

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

FINAL FINDING AND DECISION

of a
**Proposed Land Offering in an Organized Borough
Nakwasina Sound Subdivision – ADL 108062**
AS 38.05.035(e), AS 38.05.045

and its
RELATED ACTION(S):
Proposed Amendment to the Northern Southeast Area Plan
AS 38.04.065
Proposed Land Classification Order
AS 38.04.065 and AS 38.05.300

This Final Finding and Decision complements and updates the Preliminary Decision dated February 10, 2014. The preliminary decision and related action(s) have had the required public review.

The Preliminary Decision dated February 10, 2014 is considered a part of this FFD and is hereby attached.

Attachment I: Amended Vicinity Map

I. Recommended Action(s)

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Land Sales and Contract Administration Section (LSCAS) recommends offering for sale State-owned land for private ownership within the Nakwasina Sound Subdivision project area (ADL 108062), as described in the Preliminary Decision. Surveyed parcels will be offered for future sale by a method under *AS 38.05.045 Generally [Land for Sale]*.

For the purposes of providing land for settlement in the Sitka area, if deemed feasible, DNR may develop a subdivision of no more than 25 parcels, no smaller than 2.5 acres. This project area is located within the City and Borough of Sitka and therefore survey, platting, and access will be completed to the relevant subdivision standards. The project may be subdivided and offered in more than one offering over time.

There are 2 associated actions with this proposal: an amendment to the Northern Southeast Area Plan and the related Land Classification Order.

Area Plan Amendment: DNR DMLW proposes to amend the Northern Southeast Area Plan (adopted 2002) to modify the B-08 subunit to create two separate subunits: B-08-01 and B-08-02. B-08-01 (that portion of the B-08 subunit within the Nakwasina Sound Subdivision project area) will be designated Settlement, and will include management

intent language that provides for a land disposal during the planning period and recognizes the intent for the protection of heritage sites. B-08-02 will retain the designation of General Use and management intent will remain unchanged. The current management intent language of management unit B-08 will be rescinded.

Land Classification Order: In relation to the proposed Area Plan Amendment, DNR DMLW proposes to reclassify that portion of the B-08 subunit within the project area (subunit B-08-01 as described above) in a Land Classification Order from Resource Management to Settlement.

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 [Sale of Land]* 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 mandates that the state promote the settlement of its land into private ownership.

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

III. Public Participation and Input

All state requirements for public notice and public input have been met as covered in detail in Section V, Summary of Public Notice and Comments below. Factual data regarding concept and design of the proposed project may continue to be generated through further research, evaluation of agency and public input, and ongoing development study. Should this project move forward with state approval, actual subdivision design with a professional survey will be conducted and an Alaska licensed surveyor will produce a preliminary plat. In an organized borough the subdivision design must be submitted for approval in accordance with local ordinances and codes. At that point the public will have opportunity at the local level to provide additional comment and feedback on the preliminary plat prior to final establishment of lot corners and monuments.

Subdivision design will be submitted to the Sitka Borough for review in accordance with Title 21 of their Administrative Codes:

Title 21.52.040(A) Public notice. All subdivision approvals under this title shall be subject to public notice. This section details the parameters required for public hearing notification by the Sitka City and Borough.

Title 21.52.050 Public hearing. The planning commission shall hold public hearings on all subdivision application requests.

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 <http://notes.state.ak.us/pn/> and was posted on the DNR DMLW LSCAS website at http://dnr.alaska.gov/mlw/landsale/public_notice/ for the entire public notice period. Notification and decision copies were sent directly to area state legislators, to multiple state agencies, and to other interested entities; parties were notified via the subscribers list for public notice and subdivision offering by email. Information was also posted to twitter and Facebook.

Notices were mailed to the City and Borough of Sitka per *AS 38.05.945 (c) (1)*, as well as Sealaska Inc., regional corporation per *AS 38.05.945 (c) (2)-(3)*. Notices were mailed to Shee Atika Inc. and land owners and managers of record in the vicinity of the project area. Notices were also sent to the Central Council of the Tlingit and Haida Tribes of Alaska, the Sitka Tribe of Alaska, and the Southeast Soil and Water Conservation District. Additionally, notices and a request to post for 30 days were sent to postmasters and librarians in the vicinity of the offering. Additionally, a Public Open House was held at the Harrigan Centennial Hall in Sitka, at 5PM on Thursday, March 10, 2014.

The public notice stated that written comments were to be received by 5:00PM, March 20, 2014 in order to ensure consideration and eligibility to appeal. For more information, refer to the Preliminary Decision.

DNR DMLW LSCAS received comments from the Alaska Department of Fish and Game, the Sitka Tribe of Alaska and four private parties. All comments received during the public comment period are summarized below.

Alaska Department of Fish and Game (ADFG) Comment: ADFG has no objection to the establishment of [this] subdivision. They also do not object to the reclassification of these lands to settlement. There is only one anadromous fish stream identified within the project area. ADFG should be notified if any other water bodies or streams are found during the design and construction of the subdivision.

DNR DMLW LSCAS Response: DNR appreciates your comments. As a result of information received during the public comment period, the scope of the project has decreased, and the referenced anadromous stream is no longer within the project area. Refer to the **Modifications to Decision and/or Additional Information** section of this document for more information. We will notify ADFG if any other public or potentially anadromous water bodies are found during the development of the project.

Sitka Tribe of Alaska (STA) Comment: The sale and subsequent development of the project area would have significant impacts on cultural and natural resources important to STA and its tribal citizens. This area of Sitka Sound is an integral part of the rich Native culture of Sitka. There are other locations near the project area that STA considers culturally sensitive. STA requests that the State remove the northern end of the project area to protect this culturally sensitive area.

DNR DMLW LSCAS Response: The project area has been modified to remove the northern portion as described. Refer to the **Modifications to Decision and/or Additional Information** section of this document for more information.

STA Comment: The sale and development of the project area would also have an impact on subsistence resources. This area is used quite frequently by local subsistence hunters for harvesting deer. It is also used by subsistence gatherers to harvest berries. STA also noted concern about the impact of this sale on the annual Dog Point Culture Camp on the adjacent Native allotment.

DNR DMLW LSCAS Response: After consultation with STA, it was determined that the primary area of concern was that portion of the project area north of and including Dog Point. The project area (as modified) encompasses only 182 acres of the approximately 1090 acre B-08 management unit. DNR will provide access through and within the project area via easements and reservations described in the Preliminary Decision.

Additionally, the annual Dog Point Culture Camp occurs on private land and should not be affected by users of other private or state lands. Management of private property is the sole prerogative of the property owner, and is beyond the scope of this decision. The subsistence resources on State lands are for all to use and cannot be reserved for only certain users. Although there may be an increase in use of State land as a result of this offering; the use of State lands including those lands adjacent to private property is governed (in part) by *11 AAC 96.020 Generally Allowed Uses*.

STA Comment: STA recommends that the State of Alaska considers a land swap with the U.S. Forest Service for lands that would better meet the needs of all involved and minimize the impact to STA tribal citizens.

DNR DMLW LSCAS Response: Due to the complexities inherent in land exchanges through AS *38.50 Exchange of State Land*, the State does not initiate administrative land exchanges.

DNR received four separate comments from private parties concerning the offering.

Private Comment: Commenters provided opposition to the project in favor of alternative #3 (do not offer). They indicated that DNR should not sell land near a Native Allotment as it seems there are other available lands not in the vicinity of Native Allotments and because of the effect it will have on subsistence resource gathering and other activities.

DNR DMLW LSCAS Response: The project area has been significantly reduced to remove the majority of the land adjacent to the native allotment. As discussed in the Preliminary Decision, this project was selected after evaluation of multiple other projects in the Northern Southeast Area Plan. This project was determined to be valuable based on the proximity to Sitka, waterfront accessibility, and amenities. Although there are other State-owned lands within the region, few of those lands have been determined as appropriate for settlement through the relevant area plans. In order to offer lands for sale to the public, those lands must be identified as appropriate for settlement in an area plan and/or classified settlement.

After further consultation with ADF&G, DNR received additional information regarding search and harvest of subsistence resources in the Nakwasina Sound area. The only apparent subsistence use within the project area is deer hunting. Given that large amount of public land in the vicinity and the very broad distribution of this use, the effect of this disposal on deer harvest or other subsistence uses is expected to be very minimal, particularly since the project area has been reduced.

Private Comment: The commenter indicated that only one member of his family was notified of the proposal, and that it was disrespectful to the family that owns the Native allotment. The commenter also recommended that any further decisions involving Native Allotment lands should include notice of all parties prior to release in the newspaper.

DNR DMLW LSCAS Response: DNR issues public notice to the land owner of record. In this case DNR issued notice to owner of record according to the ownership records from the Alaska Recorders Office. Notices were mailed the week of February 10th. A Public Service Announcement was released to media outlets in the vicinity on February 20th. DMLW tries to release all forms of notice around the same time, but in this case media release was issued later, however; well within the public comment period. All adjacent land owners were noticed concurrently through the public notice process, including the owner of record for the Native Allotment adjacent to the project area.

Private Comment: The commenter opposes the subdivision because of the adverse effect it will have on known cultural and heritage sites including at least one village.

DNR DMLW LSCAS Response: After consultation with the Sitka tribe of Alaska and several of the owners of the Native allotments, we will design the subdivision in a way that addresses the issues with the proposed subdivision and that will minimize impacts to these culturally important sites. The affected area of concern referenced included those lands along and north of Dog Point, which have been removed from the project area. Refer to the **Modifications to Decision and/or Additional Information** section of this document for more information.

Private Comment: The commenter opposes the subdivision because as designed it will fail to meet the objective of serving the maximum number of people. There should be many parcels and the parcels should be kept small to allow a greater number of people to participate in the offering.

DNR DMLW LSCAS Response: Although the plans for the subdivision have not been finalized, we plan on having recreational parcels smaller than 10 acres that will be affordable to many Alaskans. The 2.5 acre minimum for parcels will allow for the design and sale of remote parcels of a reasonable size. Generally, remote or recreational parcels tend to be a bit larger than road accessible parcels or parcels closer to developed communities. The larger parcel size allows adequate space for suitable building areas, and accounts for the lack of infrastructure in the immediate vicinity.

Private Comments: Two commenters completely support the proposed land offering of the Nakwasina Sound Subdivision.

DNR DMLW LSCAS Response: We appreciate your comment.

VI. Modifications to Decision and/or Additional Information

Pursuant to public comment and consultation with STA, the original proposed action(s) described in Preliminary Decision has been modified as follows: If deemed feasible, DNR may develop a subdivision of no more than 25 parcels no smaller than 2.5 acres; and the project area has been reduced to include only those portions of the project area within section 28 and 33, south of USS 4568 and USS 12410. The size of the project area has been reduced from approximately 485 acres to approximately 182 acres. See the attached Vicinity Map.

Recommendation and Approval of the Final Finding and Decision follow.

VII. Final Finding and Decision

The Department recommends proceeding with the proposed action as described in Preliminary Decision and as supplemented, amended, changed, or deleted herein. This action is undertaken under relevant authorities. Offering these parcels for sale will help meet the State's goal to provide land for settlement for sale to the public and raise revenue for the State.

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

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

/s/

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

January 20, 2015

Date

/s/

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

January 23, 2015

Date

/s/

Approved by: Mark Myers
Commissioner
Department of Natural Resources
State of Alaska

January 27, 2015

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 Appeals*. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040 (c) and (d)* and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Ave., Ste. 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov.

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on the 31st calendar 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.