

**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  
Forest Knolls Subdivision – ADL 232332**  
*AS 38.05.035(e), AS 38.05.045*

and its  
**RELATED ACTIONS:**  
**Amendment to the Kenai Area Plan SC-99-002A12**  
*AS 38.04.065*  
**Land Classification Order CL SC-99-002A12**  
*AS 38.04.065 and AS 38.05.300*  
**Mineral Order (Closing) MO 1189**  
*AS 38.05.185 and AS 38.05.300*

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated August 31, 2017. The PD and related actions have had the required public review, and the PD is attached.

**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 Forest Knolls project area (ADL 232332), 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 Forest Knolls project area, DNR may develop a subdivision of no more than 20 parcels. 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 January 2000) to change the designation for the project area from General Use and Resource Management – High Value to Settlement.

Land Classification Order: In relation to the proposed Area Plan Amendment, DNR DMLW proposes to reclassify the project area in a Land Classification Order from Resource Management to Settlement.

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Mineral Order: DNR DMLW proposes to close the project area to new mineral entry through Mineral Order (MO) 1189.

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". 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 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for amendments and special exceptions 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.

As discussed in the PD, the general theme of input received at the Public Scoping Meeting was to have parcels of sufficient size to accommodate local conditions for building needs, and to avoid wetland areas. These comments have been incorporated into the design of this proposal.

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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/](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 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, October 3, 2017 in order to ensure consideration and eligibility for reconsideration. For more information, refer to the Preliminary Decision.

DNR DMLW LSS received comments from three State of Alaska agencies and six private individuals. All comments received during the public comment period are summarized below.

#### Department of Natural Resources, State Pipeline Coordinator's Section (SPCS) Comments:

SPCS verified there are no AS 38.35 pipeline Rights-of-way, applications, or AS 38.35 proposed pipelines in the vicinity of the project area.

DNR DMLW LSS Response: The review and response are appreciated.

The Alaska Department of Fish and Game (DFG) and Alaska Office of History and Archaeology responded with no additional comments or comment of non-concern.

Individual Comments: Six people submitted three comments. Two couples expressed concern about access from the Old Sterling Highway and another couple was opposed to the Mineral Order closing the project area.

ACCESS: Both sets of comments will be presented, and a single response will be made to the similar concerns below.

Landowners adjoining the northwest corner of the project area stated that the section-line easement (SLE) route from the Old Sterling Highway is the longest route through wetlands. Natural flow of water through a large pond next to their driveway access is compounded by drainage from Rollins Way [on the north side of the SLE] and flooding of the pond is common

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every year. Nonetheless, they said within that SLE they have electric, telephone line, and gas [ADL 231838] underground along the driveway to their home.

They then discussed concerns over lack of enforcement in adjacent land developments such as out building in the SLE, outhouses since the 1990s, people logging trees not on their own property, junk yard and blocking road with heavy construction vehicles.

Next, they presented concerns about wetlands, waterfowl, and a rare frog, that is under University study, that all use their pond as home or migrating stops. They stated that increased traffic would increase sediment and pollutants and would likely harm wetlands and increase agitation to the birds which already are upset by noisy trucks turning west to Silverberry. They stated concern about unsafe traffic flow being made worse at the junction with the Old Sterling Highway and the likely increase in number of accidents; a more visible intersection would be safer.

They stated it isn't necessary to take this route, there are better ones, and included a map of the area and wrote that there is a road already platted for access to the top of the property proposed for sale. They spoke with HEA [Homer Electric Association] and were informed the existing road and easements would be the best way to get power there. They highlighted the map and the SLE on the east and stated there is already a driveway from the Sterling Highway along the SLE not affecting any wet lands.

Another couple, owners of parcels on both sides of the Old Sterling Highway near the intersection with Silverberry Ave., listed three reasons objecting to access from Old Sterling Highway: 1. Topography isn't appropriate for more traffic. Because of location at edge of wetland, in occasional serious storms, access would be in doubt. 2. Traffic patterns ensure traffic accidents. Silverberry Ave. runs along the section-line easements west of Old Sterling Hwy with concerns of numerous road hazards submitted. 3. Various road hazards of Old Sterling itself were presented. More traffic will mean more problems, including more accidents. "The Old Sterling section is wet and muskeg; the portion closer to Sterling Highway is higher and has some development value. Restrict access to the project to Sterling Highway."

DNR DMLW LSS Response: The north boundary of the project area is also an east-west section line. The extended section line easements (SLE) connect to the Sterling Highway and Old Sterling Highway. DMLW project development team, consisting of a surveyor and LSS adjudicator, evaluated aerial imagery, topographic maps, Kenai Peninsula Borough (KPB) lidar contour data, and KPB wetland map. This project development team conducted field visits to investigate the viability of using the existing SLEs for access from both the intersections with the Sterling Highway and Old Sterling Highway.

DMLW project development team finds compelling reason to prefer the approach from the Old Sterling Highway as described in the following paragraphs. Both existing highway approaches have in common: 1) short crossing of wetlands that lie adjacent to or near the highway, 2) provide access to private property adjoined to the south side of the section line, and 3) would need to be upgraded for use as a public access.

The existing access from the Sterling Highway follows the section line westward for ±150 feet, crossing wetlands before turning south and becoming a private driveway. To reach the northeast corner of Section 30 (northeast corner of project area), this access will need to be

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extended 100 feet west climbing a 36% natural slope before leveling out and running for another  $\pm 160$  feet to the section corner. This access cannot be constructed to meet KPB's maximum 10% grade within the SLE width. Once at the section corner, access to useable uplands in the project area would require additional wetland crossings and traversing a 115 KV Transmission Line. This makes using access from the Sterling Highway unviable for multiple reasons.

The existing access from the Old Sterling Highway follows the section line eastward for  $\pm 252$  feet, crossing wetlands before turning south and becoming a private driveway. To access the northwest corner of the project area, this route will need to be extended east climbing a 5-7% natural slope  $\pm 425$  feet before leveling out for another 200 feet. The natural slope for this route is well below KPB's maximum grade, and access can be constructed within the current SLE widths. Accessing useable uplands within the project area from the northwest corner will not require any wetland crossings. This is clearly a viable access route.

It is clear with the above information that there are less wetlands to cross from the Old Sterling Highway approach, and access construction on the slope is far more feasible than from the Sterling Highway. It will cost significantly less to upgrade the public access to the project area from the Old Sterling Highway.

DNR DMLW considered utilizing the public ROWs just north of the project boundary and within adjoining Sterling Acres Unit 1, Plat 86-70, Homer Recording District, to access the proposed project. Research revealed that only Rollins Way has been constructed. It dead-ends at the high-power transmission line and Rosehip Drive, which is platted but not constructed. Rosehip Drive follows the high-power transmission line southeast 1/4 mile to the north boundary of the proposed project area. Rosehip Drive joins the project boundary in a wetlands area. Portions of Rosehip Drive may cross additional wetlands. This makes this route impractical as well, given the cost to build a road across wetlands and the commenters concerns with wetlands.

When the approach from the Old Sterling Highway is upgraded, it would likely involve the need to better accommodate drainage flow and nearby wetlands, as described in the public comments. All upgrades to the approach apron and highway drainage will need to be coordinated with DOT/PF to meet their specifications.

LSS anticipates creating approximately a dozen parcels that would be accessed via the Old Sterling Highway/SLE route. The State will retain a portion of elevated treed ground and most wetlands as a green belt to help mitigate any untoward influence on the wetlands, flora and fauna noted in submitted comments.

Wetlands protection was given high consideration in the project development process. Approximately 45 acres of the approximately 136-acre project area will be retained by the State of Alaska. This amounts to 1/3 of the project area retained in state ownership for wetland and greenbelt purposes and will include that portion of the wetlands adjacent to the east side of the large pond located near the northwest corner of the project area. The Department of Fish and Game (DFG) provided comments of no objection to the actions proposed. DNR is unable to address or resolve concerns on those portions of wetlands and ponds on private lands adjacent to the project area, except with the protections of retaining adjacent ponds and wetlands within the project area and following good road construction practices for the approach of the Old Sterling Highway (see below).

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Based on these factors, DMLW LSS has concluded that the project will not likely adversely impact the pond or wetland environment concerns expressed in the landowner's written comments.

The Alaska Department of Transportation & Public Facilities (DOT/PF) was included in a multi-agency review process for this project. The DOT/PF Maintenance & Operations, Central Region submitted agency comment offering to refine and upgrade project access from the Old Sterling Highway through the DOT/PF Driveway Permitting process. DMLW LSS feels that all safety concerns expressed will be adequately handled during this process. Additionally, if the project is approved and moves forward, a subdivision plat must be submitted and will be subject to Kenai Peninsula Borough standards and public hearing steps. Opportunity for public input will be afforded at that stage when details yet to be determined for specific requirements are addressed to meet project approval. DNR is unable to address or resolve other traffic concerns, such as speeding. These issues can be addressed thru DOT/PF and the State Troopers.

Any issues with existing neighboring subdivision encroachments, right-of-way (ROW) use or blockage would best be directed to those involved. The public has the right to utilize public ROWs and section-line easements for access and travel; if anyone effectively prevents that utilization, the State Troopers, KPB, or DNR DMLW Southcentral Region Office (SCRO) should be notified, depending on which agency has authority over that easement.

Concerns involving waste disposal and septic systems, or lack thereof, fall under the jurisdiction of the Department of Environmental Conservation. Again, DNR is unable to address or resolve these types of concerns happening on private land in the area.

DMLW LSS believes HEA will find the most practical way to provide electrical connection for all portions of the proposed project, as power lines serving existing private parcels in the area already run along both highways. Until HEA reviews the entire project area, the best route for electrical connections is undetermined at this time.

**MINERAL ORDER:** Owners of a gravel site abutting to the east of the proposed project objected to closing the proposed subdivision parcel from Mineral Entry. This couple stated that without benefit of equipment used to determine the extent of gravel within the project boundary, the state may be missing out on sale of a million yards of valuable, scarce gravel material. Compared to selling unimproved property, optimum potential financial gain to the state may be in question. They would like to see DNR hold this property for the future. If the sale goes forward, they suggested that a buffer area be established to protect them and future subdivision owners from a conflict of uses. They feel that the present classification of this proposed land as General use and Resource Management already best addresses this conflict.

**DNR DMLW LSS Response:** LSS is aware there are several material sites/gravel pits in the general vicinity of the proposed project as well as the need for and the value of such material on the Kenai Peninsula. Because gravel is considered a surface resource and not a locatable mineral, it is not subject to the proposed Mineral Order closing the project area to mineral entry.

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SCRO has a material unit which is responsible for material site resource/gravel sales. SCRO was part of early research Division Review for this proposed project site and expressed no concerns regarding potential future gravel sales. Upon further contact with the Material Unit, SCRO noted the high value of gravel material is a valid consideration. Nonetheless, the project parcel is not designated as a material site and cannot be used as such without that determination. SCRO does not actively seek out gravel places to be designated material sites and does not have a method to determine the extent of gravel resources or the feasibility of a gravel mine at any given location.

The Division of Geological & Geophysical Surveys (DGGS) provided their report for the site which included no comments regarding mining and mineral resources. In follow-up contact, DGGS replied that based on office review of imagery only, the large, contiguous upland area proposed for land sale development is highly likely to have the same potential for gravel resources as the adjacent land now used as a gravel pit near the east boundary. It would be reasonable to conclude that the area would be comparable with the characteristics of material in the existing gravel pit. However, because glacial deposits are notoriously variable, it would not be prudent to designate it a material site without geotechnical drilling data to establish the site's true potential as a gravel resource.

Additional communication with DOT/PF confirmed that it is becoming more difficult to find suitable materials sites that aren't exceedingly expensive to develop. Further, the department does not have resources to determine the extent of gravel or the feasibility for use as a potential material source at this time. DOT/PF commented that in the long range the project property is more valuable to the State as a future material source than it would be as an imminent land sale parcel.

KAP Chapter 3 management intent for unit 244 states no identified resource values that warrant a primary designation other than General Use. Nevertheless, from further internal research, and based on the public comments and added agency input, DMLW proposes to seek means to further evaluate the gravel resource potential for certain areas within the project before survey and selling of parcels in the area of high gravel potential. At the same time, due to other potential values and the advanced stage of the project, DMLW considers that the proposed land sale project with its related actions should proceed as presented in the Preliminary Decision approved August 31, 2017 with the added modification that gravel testing needs to be conducted and if new data establish the superior value of gravel resources, appropriate portions of the project area can be withheld from sales offering until after such materials have been successfully utilized to the state's best interest.

The Division of Forestry (DOF) conducted a timber harvest sale on the proposed site in 2004. That action left a mature tree belt around the margin of the harvested area which effectively forms a vegetated buffer as suggested in the comments. DMLW will not impose any requirement for a buffer; so future owners could elect to remove some or all the trees on their property if they felt that was in their best interest. Besides the current tree buffer along the east boundary of the project area, common to the parcel of the gravel pit owners, there is a high-voltage power line that already has essentially all vegetation cleared along its 100-foot wide path. This space between the parcels can be clearly seen on aerial imagery from KPBB, Google Earth, or other sources and serves as further separation between the properties. Offering information will point out existence of the gravel pit adjoining the project.

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Based on review of KPB Comprehensive Plan and the governing state Kenai Area Plan and in consultation with DMLW Resource Assessment and Development Section (RADS), DMLW LSS affirms it is appropriate to move forward with the proposed land sale project and related state area plan actions and mineral order as presented in the Preliminary Decision approved August 31, 2017 along with the proposed modification discussed above.

### **VI. Modifications to Decision and/or Additional Information**

The recommended action has been modified from the original proposed actions described in the Preliminary Decision as follows:

DNR should seek means to further evaluate the gravel resource potential within those portions of the project area that additional research has indicated could contain gravel. Should new data establish the superior value of gravel resources, appropriate portions of the project area can be withheld from sales offering until after such materials have been successfully utilized to the state's best interest.

For clarification, the existing transmission line along or within the section-line easement of the east boundary of the project area will be shown and appropriately designated on the plat to be submitted to the KPB platting office.

Recommendation and Approval of the Final Finding and Decision follow.

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**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 actions 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

April 3, 2018

Date

/s/

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

3 APR 2018

Date

/s/

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

April 3, 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. 7<sup>th</sup> Ave., Ste. 1400, Anchorage, Alaska 99501; faxed to 907.269.8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto: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.