

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

PRELIMINARY DECISION

Ninilchik Bluff Subdivision – ADL 231907
Proposed Land Offering in the Kenai Peninsula Borough
AS 38.05.035 (e), AS 38.05.045

RELATED ACTIONS:

Proposed Amendment to the Kenai Area Plan SC-99-002A09
AS 38.04.065

Proposed Land Classification Order #CL SC-99-002A09
AS 38.04.065 and AS 38.05.300

Proposed Mineral Order (Closing) #1175
AS 38.05.185 and AS 38.05.300

COMMENT PERIOD ENDS 5:00PM, WEDNESDAY, SEPTEMBER 23, 2015

I. Proposed Action(s)

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Attachment A: Vicinity Map
Attachment B: Area Data Summary Table
Attachment C: Public Notice

Public is also invited to comment on the proposed related actions:
Draft Amendment to the Kenai Area Plan SC-99-002A09
Draft Land Classification Order CL-SC-99-002A09
Draft Mineral Order (Closing) MO 1175

Primary Proposed Action(s): 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 and Contract Administration Section (LSCAS) is to offer for sale state-owned land within the identified project area. If approved, surveyed parcels will be offered for sale in a future offering (or offerings) under the methods described herein.

Located within DNR's Southcentral Region approximately 3.5 miles South of Ninilchik, the project area is within the SW1/4 SE1/4 Section 9, Township 2 South, Range 14 West, Seward Meridian, within the Kenai Peninsula Borough. The project area consists of approximately 20 acres identified for disposal by this proposed action. See Attachment A: Vicinity Map for a graphic depiction of the approximate location 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 project area. In order to offer these lands for sale, if approved and deemed feasible, DNR may develop a subdivision of no more than 5 parcels varying in size from one to 20 acres. Of note, if it is deemed necessary, DNR may consider parcels over 5 acres per the allowances listed in *AS 38.04.020 (h) Land Disposal*

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Bank. This proposed project area is located within the Kenai Peninsula Borough and therefore survey, platting, and road construction will be completed to the relevant subdivision standards. The project may be subdivided and offered in multiple stages.

If this proposed primary action is approved, the actual area offered for sale may consist of all or only a portion of the overall project area. After consideration of public comment, the size and boundaries of the development area will be described in a subsequent Final Finding and Decision, if the project proceeds to that step. There may be adjustments to the development area prior to survey/subdivision, as described in the applications to the Borough, as needed to reserve areas for public use, minimize conflicts between uses, or ensure compliance with Borough 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 the project area.

Proposed Related Action(s): There are three related actions with this proposal.

Area Plan Amendment: DNR proposes to amend the Kenai Area Plan (KAP, adopted 2000) to change the designation from General Use to Settlement. Refer to the Planning and Classification subsection of this document for more information on this proposed related action.

Land Classification Order: In relation to the Area Plan Amendment, DNR proposes to reclassify the project area in a Land Classification Order from General Use to Settlement. Refer to the Planning and Classification subsection of this document for more information on this proposed related action.

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

These related actions will be developed separately. However, approval of the proposed actions are dependent upon one another in that one action will not proceed without approval of all actions.

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 and the proposed related actions. Public notice of the public comment period for all actions will be conducted concurrently. See Section VIII Submittal of Public Comments at the end of this document and Attachment C: Public Notice for details on how to submit a comment for consideration. If after consideration of timely, written comments the proposal is approved, DNR will issue a Final Finding and Decision.

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 [Sale of Land]*.

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III. Authority

DNR DMLW has the authority under *AS 38.05.045 Generally [Sale of Land]* to sell State-owned land if, on preparation and issuance of a written finding under *AS 38.05.035 (e) Powers and Duties of the Director*, it is determined to be in the best interest of the State. 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 [Mining Rights]* allow for amendments and special exceptions to area plans, land classifications, and mineral orders.

IV. Administrative Record

The project file constitutes the administrative record for this action. Also incorporated by reference are:

- *Kenai Area Plan for State Lands (KAP, adopted 2000) and associated land classification files;*
- *Alaska Interagency Wildland Fire Management Plan (2010);*
- *2012 Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes; and*
- *USDA, NRCS Custom Soil Resource Report for Western Kenai Peninsula Area, Alaska, 2015; and*
- *DNR case files: LST CI0754 and ADL390764 regarding the oil and gas lease sale tract, and access easement ADL 231811.*

V. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section III Authority** of this document is limited and specific to DNR DMLW's proposal to offer State-owned land within the defined project area for disposal and to conduct the proposed related actions 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 and offering may be conducted in multiple stages.

VI. Description

The following section describes the project area.

Location: Located within DNR's Southcentral Region, Approximately 3.5 miles south of Ninilchik, the project area is within the SW1/4 SE1/4 Section 9, Township 2 South, Range 14 West, Seward Meridian, within the Kenai Peninsula Borough. The project area consists of approximately 20 acres identified for disposal by this proposed action. See Attachment B: Area Data Summary Table for additional information.

Borough/Municipality: The project area is within the Kenai Peninsula Borough and subject to the borough's platting and zoning authority.

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Native Regional and Village Corporations: Cook Inlet Region, Incorporated is the regional corporation for the Ninilchik Bluff project area. Ninilchik Native Association, Incorporated is the only village corporation within 25 miles of the project area. Kenai Natives Association, Incorporated and Cook Inlet Tribal Council will also receive courtesy notice.

Legal Description: A Portion of the SW1/4 SE1/4 Section 9, Township 2 South, Range 14 West, Seward Meridian, located within the Homer Recording District, third Judicial District, Alaska.

Title: Information from Title Report No. RPT-7054, current as of March 2, 2015 indicates the State of Alaska holds fee title to the land and mineral estate within the project area under Patent 1232868, dated August 6, 1993. The applicable State case file is GS 7. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

Retention of 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; and non-locatable minerals such as oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils.

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 Alaska Constitution* 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.

There are no waters determined navigable within the project area. Refer to the [Access To, Within, and Beyond Project Area](#) and [Setbacks, Reserved Areas, and Easements](#) subsections of this document for additional information.

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

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Physical Characteristics and Hazards: Attachment B: Area Data Summary Table describes the project area's physical characteristics. In addition, the following paragraphs describe the project area based on internal research and a field inspection conducted on May 1, 2014. 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.

Geologic Hazards: DNR Division of Geological & Geophysical Surveys has indicated that there is a potential for slope failure. A general advisory will be included in offering materials. See Section **VII. Agency Comments** for more information.

Fire Hazards: Field inspection revealed no signs of recent wildfire activity. The area is designated "Critical Protection" in the State Fire Management Plan. Landowners with structures are encouraged to follow the Alaska Wildland Fire Coordinating Group *Firewise Alaska* recommendations. The Ninilchik Emergency Services (NES) and the Alaska Division of Forestry provide fire protection to the Ninilchik area.

Fire management options and policies for the area are identified in the Alaska Interagency Wildland Fire Management Plan (2010) available from DNR Division of Forestry. The plan states that areas with a Critical Fire Management Option are "the highest priority areas/sites for suppression actions and assignment of available firefighting resources." 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: FEMA Flood Information Rate Map 0200123525A does not designate a flood hazard for this project area

Background: The area surrounding the project area is fairly dense residential development, with homes built on many of the surrounding lots. LSCAS staff visited the project area on foot on May 1, 2014. Staff noted that the area would be an excellent disposal project, due to exceptional view and easy access to the Sterling highway. Typical lot size in the surrounding subdivisions is around 5 acres. The project area can be accessed by borough maintained roads. Several large attractive homes have been developed along the south side of Berussa Drive, and there are several homes along Mahoney Way, when accessing the project from the east. The proposal of dividing the project area into up to 5 lots is consistent with the surrounding development, and provides for the maximum utilization of the State's resources. The project is currently designated general use in the Kenai Area Plan. Due to the quality of land in the project area, nature of the surrounding development, and constructed access, this portion of the management unit is appropriate for settlement.

There is a public access easement authorization (ADL 231811) in the NW corner of the project area. Refer to the Access To, Within, and Beyond Project Area for more information.

The central parcel of the project may be retained in state ownership to provide a buffer around an eagle nest identified in the project, until such protection is no longer necessary.

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The project is within Oil and Gas Lease Sale Tract CI0754. The Ninilchik Bluff project area, as with the majority of lands owned or sold by the state of Alaska, is open to oil and gas exploration and development regardless of surface ownership or interest. Other factors govern the compensation of the surface owner for damages. Offering materials will include information regarding this third party interest.

Planning and Classification: The general management intent of the area plan unit and subunit were reviewed for consistency with the proposed offering. The project area is within Kenai Area Plan (KAP), Region 7, Deep Creek Subregion, Unit 66. Lands within this unit are currently designated and classified general use under Land Classification Order No. CL SC-99-002.

Area-wide Considerations: We reviewed the area plan's guidelines in Chapter 2 Area wide Land Management Policies regarding: Fish and Wildlife Habitat and Harvest; Forestry; Heritage Resources; Materials; Settlement and Agriculture; Shoreline, Stream Corridors and Wetlands; Trails and Access; and Transportation and Utilities. We will incorporate these considerations into the development of the project. Additional information regarding Chapter 2 management intent is described below.

Settlement and Agriculture: The KAP states that the goal of the plan is to provide a pool of land available for private ownership over the long term. In general, the plan attempts to concentrate lands for settlement in areas with existing settlements and areas with existing infrastructure.

Fish and Wildlife Habitat and Harvest: Management Guidelines provide that when authorizing the use or development of state lands, DNR will evaluate the requirements of the activity or development and the benefits or impact it may have to habitat. ADF&G was consulted during the development of this project, and did not address any specific concerns other than those recommending a setback for the wetland area. See **VII. Agency Comments** for more information.

This section also provides that authorizations may be restricted or prohibited to avoid or minimize significant impacts if they are likely to interfere with a life history stage. Specifically, the KAP recommends avoiding potentially disturbing activities within 330 feet of Bald Eagle nests for the period of March 1-Aug 31. Additionally, activities that potentially affect Bald Eagles will be consistent with state and federal Endangered Species Acts and the Eagle Protection Act of 1940 as amended. See the **Background** section for more information.

Heritage Resources: KAP Chapter 2 management guidelines provide that cultural surveys or inventories should be conducted prior to offering in areas the state Office of History and Archaeology determines have a high potential to contain important heritage sites, and for which information is inadequate to identify and protect these sites. See Section **VII. Agency Comments** for more information.

Shorelines, Stream Corridors and Wetlands: Management guidelines provide that wetlands perform many important functions, and note that wetland areas not specifically

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identified as important watersheds for communities or important habitat have been designated General Use. There are no wetlands within the project area. However; DMLW proposes to impose a building setback from the wetland area located to the south of the project area. See *Easements, Setbacks, and Retained Lands* and Section **VII. Agency Comments** for more information.

Trails and Access: Management guidelines provide that prior to disposal of state lands, trails that merit consideration for protection should be identified and reserved. There are no public trails identified in this project area. However; the state will retain public access and utility easements along interior parcel boundaries as appropriate in order to maintain access through and within the project. See Access To, Within, and Beyond Project Area for more information.

Transportation and Utilities: Management guidelines provide that before a land offering, DNR will work with DOT/PF to identify appropriate locations, if any are needed, for access and will identify responsibilities. The project area is within the Kenai Peninsula Borough, and DNR will coordinate with KPB through the platting process. DMLW will reserve public access and utility easements as necessary through the platting process. See Local Planning and Access To, Within, and Beyond Project Area for more information.

Unit 66: Management intent provides that no resource values were identified to warrant a primary designation.

The proposed offering will be consistent with area-wide land management policies and general management intent of the KAP and specific management unit if the proposed related actions are approved in accordance with *AS 38.04.065 Land Use Planning and Classification*. The unit is designated and classified General Use and will need an Area Plan Amendment and Land Classification Order to change the designation and classification to Settlement prior to disposal.

AS 38.04.065 (b) Requirements: The factors identified in this section of statute have been considered in this plan amendment and the proposed action is consistent with that portion of statute.

Area Plan Proposal: DNR proposed the following related action:

Area Plan Amendment: DNR proposes to amend the designation of Kenai Area Plan (KAP, adopted 2000) to change the designation from General Use to Settlement for an approximately 20 acre portion of management unit 66, located within the project area. The new unit is to be identified as '66-A'. The remainder of unit 66 is unaffected by this amendment and continues to be designated General Use. The amendment is necessary to allow for the subdivision and offering of parcels through this action.

The amendment, if approved, will also modify the Management Intent for unit 66-A, revising the management intent to state that this unit is appropriate for land disposal during the planning period, subject to the requirements of the Kenai Area Plan. The

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remainder of this unit (66) is unaffected by this amendment and the current management intent is to be retained.

Classification Proposal: DNR proposes the following related action:

Land Classification Order: In relation to the Area Plan Amendment, DNR proposes to reclassify the project area in a Land Classification Order from General Use to Settlement.

Reservation of 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, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing, and producing the reserved mineral resources. Exploration and development, that could occur, would be consistent with *AS 38.05.130 Damages and Posting of Bond* and any other applicable statutes and regulations, which provide that the land estate owner be compensated for damages resulting from mineral exploration and development.

Mineral Activity and Order(s): No mineral activity has been identified on these lands. Mineral Order (Closing) No. 1175 will close the project area to new mineral entry.

Mineral closing orders, where established, close an area to new exploration and development of locatable minerals such as gold, copper, platinum, etc. Such mineral orders do not apply to non-locatable minerals, including oil and gas leasing, coal leasing, shallow gas leasing, 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.

Mining activity 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.

Mineral Order Proposal: DNR DMLW proposes a mineral order to close the project area to new mineral entry.

Local Planning: Where they exist, local zoning and related ordinances govern private land use. The project area is within the Kenai Peninsula Borough and platting actions within this borough are subject to the Kenai Peninsula Borough platting and zoning authority. Approval of platting and zoning actions, and dedication of right-of-ways will require separate processes and public notices through the Kenai Peninsula Borough.

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The area is within the bounds of the 2005 Kenai Peninsula Borough Comprehensive Plan. Review of the KPB comprehensive plan did not reveal any conflicts with this proposed action.

Traditional Use Finding: The project area is located within the Kenai Peninsula Borough 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 C: Public Notice for details on how to submit comment.

Access To, Within, and Beyond Project Area: Access to the northwest corner of the project area is by borough-maintained Berussa Road, approximately one-half mile from the Sterling Highway. Access to the northeast corner is by Crane Street to Mahoney Way off borough-maintained Deep Creek Rd. There is a public access easement (ADL 231811) approximately 90 feet long by 30 feet wide in the NW corner of the project area that provides access from Berussa Road to the applicant's parcel. Ninilchik Bluff project design will take into account this public access easement (ADL 231811) and will not interfere or restrict public access through this easement.

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 body of water or waterway is a navigable or public waterway 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 water are generally lakes larger than 50 acres in size or streams larger than 50 feet in average width;
- 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*.

For the purposes of reserving access to public or navigable water under the aforementioned statutes and regulations, if a water body is determined to be public or navigable prior to disposal, a continuous easement extending upland from the ordinary high water mark (OHWM) will be reserved within parcels located along said waters. An alternate upland access route may be reserved if topography or obstructions prevent or make a continuous easement difficult. If a water body determined to be public is located entirely within a parcel, a public use access easement from the parcel boundary to and along the water body will be reserved and dedicated at the time of field survey. Refer to the Easements, Setbacks, and Retained Lands subsection and Section VII Agency Comments section of this document for additional information.

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There are no known public, navigable, or anadromous water bodies in this project area.

Easements, Setbacks, and Retained Lands: Parcels may be subject to a variety of easements, setbacks, and retained lands. Easements, setbacks, and retained lands will be identified on the subdivision plat and included in related informational documents. Approval of platting actions will require separate processes and public notices through the Kenai Peninsula Borough. Final width and location of easements and reservations will be determined as part of the platting process.

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

- a public access and utility easement along interior parcel boundaries;
- a 50-foot wide public access easement on each side of surveyed or protracted section lines on State-owned land, unless formally vacated; section-line easements may be vacated under *AS 19.30.410* and *11 AAC 51.065* as part of the subdivision design process;
- a 100-foot wide building setback from wetland areas;
- 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 5-foot radius around the control monument, and as applicable, a 5-foot 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 a field inspection on May 1, 2014 staff did not observe any hazardous wastes, spills, or other potential contaminants within the area. There are no known environmental hazards present within the project area, however, the State makes no representations and no warranties, express nor 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 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. Given the high degree of interest from both the

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legislature and citizens in sale of State-owned land, DNR DMLW is of the opinion that the benefits outweigh the potential risks.

Survey, Platting, and Appraisal: Depending on agency and public comment, physical conditions of the land, and access issues, DNR DMLW proposes to offer the property for sale. In order to offer the property, a combination of survey, subdivision, or plat may be required. This proposed project area is located within the Kenai Peninsula Borough, and therefore survey and platting will be completed to the relevant subdivision standards.

The Kenai Peninsula Borough's planning requirements provide for separate public notice periods and processes for platting actions within the Borough. These additional opportunities for public involvement occur after Final Finding and Decision, if this proposed primary action is approved and the project moves forward.

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.

VII. Agency Comments

Agency review was conducted from November 7th, 2014 through December 5th, 2014. Comments pertinent to this proposed action received during agency review have been considered and addressed in the following paragraphs. 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 Division of Division of Oil and Gas: Lease Sale Tract CI0754 affects this project. DOG recommends LSCAS make potential applicants aware the States reserves oil, gas, and other subsurface estate and reserves the right to enter the land for exploration, development and production.

DNR DMLW LSCAS Response: LSCAS appreciates your review of our proposal, and will continue to make this information known to potential applicants thru this decision process and in sales offering materials.

DNR Alaska Mental Health Trust Land Office: The proposed action does not impact Mental Health Trust Lands, therefore we have no objections the proposed Ninilchik Bluff Subdivision.

DNR DMLW LSCAS Response: LSCAS appreciates your review of our proposal.

DNR Division of Forestry(DoF): DoF recently completed a timber sale immediately south of the proposed subdivision. DoF requests that we maintain a Right of Way to access this timber sale area in the future. DoF also recommends that prospective parcel owners be informed on how to reduce wild land fire risks, and receive Firewise information.

DNR DMLW LSCAS Response: LSCAS appreciates your review of our proposal. Further research was done and the access to the timber sale is through State land southeast of this

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project, and will not be affected. In addition, LSCAS will continue to distribute information to potential applicants regarding wild fire risks through offering materials.

DNR Division of Geological & Geophysical Surveys (DGGS): The Ninilchik Bluff parcel is likely underlain with coal, as is nearly all of the western half of the Kenai Peninsula; there is no known hard rock potential in this area; bedrock is largely friable sand, and bluffs may be prone to landslides; and there are no known geologic hazards aside from the regions general seismic hazard.

In addition to Agency Review, DGGS was consulted for further information regarding potential geologic hazards. Information received indicated that while there is “no significant evidence of active slope failure or erosion” in the project area, there is a potential hazard, especially under conditions of water saturation and/or seismic shaking.

DNR DMLW LSCAS Response: LSCAS appreciates your review of our proposal. LSCAS will make pertinent geological information into account when designing the subdivision and can make known to any potential applicants through this decision process and sales offering materials.

DNR Division of Parks and Recreation Office of History and Archeology: The Alaska Heritage Resource Survey indicates no known cultural resources with the proposed subdivision area. However, please note that only a small portion of the state as has been surveyed for cultural resources. The Kenai Peninsula and the Ninilchik area have a moderate-high potential for previously unidentified artifacts.

DNR DMLW LSCAS Response: LSCAS appreciates your review of our proposal. LSCAS is aware that only a portion of the state has been surveyed for cultural resources. Should any such sites be discovered by LSCAS during the development of this project, OHA will be notified. LSCAS will make information known to the public during offerings that should inadvertent discoveries of cultural resources by the purchaser, OHA offices should be notified.

In addition to Agency Review period, OHA has been consulted during the development of this proposed action. OHA conducted a ‘desk top’ survey of the area, and noted that the area is felt to have moderate potential for heritage resource sites. OHA found no indication of previous surveys in the area.

Department of Fish and Game(ADF&G): ADF&G has no objection, however; vegetated buffer strips along wetland and bog areas should be incorporated into subdivision design.

DNR DMLW LSCAS Response: LSCAS appreciates your review of our proposal. LSCAS plans to retain in state ownership and not develop the wetland drainage way to south of the proposed subdivision. In addition, we propose a 100 ft building setback from the wetlands. See the *Easements, Setbacks, and Retained Lands* subsection above for more information on retained lands.

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State Pipeline Coordinator's Office (SPCO): SPCO has no concerns, and there are no pipeline right-of-ways or applications in the vicinity.

DNR DMLW LSCAS Response: LSCAS appreciates your review of our proposal,

The following agencies or groups were included in the agency review but did not submit comments:

- Department of Natural Resources;
 - Division of Agriculture;
- Department of Environmental Conservation;
- Department of Transportation and Public Facilities;
- Department of Commerce, Community, and Economic Development;
- Alaska Railroad Corporation;
- University of Alaska;
- Alaska Soil and Water Conservation District; and
- Kenai Soil and Water Conservation District.

VIII. Submittal of Public Comments

See Attachment C: Public Notice for specific dates and conditions.

Pursuant to *AS 38.05.945 Notice*, DNR will issue public notice inviting comment on this Preliminary Decision, draft mineral order, draft area plan amendment, and draft land classification order.

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.

We will consider all timely, written comments received by DNR DMLW LSCAS. If timely written comments received in response to this notice indicate the need for significant changes to the Preliminary Decision, draft mineral, draft area plan amendment, and draft land classification 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, draft mineral, draft area plan amendment, and draft land classification order, including any deletions, minor changes, and summary of comments and the DMLW responses, will be issued as a subsequent Final Finding and Decision, Mineral Order 1175, Kenai Area Plan Amendment SC-99-002A09 and Land Classification Order SC-99-002A09 without further notice. All actions will be developed separately. 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 LSCAS receives timely, written comment during the identified comment period will be eligible to file an appeal or request for reconsideration of the

Preliminary Decision

for a Proposed Land Offering in the Kenai Peninsula Borough
Ninilchik Bluff Subdivision – ADL 231907
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Final Finding and Decision, Mineral Order 1175, Kenai Area Plan Amendment SC-99-002A09 and Land Classification Order SC-99-002A09. Upon approval and issuance of these actions, a copy of the decision, orders, and amendment will be made available online at <http://dnr.alaska.gov/mlw/landsale/> and sent with an explanation of the appeal process to any party who provides timely written comment.

DEADLINE TO SUBMIT WRITTEN COMMENT IS 5:00 PM, WEDNESDAY, SEPTEMBER 23, 2015

VIII. Alternatives and Discussion

DNR DMLW is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision consisting of up to 5 parcels varying in size from one to 20 acres, and offer those parcels for sale. The development and/or offering of these parcels may be completed over multiple years. This alternative includes amending the Kenai Area Plan and reclassifying the project area Settlement, in addition to closing the lands to new mineral entry.

Alternative 2: (Status Quo) Do not offer this project area for private ownership. Retain the land in State ownership. Do not amend the area plan or reclassify the project area, and do not close the project area to new mineral entry.

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 [Sale of Land]* has placed this charge with DNR.

Alternative 1 provides a method for DNR to help meet the obligations laid out in the Constitution and statute. Alternative 1 maximizes public interest. This offering provides an opportunity for the public to obtain land for settlement in a desirable area. Because the project area has good road access, and due to the surrounding pattern of settlement in the vicinity, the project area is well suited to subdivision prior to sale. The subdivision as described will allow DNR DMLW to create a design that will maximize use of the land and provide the public a greater opportunity to purchase land within this area. Additionally, if deemed appropriate, under this alternative DNR may offer the project area as a single approximately 20 acre parcel.

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 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 consistent with the surrounding development. 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 offering, the related actions will not be processed.

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

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IX. Recommendation

This Preliminary Decision for the proposed disposal of state lands, draft mineral order, draft plan amendment, and draft land classification orders described throughout this document and its attachments is consistent with the overall management intent for State-owned land; potential changes to public resources and the public interest as a result of the proposal are acceptable; and these proposed actions appear to be in the best interest of the State. It is hereby recommended to proceed to public notice.

This is a Preliminary Decision and subsequent public review may result in changes to the preferred alternative or disapproval of the proposed disposal of state lands, draft mineral order, draft plan amendment, and draft land classification order. If the decision is approved, the Mineral Order 1175, Kenai Area Plan Amendment SC-99-002A09 and Land Classification Order SC-99-002A09 will accompany and precede any Final Finding and Decision issued.

/s/
Prepared by: Peter Burton
Natural Resource Specialist II
Land Sales and Contract Administration Section
Division of Mining, Land, and Water
Department of Natural Resources
State of Alaska

8/14/2015
Date

/s/
Approved by: Kathryn Young
Section Manager
Land Sales and Contract Administration Section
Division of Mining, Land, and Water
Department of Natural Resources
State of Alaska

8/14/2015
Date

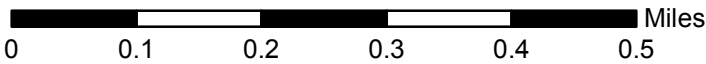


Attachment A: Vicinity Map

to the Preliminary Decision for a
Proposed Land Offering in the Kenai Peninsula Borough
Ninilchik Bluff Subdivision - ADL 231907



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.



PAB 07/02/2015

Legend

- Project Area
- Section

A portion of the SW1/4SE1/4 Section 9
Township 2 South, Range 14 West; Seward Meridian



USGS QUAD 1:63,360

Kenai A-5
For more information contact:
Peter Burton
Department of Natural Resources
Division of Mining, Land, and Water
Land Sales & Contract Administration Section
Phone 907.269.8602
Fax 907.269.8916
Email subdivision.sales@alaska.gov

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

ATTACHMENT B: AREA DATA SUMMARY TABLE

**Preliminary Decision
Ninilchik Bluff Subdivision – ADL 231907
Proposed Land Offering in the Kenai Peninsula Borough**

Offering Information	
Proposed Number of Parcels	Up to 5 parcels
Proposed Parcel Size	1 to 20 acres
Proposed Related Actions	Area Plan Amendment, Land Classification Order, Mineral Order (Closing)
Project Area	
Location	Approximately 3.5 miles south of Ninilchik, in the SW1/4 SE1/4 Section 9, Township 2 South, Range 14 West, Seward Meridian
Project Area Acreage	Approximately 20 acres
USGS Topography Map	Kenai A-5
Legal Description	A Portion of the SW1/4 SE1/4 Section 9, Township 2 South, Range 14 West, Seward Meridian, located within the Homer Recording District, third Judicial District, Alaska.
Title	State Patented Land, State Case File GS 7, Patent # 1232868.
Area Plan and Classification	Kenai Area Plan (KAP), Region 7, Deep Creek Subregion, Unit 66. Land Classification Order SC-99-002. Presently classified General Use.
Mineral Orders	None. Mineral Order (Closing) will be established prior to offering.
Physical Characteristics	
Access	Access to the northwest corner of project area is by borough-maintained Berussa Road, off the Sterling Highway. Access to the northeast corner is by Crane St. to Mahoney Way off borough-maintained Deep Creek Rd.
Terrain and Major Features	The project area is situated atop a large bluff overlooking the valley below. The ridge is level for approximately 570 ft. before gradually sloping (approximately -8%) to the top of steep slope (approximately -35-40%), then to a lower bench which continues with a negative slope of approximately -5% to the northeast project corner. Elevation ranges from approximately 280 feet at the top of the bluff to approximately 160 feet near the base.
View	View from bluff of surrounding area

Attachment C: Public Notice

to the preliminary decision and related actions
 for a Proposed Land Offering in the Organized Borough
 Ninilchik Bluff Subdivision – ADL 231907
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Climate	This area has an average temperature of approximately 53 degrees in the summer and 15 degrees in the winter and receives an average of 26 inches of precipitation a year according to the Soldotna climate station data approximately 40 miles away.
Soils	The Project area is a mixture of Island silt loam, and Whitsol silt loam.
Wetlands	No wetlands exist in project area; however there is a fairly large area of wetlands south of, and below the project area.
Vegetation	Field Inspection on May 1, 2014 revealed grassy areas with willow brush, pockets of spruce trees and a scattering of birch trees.
Water Source	Common source of water for residents in this area is by personal well or hauled containers; water quality is unknown. Well depths within the general vicinity range from approximately 80 to 260 feet. DEC requirements must be followed.
Anadromous Waters	None.
Local Management Information	
Fire Management Option	Fire management option(s) from the <i>Alaska Interagency Fire Management Plan</i> : “Critical Protection “. See discussion under Section VI, <u>Physical Characteristics and Hazards</u> , <i>Fire Hazards</i> subsection.
Game Management Unit	Game Management Unit 15C
Local Authority	The Kenai Peninsula Borough (KPB) currently exercises authority for planning, platting, taxes, and zoning for the project area,
Flood Zone	FEMA Flood Information Rate Map 0200123525A does not designate a flood hazard for this project area. See Section VI, <u>Physical Characteristics and Hazards</u> , <i>Flood Hazard</i> subsection for more discussion.
Utilities	This area is currently served by Homer Electric Association.
Waste Disposal	All on-site waste water disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
Setbacks, Reserved Areas, Easements, and Conditions	
Improvements	Prior to construction of any structure or waste disposal system, contact KPB platting authority for any permits or for required setbacks from water bodies, lot lines, and easements.
Building Setbacks	Parcels are subject to a 100 foot setback from wetlands. Parcels are subject to KAP guidelines; appropriate federal, state, and KPB protection guidelines will be consulted during the survey and platting process to determine additional setbacks and other restrictions. See below and <i>Easements, Setbacks, and Retained Lands</i> subsection for more details.

Attachment C: Public Notice

to the preliminary decision and related actions
for a Proposed Land Offering in the Organized Borough
Ninilchik Bluff Subdivision – ADL 231907
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Public Access and Utility Easements	Parcels and subdivision design may be subject to a variety of reservations or restrictions where appropriate, such as: <ul style="list-style-type: none">• a public access and utility easement along interior parcel boundaries;• a 50-foot wide public access easement on each side of surveyed or protracted section lines on State-owned land, unless formally vacated; section-line easements may be vacated under <i>AS 19.30.410</i> and <i>11 AAC 51.065</i> as part of the subdivision design process;• 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 5-foot radius around the control monument, and as applicable, a 5-foot 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.
Public or Navigable Water Bodies	None. If any water bodies are deemed public or navigable within the project area prior to platting, DNR DMLW will comply with statutory requirements to provide access to and along said water bodies.
Additional Information	
Native Regional Corporations	CIRI – Cook Inlet Region Corporation
Villages and Tribal Councils	Ninilchik Native Association, Incorporated; Kenai Natives Association, Incorporated; and Cook Inlet Tribal Council.
Oil and Gas Activity	Lease Sale Tract CI0754
Mining Activity	None
Comments	There is an eagle nest in center of project area. The parcel with the nest on it will be retained for this reason until this protection is no longer necessary.

ATTACHMENT C: PUBLIC NOTICE

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

PUBLIC NOTICE

Requesting Input for
a Proposed Land Offering:

Ninilchik Bluff Subdivision – ADL 231907

a Preliminary Decision and its Proposed Related Actions:

Amendment to the Kenai Area Plan SC-99-002A09, Land Classification Order CL SC-99-002A09, Mineral Order (Closing) #1175

COMMENT PERIOD ENDS 5:00PM, WEDNESDAY, SEPTEMBER 23, 2015

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.

Located within DNR's Southcentral Region, approximately 3.5 miles south of Ninilchik, the project area is within the SW1/4 SE1/4 Section 9, Township 2 South, Range 14 West, Seward Meridian, within the Kenai Peninsula Borough.

Project size: ~20 acres proposed development area, up to 5 parcels sized from 1 to 20 acres

To obtain the notice, Preliminary Decision, Mineral Order, Land Classification Order, Area Plan Amendment, or instructions on submitting comment, go to <http://landsale.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, WEDNESDAY, SEPTEMBER 23, 2015.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on either the Preliminary Decision, Mineral Order, Land Classification Order, or Area Plan Amendment 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, WEDNESDAY, SEPTEMBER 23, 2015.** Only persons from whom DNR DMLW LSCAS receives timely, written comment during the identified comment period will be eligible to request reconsideration on those actions commented on. Written comment may be received by fax, email or postal mail. To submit comments or for direct inquiries, , contact Peter Burton, 550 W. 700 Ave, Suite 640, Anchorage, AK 99501, fax at 907.269.8916, land.development@alaska.gov. If you have questions, call Peter Burton at 907.269.8602.

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

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