

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

**FINAL FINDING AND DECISION**

of a  
Land Offering in the Fairbanks North Star Borough  
**Emma Creek Subdivision – ADL 419930**  
*AS 38.05.035(e), AS 38.05.045*

and its  
**RELATED ACTION:**  
**Mineral Order 1167 (Closing)**  
*AS 38.05.185 and AS 38.05.300*

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated January 17, 2024. The PD (attached) and related action have had the required public review.

**I. Recommended Action(s)**

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends offering for sale State-owned land for private ownership within the Emma Creek Subdivision project area (ADL 419930), as described in the PD. Surveyed parcels will be offered for future sale by a method under *AS 38.05.045 Generally*.

For the purposes of providing land for settlement in the Emma Creek project area, LCS may develop a subdivision of no more than four parcels each no smaller than 10 acres. This project area is located within the Fairbanks North Star Borough and therefore survey, platting, and access to and within the project area will be subject to the relevant subdivision standards. The project may be subdivided and offered in multiple stages.

There is a related action with this proposal:

Mineral Order: DNR proposes to close the project area to new mineral entry through Mineral Order 1167.

Public notice for this related action was conducted concurrently with the notice for the primary action's PD.

**II. Authority**

DNR has the authority under *AS 38.05.045 Generally* to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska provides: "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum

## **Final Finding and Decision**

Emma Creek Subdivision – ADL 419930

Page 2 of 9

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.

### **III. Public Participation and Input**

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

- Posted under State of Alaska Online Public Notice from January 18 to February 22, 2024.
- Posted on DNR Land Sales website from January 18 to February 22, 2024.
- Notices mailed to the Fairbanks North Star Borough per AS 38.05.945(c)(1).
- Mailed to the postmaster in Ester with a request to post for 30 days, per AS 38.05.945(c)(4).
- Mailed to the Ester Library with a request to post for 30 days.
- Mailed to the Doyon regional corporation per AS 38.05.945(c)(2)-(3).
- Mailed to landowners in the vicinity of the offering and the Ester Community Association.
- Sent notification to area state legislators and to multiple state agencies.
- Notified parties via the DNR Land Sales subscribers lists by email and the DNR Land Sales Facebook account.

The public notice stated that written comments were to be received by 5:00PM, February 22, 2024 in order to ensure consideration and eligibility to appeal. For more information, refer to the attached PD.

Should this project move forward, final subdivision design and survey will be completed by an Alaska licensed surveyor. The surveyor will submit a platting application including a preliminary plat to the local platting authority prior to survey. This process will be subject to Fairbanks North Star Borough ordinances and codes. During the process the public will have opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

Subdivision design will be submitted to the Fairbanks North Star Borough for review in accordance with Title 17 *Subdivisions* of their ordinance.

Chapter 17.12.030F. “All plans, data, and other supporting material shall be available for public inspection at the Department of Community Planning at least 14 calendar days prior to the time set for Platting Board review.”

Chapter 17.12.030G. “Notice of the application shall be published in a newspaper of general circulation not less than five calendar days prior to consideration by the Platting Board.”

## **Final Finding and Decision**

Emma Creek Subdivision – ADL 419930

Page 3 of 9

Chapter 17.12.030D. “Verbal testimony by parties and interested persons may be given at the platting board meeting.”

### **IV. Summary of Comments**

LCS received timely written comments from the State of Alaska Department of Transportation, the Fairbanks North Star Borough (FNSB) Trails Coordinator, and six private individuals. All comments received during the public comment period are summarized below.

Department of Transportation Comment: DOT has no comment at this time.

DNR Response: Thanks for your review of the PD.

Individual Comment: What's the timeline for this land sale proposal?

DNR Response: DNR will need to complete the subdivision platting process and appraise the parcels before they could be sold. This process will take approximately two or more years.

Comments regarding subdivision access locations: Where would the Emma Creek Subdivision parcels be accessed?

DNR Response: DNR plans to create two parcels so that each parcel will have direct access onto Old Nenana Highway. The property has direct frontage on Old Nenana Highway on its northeast corner for approximately 175 feet and its northwest corner for approximately 600 feet, as illustrated in the aerial images on the next page. These locations will provide each parcel driveway access to the highway.

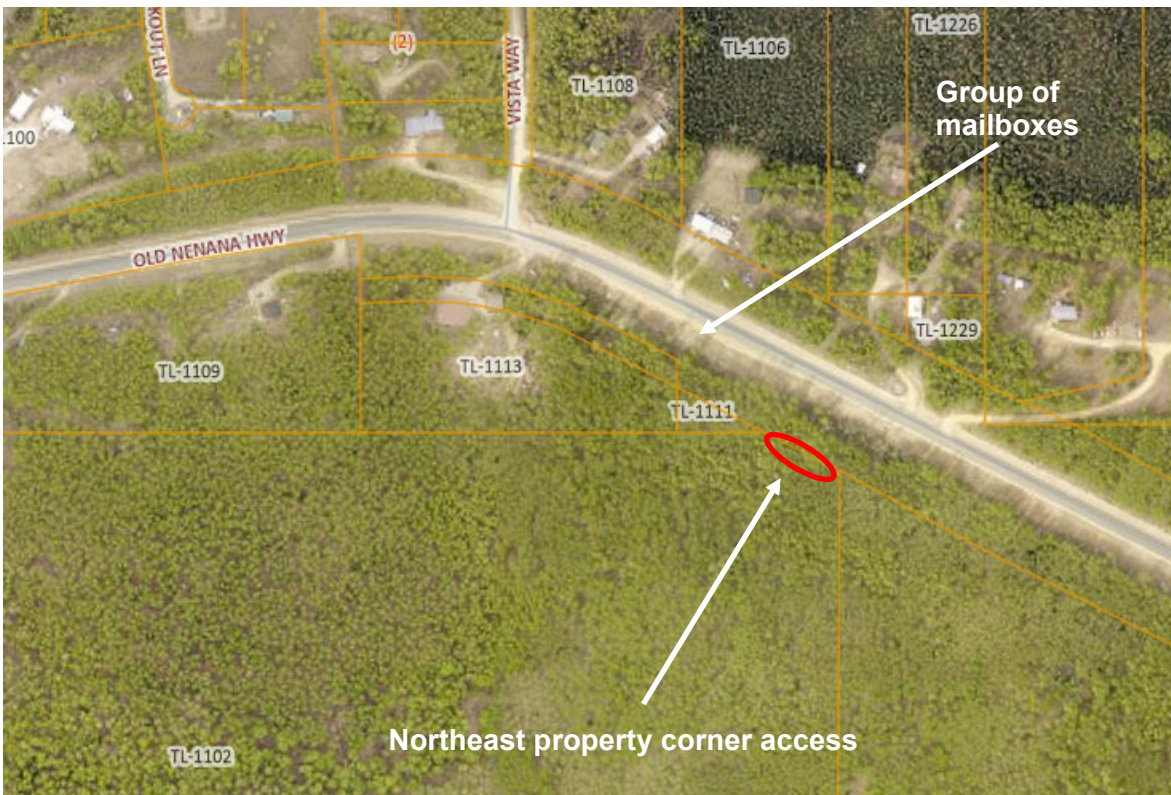
Comments regarding access development: One commenter stated that all subdivision roads should meet fire and EMS standards, and DNR should be responsible for the road construction design. Another commenter asked if a road is built as part of the subdivision process, would there be two access points in case of a fire? A commenter asked whether future owners would be responsible for building driveways.

DNR Response: DNR plans to create two parcels that each have direct access onto Old Nenana Highway, therefore no subdivision access roads into the Emma Creek Subdivision would be created. If the parcels are sold into private ownership as proposed, the eventual owners will be responsible for obtaining a DOT driveway permit and constructing a driveway for access to Old Nenana Highway.

**Final Finding and Decision**

Emma Creek Subdivision – ADL 419930

Page 4 of 9



## Final Finding and Decision

Emma Creek Subdivision – ADL 419930

Page 5 of 9

Comments regarding access safety and preferences: One commenter stated that it is imperative for subdivision access to be constructed as safely as possible, noting that this area is very steep with limited sight distance. Another commenter stated that Old Nenana Highway has become a speedway for some drivers, making careful planning of road access a major concern. A commenter stated that they do not want access development via the western corner of the proposed subdivision or multiple driveways connecting directly to Old Nenana Highway for aesthetic and safety reasons.

DNR Response: LCS is responsive to public input and seeks to create new opportunities for property ownership while minimizing impacts to neighboring properties. However, DNR is not willing to forgo legal access to property to accommodate aesthetic preferences. Both areas where the proposed subdivision has frontage along Old Nenana Highway have good visibility for seeing traffic along the highway. Alaska DOT exercises control for driveway permits on roads they maintain, which considers traffic safety amongst other factors.

Comments regarding parcel size, zoning, and future subdivision: A few commenters noted that creating up to four parcels seemed reasonable or compatible with the character of the area. A few commenters wanted the proposed subdivision to be zoned to restrict the number of dwelling units on each parcel and/or restrict future subdivision potential. Commenters stated preferences ranging from 5 to 10-acre minimum lot sizes for restrictions on future subdivision within the Emma Creek project area. One commenter asked how DNR would restrict minimum lot sizes and provide notice to neighbors before any additional parcel sales.

DNR Response: Thanks for providing specific input on the subdivision concept. LCS plans to submit a platting application to the FNSB creating two parcels, each around 40 acres. This FFD allows LCS to create up to four parcels, providing for flexibility in the subdivision design if necessary to meet platting requirements or other site-specific considerations.

LCS also plans to apply to rezone the Emma Creek Subdivision from General Use (GU) to Rural & Agricultural (RA) concurrently with subdivision platting. DNR will likely apply for RA-10 zoning, which would limit future subdivision potential to minimum lot sizes of 10 nominal acres. RA zoning districts limit the number of allowable dwelling units within a parcel. If there are concerns about parcel density and allowable land uses in the area, note that the land surrounding the Emma Creek Subdivision is zoned GU-1, which allows for parcels to be subdivided as small as one-nominal acre, places no limit on the number of buildings within a parcel, and has relatively few prohibitions on allowable property uses.

If Emma Creek Subdivision parcels are created and sold, they would be private property and subject to FNSB planning and platting rules. The FNSB has public notice and comment processes for changes in zoning and subdivision platting.

Comments regarding drainage and property use restrictions: Two commenters stated that watershed drainage areas and land with poor drainage should be set aside as a green belt. Another commenter asked how clearcutting of the property can be restricted to avoid runoff, drainage issues, and impacts to habitat.

DNR Response: The Emma Creek project area has excellent drainage because of the soil types and hillside slopes. DNR does not place restrictions on parcels it sells relating to clearing of vegetation, except in cases where there are sensitive environments such as anadromous water bodies within or adjacent to parcels created for sale. The Fairbanks Soil



## Final Finding and Decision

Emma Creek Subdivision – ADL 419930

Page 6 of 9

and Water Conservation District is available to help guide property owners on appropriate property development practices to help avoid soil erosion and drainage problems.

Comments regarding greenspaces between adjacent properties: Two commenters stated that adjoining properties along Old Nenana Highway should be protected by creating a separating greenbelt to minimize the impact of the subdivision to those owners.

DNR Response: LCS plans to apply to change the zoning for the Emma Creek Subdivision from GU to RA, as mentioned above. This zoning change will restrict allowable property uses and create restrictions on the placement of buildings with respect to lot lines. These restrictions would be unique to the Emma Creek Subdivision, as the adjoining properties are currently zoned GU. Any further voluntary restrictions for the Emma Creek Subdivision would create unreasonable burdens on future property owners and could lessen the value of the parcels.

FNSB Trails Coordinator Comment: The Alder Creek Hillside Trail appears to cross the parcel proposed for subdivision. In the FNSB Comprehensive Recreational Trails Plan, it is identified as proposed trail I-C6. The FNSB would appreciate working with DNR to integrate this trail into the subdivision design to retain public trail access and opportunities for outdoor recreation.

DNR Response: LCS is open to discussion and plans to dedicate a trail easement for the Alder Creek Hillside Trail that passes through the southern portion of the Emma Creek project area. This easement will be dedicated to the public, which the FNSB accepts in trust on behalf of the public.

Comments regarding trails and trail easements: One commenter stated that DNR should provide trail easements for Alder Creek Hillside Trail and Ester-Dunbar Trail with access from Old Nenana Highway to the trails. Another commenter stated that he frequently uses the trail within the subdivision in both winter and summer, and asked if a trail easement would be created.

DNR Response: LCS plans to dedicate a trail easement for Alder Creek Hillside Trail that passes through the southern portion of the Emma Creek project area. Old Nenana Highway was constructed directly over Ester-Dunbar Trail (a RS2477 easement); therefore, this is not a trail within the Emma Creek Subdivision.

There currently isn't a trail within the Emma Creek Subdivision that leads to Alder Creek Hillside Trail, as the trail originates from outside of DNR DMLW managed land. However, there is a 50-foot-wide section line easement along the east boundary of the Emma Creek project area that provides legal access between Old Nenana Highway and Alder Creek Hillside Trail. The section line easement and the trail easement will be shown on the subdivision plat. LCS is unaware if legal access to and for Alder Creek Hillside Trail exists on the properties outside of the project area.

Comments regarding drainage and groundwater table: Two commenters noted that there is a natural drainage on the western side of the Emma Creek project area which should be protected so that adjoining and downstream water tables are not affected.

DNR Response: There is not a strong connection between local surface water drainage and the groundwater resources accessed by water wells in the hills surrounding Fairbanks. The

## **Final Finding and Decision**

Emma Creek Subdivision – ADL 419930

Page 7 of 9

potential is extremely low for a few more water wells to significantly impact local groundwater resources, especially considering the large lot, low-density development of the area and proposed for Emma Creek Subdivision. Please note that surface and subsurface waters on all lands in Alaska are a public resource, subject to appropriation. As many property owners in the vicinity of the Emma Creek Subdivision have done, future property owners may apply for a water right to ensure their water use is legal and to seek legal protection for their appropriation.

Comments regarding best interest finding: Two commenters stated that while DNR must demonstrate that a land sale be found to be in the best interest of the State, a change having such an impact on adjoining property owners needs to consider several factors, and may not be in the best interest of the citizens of the state.

DNR Response: LCS understands and appreciates such distinctions. It is important to recognize that the interests of state residents generally may differ from those of adjoining property owners. While neighboring property owners may desire to place restrictions on the Emma Creek Subdivision above and beyond imposed on their own properties, this could be viewed as unbalanced and burdensome to potential purchasers and state residents that don't own property near the proposed Emma Creek Subdivision.

LCS is responsive to public input and seeks to create new opportunities for property ownership while minimizing impacts to neighboring properties. Two specific illustrations of DNR's efforts that go beyond FNSB requirements are the proposed trail easement to protect Alder Creek Hillside Trail within the subdivision and willingness to apply to the FNSB for a zoning change from GU to RA.

Comments regarding the mineral estate: One commenter sought to confirm that leasehold location order (LLO) 39 closed the mineral estate underlying the Emma Creek Subdivision and that no mineral entry will be possible. Another commenter stated that mining rights should be removed prior to the sale of parcels, as individuals who purchase land should be able to know the mineral rights status. Another commenter stated support for closure of the mineral estate.

DNR Response: Currently the mineral estate is open underlying the Emma Creek Subdivision, as a LLO allows for staking of a location for a leasehold under which mining could occur. Because a LLO does not adequately avoid conflicts between the surface and mineral estates in proposed subdivisions such as Emma Creek, the proposed mineral order 1167 accompanies the proposal to authorize the creation of the subdivision. If approved, MO 1167 will close the mineral estate to location and entry.

Comments about a public meeting: Two commenters requested a public meeting about the subdivision project so questions and concerns could be addressed.

DNR Response: LCS provided the public comment period on the Emma Creek Subdivision PD and received input from the public and the FNSB. DNR has also answered questions about the proposal after the comment period and has met in person with interested parties to discuss the subdivision proposal. When the subdivision plat and zoning applications are submitted to the FNSB, they also provide public notice and comment opportunities on those applications. DNR remains open to questions about and discussion of the proposal but

## **Final Finding and Decision**

Emma Creek Subdivision – ADL 419930

Page 8 of 9

doesn't agree with the need to organize a meeting as an additional venue for public input in addition to these opportunities.

Individual Comment: One commenter expressed support for the subdivision proposal, stating that the state and federal government owns so much land in Alaska, and that more private land ownership helps the local economy, land development, and local tax revenue.

DNR Response: Thanks for your review and support of the proposal.

## **V. Traditional Use Findings**

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

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

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

Recommendation and Approval of the Final Finding and Decision follow.



**Final Finding and Decision**

Emma Creek Subdivision – ADL 419930

Page 9 of 9

**VII. 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. Offering these parcels for sale will help meet the State’s goal to provide land for settlement for sale to the public and raise revenue for the State.

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

Signature on File

\_\_\_\_\_  
Recommended by: Timothy Shilling  
Natural Resource Manager  
Land Conveyance Section  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

August 26, 2024

\_\_\_\_\_  
Date

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

Signature on File

\_\_\_\_\_  
Approved by: Christianna D. Colles  
Director  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

September 13, 2024

\_\_\_\_\_  
Date

Signature on File

\_\_\_\_\_  
Approved by: John Boyle  
Commissioner  
Department of Natural Resources  
State of Alaska

September 16, 2024

\_\_\_\_\_  
Date

## **Reconsideration Provision**

An eligible person affected by this decision of the department, and who provided timely written comment or public hearing testimony to the department, may request reconsideration to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any request for reconsideration must be received by the Commissioner's Office within twenty (20) calendar days after issuance of the decision under 11 AAC 02.040. The Commissioner may order or deny a request for reconsideration within thirty (30) calendar days after issuance of the decision. If the Commissioner takes no action on a request for reconsideration within thirty (30) days after issuance of the decision, the request for reconsideration is considered denied. The Commissioner's decision on reconsideration, other than a remand decision, is a final administrative order and decision of the department. An eligible person must first request reconsideration to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Reconsideration may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918 or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Reconsideration 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)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.