to traditional uses of the land and resources of this area as a result of the proposed action, other than a possible increase in the various traditional activities which may be practiced by private-property owners. Impacts on existing resource users will be minimized by retaining a portion of land between El Capitan Passage and FDR-15, and retaining the land along Wolf Creek (a.k.a. Turn Creek). LSS is proposing to offer approximately 100 acres of the approximately 139-acre area. Additionally, the project is generally surrounded by public lands in State or USFS ownership. No conflicts with traditional uses of the land have been discovered. Public review brought forth no new information indicating traditional use conflicts that were not apparent at the Preliminary Decision stage.

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

Final Finding and Decision

El Capitan West Subdivision – ADL 108376

Page 3 of 4

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 Sealaska 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, September 27th, 2018 in order to ensure consideration and eligibility to appeal. For more information, refer to the Preliminary Decision.

DNR DMLW LSS received comments from the State of Alaska, Department of Fish and Game; the State of Alaska, Department of Transportation; and the DNR, Division of Parks and Outdoor Recreation. No comments from private individuals were received. All comments received during the public comment period are summarized below.

DNR DMLW LSS received brief comments of non-objection from the following agencies:
Department of Transportation and Public Facilities; Department of Fish and Game; and DNR Division of Parks and Outdoor Recreation.

DNR DMLW LSS Response: Thank you for your review of the proposal.

VI. Modifications to Decision and/or Additional Information

The recommended action has not been modified from the original proposed action(s) described in the Preliminary Decision.

Recommendation and Approval of the Final Finding and Decision follow.

Final Finding and Decision

El Capitan West Subdivision – ADL 108376

Page 4 of 4

VII. Final Finding and Decision

The Department recommends proceeding with the proposed action as described in the Preliminary Decision. This action is undertaken under relevant authorities. 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.

Signature on file

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

11/9/2018

Date

Signature on file

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

11/16/2018

Date

Signature on file

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

11/21/2018

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. Under *11 AAC 02.030*, requests for reconsideration filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(6)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a) and (b)*.

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.