

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

FINAL FINDING AND DECISION

of a
Noncompetitive Sale to Preference Right Applicant – ADL 108412
AS 38.05.035(b)(7)

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) issued on October 21, 2021. The PD (attached) and related actions have had the required public review.

I. Recommended Action

The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends offering for noncompetitive sale a parcel of state-owned land for private ownership pursuant to Alaska Statute (AS) *38.05.035(b)(7)*. The parcel is located near Ward Cove, is approximately three miles northwest of the city of Ketchikan and is approximately three acres in size. The legal description for the parcel is Lot 2 of U.S. Survey No. 3835, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on August 12, 1986, and officially filed September 8, 1986, containing 3.00 acres, more or less.

II. Authority

DNR has the authority under *AS 38.05.035(b)(7)* 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 states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

III. Public Participation and Input

Pursuant to *AS 38.05.945 Notice*, public notice inviting comment on the PD for the recommended action was published and distributed in the following manner:

- Posted under State of Alaska Online Public Notice from October 21, 2021, to November 22, 2021;
- Posted on DNR Land Sales website from October 21, 2021, to November 22, 2021;
- Mailed to postmaster in Ward Cove and Ketchikan with a request to post for 30 days, per *AS 38.05.945(c)(4) Notice*;
- Mailed to the Ketchikan Public Library with a request to post for 30 days;
- Mailed to the Sealaska Regional Corporation per *AS 38.05.945(c)(2)-(3) Notice*;
- Mailed to Federally Recognized Tribes and Native Village Corporations
 - Federally Recognized Tribes
 - Ketchikan Indian Corporation
 - Organized Village of Saxman
 - Organized Village of Kasaan
 - Metlakatla Indian Community

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- Village Corporations
 - Cape Fox Corporation
- Emailed to the Ketchikan Mayor's Office and Ketchikan Planning and Community Development Department;
- Mailed to the applicant and adjacent landowners within the vicinity; and
- Emailed notice to the Alaska Center for the Environment, Alaska Soil and Water Conservation District, Alaska Miners Association, University of Alaska Land Management Department, Trustees for Alaska, and all state agencies who received the agency review notice.

The public notice stated that written comments were to be received by 4:30 PM, November 22, 2021, in order to ensure consideration and eligibility to appeal. For more information, refer to the attached PD.

IV. Comments Received

DNR DMLW LCS received two written comments during the public comment period. All comments received during the public comment period are summarized and addressed below.

DNR DMLW LCS received brief comments of non-objection from the following:
Bob Sivertsen and DNR Division of Forestry.

DNR DMLW LCS Response: LCS appreciates your review.

V. Traditional Use Finding

In accordance with *AS 38.05.830 Land Disposal in the Unorganized Borough*, a Traditional Use Finding is required for project areas within the Unorganized Borough. The subject parcel is located within an organized borough; therefore, no Traditional Use Finding is required.

No conflicts with traditional uses of the land have been discovered. Public review brought forth no new information indicating traditional use conflicts that were not apparent at the PD stage.

VI. Modifications to Decision

The recommended action has not been modified from the original proposed actions described in the PD.

VII. Stipulations

The applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. A notice to proceed to appraisal will be issued if no appeals are received, or when appeals are resolved, after issuance of a Final Finding. Within two years from the date of the notice to proceed to appraisal, the applicant must hire an appraiser from DNR's Approved Appraiser list. The appraiser must apply for appraisal instructions issued by DMLW, and then must submit a completed fair market value appraisal to LCS in accordance with the appraisal instructions.
2. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within two years of an approved appraisal, the applicant must submit the following to LCS:

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- A completed and signed Declaration of Intent Form; and
 - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as deposit plus land sales contract application and recordation fees. Fees are established under to *11 AAC 05.100 Land Disposals* and *11 AAC 05.200 Recorder's Office* and are subject to change. Some fees have been reduced by Director's Order Number 3.
3. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such a contract is issued. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying LCS and receiving approval from LCS for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

Recommendation and approval of the Final Finding and Decision follow.

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VIII. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities.

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 case file has been found to be complete and the requirements of all applicable statutes have been satisfied. LCS recommends proceeding with the proposed action as described in the Preliminary Decision and this Final Finding and Decision.

[Signature on file]

Recommended by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

12/1/2021

Date

Under the authority of the applicable statutes, it is in the best interest of the state to proceed with the recommended action(s) as described in this Final Finding and Decision.

[Signature on file]

Approved by: Martin W. Parsons
Director
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

12/2/2021

Date

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Appeal Provision

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal 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 Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a) and (b). If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the Department on the 31st day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court (11 AAC 02.020(a) and (b)). A copy of 11 AAC 02 may be obtained from any regional office of the Department of Natural Resources.

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

PRELIMINARY DECISION
ADL 108412

Proposed Noncompetitive Sale to Preference Right Applicant
AS 38.05.035(b)(7)

PUBLIC COMMENT PERIOD ENDS 4:30 PM, MONDAY, NOVEMBER 22, 2021

I. Proposed Action

Preliminary Decision: Proposed Noncompetitive Preference Right Parcel Sale ADL 108412

Attachment A: Vicinity Map

Attachment B: Public Notice

Proposed Action, Noncompetitive Sale: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) received an application from Boyer Towing Inc. to purchase a parcel of state-owned land pursuant to Alaska Statute (AS) 38.05.035(b)(7). The proposed decision will allow the parcel to be sold through a noncompetitive sale to the applicant. The parcel, located near Ward Cove, is approximately three miles northwest of the city of Ketchikan and is approximately three acres in size. See *Attachment A: Vicinity Map* for a depiction of the subject parcel.

AS 38.05.035(b)(7) allows a remnant of state land determined to be unmanageable to be conveyed to an adjacent landowner for its fair market value.

Proposed Related Actions: There are no proposed related 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.

See **Section VII. Submittal of Public Comments** and *Attachment B: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. Authority

DNR has the authority under AS 38.05.035(b)(7) 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 states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

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III. Administrative Record

The project file for Alaska Division of Lands (ADL) 108412 constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Central/Southern Southeast Area Plan, adopted November 1, 2000;
- Ketchikan Gateway Borough Code, passed November 2, 2020;
- Ketchikan Gateway Borough Comprehensive Plan 2020;
- DNR case files: ADL 229421; ADL 44141; OSL 1446;
- Federal case file AA 009474; and
- State of Alaska casefile CG 85.

IV. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to determining the following: (1) if the applicant and subject parcel themselves qualify, (2) if it is in the State's best interest to sell the subject parcel, and (3) if it is in the State's best interest to sell the subject parcel to the applicant. The scope of this decision does not include the control of post-patent use and LCS does not intend to impose deed restrictions for this purpose. Restrictions regarding land use will be handled by the local zoning authority, if any.

V. Description

- a. **Location:** Within DNR's Southeast Region, the subject parcel is located near Ward Cove, close to the North Tongass Highway, and is approximately three miles northwest of the city of Ketchikan. It is located within Section 3, Township 75 South, Range 90 East, Copper River Meridian. See *Attachment A: Vicinity Map* for additional information.

USGS Map Coverage: Ketchikan B-6

Platting Authority: Ketchikan Gateway Borough

Regional Corporation: Sealaska

Federally Recognized Tribe: Ketchikan Indian Corporation

Village Corporation: None

- b. **Legal Description:** Lot 2 of U.S. Survey No. 3835, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on August 12, 1986, and officially filed September 8, 1986, containing 3.00 acres, more or less.

Situated in the Ketchikan Recording District.

- c. **Title:** Information from Title Report No. 21673, current as of April 7, 2021, indicates the State of Alaska received title to the subject parcel on February 13, 1990, under Federal Patent 50-90-0158. On July 9, 2007, the State of Alaska transferred the state's interest in the parcel through Quitclaim Deed No. 1635 to the Board of Regents of the University of Alaska, as trustee for the University of Alaska. On April 23, 2010, the Board of Regents of the University of Alaska quitclaimed its interest back to the State of Alaska for said parcel. The parcel is subject to the reservations, easements, and exceptions contained in the federal patent.

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d. *State Reservation of Title:*

Retention of and Access to Mineral Estate: In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation*, the State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils 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, silver, etc.) and leasable minerals (such as oil, gas, coal, etc.)

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

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

The Bureau of Land Management has not made a navigability determination for waters within the affected townships for title purposes.

Native Interest: The subject parcel is within the boundaries of the Sealaska regional ANCSA corporation and federally recognized tribe, Ketchikan Indian Corporation. There are no Native interests identified with this parcel.

Other Conflicts or Pending Interest: None.

e. Background and Discussion:

Background

On August 3, 2015, Boyer Towing Incorporated (Boyer Towing, Inc.) submitted an application to purchase the subject parcel noncompetitively through statutory authority *AS 38.05.035(b)(7)*.

The applicant (Boyer Towing, Inc.) obtained adjacent parcels, U.S. Survey 1207 and U.S. Survey 2090, through a Statutory Quitclaim Deed from Ward Cove Packing Company, recorded in the Ketchikan Recording District on June 1, 2004, as document number 2004-

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002375-0. Also included in the Statutory Quitclaim Deed were associated rights of use under State of Alaska Certificate of Appropriation of Water, Certificate No. 185. This certificate allows for the right to the use of 395,000 gallons of water/day from the public waters of the State of Alaska for the purposes of domestic use. The location of the water source to which the water right was granted was Walsh Creek, dam and pipeline in U.S. Survey 1207, protracted Section 3, Township 75 South, Range 90 East, Copper River Meridian. Certificate No. 185 was signed by the Director of the Division of Lands on April 20, 1970. This document was recorded April 29, 1970, as Document #1970-000801-0 in Book 27, Page 1.

The adjoining parcels owned by Boyer Towing, Inc. currently contain a dam on Walsh Creek and reservoir lake. The dam straddles the boundary between U.S. Survey No. 1207 and the subject parcel. Two corners of the dam and part of the reservoir are located on the subject parcel. The dam is owned by the applicant who operates and utilizes the adjacent property as a marine maintenance and short-term residential facility. Currently, water from the dam is used for personal hygiene and drinking water for current Boyer Towing operations.

Construction of the dam began in the 1930's with the original intent of the dam to supply water for the salmon processing and canning operations at the Ward Cove Cannery. The water reservoir impounds water on the subject parcel in the western corner. This reservoir is also the main source of water for Boyer Towing and is a significant reason why the applicant has applied to purchase the subject parcel.

After purchasing the adjoining parcels and dam from Ward Cove Packing Company, Boyer Towing, Inc. worked with DNR to improve the dam to a safe operating condition. In 2015 and 2016, the applicant hired an engineering firm to improve and expand the dam. Boyer Towing, Inc. obtained a Certificate of Approval to Operate a Dam from DNR on June 21, 2018.

The subject parcel is composed mostly of natural vegetation and free from any manmade structures except for the northeast corner of the dam and a possible shed, as indicated on a site map provided in the 2018 Ward Cove Dam Periodic Safety Inspection Report provided by Shannon & Wilson, Inc.

Boyer Towing, Inc. operates as a deep sea and inland water freight transportation company under Alaska Business License #1777. At the time the preference right application was submitted, a Certificate of Compliance for Boyer Towing, Inc. was provided stating that this entity is in good standing. Additionally, Boyer Towing, Inc. provided a corporate resolution stating that Kent Halvorsen was authorized to negotiate and purchase the subject parcel. As of the time of this PD, there are no liens associated with Boyer Towing, Inc.

Discussion

Under AS 38.05.035(b)(7), the State may sell land noncompetitively to an adjoining landowner at fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right of way. The director must determine it is in

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the best interest of the state, the parcel must not exceed minimum lot size under applicable zoning code or is smaller than 20 acres and is completely enclosed by property owned by the adjacent landowner. The director and platting authority having land use planning jurisdiction must also agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans.

The subject parcel is a landlocked, triangularly shaped piece of land located between three privately owned parcels. On the northwest and southwest sides of the subject parcel are U.S. Survey 1207 and U.S. Survey 2090. Both parcels are owned by Boyer Towing, Inc. On the northeast and southeast of the subject parcel is Lot 1, U.S. Survey 3835, owned by the Alaska Mental Health Trust Authority.

As adjacent landowners, both Boyer Towing, Inc. and the Trust Land Office are the only eligible applicants to purchase the subject parcel under AS 38.05.035(b)(7). In 2015, the Trust Land Office stated in an email to DNR that they have no interest in the subject parcel and to date, LCS has not received a preference right purchase application for the parcel or other expression of interest in purchasing the parcel. Therefore, Boyer Towing, Inc. is the only appropriate applicant to purchase the parcel.

DNR uses various case specific criteria to determine if a parcel is considered “unmanageable”. Where applicable, criteria include the following: eligibility for disposal, size, existing authorizations, access, topography, resources, wildlife, vegetation, soils and hydrography, structures or improvements, statutory or legislative restrictions, incompatible state land use authorizations, state area plans, municipal land use plans, alternative uses, and surrounding land uses.

The subject parcel is eligible for disposal and currently has no legal access. The only known physical access is through the adjoining property (U.S. Survey No. 1207), which is owned by the applicant. AS 38.05.035(b)(7) restricts the size of an unmanageable parcel to no larger than the minimum lot size under the applicable code. The subject parcel is located within the Ketchikan Gateway Borough (KGB) and is currently zoned as “FD-future development zone”. Under KGB code, Chapter 18.25, FD zones are “established to apply to areas which should be preserved in a natural state to be used primarily as recreation areas and as watersheds and wildlife reserves.” For land zoned as future development, there is no minimum lot area or width. Therefore, the minimum lot size restriction is not applicable in this case.

The topography of the parcel is generally flat and would not prohibit reasonable development. However, the presence of part of the dam and reservoir on the parcel makes portions of the parcel unsuitable for development possibilities. There are no active mining claims or other resource authorizations on the parcel. This parcel may support wildlife with the presence of the dam reservoir as a water source. There are no known hazardous materials or contamination on the parcel.

The only known structures or improvements on the parcel is the portion of the Ward Cove Cannery dam (National Inventory of Dams ID# AK00178) owned by Boyer Towing, Inc., the dam reservoir, and a possible shed. Boyer Towing, Inc. currently holds the following authorizations for operation of the dam: Certificate of Approval to Operate a Dam, issued

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June 2018, and Certificate of Appropriation of Water No. 185. The sale of the parcel will allow the improvements to remain *in situ* and provides the applicant assurances required for future planning, protecting a valuable water source, and passing property to heirs. If the State chooses to retain the parcel in state ownership and declines to sell the parcel to the applicant, the applicant may be required to remove the improvements from the land and restore it to its original condition. The Ward Cove Cannery dam has been located on the subject parcel for over 90 years and it would be very difficult, if not impossible to remove the corner of the dam currently on state land.

The parcel and surrounding land are classified as Settlement-Commercial in the Central/Southern Southeast Area Plan (CSSEAP). CSSEAP management goals include providing economic opportunities for jobs and income by managing state land and resources to support a vital, self-sustaining local economy; additional goals include maintaining or enhancing the quality of the natural environment including air, land, and water, fish and wildlife, both habitat and harvest opportunities; protecting heritage resources and the character and lifestyle of the community; provide opportunities for private ownership and leasing of land currently owned by the state; and maintaining long-term productivity and quality of renewable resources including fish and wildlife, and timber.

The primary management goal for CSSEAP Unit K-51 (the unit encompassing the subject parcel) is, if practicable, dispose of this parcel to either private interests or the Borough. Unit K-51 is designated for resources such as commercial and/or industrial uses. Lands designated Settlement-Commercial are typically uplands suitable for sale, leasing, or permitting of state lands to allow private commercial, industrial, recreational, or community use. This designation is generally used for areas appropriate for land offerings for industrial or commercial uses.

As required by AS 38.05.035(b)(7), approval was sought from the platting authority having land use planning jurisdiction that conveyance of the parcel to the applicant will be compatible with municipal land use plans. LCS emailed the local platting authority (KGB) seeking this approval. KGB replied in an email received August 19, 2021, that they approved of and consented to the preference right sale.

As an alternative to conveyance of the subject parcel, the State could enter into a lease with the applicant. Under this scenario, the State retains long-term interest in the land and the option to decline to re-lease the parcel in the future. The applicant receives site control for a given period. However, the State expends resources managing leases that may outweigh the benefits of any revenue earned from them.

Conveyance under these circumstances supports DNR's goal of providing lands for private settlement and supporting economic growth throughout Alaska. Article VIII, Section 1 of the Alaska Constitution states that "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." A sale of land supports settlement in a more viable way than a lease of land, as it provides the private owner long-term assurances needed for planning improvements and maintaining a commercial enterprise.

For the reasons outlined above, the sale of the subject parcel is beneficial both to the State, and to the prospective applicant. The sale provides land for settlement to the

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applicant and is the site of used and useful improvements. It provides maximum use for the public benefit in that it provides land to the private sector, the proposed parcel use does not disturb or curtail nearby state land uses and supports operations of a local business.

f. Planning, Classification, and Mineral Orders:

1. *Planning:* The subject parcel is located within Unit K-51 of the Central/Southern Southeast Area Plan adopted November 1, 2000. Recommended land use within this management unit includes disposing of this parcel to either private interests or the Borough. The plan designates the subject parcel as Settlement-Commercial. This designation is suitable for conveyance.

2. *Land Classification Order:* The State classified the subject parcel as Settlement-Commercial under Classification order (CL SE-00-001) based on the Central/Southern Southeast Area Plan adopted November 1, 2000.

3. *Mineral Order:* This parcel has been previously closed to mineral entry by Mineral Order 1118.

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

4. *Local Planning:* This area is zoned “FD-future development zone” by the Ketchikan Gateway Borough and applies to areas which should be preserved in a natural state to be used primarily as recreation areas and as watersheds and wildlife reserves.

5. *Flood Risk:* There are no FEMA flood maps available for this area.

g. Traditional Use Findings: The subject parcel is located within the Ketchikan Gateway Borough and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. There are no anticipated significant changes to traditional uses of the land and resources of this area as a result of the proposed action. Additional information on traditional use is welcome during the public comment period and if this proposal is approved, LCS will address the information received in a subsequent FFD, if one is issued. See the **Section VIII Submittal of Public Comments** at the end of this documents and *Attachment B: Public Notice* for details on how to submit comment.

h. Access, including Access To and Along Public or Navigable Water:

Public Access: There is no legal access to the subject parcel. Physical access to the parcel is through the adjoining property (U.S. Survey No. 1207) which is owned by the applicant.

Access To and Along Public or Navigable Waters: In accordance with *AS 38.05.127 Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed

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access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include *11 AAC 51.035 Determination of Navigable and Public Water*, *11 AAC 51.045 Easements To and Along Navigable and Public Water*, and *11 AAC 53.450, Buffer Strips, Reserved Areas, and Public Easements*.

As there is no legal access to the subject parcel, the State will not retain an *AS 38.05.127* access reservation. The State also finds it is in the State and applicant's best interest to not reserve a *AS 38.05.127* access easement in order to protect and preserve the water supply of the dam owned and operated by the applicant.

Easements and Setbacks:

- Additional reservations and/or restrictions required through the local platting authority.
- i. Reservation of Mineral Estate: In accordance with section 6(i) of the Alaska Statehood Act and *AS 38.05.125 Reservation*, 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, if any, which could occur, would be consistent with *AS 38.05.130 Damages and Posting of Bond* and other applicable statutes and regulations.
 - j. Hazardous Materials and Potential Contaminants:
There is no known contamination of, or hazardous materials on, the subject parcel. The applicant, Boyer Towing, Inc., is expected to inspect the subject parcel and familiarize itself with the condition and quality of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed here for conveyance. The State of Alaska does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.
 - k. Survey: This parcel is surveyed as Lot 2 of U.S. Survey No. 3835, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on August 12, 1986, and officially filed September 8, 1986, containing 3.00 acres, more or less. A Survey Determination (SD 2021-09) was received May 26, 2021 and stated that the subject parcel was determined by the DNR DMLW Survey Section to be surveyed.
 - l. Compensation/Appraisal: If the purchase is approved, the parcel will be sold at fair market value as required by *AS 38.05.840(a) Appraisal*. At the appropriate time, LCS will notify the applicant to begin the appraisal process and will provide a list of approved appraisers. The DMLW Appraisal Unit will provide appraisal instructions to an approved appraiser. The applicant bears the cost of appraisal. The date fixed for sale under *AS 38.05.840(a) Appraisal* and the valuation date of the appraisal will be set as the date of inspection by the appraiser.

VI. DMLW and Agency Review

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD. Agency review

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was conducted between May 20, 2021, through June 10, 2021. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision if one is issued.

DNR DMLW LCS received brief comments of non-objection from the following agencies: DNR Division of Parks and Outdoor Recreation, DMLW Water Section, DNR Division of Forestry, Department of Transportation and Public Facilities, and Alaska Department of Fish and Game.

DNR DMLW LCS Response: LCS appreciates your review of the proposal.

DNR Division of Oil and Gas (DOG): DOG thanked DMLW for sharing information on the proposed Noncompetitive Sale to Preference Right Applicant ADL 108412. DOG does not have any objection to the proposed disposal. DOG has not issued any third-party authorizations on the subject land, nor are there any pending applications or activity in the vicinity.

DOG asks to please inform the applicant that the State reserves oil, gas, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells in accordance with Section 6(i) of the Alaska Statehood Act and AS 38.05.125. The State also reserves the right to enter the land for the purposes of exploring for, developing, and producing these mineral resources. A mineral order closing the area to locatable mineral entry, if any, does not apply to leasable mineral resource exploration, development, or production.

DNR DMLW LCS Response: LCS appreciates the review of this proposed noncompetitive sale. Included in this decision is the reservation of mineral estate in accordance with Section 6(i) of the Alaska Statehood Act and AS 38.05.125 *Reservation.*

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

- Department of Environmental Conservation;
- Department of Natural Resources;
 - Division of Agriculture;
 - Division of Geological and Geophysical Surveys; and
 - State Historic Preservation Office.

VII. Submittal of Public Comments

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

Pursuant to AS 38.05.945 Notice, LCS is issuing public notice inviting comment on this Preliminary Decision.

In accordance with AS 38.05.946(a) Hearings, a municipality or corporation entitled to receive notice under AS 38.05.945(c) Notice 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 to hold a public hearing.

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LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, 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 proposal is approved and no significant change is required, the PD, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent FFD without further notice.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the FFD. Upon approval and issuance of a FFD, a copy of the decision will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the appeal process to any party who provides timely written comment.

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

DEADLINE TO SUBMIT WRITTEN COMMENT IS 4:30 PM, MONDAY, NOVEMBER 22, 2021

VIII. Stipulations

The applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. A notice to proceed to appraisal will be issued if no appeals are received, or when appeals are resolved, after issuance of a Final Finding. Within two years from the date of the notice to proceed to appraisal, the applicant must hire an appraiser from DNR's Approved Appraiser list. The appraiser must apply for appraisal instructions issued by DMLW, and then must submit a completed fair market value appraisal to LCS in accordance with the appraisal instructions.
2. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within two years of an approved appraisal, the applicant must submit the following to LCS:
 - A completed and signed Declaration of Intent Form; and
 - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as deposit plus land sales contract application and recordation fees. Fees are established under to *11 AAC 05.100 Land Disposals* and *11 AAC 05.200 Recorder's Office* and are subject to change. Some fees have been reduced by Director's Order Number 3.
3. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such a contract is issued. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

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If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying LCS and receiving approval from LCS for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

IX. Discussion and Alternatives

LCS considered the following alternatives:

Alternative 1: Sell

Offer the subject parcel for sale as proposed in this decision in accordance with *AS 38.05.035 (b)(7)*.

Alternative 2: Lease

Issue a lease to the applicant.

Alternative 3: Retain

DNR will take no action and retain the subject parcel.

Alternative 1 will provide settlement land to the private sector, generate revenue for the State, support a local commercial enterprise and the local economy, is compatible with area plan management intent, and provides stability and assurance for future planning to the applicants. Therefore, it is in the best interest of the State to sell the parcel as proposed in this decision. This is the preferred alternative.

Article VIII, Section 1 of the Alaska Constitution states, “it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.” Alternative 1 provides a method for DNR to meet the obligations laid out in the Constitution and statute and maximizes public interest.

Under Alternative 2, DNR will issue a lease to the applicant. Under this option the State earns revenue from the leasehold, but also incurs future management costs related to ensuring performance under the lease agreement and administrative costs related to lease administration. This is not in the best interest of the State. This alternative is not preferred.

Under Alternative 3, the State would need to expend resources managing the land, while forgoing the income that could have been generated by a sale or lease. If the State chooses to neither sell nor lease the land to the applicant, they will be required to remove existing infrastructure from the land that has existed prior to statehood. Retaining the subject parcel in state ownership is not in the best interests of the State. This alternative is not preferred.

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

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X. Recommendation and Preliminary Decision

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

_____[Signature on file]_____
Prepared by: Kelsey M. Anderson
Natural Resource Specialist 3
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

____10/21/2021_____
Date of Signature

_____[Signature on file]_____
Approved by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

____10/21/2021_____
Date of Signature

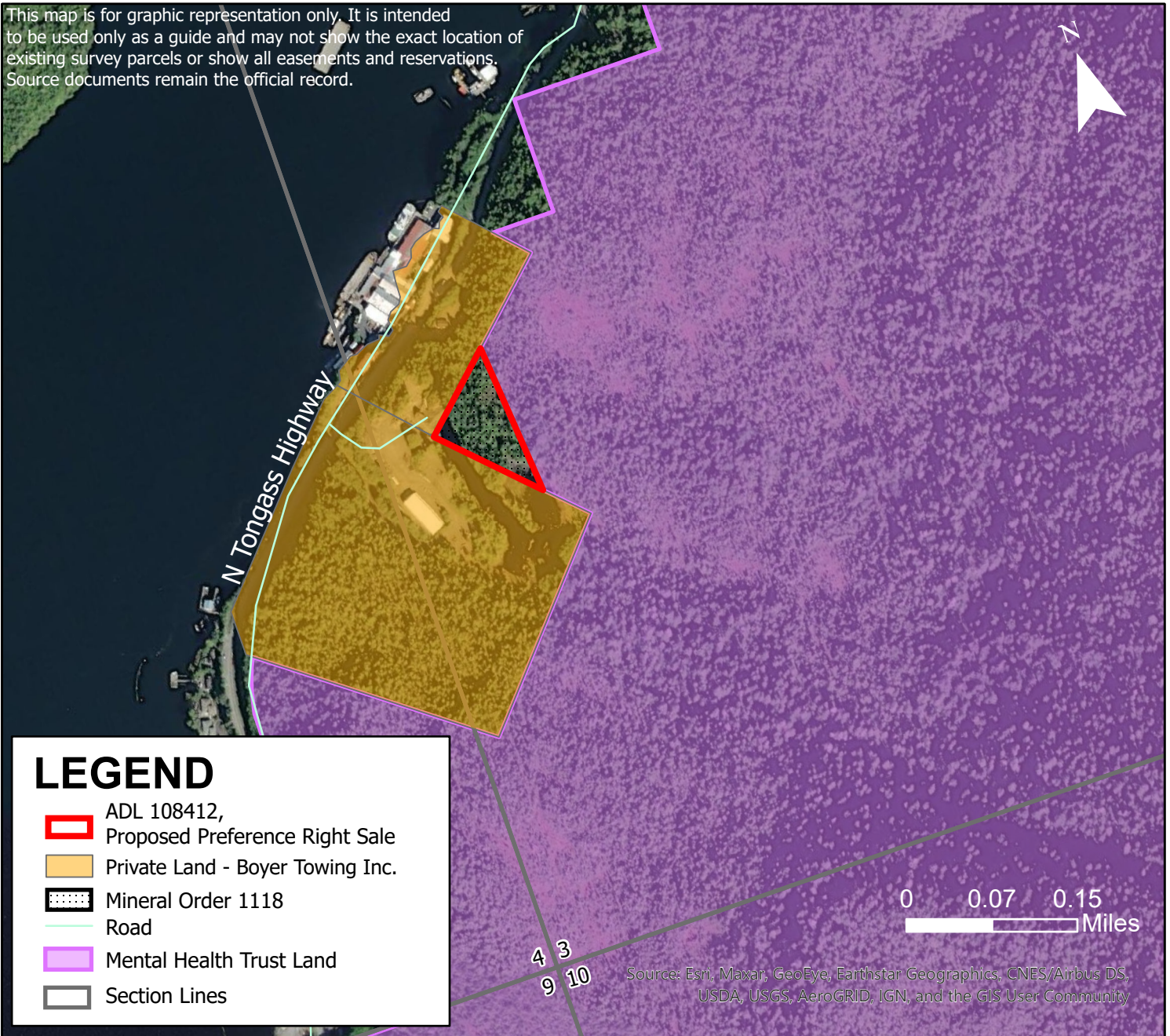


Boyer Towing Incorporated
ADL 108412

Attachment A: Vicinity Map

Proposed Noncompetitive Sale
Pursuant to AS 38.05.035(b)(7)

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



Section 3, Township 75 South, Range 90 East, Copper River Meridian

USGS Quad 1:63,360 Ketchikan B-6

For more information contact:
Kelsey M. Anderson
Department of Natural Resources
Division of Mining, Land and Water
Land Conveyance Section
Phone: 907-269-8851
Fax: 907-269-8916
Email: Kelsey.anderson1@alaska.gov



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

PUBLIC NOTICE

**Requesting Input for Proposed Noncompetitive Sale to
Preference Right Applicant - ADL 108412**
AS 38.05.035(b)(7)

COMMENT PERIOD ENDS 4:30 PM, MONDAY, NOVEMBER 22, 2021

The Alaska Department of Natural Resources (DNR), Division of Mining Land and Water (DMLW), Land Conveyance Section (LCS) is conducting a public notice for a noncompetitive land sale located near Ward Cove and approximately three miles northwest of the city of Ketchikan. The legal description for the parcel is Lot 2 of U.S. Survey No. 3835, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on August 12, 1986, and officially filed September 8, 1986, containing 3.00 acres, more or less. Situated in the Ketchikan Recording District.

To obtain the notice, Preliminary Decision (PD), or instructions on submitting comment, go to <http://dnr.alaska.gov/mlw/landsale/> 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 10:00 AM and 5:00 PM in Anchorage at (907) 269-8400 or Fairbanks at (907) 451-2705 or the Southeast Land Office in Juneau at (907) 465-3400 or TTY: 711 for Alaska Relay or 1-800-770-8973 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, Monday, November 15, 2021.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comments on the Preliminary Decision. **The deadline for public comment is 4:30 PM, MONDAY, NOVEMBER 22, 2021.** Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision (FFD). Written comment may be received by fax, email, or postal mail. To submit comments or for direct inquiries, contact Kelsey M. Anderson by mail at 550 West 7th Ave, Suite 640, Anchorage, AK 99501 or by fax at (907) 269-8916 or by email at kelsey.anderson1@alaska.gov. If you have questions, call Kelsey M. Anderson at (907) 269-8851.

If no significant change is required, the PD, including any minor changes and a summary of comments and responses, will be issued as the FFD without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

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