

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

**PRELIMINARY DECISION**  
**Forest Highway Subdivision – ADL 108464**

**Proposed Land Offering in the City and Borough of Yakutat**  
*AS 38.05.035 (e), AS 38.05.045*

**RELATED ACTION:**  
**Proposed Mineral Order (Closing)**  
*AS 38.05.185 and AS 38.05.300*

**PUBLIC COMMENT PERIOD ENDS 5:00PM, THURSDAY, AUGUST 3<sup>RD</sup>, 2017**

**I. Proposed Action(s)**

*Preliminary Decision: Forest Highway Subdivision - ADL 108464*

*Attachment A: Vicinity Map*

*Attachment B: Public Notice*

*Attachment C: Area Data Summary Table*

*Public is also invited to comment on the proposed related actions:*

*Draft Mineral Order (Closing) MO(C) 1202*

Primary Proposed Action: The primary proposed action of this Preliminary Decision of the State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Land Sales Section (LSS) is to offer for sale state-owned land within the identified project area. If approved, surveyed parcels will be offered for sale.

Located within DNR's Southeast Region, approximately three miles northeast of the Yakutat Airport within the limits of the City and Borough of Yakutat (CBY), the project area is within Section 30, Township 27 South, Range 34 East, Copper River Meridian, within the CBY. The project area consists of 7.59 acres of land owned by the CBY, 20 acres of state-owned land, and approximately 0.33 acres of unsurveyed state-owned land between the southwest corner of Alaska State Land Survey (ASLS) 71-34 and the Forest Highway. See *Attachment A: Vicinity Map* for a depiction of the project area.

In accordance with the governing area plan and for the purposes of providing land for settlement, DNR proposes to sell land within the Forest Highway Subdivision project area. The area proposed for subdivision includes Tracts B and C of the XeitlAani' (Thunder Land) Subdivision and approximately 12.5 acres of the northern portion of ASLS 71-34, which excludes the approximately 7.5 acres currently used for the Yakutat School. In order to offer these lands for sale, if approved and deemed feasible, DNR may develop a subdivision of no more than 40 parcels no smaller than 18,000 square-feet in size; all within Tracts B and C of the XeitlAani' Subdivision and approximately 12.5 acres in the northerly portion of ASLS 71-34. In a separate action (ADL 108750), if approved, DNR proposes to exchange surveyed parcels within ASLS 71-34 for Tracts B and C of the XeitlAani' Subdivision. This

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proposed project area is located within the CBY and therefore survey, platting, and access to and within the project area will be subject to the relevant CBY subdivision standards. The project area may be subdivided and offered in multiple stages.

After consideration of public comment, the size and boundaries of the project area will be described in a subsequent Final Finding and Decision, if the project proceeds to that step. Additional adjustments may be made prior to subdivision, as described in the applications to the platting authority, as needed to reserve areas for public use, minimize conflicts between uses, or ensure compliance with platting requirements. Although actions under this proposal are limited to the stated maximums, additional offerings may be authorized under future proposals, which could increase the density of privately-owned parcels within or near the project area.

Proposed Related Action(s): This related action will be developed separately, however; public notice is being conducted concurrently.

*Mineral Order (Closing)*: DNR proposes a mineral order to close the project area to new mineral entry. There are currently no mining claims identified within the project area. Refer to the Reservation of Mineral Estate subsection of this document for more information on this proposed related action.

This related action will be developed separately. However; approval of the proposed action is dependent upon one another in that one action will not proceed without approval of all actions.

Proposed Land Exchange Decision: A land exchange between the state and CBY is proposed as a concurrent action (ADL 108750) to follow the proposed subdivision of the project area. This action will be developed separately, however, public notice is being conducted concurrently.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal. Public notice for all actions is being conducted concurrently.

See **Section VIII. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, DNR moves forward with the proposal, a Final Finding and Decision will be issued.

## **II. Method of Sale**

DNR proposes to offer for sale land within the project area as described herein, through a future offering under *AS 38.05.045 Generally*.

Parcels offered through this action are offered fee-simple for the surface estate only. For more information about the land sales program, please visit the website at <http://landsales.alaska.gov>.

## **III. 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

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by AS 38.05.035(e) *Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska states "It is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

For related actions, AS 38.05.300 *Classification of Land* and AS 38.05.185 *Generally* allow for mineral orders.

## IV. Administrative Record

The project file, Forest Highway Subdivision - ADL 108464, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Yakutat Area Plan for State Lands (YAP), adopted April 1995, amended January 2004 and associated land classification files;
- *Alaska Interagency Wildland Fire Management Plan 2016*;
- *Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*;
- DNR case files: Classification Order CL 27S34ECA and Interagency Land Management Agreement (ILMA) ADL 53385, proposed Conveyance of Land Under AS 29.65.090 (ADL 108750); and
- *Overview of Environmental and Hydrogeologic Conditions at Yakutat, Alaska*. W. Holmes and J. Dorava, USGS, Open-File Report 94-713 prepared in cooperation with the FAA, 1995.

## V. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section III**.

**Authority**, is limited and specific to DNR DMLW's proposal to offer state-owned land, after the proposed land exchange decision (ADL 108750), within the defined project area for disposal and to conduct the mineral order as described herein. The scope of this proposal does not include the control of post-patent use and DNR DMLW does not intend to impose deed restrictions for this purpose. The subdivision may be conducted in multiple stages.

## VI. Description

Location: Within DNR's Southeast Region, approximately three miles northeast of the Yakutat Airport within the limits of the CBY. See *Attachment C: Area Data Summary Table* for additional information.

The project area is within the CBY and subject to the borough's platting authority.

*Native Regional and Village Corporations*: The project area is within the boundaries of the Sealaska regional corporation. The village of Yakutat is within 25 miles of this proposed action and notice will be sent to Yak-Tat Kwaan Incorporated and Yakutat Tlingit Tribe.

Legal Description:

- The entirety of ASLS 71-34 (Plat #640), containing 20.00 acres more or less;

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- Approximately 0.33 acres of unsurveyed land between the southwest corner of ASLS 71-34 and the Forest Highway; and
- Tracts B and C of the XeitlAani' (Thunder Land) Subdivision, Plat 92-27, 7.59 acres more or less (currently owned by CBY).

All within Section 30, Township 27 South, Range 34 East, Copper River Meridian located within the Juneau Recording District, First Judicial District, Alaska.

Title: Information from Title Report No. 8349, current as of January 21, 2016 indicates the State of Alaska holds fee title to the land and mineral estate within the project area under Patent 50-84-0162, dated February 7, 1984. The applicable state case file is NFCG 2. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

### *State Reservations of Title:*

*Retention of and Access to Mineral Estate*: In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation [of Rights to Alaska]*, the state retains ownership of the mineral estate that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper and silver, etc.), and leasable minerals (such as oil, gas, coal, etc.).

The state and its successors reserve the right to enter onto the land for the purposes of exploring for, developing, and producing these reserved mineral resources. Access reserved to these retained interests is superior to any and all surface uses. The state may also lease these retained interests to mineral developers or allow mining locations to be staked. However, *AS 38.05.130 Damages and Posting of Bond* also provides that the land estate owner will be compensated for damages resulting from mineral exploration and development.

*Navigable Waters*: Per *AS 38.05.126 (b) Navigable and Public Waters*, "...the state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the state's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made and access will be reserved per *AS 38.05.127 Access To and Along Public and Navigable Water*. For more information, see [Access To, Within, and Beyond Project Area](#) subsection of this document.

The Bureau of Land Management has determined that there are no waters determined navigable within the project area.

Where they exist within the project area, state third-party interests will be described in land sales brochures.

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Physical Characteristics and Hazards: Attachment C: Area Data Summary Table describes the project area's physical characteristics. Information about the project area is based on internal research, information received during agency review, and a field inspection conducted by LSS on February 3 and 4, 2016. This is by no means a complete description of the project area and if this proposal is approved and the area offered for sale, it will be the responsibility of interested parties to inspect individual parcels prior to purchase to familiarize themselves with the physical characteristics of the land.

*Soils:* Surficial soils within the project area generally consist of a thin mat of organic material overlying gray sandy gravel containing cobbles and boulders. Well logs from approximately one-half mile north of the project area show sands and gravels typically containing cobbles and boulders near the surface; deeper sections of the well transition more to silts and clays that exclude very coarse sediments. The vegetation within the project area is primarily Sitka spruce and hemlock.

*Wetlands:* Wetlands exist within the northwest portion of ASLS 71-34 and Tract B of the XeitlAani' (Thunder Land) Subdivision within the project area, consisting of a small, hanging pond. Wetlands will be considered in subdivision design.

*Geologic Hazards:* According to information provided by DNR, Division of Geological and Geophysical Surveys, the tsunami hazard is likely very low to nonexistent within the project area. The proposed subdivision is in close proximity to known active faults with potential to significantly impact the area, and there is potential for sporadic permafrost to be present in area soils.

*Fire Hazards:* Pursuant to observations from the February 2016 field inspection, fire risk in the area is likely low. Fire protection in Yakutat is provided by a volunteer fire department.

Fire management options and policies for the area are identified in the Alaska Interagency Wildfire Management Plan available from DNR Division of Forestry. The current fire management option for most of the project area is Limited. The policy on areas with the Limited management option reads, "Limited Management option fires are assigned the lowest resource allocation priority." It also states that the designation of a fire management option does not ensure protection from wildfire, and that a protection response will be based on various factors. "Ultimately it is the personal responsibility of the [landowner] to mitigate and minimize risk to their property and structures and to be 'Firewise'."

*Flood Hazard:* There is no Flood Insurance Rate Map available for the project area. There is potential for seasonal flooding and erosion of parcels adjacent to water bodies, especially in low-lying areas. The U.S. Geological Survey reports that flood hazards in Yakutat are low and typically result from high water in local rivers, such as the Situk River, or coastal areas during tide surges and tsunamis.

*Water Resources:* All surface and subsurface waters on all lands in Alaska are a public resource, subject to appropriation in accordance with the Alaska Water Use Act (AS 46.15). There are three subsurface water rights within a mile of the project area. Information from well logs for the CBY community water supply indicate that well depths

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in the vicinity typically range from 81 to 335 feet. Water quality from the potable water supply wells is documented by the CBY.

Background: The state acquired the land within the project area under statehood entitlement, National Forest Community Grant for the purpose of furthering the development and expansion of communities. In 1973 the CBY requested patent to the land within ASLS 71-34, however, the State of Alaska was unable to do so since it had not yet received patent from the federal government. The state received tentative approval for the land in 1968, and patent for the surface and mineral estate in 1984. The CBY acquired the land for the XeitlAani' (Thunder Land) Subdivision as part of CBY's municipal entitlement, of which Tracts B and C are part of the project area. The CBY requested conveyance of the land within ASLS 71-34 in 2005 and 2014, and negotiations proceeded via proposed public and charitable use sales. The state and CBY were not able to bring these negotiations to resolution.

In 2015 CBY approached DMLW to request the subdivision and sale of the norther portion of ASLS 71-34 to meet the housing demand related to a health clinic scheduled for construction in 2018. In February 2016, DNR DMLW representatives visited Yakutat to meet with CBY and Yak-Tat Kwaan, Inc. representatives, and to conduct a field inspection around ASLS 71-34 to help determine routes of access and site limitations. The 2016 proposal included the subdivision and sale of only the northern portion of ASLS 71-34, and included a public and charitable sale of the southern portion (school site) within ASLS 71-34. The CBY agreed with the original proposal and agreed to grant DNR waivers for CBY subdivision development requirements (e.g. road and utility development). The CBY also agreed with providing access to the north half of a proposed subdivision within ASLS 71-34 from Lake Street, crossing through Tracts B and C of the XeitlAani' (Thunder Land) Subdivision. The CBY subsequently retracted these agreements in late 2016, and the state ended the proposed conveyance process. Because the need for housing associated with the new health clinic remains unmet, negotiations between the state and CBY resumed in early 2017. These negotiations led to the current proposal of subdividing the project area and (as a concurrent proposal) exchanging surveyed parcels.

DNR DMLW proposes to subdivide approximately 12.5 acres in the northern portion of ASLS 71-34, and the entirety of tracts B and C of XeitlAani' Subdivision. Subsequent to the subdivision of the project area, but prior to offering parcels for sale, the state and CBY propose a land exchange of surveyed parcels within the northern portion ASLS 71-34 for Tracts B and C of the XeitlAani' (Thunder Land). The exact number of parcels and acreage proposed for exchange is not currently known, but will be of approximate equal value, as described proposed land exchange (ADL 108750). This proposed subdivision and exchange will provide saleable parcels for the state and provide surveyed parcels for CBY near existing CBY infrastructure.

The CBY operates the Yakutat School on state-owned land through an ILMA (ADL 53385) managed by the Department of Transportation and Public Facilities (DOT&PF). The ILMA includes the entirety of ASLS 71-34. If this proposal is approved, LSS will coordinate with DNR DMLW Reality Services, DMLW Southeast Region Lands Section, and DOT&PF to reduce the ILMA to exclude the proposed subdivision development area. DNR anticipates that this will reduce the ILMA acreage to approximately 7.5 acres.

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The approximately 7.5-acre southerly portion of ASLS 71-34 containing the Yakutat School site will not be a part of either the proposed sale or land exchange. The Forest Highway Subdivision project area includes an approximately 0.33-acre parcel of unsurveyed land, south of ASLS 71-34. This parcel is included in the project area to be surveyed along with ASLS 71-34 and tracts B and C of XeitlAani' Subdivision. This parcel is not proposed for inclusion in either the sale or land exchange.

The land surrounding the project area is largely owned by the CBY, primarily by land transferred from the state under municipal entitlement. Immediately west of ASLS 71-34 is largely undeveloped, whereas the eastern side is bounded by the developed XeitlAani' (Thunder Land) Subdivision and a parcel leased by the state to the Corporation of Catholic Bishop of Juneau. Clearing of vegetation around the XeitlAani' (Thunder Land) Subdivision may have extended into the eastern portion of ASLS 71-34. Tracts B and C of the XeitlAani' (Thunder Land) Subdivision, owned by the CBY, are immediately north of ASLS 71-34. Current developments within Tracts B and C include Lake Street (not depicted on Plat 92-27) and potable water service that runs along Lake Street. Yakutat Power provides electricity to homes on either side of Tract B, but electric service does not currently extend along Tract B. Lands south of ASLS 71-34, south of the Forest Highway are primarily CBY and privately owned.

A Public Scoping Meeting was held in Yakutat on Thursday, February 4, 2016 at Yakutat City Hall. Information about the project area, including size and number of parcels were shared with the attendees. Three members of the public participated in the scoping meeting. Attendees expressed concern that the project would not move fast enough to meet the need for providing housing for the influx of employees at the new health clinic. All attendees supported moving the proposed project forward. Meeting attendees also expressed some concern about the DNR land sale auction process, as people outside of the community could buy parcels and may not develop them. The information received during the scoping meeting is considered in the development of this proposal. The specifics of this proposal are different than as discussed during the scoping meeting, however, the general intent of providing CBY with subdivided parcels for housing development and the state with land for disposal remain unchanged.

The proposed subdivision within the project area, and concurrent proposed land exchange, will help fulfill a longstanding need for additional land for development within the CBY. This need is especially crucial now given the anticipated timeline for construction of a health clinic. The state will benefit by having subdivided parcels with developed access and partial utilities that can be offered for sale.

Planning and Classification: The project area was not captured in the Yakataga Area Plan (YAP), adopted April 1995 and amended January 16, 2004. The land within the project area was previously classified Residential per the Classification Order CL27S34ECA, and considered Settlement under 11 AAC 55.277. However, the YAP provides guidelines for management, classification, and conveyance of isolated parcels of state land without requiring a plan amendment under the areawide guidelines for land classified Settlement. The YAP states that such parcels near other state land are to be managed following the management intent and guidelines that apply to adjacent lands. The project area is generally surrounded by subunits 8a2, 8a3, and 8a5 in the YAP, all of which are designated

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and classified Settlement. DMLW LSS will request a classification determination prior to offering of the proposed land sale.

*Unit 8A Considerations:* LSS reviewed the management intent, management guidelines, and resource allocation tables for the subunits that generally surround the project area (8a2, 8a3, and 8a5). The management intent for subunits 8a2, 8a3, and 8a5 include promoting sale, lease, or permitting for private commercial, industrial, residential, or community uses. The only management guideline that applies to subunit 8a5 states that the bed of Ophir Creek is closed to mineral entry for protecting fish habitat and water quality. Subunits 8a2, 8a3, and 8a5 have timber potential or value. Subunits 8a2 and 8a5 were previously proposed for land sales.

*Area-wide Considerations:* LSS reviewed the area plan's guidelines in Chapter 2 Areawide Land Management Policies regarding Heritage Resources; Public and Private Access; Settlement; Shoreline and Stream Corridors; and Transportation and Utilities. These considerations will be incorporated into the design and development of the project. Lands to be retained in public ownership, conditions, and reservations will be included on the plat and in offering materials as appropriate. Specific area-wide management intent and management guidelines affecting this proposal are discussed below.

**Heritage Resources:** Area-wide management guidelines provide that the state will protect heritage resources by encouraging heritage resource investigations on public lands. Furthermore, the DNR Office of History and Archaeology (OHA) will determine which areas have high potential for containing important heritage resources and lack sufficient information to identify and protect these resources. In such areas, DNR land managers will contact the OHA prior to implementing projects, land offerings, or other authorizations. OHA was consulted during the development of this proposal, and noted that the project area is within the Yakutat Landing Field Historic District (YAK-00072), and OHA does not believe YAK-00072 will be affected by the project. See section **VII. DMLW and Agency Review** for more information.

**Public and Private Access:** Area-wide management guidelines provide that public access to areas with significant public resource values should be retained or improved by retaining means of access in public ownership, reserving rights of access when selling or leasing state land, acquiring access, or asserting rights-of-way. Reasonable access will be accommodated across state lands to other public and private lands. Existing legal access will not be precluded unless equivalent access is available. There are no trails identified in the project area, however, the state will retain easements as appropriate to maintain access through and within the project area. See the *Access To, Within, and Beyond Project Area* section for more information.

**Settlement:** Area-wide management guidelines provide that DNR should coordinate land offerings with similar programs of the CBY. DNR should consider joint land offerings with the local governments and consider CBY plans for road extensions and levels of service in different areas. In deciding whether to offer state land for disposal, DNR should consider land offerings from other entities and the availability of land for settlement within the local market. The proposed decision for subdivision



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of the project area and a concurrent proposed land exchange between the CBY and DNR are consistent with this areawide guideline. The Mental Health Trust Land Office offered three parcels for sale within a subdivision between the project area and the Yakutat airport, however, the auction for these parcels closed on March 31, 2017. This proposal will make additional land available within the area, and help meet the need for housing for the Yakutat medical facility.

Settlement guidelines also provide that in designing land offerings, DNR should retain greenbelts, public use corridors, water supply areas, buffer areas, materials sites, roads, parks, and other public facilities as appropriate to help further sound land use pattern in developing areas. Subdivision design will preserve and enhance the natural setting and will take into account site limitations such as slope, drainage, soils, and erosion to ensure that land is buildable and environmental impact can be mitigated.

Shoreline and Steam Corridors: Area-wide management guidelines provide that DNR should reserve public access to waterbodies when transferring land out of state ownership, and should apply a 50 foot building setback from all non-anadromous lakes, streams, and tidelands where feasible and prudent to protect public values and habitat. There are no public waterbodies within the project area. Therefore, no setbacks are needed.

Transportation and Utilities: Area-wide management guidelines provide that DNR should identify appropriate locations of access for land offerings in coordination with the DOT&PF. Where feasible, surface access routes should be jointly used and designed to accommodate future development. Roads, berms, pads, and other developments should be routed to avoid wetlands, tideflats, and streams, minimize the alteration of natural drainage, and avoid significant long-term impacts to recreation and water resources. Subdivision design will design access to mitigate impacts where appropriate.

The proposed offering is consistent with area-wide land management policies and general management intent of the YAP and the specific management units surrounding the project area.

*Mineral Activity and Order(s):* No mineral activity has been identified on these lands.

The entirety of the project area will be closed to mineral entry (approximately 28 acres) if the mineral order is approved in accordance with *AS 38.05.185 Generally* and *AS 38.05.300 Classification of Land* for a land disposal. Closing the entire area to mineral entry is consistent with the management intent of the YAP for Unit 8A.

Mineral closing orders, where established, close an area to new exploration and development of locatable minerals. Such mineral orders do not apply to leasable minerals (such as: oil, gas, coal, etc.), or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, *AS 38.05.130 Damages and Posting of Bond* stipulates that the land estate owner will be compensated for damages resulting from exploration and development.

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Mining activity for locatable minerals would be incompatible with the past, current, and proposed land estate uses for land disposals. To allow new mineral location within the boundaries of the parcels encompassed by this decision could create serious conflicts between land estate and mineral estate users. Area plan mineral estate management policy states that, in general, areas scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between land estate and mineral estate users.

Local Planning: The project area is within the CBY and property purchased through this proposed offering will be subject to the applicable zoning, ordinances, and restrictions of the borough. The project area is within the boundary of the City and Borough of Yakutat Comprehensive plan. Review of that plan did not indicate any conflicts with proposed land disposal. The project area is shown in the Comprehensive Plan as mixed use (ASLS 71-34) and residential (Tracts B and C, Plat 92-27) future growth designations, both of which anticipate residential development.

Traditional Use Finding: The project area is located within the CBY and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. However, information on current or traditional use is welcomed and can be given during the public comment period. See the Section VIII Submittal of Public Comments at the end of this documents and Attachment B: Public Notice for details on how to submit comment.

Access To, Within, and Beyond Project Area: Access to the project area is provided by the Forest Highway to the Yakutat School for ASLS 71-34 and by Lake Street from GaGaan Deiyi' Road for Tract B within the XeitlAani' (Thunder Land) Subdivision. The Forest Highway near the project area is maintained by DOT&PF in winter at priority level two, meaning that they could take up to 36 hours to clear the road after a winter storm. Lake Street and GaGaan Deiyi' Road are maintained by the CBY. There is a foot path between the eastern boundary of ASLS 71-34 and the XeitlAani' (Thunder Land) Subdivision, accessing the Yakutat School site. There is no easement on this foot path across private property to the east or on ASLS 71-34. If this foot path is within the boundaries of the subdivision parcels proposed for sale, final subdivision design may reserve an easement or alternative easement if appropriate. Subdivision design will take into account topography and access to lands beyond the project area boundaries. The project area is subject to the platting authority of the CBY. Approval of platting actions and dedication of right-of-ways will require separate processes and public notices through the borough.

*Access To and Along Public or Navigable Waters:* In accordance with *AS 38.05.127 Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or right-of-ways as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or right-of-ways under this statute include *11 AAC 51.035 Determination of Navigable and Public Water* and *11 AAC 51.045 Easements To and Along Navigable and Public Water*.

For the purposes of *AS 38.05.127*:

- navigable waters are generally lakes larger than 50 acres in size or streams larger than 50 feet in average width;

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- public waters are generally lakes larger than 10 acres in size or streams larger than 10 feet in average width; and
- waters may be determined public or navigable consistent with *AS 38.05.965 (18) Definitions*.

DNR has not identified any public, navigable, or anadromous water bodies within the project area. If any such water bodies are discovered, parcels will be subject to access reservations in accordance with *AS 38.05.127 Access to Public or Navigable Water*, and a 100-foot building setback from the OHW of the water body.

*Easements, Setbacks, and Retained Lands:* Subdivision design may include a variety of easements, setbacks, and retained lands, which will be identified on the subdivision plat and included in related informational documents. Final width and location of easements and reservations will be determined as part of the local platting process, which will include an additional opportunity for public participation.

Parcels and subdivision design may be subject to a variety of reservations or restrictions where appropriate:

- a public access easement;
- an utility easement;
- a 5-foot survey easement from the nearest practical point on the property boundary to control monuments within the parcel and an easement with a radius around the control monument, and as applicable, a 5' direct line-of-sight easement from the control station to an azimuth mark or other control monument; and
- additional reservations and/or restrictions required through the local platting authority.

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

Hazardous Materials and Potential Contaminants: During ground field inspections conducted on February 3, 2016, field staff did not observe any environmental hazards within the project area. There are no known environmental hazards present within the project area, however, the state makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for conveyance. The state further assumes no liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances eventually be found. Interested parties are encouraged to inspect the property and familiarize themselves with the condition and quality of the land prior to bid or application submittal.

DNR DMLW recognizes there are potential future environmental risks when previously vacant land is occupied. Many of the activities increasing these potential risks are regulated by other agencies, such as the regulation of septic system installation by the State of Alaska, Department of Environmental Conservation. This risk is no greater than when

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vacant private land undergoes development. Given that this land was specifically designated Settlement for transfer into private ownership, and given the high degree of interest from both the legislature and citizens in transferring state-owned land into private ownership, the Department is of the opinion that the benefits of offering the land outweigh the potential risks.

Survey, Platting, and Appraisal: After evaluation of public comment and conditions of the land, DNR will determine if it is in the state's best interest to offer the proposed project area. In order to offer the property, a combination of survey, subdivision, and/or platting actions may be required.

This proposed project area is located within the CBY, and therefore survey and platting will be subject to the relevant subdivision standards. The borough's platting requirements provide for separate public notice periods and processes for platting actions. These additional opportunities for public involvement occur after an approved Final Finding and Decision, if one is issued.

In accordance with *AS 38.05.840 Appraisal*, an appraisal meeting DNR DMLW standards will be required within two years of the date fixed for the sale of any parcel developed under this proposed action. Even though the sale of project area parcels in multiple offerings over time will mitigate "flooding" the market, the two year appraisal requirement must still be followed.

Project research and development includes consideration of economic factors utilizing market data and project development costs compiled by DNR staff, which determines the economic feasibility of a project. Since it commonly takes several years for the project development process, AS 38.05.840 ensures the current market conditions are addressed in order to obtain a realistic minimum bid for the sale of state land.

## **VII. DMLW and Agency Review**

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from March 8, 2016 through April 8, 2016 concurrently with other separate, proposed projects. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision, if one is issued.

DNR DMLW LSS received brief comments of non-objection from the following agencies: Mental Health Trust Land Office, DNR Division of Parks and Outdoor Recreation, and DNR Division of Agriculture.

*DNR DMLW LSS Response:* LSS appreciates your review of the proposal.

*DNR Division of Geological and Geophysical Surveys (DGGS) Comment:* The proposed subdivision is in close proximity to known active faults with potential to significantly impact the area and the region's overall seismic hazard potential is high. Best building practices should be used to accommodate the regional seismic hazard. The proposed subdivision is

## **Preliminary Decision**

Forest Highway Subdivision – ADL 108464

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at an elevation higher than the maximum tsunami inundation modeled for Yakutat, therefore the tsunami hazard is likely very low to nonexistent. Yakutat is in the zone of sporadic permafrost, meaning that 10-50 percent of the area may be perennially-frozen ground. There is an unevaluated potential for heavy minerals in the ancient coastal sediments of this upland region, however, this potential is not worth delaying development of the surface estate. There are no potential energy resources in the immediate vicinity of the proposed subdivision.

*DNR DMLW LSS Response:* LSS appreciates your comments.

### *DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA)*

*Comment:* The Alaska Heritage Resource Survey database indicates that the Yakutat Landing Field Historic District (YAK-00072) cultural resource site boundaries encompass the proposed area of the subdivision. OHA does not believe that YAK-00072 would be adversely affected by the proposed subdivision. Further development in the area after the subdivision occurs may warrant another review under federal or state historic preservation law. Since only a very small portion of the state has been surveyed, should inadvertent discoveries of cultural resources occur during the duration of the project, OHA should be notified to evaluate whether the resources should be preserved in the public interest.

*DNR DMLW LSS Response:* LSS appreciates your comment.

OHA will be notified if any cultural or historical sites are discovered during subdivision development. Offering materials will inform potential purchasers that any discovery of cultural or historic sites must be reported to OHA.

The following agencies or groups were included in the agency review but no comment was received:

- Alaska Railroad;
- Department of Environmental Conservation;
- Alaska Department of Fish and Game;
- Department of Natural Resources,
  - Division of Forestry;
  - Division of Oil and Gas;
  - Office of Project Management and Permitting;
  - State Pipeline Coordinator's Office;
- Department of Environmental Conservation;
- Department of Transportation and Public Facilities; and
- Southeast Soil and Water Conservation District.

## **VIII. Submittal of Public Comments**

**See Attachment B: Public Notice for specific dates and conditions.**

Pursuant to AS 38.05.945 Notice, DNR is issuing public notice inviting comment on this Preliminary Decision and draft mineral order.

## **Preliminary Decision**

Forest Highway Subdivision – ADL 108464

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In accordance with *AS 38.05.946 (a) Hearings*, a municipality or corporation entitled to receive notice under *AS 38.05.945 (c)* may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LSS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision or draft mineral order, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposals are approved and no significant change is required, the Preliminary Decision and draft mineral order including any deletions, minor changes, and summary of comments and LSS responses will be issued as a subsequent Final Finding and Decision and Mineral Order 1202 without further notice. All related actions will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without approval of all actions.

Only persons from whom DNR DMLW LSS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the Final Finding and Decision and Mineral Order 1202. Upon approval and issuance of these actions, a copy of the decision and order will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration process to any party who provides timely written comment.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact the Department's Public Information Center. For more information refer to *Attachment B: Public Notice*.

### **DEADLINE TO SUBMIT WRITTEN COMMENT IS 5:00 PM, THURSDAY, AUGUST 3<sup>RD</sup>, 2017**

#### **X. Alternatives and Discussion**

DNR DMLW is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision within the northern portion of ASLS 71-34 and Tracts B and C of Plat 92-27, consisting of up to 40 parcels no smaller than 18,000 square-feet in size. This proposal includes the mineral order and concurrent proposal to exchange surveyed parcels between the state and the CBY. Surveyed parcels within state ownership subsequent to the proposed exchange will be offered for sale. The development and offering of these parcels may be completed in multiple stages.

Alternative 2: (Status Quo) Do not create the proposed subdivision nor offer this project area for private ownership. Retain the land in state ownership.

## **Preliminary Decision**

Forest Highway Subdivision – ADL 108464

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Article VIII, Section 1 of the Alaska Constitution states, in part, that. “it is the policy of the State to encourage the settlement of its land...” Furthermore, *AS 38.05.045 Generally* has placed this charge with DNR, and the legislature has provided funding to administer the land sale program.

Alternative 1 provides a method for DNR to help meet the obligations laid out in the Constitution and statute, and maximizes public interest. This offering provides an opportunity for the public to obtain land for settlement in a desirable area. This proposal, if approved in a subsequent Final Finding and Decision, will allow DNR DMLW to create and design a subdivision which will provide for the best use and development of the land and financial return to the state.

Alternative 1 provides the greatest opportunity for more Alaskans to purchase land within this area. Due to the request of the CBY for subdivided parcels adjacent to the Yakutat School and the immediate need for housing within the CBY, the project area is better suited to subdivision prior to offering. Alternative 1 is preferred.

Alternative 2 is not preferred. The Legislature and the public have indicated a desire for DNR DMLW to offer state-owned land for private ownership. Retention of this land would inhibit DNR DMLW from meeting its Constitutional, statutory, and legislative obligations. Not offering the project area would deny many Alaskans the opportunity to obtain land in an area that is suited to settlement and would not assist the CBY in their need to develop housing within the community. The related actions are necessary to allow for the offering of the project area. The primary action and related actions are dependent upon one another, and if DNR DMLW does not approve the project, the related actions will not be processed.

For the aforementioned reasons, Alternative 1 is the preferred alternative. Recommendation follows.

**Preliminary Decision**

Forest Highway Subdivision – ADL 108464

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**IX. Recommendation**

This Preliminary Decision for the proposed disposal of state lands and Mineral Order 1202 described throughout this document and its attachments is consistent with the overall management intent for state-owned land. Alternative 1 is the preferred alternative because it provides the maximum opportunity for offering state land to the public, and helps meet the mission of the land sales program. The Preliminary Decision described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the state and that it is hereby approved to proceed to public notice.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of state lands and Mineral Order 1202. If the decision is approved, Mineral Order 1202 will accompany and precede any Final Finding and Decision issued.

/S/

Prepared by: Colin Craven  
Natural Resource Specialist III  
Land Sales Section  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

June 29, 2017

Date

/S/

Approved by: Tim Shilling  
Natural Resource Manager II  
Land Sales Section  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

June 29, 2017

Date

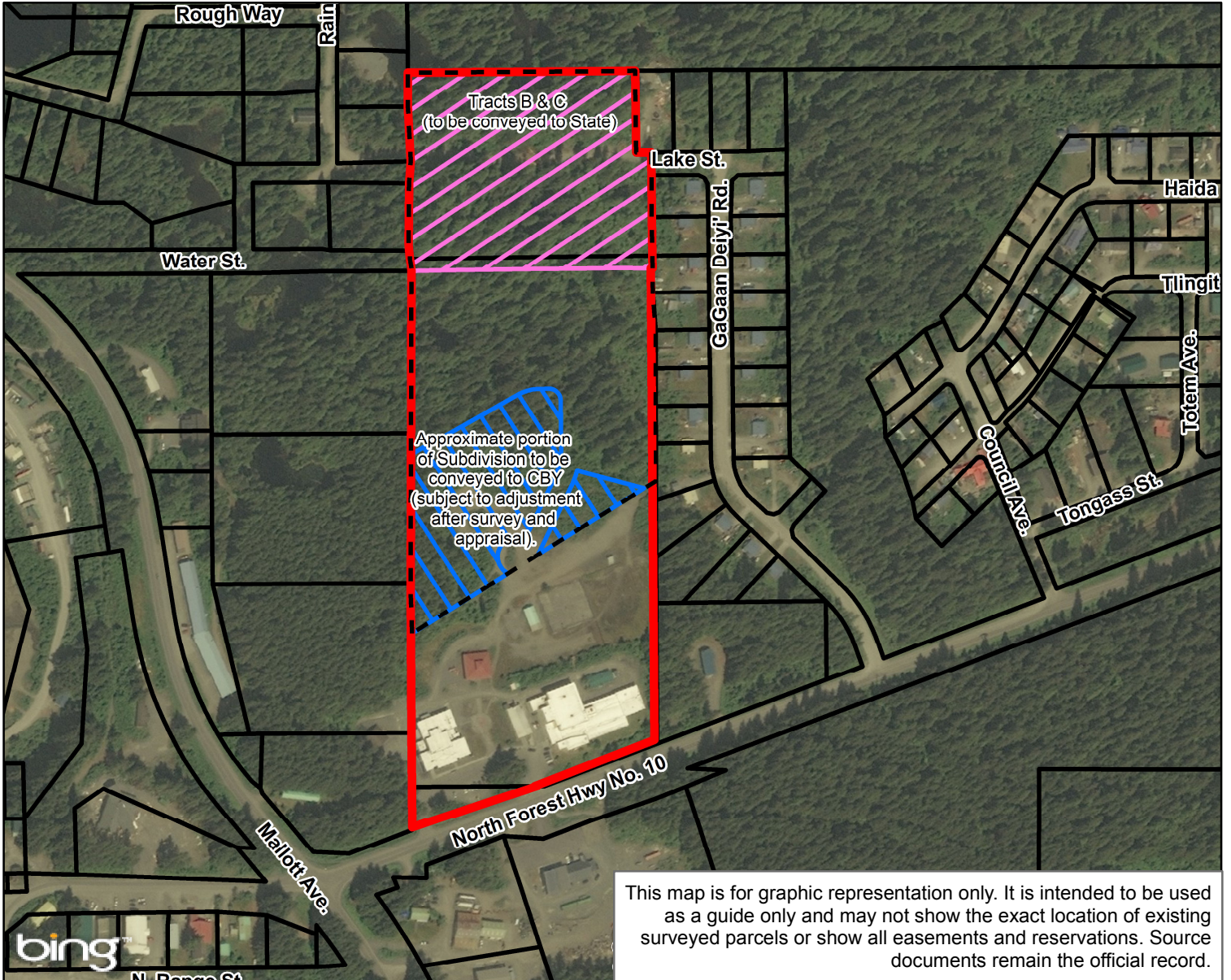




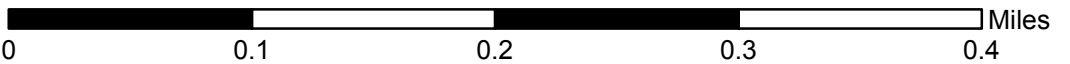
# Attachment A: Vicinity Map

## Proposed Forest Highway Subdivision - ADL 108464

## Proposed Yakutat Land Exchange - ADL 108750



This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



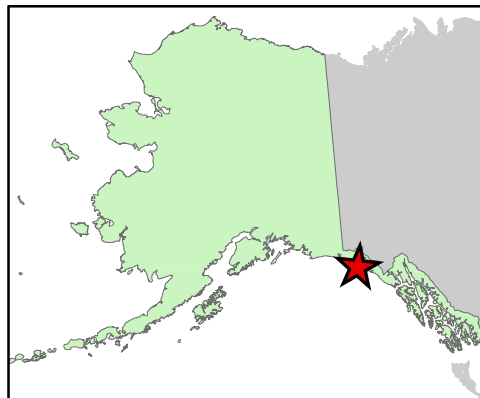
- Project Area
- CBY to State
- State to CBY
- Subdivision Area

**C027S034E, Section 30**

TAS 04/04/2017

**USGS QUAD 1:63,360**

Yakutat C-5  
 For more information contact:  
 Colin Craven  
 Department of Natural Resources  
 Division of Mining, Land, and Water  
 Land Sales & Contract Administration Section  
 Phone 907.451.2730  
 Fax 907.451.2751  
 Email: [land.development@alaska.gov](mailto:land.development@alaska.gov)



**STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND, & WATER  
LAND SALES ADMINISTRATION SECTION**

**ATTACHMENT B: PUBLIC NOTICE**

Requesting Input for  
a Proposed Land Offering:  
**Forest Highway Subdivision – ADL 108464**  
a Preliminary Decision and its Proposed Related Actions:  
Mineral Order (Closing) MO 1202  
and  
a proposed exchange of land under AS 29.65.090  
**Municipal Land Exchange – ADL 108750**

**COMMENT PERIOD ENDS 5:00PM, THURSDAY, AUGUST 3<sup>RD</sup>, 2017**

This proposed project includes offering for sale surveyed parcels in a future offering under the method and the related actions as described in the Preliminary Decision document. The project may be subdivided and offered in multiple offerings over time.

Location: Within DNR's Southeast Region, approximately three miles northeast of the Yakutat Airport within the limits of the City and Borough of Yakutat (CBY).

Land Offering project size: ~20 acres proposed development area, up to 40 parcels no smaller than 18,000 square feet.

Land Exchange: If approved, CBY will exchange approximately 7.59 acres for an approximate equal value of subdivided parcels.

To obtain the notice, Preliminary Decision for the land offering, draft Mineral Order, Preliminary Decision for the land exchange, or instructions on submitting comment, go to <http://landsales.alaska.gov/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10AM and 5PM in Anchorage at 907.269.8400 (TDD for the hearing impaired: 907.269.8411) or Fairbanks at 907.451.2705 (TDD for the hearing impaired: 907.451.2770), or the Southeast Land Office in Juneau at 907.465.3400 (TDD for the hearing impaired: 907.465.3888), or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Thursday, August 3<sup>rd</sup>, 2017.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on either the Preliminary Decision for the land offering, draft Mineral Order, Preliminary Decision for the land exchange for which notice is being conducted concurrently. If commenting on more than one proposed action, separate comments should be submitted for each. **The deadline for public comment is 5:00PM, THURSDAY, AUGUST 3<sup>RD</sup>, 2017.** Only persons from whom DNR DMLW LSCAS receives timely, written comment during the identified comment period will be

eligible to file an appeal of the Final Finding and Decision. Written comment may be received by fax, email or postal mail. To submit comments or for direct inquiries, contact Colin Craven, 3700 Airport Way, Fairbanks, Alaska 99709, fax # 907.451.2751, [land.development@alaska.gov](mailto:land.development@alaska.gov). If you have questions, call Colin Craven at 907.451.2730.

If no significant change is required, the land offering preliminary decision and mineral order, and the land exchange preliminary decision, including any minor changes and a summary of comments and responses, will be issued as final findings and decisions without further notice. A copy of the final findings and decisions will be sent to any persons who commented timely on the preliminary decision.

DNR reserves the right to waive technical defects in this notice.

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

**ATTACHMENT C: AREA DATA SUMMARY TABLE**

to the  
**Preliminary Decision**

for a  
**Proposed Land Offering in the City and Borough of Yakutat  
Forest Highway Subdivision – ADL 108464**

<b>Offering Information</b>	
<b>Proposed Number of Parcels</b>	Up to 40 parcels.
<b>Proposed Parcel Size</b>	No smaller than 18,000 square-feet in size.
<b>Proposed Related Actions</b>	Mineral order (closing) 1202
<b>Project Area</b>	
<b>Location</b>	The project area is located within the limits of the City and Borough of Yakutat (CBY), approximately three miles northeast of the Yakutat Airport.
<b>Project Area Acreage</b>	Approximately 28 acres, approximately 20 acres proposed for development.
<b>USGS Topography Map</b>	USGS Quad Yakutat C-5.
<b>Legal Description</b>	The entirety of ASLS 71-34, 20 acres more or less; Tracts B and C of the XeitlAani' (Thunder Land) Subdivision, Plat 92-27, 7.59 acres more or less; and 0.33 acres of unsurveyed land between ASLS 71-34 and the Forest Highway; all within Section 30, Township 27 South, Range 34 East, Copper River Meridian.
<b>Title</b>	Patented state-owned land and CBY land acquired under municipal entitlement.
<b>Area Plan and Classification</b>	Yakataga Area Plan (adopted 1995, updated 2004), isolated parcel of state land within Management Unit 8a. Lands are classified Settlement.
<b>Mineral Orders</b>	None. Project area will be closed to mineral entry prior to offering.
<b>Physical Characteristics</b>	
<b>Access</b>	Primarily via the Forest Highway and Lake Street, and other access dedicated as part of the subdivision design. Individual lots would be accessible via platted internal easements.
<b>Terrain and Major Features</b>	The southern and center areas of ASLS 71-34 north of the Yakutat School are generally flat. The northern portions of ASLS 71-34 and Tracts B & C of ASLS 92-27 have small hills with changes of elevation up to approximately 30 feet. The western portion of the proposed development area slopes to the west or northwest.



**Attachment C: Area Data Summary Table**

for a Proposed Land Offering in the City and Borough of Yakutat

Forest Highway Subdivision – ADL 108464

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<b>View</b>	Some parcels may have a regional review.
<b>Climate</b>	On average, the monthly daily temperature ranges from 28°F in January to 54°F in July. Yakutat has high precipitation, rivaling Ketchikan as the wettest city with an annual precipitation of 155 inches of rainfall and 150 inches of snow. September and October is primary the “rainy season” with an average of over 20 inches of precipitation during both months. April through July is drier with average precipitation between 6 to 9 inches per month.
<b>Soils</b>	Surficial soils generally consist of a thin mat of organic material overlying gray sandy gravel containing cobbles and boulders. Well logs from approximately one-half mile north show sands and gravels typically containing cobbles and boulders near the surface; deeper sections transition to silts and clays that exclude very coarse sediments.
<b>Wetlands</b>	Small isolated wetlands exist in the western and northern portions of the proposed subdivision. Dredging or filling of wetlands may require a permit from the US Army Corps of Engineers.
<b>Vegetation</b>	Primarily Sitka Spruce and some hemlock.
<b>Water Source</b>	Municipal water supply is available along Lake Street and the Forest Highway. Water quality is documented by the CBY.
<b>Anadromous Waters</b>	None within the project area.
<b>Local Management Information</b>	
<b>Fire Management Option</b>	Limited. No fire history was provided for this area.
<b>Game Management Unit</b>	5-A
<b>Local Authority</b>	CBY holds authority for planning, platting, taxes, and zoning for the project area.
<b>Flood Zone</b>	Flood Information Rate Maps are not available for the project area.
<b>Utilities</b>	This area is currently served by Yakutat Power and the CBY municipal water and sewer service.
<b>Waste Disposal</b>	All on-site waste water disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
<b>Setbacks, Reserved Areas, Easements, and Conditions</b>	
<b>Improvements</b>	Prior to construction of any structure, driveway, or waste disposal system, potential purchasers should contact the platting authority for any permits or for required setbacks from water bodies, lot lines, and easements.
<b>Building Setbacks</b>	None.

**Attachment C: Area Data Summary Table**

for a Proposed Land Offering in the City and Borough of Yakutat

Forest Highway Subdivision – ADL 108464

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<b>Public Access and Utility Easements</b>	Parcels may be subject to the following: <ul style="list-style-type: none"><li>• a public access easement;</li><li>• an utility easement;</li><li>• a 5-foot survey easement from the nearest practical point on the property boundary to control monuments within the parcel and an easement with a radius around the control monument, and as applicable, a 5' direct line-of-sight easement from the control station to an azimuth mark or other control monument; and</li><li>• additional reservations and/or restrictions required through the local platting authority.</li><li>•</li></ul>
<b>Retained Lands</b>	Approximately 7.5 acres within the southern portion of ASLS 71-34, and the approximately 0.33 acre portion of land south of ASLS 71-34.
<b>Public or Navigable Water Bodies</b>	None identified.
<b>Additional Information</b>	
<b>Native Regional Corporations</b>	Sealaska Regional Corporation
<b>Villages and Tribal Councils</b>	Yak-Tat Kwaan Incorporated and Yakutat Tlingit Tribe.
<b>Oil and Gas Activity</b>	None known.
<b>Mining Activity</b>	None known.
<b>Comments</b>	<p>The project area includes the entirety of ASLS 71-34 and Tracts B and C of the XeitlAani' (Thunder Land) Subdivision, though the portion proposed for subdivision development will be restricted to the northern portion of the project area as identified on the attached map. The inclusion of the Yakutat School within the project area is necessary to subdivide and separate the school from the subdivision development.</p> <p>The CBY operates the Yakutat School on state-owned land through an ILMA (ADL 53385) managed by the Department of Transportation and Public Facilities (DOT&amp;PF). The ILMA includes the entirety of ASLS 71-34. If this proposal is approved, LSS will coordinate with DNR DMLW Realty Services, DMLW Southeast Region Lands Section, and DOT&amp;PF to reduce the ILMA to exclude the proposed subdivision development area. DNR anticipates that this will reduce the ILMA acreage to approximately 7.5 acres.</p> <p>This project is being proposed pursuant to a request from the CBY to provide settlement land within the community. CBY also proposed the land exchange between the state-owned surveyed parcels created by this subdivision proposal and CBY-owned Tracts B and C of XeitlAani' Subdivision . This proposed land exchange decision (ADL 108750) is being processed concurrently, but separately from the proposed subdivision project.</p>