

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

**PRELIMINARY DECISION**  
**Anchors Aweigh North Subdivision – ADL 233192**

**Proposed Land Offering in Kenai Peninsula Borough**  
*AS 38.05.035(e), AS 38.05.045*

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

**PUBLIC COMMENT PERIOD ENDS 5:00PM, WEDNESDAY, NOVEMBER 30, 2022**

**I. Proposed Action(s)**

*Preliminary Decision: Anchors Aweigh North Subdivision - ADL 233192*

*Attachment A: Vicinity Map*

*Attachment B: Public Notice*

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

*Draft Mineral Order (Closing) MO 1259*

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

LCS proposes to sell land within the Anchors Aweigh North project area for the purpose of providing land for settlement by developing a subdivision of no more than 30-parcels no smaller than 1-acre. Subdivision design may include additional tracts as necessary. The project area consists of approximately 60 acres that have been identified for disposal by this proposed action. The project area 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 project area will be described in a subsequent Final Finding and Decision (FFD), if the project proceeds to that step. Additional adjustments may be made prior to survey and platting, as described in the applications to the platting authority, as needed to reserve areas for public use, minimize conflicts between uses, or ensure compliance with platting requirements. Although actions under this proposal are limited to the stated maximums, additional offerings may be authorized under future proposals, which could increase the density of privately-owned parcels within, adjacent to, or near the project area.

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Proposed Related Action(s): The related action outlined below will be developed separately, however; public notice for all actions is being conducted concurrently.

*Mineral Order (Closing)*: DNR proposes to close the project area to new mineral entry. There are no known mining in claims in the project area. Refer to the Mineral Activity and Order(s) subsection of this document for more information on this proposed related action.

This related action will be developed separately. However, approval of the proposed actions is 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. Public notice for all actions is being conducted concurrently.

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

## **II. Method of Sale**

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

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

## **III. Authority**

DNR has the authority under *AS 38.05.045 Generally* to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required 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." 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 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for mineral orders.

## **IV. Administrative Record**

The project file, Anchors Aweigh North Subdivision - ADL 233192, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Kenai Area Plan for State Lands (KAP, adopted 2001) and associated land classification files;
- Kenai Peninsula Borough Comprehensive Plan 2019;

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- *Alaska Interagency Wildland Fire Management Plan 2021;*
- *Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes;*
- *USDA, Natural Resource Conservation Service Custom Soil Report for this project, dated August 8, 2018; and,*
- DNR case files: access easements ADL 58229, ADL 212303, and ADL 214612; and, other cases, documents, reports, etc. referenced herein.

### **V. Scope of the Proposal**

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

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

### **VI. Location**

The project area is located within DNR's Southcentral Region, approximately 7-miles north from Anchor Point within Section 36, Township 3 South, Range 15 West, Seward Meridian, within the Kenai Peninsula Borough (KPB). The project area consists of approximately 60 acres identified for disposal by this proposed action.

*Platting Authority:* The project area is within the KPB and subject to the borough's platting authority.

*Native Regional and Village Corporations:* The project area is within the boundaries of the Cook Inlet Regional Incorporated (CIRI) regional corporation. The villages of Seldovia and Ninilchik are within approximately 25-miles of this proposed action and notice will be sent to the village of Ninilchik, Ninilchik Natives Association Incorporated, the Ninilchik Traditional Council, the Seldovia Village Tribe, the Seldovia Native Association Inc., and CIRI.

### **VII. Property Description**

That portion of W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 36 excluding the Sterling Highway Right-of-Way and that portion of the NE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  east of the Sterling Right-of-Way; Township 3 South, Range 15 West, Seward Meridian according to the plat approved by the U.S. Surveyor General's Office on April 6, 1921, containing 60 acres more or less.

### **VIII. Title**

Title Report No. 22171, current as of February 8, 2022, indicates the State of Alaska holds fee title to the land and mineral estate within the project area under Patent 1225472, dated February 23, 1962. The applicable State case file is SCH 73. The parcel is subject to the reservations, easements and exceptions contained in the federal patent including.

*State Reservations of Title:*

*Retention of and Access to Mineral Estate:* In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation [of Rights to Alaska]*, the State retains

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ownership of the mineral estate that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper, and silver, etc.), and leasable minerals (such as oil, gas, coal, etc.).

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

*Navigable Waters:* Per *AS 38.05.126(b) Navigable and Public Waters*, "...the State has full power and control of all of the navigable or public water of the State, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the State." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the 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 Section **XIII. Access To, Within, and Beyond Project Area.**

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

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

## **IX. Physical Characteristics and Hazards**

Information about the project area is based on internal research and an on-ground field inspection conducted on July 16, 2018. 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.

*Terrain and Major Features:* The project area is located on the first major terrace east of the coast of Cook Inlet. The terrain is relatively even, with gently decreasing elevation from the east to west. Elevations range from approximately 150 feet to 230 feet above sea level.

*View:* Mount Redoubt and Mount Iliamna of the Alaska Range can be seen from the project area. Cook Inlet is visible to the west of the project area.

*Vegetation:* Area vegetation consists of open spruce forest with some thickets of alder where the land was previously logged. Most of the standing mature spruce are Lutz spruce (a hybrid of Sitka spruce and white spruce). The remaining ground vegetation

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consists of grasses, sedges, horsetails, ferns, fireweed, wild geraniums, and occasional cow parsnip.

*Soils:* Soils within the project area generally consists of well drained, gravelly sandy loam and very gravelly sand, overlain by silt loams and slightly to moderately decomposed plant material (Island, Qutal and Mutnala silt loams), and silt loam overlain by mucky peat (Starichkof and Doroshin soils). According to the USDA Web Soil Survey, the project area is rated as a “poor” gravel source with areas of non-irrigated land capability class III, IV and VII soils. No areas of erosion were identified during the field inspection. The project area is in a region that lacks permafrost.

*Wetlands:* Freshwater emergent wetlands are located adjacent to the northeast portion of the project area. The majority of these wetlands are outside of the project area in KAP Unit 324B, which is designated as habitat. However, the wetland’s margins may still overlap portions of the project area. Subdivision design will account for wetland areas, and may include retention and/or conveyance of portions of the wetlands with the project area as appropriate. Dredging or filling of wetlands may require a permit from the US Army Corps of Engineers.

*Geologic Hazards:* Geologic hazards are common throughout Alaska. Information gathered during project research and field inspection did not identify any specific geologic hazards for this area. Should any geologic hazards be discovered in the development of this proposal, information will be included in offering materials.

*Fire Information:* Pursuant to observations from the 2018 field inspection, fire risk in the area is moderate. The project area is within the Anchor Point Fire and Emergency Medical Service Area. Four fires were recorded in the vicinity of the project area in the past. The 1952 Stariski Fire grew to an estimated 0.5 acres. In 1960, the Stariski Fire was limited to 0 acres. More recently, the 2003 Mile 151 Fire grew to 0.1 acres, and the 2011 Tall Tree Avenue Fire encompassed 2.9 acres.

Landowners with structures are encouraged to follow the Alaska Wildland Fire Coordinating Group *Firewise Alaska* recommendations. Offering materials include information regarding wildland fire prevention.

Fire management options and policies for the area are identified in the Alaska Interagency Wildland Fire Management Plan available from DNR Division of Forestry. The current fire management option for the project area is “Critical.” The policy on areas with the “Critical” management option reads, “Wildfires occurring in Critical [Fire] Management Option or that threaten Critical sites are assigned the highest priority for suppression actions and assignment of available firefighting resources.” The designation of a fire management option does not ensure protection from wildfire. A protection response is based on various factors, and “Ultimately, it is the responsibility of [landowners] to mitigate and minimize risk to their property before it becomes threatened by a wildfire.”

*Flood Hazard:* The project area is within FEMA Flood Insurance Rate Map Community Panel #02122C1885E. The map indicates the project area is located outside of a defined flood zone. No areas of flood erosion were reported from the 2018 field inspection.

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*Water Resources:* All surface and subsurface waters on all lands in Alaska are a public resource, subject to appropriation in accordance with the Alaska Water Use Act (AS 46.15). There are three water rights in the vicinity of the project area. Information from two surface rights along the Stariski tributary to the southwest indicate well depths range around 9 feet deep. A subsurface well just north of the project area is approximately 90 feet deep. Potential water sources in the area include drilling a subsurface well or hauling water from Anchor Point. Water quality in the area is unknown. Additional information on wells, water quality, and drinking water may be obtained from the Alaska Department of Environmental Conservation.

*Utilities:* This area is currently served by Homer Electric Association Incorporated, ENSTAR Natural Gas Company, and is also within Alaska Communications, and GCI service areas.

*Waste Disposal:* The area is serviced by the Soldotna Kenai Peninsula Borough Central Landfill. Solid waste disposal is available at Anchor Point (approximately 7-miles from the project area), off the Old Sterling Highway past the Anchor River Inn Grocery Store. All on-site wastewater disposal systems must meet regulatory requirements of the Alaska Department of Environmental Conservation.

### **X. Background:**

Land within the project area was selected via School selection (SCH 73). The KPB had previously selected the parcel (ADL 227552), but DNR found it to be an invalid selection under AS 29.65.060(G). The Anchors Aweigh North project area was later identified pursuant to the recommendation of the KAP (updated 2001).

The proposed Anchors Aweigh North subdivision project area is in a popular region where other subdivision projects have been successfully developed by private developers and the KPB. There have been no prior State land offerings in the vicinity. Private property, in the form of residential subdivisions, primarily surrounds the project area. The exception is an undeveloped parcel of KPB land to the northwest. North of the project area is the S. Boothe Recreational subdivision, which is approximately 4,067 acres with most lots ranging from approximately 1-acre to 10 acres in size. The Glud subdivision is to the southwest where parcel sizes range from approximately 1.7 acres to 10 acres. A single 73-acre parcel of land, owned by the Kachemak Heritage Land Trust Incorporated, partially surrounds the Glud subdivision and borders portions of the western-most project area. Directly south is the Coastal Vista subdivision, which is comprised of parcels ranging from approximately 1-acre to 4 acres in size. Tall Tree Estates, with individual lots ranging from 2 acres to 5 acres, is to the southeast. Finally, east of the proposed project area is the Jeppesen subdivision where parcel sizes approximately range from 5-to-10 acres.

There are four easements contained within the project area. ADL 19359 is a public easement for the Sterling Highway, 232 feet either side of the centerline of the highway, crossing through the center of the project area. The Sterling Highway ROW will be reserved as part of subdivision design. ADL 58229 is a public utility easement, 10 feet in width, located along the northerly boundary of the project area, west of the Sterling Highway. ADL 212303 is a public utility easement issued to Glacier State Telephone Company, 10 feet in width, crossing through the NW1/4 NW1/4 SW1/4 of section 36. The easement was issued in 1985 for the utility corridor

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only. There is a roadway following the route; however, the telephone lines and roadway appear to have pre-existed the authorization for the utility easement. This roadway appears to be currently used to access private property to the west of the project area. LCS intends to incorporate this easement and access into subdivision design. ADL 214612 is a public access easement, 30 feet in width, on a constructed road crossing the project area from the Sterling Highway west to the Glud Subdivision. During the July 16, 2018 field inspection, staff documented an unauthorized locked gate and no trespassing located at the beginning of the road. LCS intends to incorporate this access road into subdivision design. There are two other roads along the section line easement forming the south boundary of the subdivision: Cottonfield Avenue heading west from the Sterling Highway, and Tall Tree Avenue heading east from the Sterling Highway. There is also a small approach in the southeast portion of the project area leading from Tall Tree Avenue. Aerial imagery suggests the approach may represent the opening to one or more ATV trails that parallel the Sterling Highway in the region.

Developed access to the project area exists from the Sterling Highway, which is maintained by Alaska Department of Transportation and Public Facilities (DOT&PF). Tall Tree Avenue (a KPB-maintained gravel road) and Cottonfield Avenue will also provide access into the southerly portion of the proposed project area. Access within the project area will be from existing gravel roads and/or platted ROWs and easements to be created through subdivision design. DOT&PF commented that ADL 214612 & ADL 212303 should be upgraded to DOT&PF Approach Road standards. Access beyond the project area exists via the Sterling Highway and existing easements.

Other than access and utilities noted above, there are no other current uses identified within the project area. Much of the land in the project area was previously logged by the Division of Forestry in the 1990s. There is an existing oil and gas lease (ADL 393698) underlying the project area and surrounding lands. The State reserves all 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. There are no anticipated conflicts with the lease.

The project area terrain is relatively level and, barring areas in the northeast adjacent to wetlands, subsurface soils are well-drained; and thus, there is not an anticipated need to offer lots in excess of 5 acres to account for topography or soils. If a reason to include lots in excess of 5 acres is identified, LCS reserves the right to design and offer parcels larger than 5-acres under the allowances listed in *AS 38.04.020(h) Land Disposal Bank*.

The proposed project is consistent with surrounding land use. The project area encompasses approximately 60 acres. It is situated in an area with a sustainable economic base where necessary services can be efficiently provided. LCS considered the quality of the land, existing development in the area, and general land use patterns to incorporate into subdivision design. Subdivision design provides more residential opportunities in a popular area. Surrounding area lot sizes vary from approximately 1-acre to as high as 80 acres. By selling the land as subdivided lots, the State can maximize opportunity for land ownership in a highly desirable area that is close to amenities and has excellent road access via the Sterling Highway, Tall Tree Avenue, and Cottonfield Avenue. In turn, the land sale will also generate revenue for the State.

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### **XI. Planning and Classification**

The project area is within Kenai Area Plan (KAP, adopted 2001), Region 7, Unit 324A. Lands within this unit are currently designated Settlement, and classified Settlement under Land Classification Order No. SC-99-002. The project area consists of all of the management unit. LCS reviewed the general management intent of the area plan, 324A for consistency with the proposed offering.

*Region 7, Unit 324A Considerations:* Retain or manage buffer along Stariski Creek tributary (anadromous) for fish habitat. The tributary of Stariski Creek is not included in the anadromous waters catalog. LCS received comment from ADF&G that they had no documentation of anadromous fish using the tributary. It appears that the KAP identified this tributary as anadromous in error. Additionally, this water body does not appear to meet the criteria of a public water body pursuant to *11 AAC 51.035 Determination of Navigable and Public Water*. Given that the Stariski Creek tributary within the project area does not support anadromous or high value resident fish, LCS does not intend to retain any lands along this Stariski Creek tributary. If anadromous fish are discovered in this tributary prior to subdivision survey, LCS will include a buffer from the stream in subdivision design.

*Area-wide Considerations:* LCS reviewed the area plan's guidelines in Chapter 2 Areawide Land Management Policies. LCS will incorporate these considerations into the design and development of the project. Lands to be retained in public ownership, conditions, and reservations will be included on the plat and in offering materials as appropriate. Specific area-wide management intent and management guidelines affecting this proposal are discussed below.

*Fish and Wildlife Habitat and Harvest:* Areawide management guidelines for fish and wildlife habitat and harvest do not address any specific management intent or management guidelines specific to settlement. However, management guidelines provide that DNR and the Alaska Department of Fish and Game (ADF&G) will evaluate the use or development of State lands and the benefits or impacts it may have. ADF&G reviewed the proposed Anchors Aweigh North Subdivision project. Unit 324A resides approximately 1,100 feet east of Stariski Creek (an anadromous water body). As mentioned, a tributary of Stariski Creek passes through the northwest portion of the project area. ADF&G does not have records that indicate the tributary is anadromous and is not considered to be fish habitat.

*Forestry:* Management guidelines provide that in units designated other than Forestry (including Settlement), a percentage of forest cover is available for timber production and included in the timber base unless prohibited by the management intent for the specific unit. The project area has limited forest resources given that most of the timber within the project area was harvested by the Division of Forestry in the 1990s and replanted with white spruce. LCS does not intend to harvest timber prior to or in conjunction with the development of this proposed project.

*Heritage Resources:* Management guidelines provide that cultural surveys or inventories should be conducted prior to the design of land offerings in areas the state Office of History and Archaeology (OHA) determines to have high potential to contain important heritage sites and for which information is inadequate to identify



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and protect these sites. OHA reviewed the proposed Anchors Aweigh North Subdivision project area to determine the potential for negative effects on heritage resources and stated that their database did not indicate the presence of any known heritage resource sites within the proposed subdivision. OHA staff determined that a cultural resource survey was not required at this time. OHA will be notified should any heritage resources be discovered during the development of this project and offering materials will include information regarding heritage sites and the requirement to notify OHA if any heritage resources are discovered.

**Materials:** Management guidelines state that generally, if a unit is designated Settlement but contains sand and gravel deposits, rock sources, or other similar, high-value materials resources, a pit area will be identified and retained in public ownership for future use before lands are offered for sale. The project area does not contain any known high-value material resources; and thus, LCS does not intend to retain a pit area.

**Mineral Resources:** Areawide management guidelines do not address mineral resources or mineral orders for areas designated settlement; however, KAP Land Use Designations states that areas designated Settlement should be closed to mineral entry prior to sale. There are no known mineral claims or activities within the project area, and LCS proposes to close the project area to mineral entry should this project be approved.

**Settlement and Agriculture:** Applicable management guidelines include provisions for coordination with local government, commercial use of parcels, subdivision design, and erosion and flood control. These guidelines have been considered in the development of this proposal. LCS staff reviewed the KPB Comprehensive Plan (and 2019 update) and found no conflicts with this proposed offering. The KPB will be included in the public notice process. LCS has not identified any lands within the project area to be retained specifically for open space or recreational use. LCS does not intend to offer any commercial parcels within the proposed subdivision; however, the offering will not preclude that use. FEMA flood information indicates the project area is located outside of a defined flood zone. The project area does contain areas of non-irrigated land capability class III, IV soils, potentially capable of supporting agriculture. However, given the small size of the project area in conjunction with the surrounding development patterns, LCS feels designing and offering smaller settlement parcels is more appropriate than offering the project for agricultural use.

**Shorelines, Stream Corridors and Wetlands:** Management guidelines provide that legal access will be reserved along the shore of waterbodies. Parcels along public water bodies are subject to a 50-foot access easement along the water body, and a 50-foot building setback along non-anadromous waters or 100 feet along anadromous waters. The tributary within the project area is not considered to be public or navigable; and thus, LCS does not intend to reserve access along this drainage. However, if anadromous fish are identified prior to survey and platting, LCS will notify ADF&G, include a buffer from the stream in subdivision design, and will reserve public access along the stream.

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**Trails and Access:** Management guidelines require that, prior to the disposal of State lands, trails that merit consideration for protection should be identified and reserved. No trails that merit consideration for protection, including RS2477 trails, are located within or near the project area. There are ATV trails that pass through the project area, paralleling the east ROW of the Sterling Highway. Access to and within the area will be reserved along existing roads, section-line easements, and platted easements and platted ROWs as appropriate. See the **Access To, Within, and Beyond the Project** section for more information.

**Transportation and Utilities:** Management guidelines provide that before a land offering DNR will work with DOT&PF to identify appropriate locations for access and transportation facilities, if necessary. The proposed project is currently accessible by three constructed roads. DOT&PF was consulted and provided comments during the Agency Review period and LCS will continue to work with DOT&PF and the KPB as appropriate for reservation of access.

The proposed offering is consistent with area-wide land management policies and general management intent of the KAP and specific management unit.

Mineral Activity and Order(s): No mineral activity has been identified on these lands. The entirety of the project area (approximately 60 acres) will be closed to mineral entry if the mineral order is approved in accordance with *AS 38.05.185 Generally* and *AS 38.05.300 Classification of Land* for a land disposal. The proposed mineral order, if approved, will close the area to new mineral entry only and will not affect current existing mining claims. Closing the area to mineral entry is consistent with the management intent of the KAP.

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

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

Local Planning: The project area is within the KPB and property purchased through this proposed offering will be subject to the applicable zoning, ordinances, and restrictions of the borough. The project area is within the boundary of the KPB Comprehensive Plan (Adopted November 2019). Review of that plan did not indicate any conflicts with the proposed State land disposal.

## **XII. Traditional Use Finding**

The project area is located within the Kenai Peninsula Borough (KPB) and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*.

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However, information on current or traditional use is welcomed and can be given during the public comment period. See **Section XVII. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit comment.

### **XIII. Access To, Within, and Beyond Project Area**

Access to the project area is from the Sterling Highway to roads within the project area or along the project area boundary. Currently, ADL 214612 provides access to a private lot from the Sterling Highway through the western portion of the project area. Tall Tree Avenue and Cottonfield Avenue provide additional vehicular road access in the southeast and southwest portions of the proposed subdivision. There is a constructed road along ADL 212303, which will likely be incorporated into subdivision design. LCS may also dedicate additional access within the project area for parcel access. Subdivision design will incorporate platted ROWs and easements within the project area. Subdivision design will also consider topography and access to lands beyond the project area and within project area boundaries. The project area is subject to the platting authority of the KPB. Approval of platting actions and dedication of rights-of-way will require separate processes and public notices through the borough.

*Access To and Along Public or Navigable Waters:* In accordance with AS 38.05.127 *Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed 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*, and 11 AAC 51.045 *Easements To and Along Navigable and Public Water*, and 11 AAC 53.450, *Buffer Strips, Reserved Areas, and Public Easements*.

For the purposes of AS 38.05.127:

- navigable waters are generally lakes larger than 50 acres in size or streams larger than 50 feet in average width;
- 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 (21) *Definitions*.

There are no known public water bodies in the project area. A tributary to Stariski Creek appears from the adjacent wetlands east of the project area and passes through the northwest portion of the project area. Anadromous water bodies are also public waters and according to the KAP this tributary is also anadromous. However, ADF&G has no record that the tributary is anadromous, and the tributary does not appear to meet the criteria of public water under 11 AAC 51.035 *Determination of Navigable and Public Water*. LCS does not intend to determine the water body to be a public water body. However, if anadromous fish are identified prior to survey and platting, LCS will notify ADF&G, include a buffer from the stream in subdivision design, and will reserve public access along the stream in accordance with AS 38.05.127 *Access To Navigable or Public Water*. Parcels will be subject to access reservations in accordance with AS 38.05.127 *Access to Public or Navigable Water* and a building setback from the OHW of any water bodies identified as public or navigable prior to completion of survey in accordance with the KAP.

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*Building Setbacks From Public or Navigable Water:* If subdivision is deemed feasible and anadromous fish are identified in the project area prior to survey, LCS proposes to place a note on the final survey plat describing a building setback upland from the OHW of public or navigable water to protect access, fish and wildlife habitat, and personal property. Structures and subsurface sewage disposal systems will not be permitted within the building setback, except for utilities, water-dependent structures whose purpose is access to or across the stream or lake, or minor accessory structures for uses that must be in or adjacent to the water body in order to function.

*Easements, Setbacks, and Reservations:* Subdivision design may include a variety of easements, setbacks, and retained lands, which will be identified on the subdivision plat and included in related documents. Standards for easements are provided in *11 AAC 51.015* or by local platting ordinances. Final width and location of easements and reservations will be determined as part of the local platting process, which will include an additional opportunity for public participation.

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

- public access easements;
- utility easements;
- a 50-foot-wide section-line easement on each side of surveyed or protracted section-lines on State-owned land in accordance with *AS 19.10.010 Dedication of Land for Public Highways* and *11 AAC 51.025 Section-line Easements*; section-line easements may be vacated under *AS 19.30.410 Vacation of Rights-of-Way* and *11 AAC 51.065 Vacation of Easements* as part of the subdivision development;
- a 50-foot continuous easement upland from the OHW of public or navigable water bodies in accordance with *AS 38.05.127 Access To Navigable or Public Water*;
- a 50-foot building setback from the OHW of non-anadromous public or navigable water bodies, or 100 feet along anadromous waters, in accordance with the area plan;
- a 5-foot survey easement from the nearest practical point on the property boundary to control monuments within the parcel and an easement with a radius around the control monument, and as applicable, a 5-foot direct line-of-sight easement from the control station to an azimuth mark or other control monument;
- 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.

*Retained Lands:* None identified.

## **XIV. Hazardous Materials and Potential Contaminants**

During ground and vehicle field inspections conducted on July 16, 2018, field staff did not identify any environmental hazards within the project area. There are currently no known

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Anchors Aweigh Subdivision – ADL 233192

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environmental hazards associated with the proposed project; however, the State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for conveyance. The State further assumes no liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances eventually be found. Interested parties are encouraged to inspect the property and familiarize themselves with the condition and quality of the land prior to bid or application submittal.

LCS recognizes there are potential future environmental risks when previously vacant land is occupied. Many of the activities increasing these potential risks are regulated by other agencies, such as the regulation of septic system installation by the State of Alaska, Department of Environmental Conservation. This risk is no greater than when vacant private land undergoes development. Given that this land was designated Settlement for transfer into private ownership, and given the high degree of interest from both the legislature and citizens in transferring State-owned land into private ownership, LCS is of the opinion that the benefits of offering the land outweigh the potential risks.

### **XV. Survey, Platting, and Appraisal**

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

This proposed project area is located within the KPB, and therefore survey and platting will be subject to the relevant subdivision standards. The borough's platting requirements provide for separate public notice periods and processes for platting actions. These additional opportunities for public involvement occur after DNR issues a FFD, if this proposed action is approved.

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

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

### **XVI. DMLW and Agency Review**

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from February 7, 2019 through February 26, 2019. 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 FFD, if one is issued.

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DNR DMLW LCS received brief comments of non-objection from the following agencies: Alaska Department of Environmental Conservation; *DNR Division of Parks and Outdoor Recreation*; and *DNR State Pipeline Coordinator's Section*.

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

ADF&G Comment: ADF&G commented that they have no record of anadromous fish in the Stariski Creek tributary in the project area; however, the area plan reports that the tributary does have anadromous fish. ADF&G needs to be contacted if anadromous fish are identified during subdivision development but had no additional comments or concerns with the proposed project.

*DNR DMLW LCS Response:* LCS appreciates your review and comments of the proposal. LCS will notify ADF&G if anadromous fish are identified in the tributary prior to survey and platting.

Alaska Department of Transportation and Public Facilities (DOT&PF) Comment: DOT&PF commented that additional access to the Sterling Highway will not be permitted. DOT&PF recommended that DNR and developers utilize section lines and Tall Tree Avenue as alternative access points. If the project is approved, access points ADL 214612 & ADL 212303 should be upgraded to DOT&PF Approach Road standards.

*DNR DMLW LCS Response:* LCS is currently working with the Central Region Right-Of-Way staff in Anchorage and have incorporated your comments into the conceptual design of the subdivision. Approaches leaving the Sterling Highway will be upgraded to DOT&PF approach road standards when necessary. The necessary Approach Road permit(s) will be acquired through DOT&PF.

DNR Division of Oil and Gas Comment (DOG): The Division reported no objection to the proposed disposal or mineral order. There is an existing oil and gas lease (ADL 393698) underlying the project area. DOG commented that the proposed mineral order closing the area to locatable mineral entry does not apply to leasable oil and gas resource exploration, development, or production.

*DNR DMLW LCS Response:* LCS appreciates your review of the proposal. LCS will notify potential purchasers of the oil and gas activity in the area, and will continue to notify potential buyers that the State reserves all 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.

DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA) Comment: There are no known cultural resources sites within the identified area. No survey is recommended at this time.

*DNR DMLW LCS Response:* LCS appreciates your review of our proposal. OHA will be notified should any heritage resources be discovered during the development of this project and offering materials will include information regarding heritage sites and the requirement to notify OHA if any heritage resources are discovered.

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*DNR Division of Forestry Comment (DOF):* The Division of Forestry does not have any objections to the subdivision. This parcel was logged in the mid 1990's, and replanted with white spruce around 2011. The majority of the remaining standing timber is Lutz spruce, a hybrid between white spruce and Sitka spruce found on the southern Kenai Peninsula. The parcel is along the Sterling Highway, which does not present access issues in case of a wildland fire, and is already in a Critical fire protection area.

*DNR DMLW LCS Response:* LCS appreciates your review and comments of our proposal.

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

- Alaska Association of Conservation Districts
- Homer Soil & Water Conservation District
- Alaska Department of Commerce, Division of Community and Regional Affairs
- Alaska Railroad
- University of Alaska Land Management
- Department of Natural Resources;
  - Division of Agriculture;
  - Division of Geological and Geophysical Surveys;
  - Mental Health Trust Land Office; and,
  - Office of Project Management and Permitting

## **XVII. 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, and draft mineral 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 to hold a public hearing.

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

If the proposals are approved and no significant change is required, the Preliminary Decision and draft mineral order including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent FFD and Mineral Order 1259 without further notice. All related actions will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without approval of all actions. Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the FFD, and Mineral Order 1259. Upon approval and issuance of these actions, a copy of the decision and order will be made

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available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration process to any party who provides timely written comment.

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

### **DEADLINE TO SUBMIT WRITTEN COMMENT IS 5:00 PM, WEDNESDAY, NOVEMBER 30, 2022**

#### **XVIII. Alternatives and Discussion**

LCS is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision consisting of developing a subdivision of no more than 30-parcels no smaller than 1-acre and offer those parcels for sale. The development and offering of these parcels may be completed in multiple stages. This proposal includes a mineral order.

Alternative 2: (No Action) Do not offer this project area for private ownership. Retain the land in State ownership.

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." Furthermore, *AS 38.05.045 Generally* has placed this charge with DNR, and the legislature has provided funding to administer the land sale program.

Alternative 1 provides a method for DNR to meet the obligations laid out in the Constitution and statute, and maximizes public interest. This offering provides the public an opportunity to obtain land for settlement in a popular area. This proposal, if approved in a subsequent FFD, will allow LCS to create and design a subdivision which will provide for the best use and development of the land and financial return to the State. Alternative 1 provides the greatest opportunity for more Alaskans to purchase land within this area. Due to the unique amenities of the area, location relative to the communities of Anchor Point and Ninilchik, and the proximity to existing private property, the project area is better suited to subdivision prior to offering. Alternative 1 is preferred.

The related action is necessary to allow for the offering of the project area. The primary action and related action are dependent upon one another, and if DNR does not approve the project, the related action will not be processed.

Alternative 2 does not meet the legislative and public desire for DNR to offer State-owned land for private ownership. Retention of this land would inhibit DNR from meeting its constitutional, statutory, and legislative goals. Not offering the project area would deny many Alaskans the opportunity to obtain land in an area that is suited to settlement, which is consistent with the surrounding development in the area. Alternative 3 is not preferred.

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



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Recommendation follows.

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**XIX. Recommendation**

This Preliminary Decision for the proposed disposal of State lands and Mineral Order 1259 described throughout this document and its attachments are consistent with the overall management intent for State-owned land. Alternative 1 is the preferred alternative because it provides the maximum opportunity for offering State land to the public and helps meet the mission of the land sales program. The Preliminary Decision described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of State lands and Mineral Order 1259. If the decision is approved, the Mineral Order 1259 will accompany and precede any Final Finding and Decision issued.

**Signature on file**

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Prepared by: Patrick Hall  
Natural Resource Specialist II  
Land Conveyance Section  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

10/19/2022

Date

**Signature on file**

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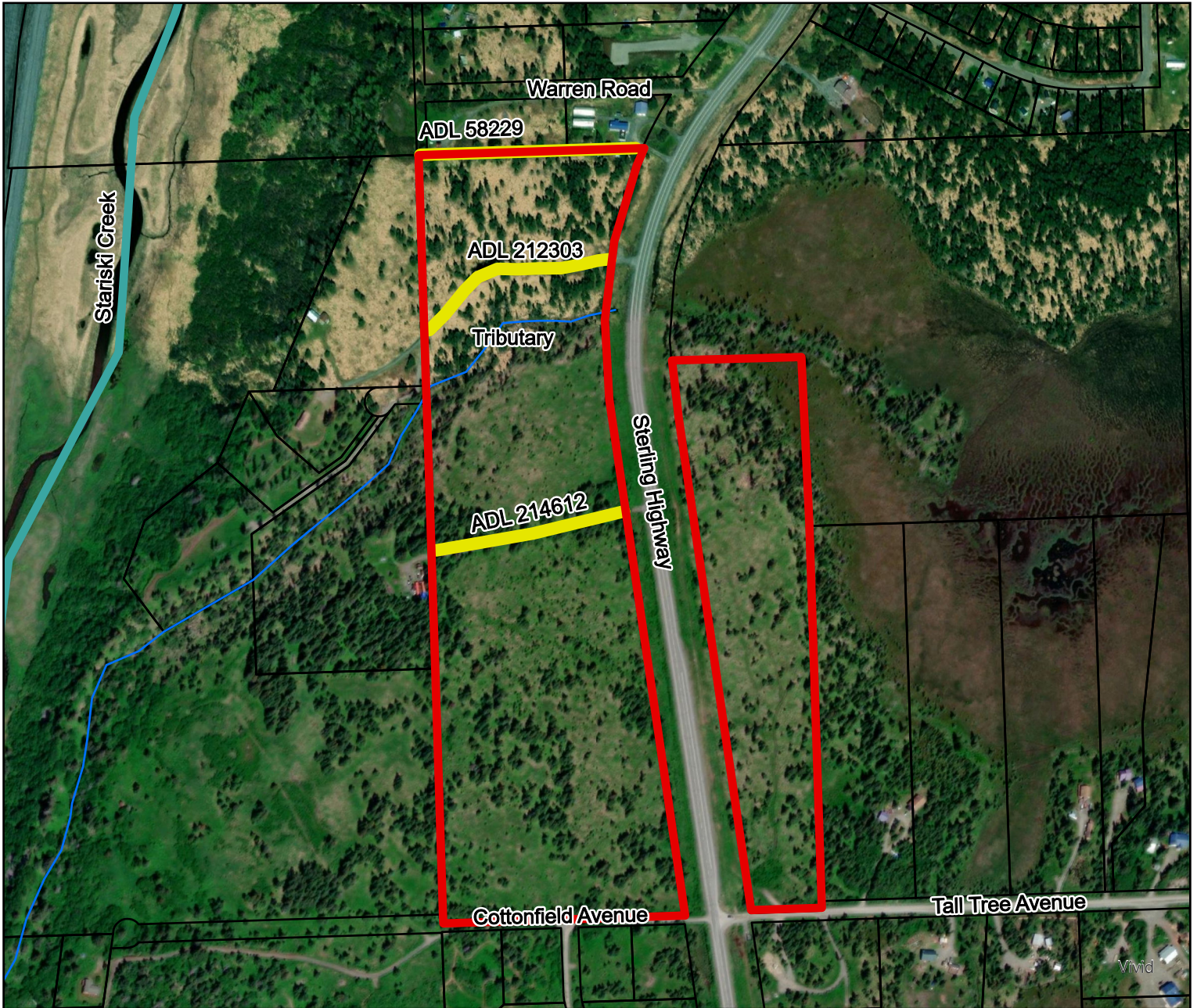
Approved by: Tim Shilling  
Natural Resource Manager II  
Land Conveyance Section  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

10/19/2022



Date



# Attachment A: Vicinity Map Anchors Aweigh Subdivision ADL 233192



### Legend

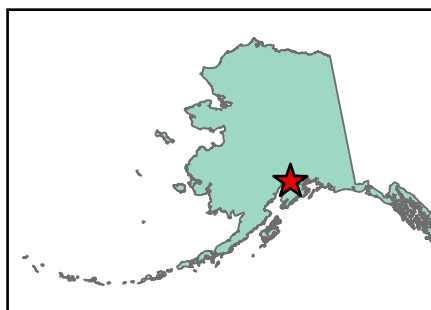
-  Project Area
-  Anadromous Stream



Section 36, Township 3 South,  
Range 15 West, Seward Meridian

PH 8/12/2022

USGS QUAD 1:63.360  
Seldovia D-5  
For more information contact:  
Patrick Hall  
Department of Natural Resources  
Division of Mining, Land, and Water  
Land Sales Section  
Phone: 907-374-3737  
Fax: 907-451-2751  
Email: [land.development@alaska.gov](mailto:land.development@alaska.gov)





STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND & WATER  
LAND CONVEYANCE SECTION

**ATTACHMENT B: PUBLIC NOTICE**

Requesting Input for  
a Proposed Land Offering:  
**Anchors Aweigh Subdivision – ADL 233192**

**COMMENT PERIOD ENDS 5:00PM, WEDNESDAY, NOVEMBER 30, 2022**

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

Location The project area is located within DNR's Southcentral Region, approximately 7-miles north of Anchor Point, within that portion of W1/2 SW1/4 of Section 36 excluding the Sterling Highway Right-of-Way and that portion of the NE1/4 NW1/4 SW1/4 east of the Sterling Right-of-Way; Township 3 South, Range 15 West, Seward Meridian according to the plat approved by the U.S. Surveyor General's Office on April 6, 1921 containing 60-acres more or less.

Project size: 60-acres proposed development area

Proposed Offering: no more than 30-parcels no smaller than 1-acre.

To obtain a copy of the Preliminary Decision, Mineral Order, or instructions on submitting comment, go to <http://landsales.alaska.gov/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10AM and 5PM in Anchorage at 907-269-8400, Fairbanks at 907-451-2705, or the Southeast Land Office in Juneau at 907-465-3400 (TTY for the hearing impaired for all locations: 711 for Alaska relay or 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, Tuesday, November 22, 2022.

Pursuant to *AS 38.05.945 Notice*, the public is invited to submit comment on the Preliminary Decision, and Mineral Order for which notice is being conducted concurrently. If commenting on more than one proposed action, separate comments should be submitted for each. **The deadline for public comment is 5:00PM, WEDNESDAY, NOVEMBER, 30, 2022.** 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. Written comment may be received by email, fax, or postal mail. To submit comments or for direct inquiries, contact Patrick Hall: [land.development@alaska.gov](mailto:land.development@alaska.gov), fax # 907-269-8916, or 3700 Airport Way, Fairbanks, AK, 99709. If you have questions, call Patrick Hall at 907-374-3737.

If no significant change is required, the Preliminary Decision and related actions including any minor changes and a summary of comments and responses, will be issued as the Final Finding and Decision, and Mineral Order 1259 without further notice. A copy of the Final Finding and Decision and related actions will be sent to any persons who commented timely on the Preliminary Decision.

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