

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

FINAL FINDING AND DECISION

of a
Land Offering in the Kodiak Island Borough
Viekoda Bay Subdivision – ADL 232390
AS 38.05.035(e), AS 38.05.045

and its
RELATED ACTION:
Mineral Order 1289 (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 14, 2025. 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 Viekoda Bay project area (ADL 232390), 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 Viekoda Bay project area, LCS may develop a subdivision of no more than 45 parcels varying in size no smaller than 5 acres. This project area is located within the Kodiak Island 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 one related actions with this proposal:

Mineral Order: DNR proposes to close the project area to new mineral entry through Mineral Order 1289.

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

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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 38.04.065 *Land Use Planning and Classification*, AS 38.05.300 *Classification of Land*, and AS 38.05.185 *Generally* allow for amendments and special exceptions to area plans, land classifications, and 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 draft of the related action was published and distributed in the following manner:

- Posted under State of Alaska Online Public Notice from January 16 to February 25 2025.
- Posted on DNR Land Sales website from January 16 to February 25 2025.
- Notices mailed to the Kodiak Island Borough per AS 38.05.945(c)(1).
- Mailed to postmasters in Kodiak and Port Lions with a request to post for 30 days, per AS 38.05.945(c)(4).
- Mailed to the libraries in Kodiak and Port Lions with a request to post for 30 days.
- Mailed to the Koniag regional corporation per AS 38.05.945(c)(2)-(3).
- Mailed to 2 landowners in the vicinity of the offering, 8 community councils, and Native villages including: Afognak Native Corporation, Anton Larsen Bay Corporation, Ouzinkie Native Corporation, Uganik Natives Incorporated, Sun'aq of Kodiak, Native Village of Afognak, Native Village of Ouzinkie, and Native Village of Port Lions.
- 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.
- Additionally, notice was sent to the Alutiiq Museum in Kodiak.

The public notice stated that written comments were to be received by 5:00PM, February 25, 2025 in order to ensure consideration and eligibility to appeal. For more information, refer to the 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 Kodiak Island 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.

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Subdivision design will be submitted to the Kodiak Island Borough for review in accordance with Title 16 Subdivision of their ordinance.

Section 16.10.070 Public Hearing and Notification:

“A. Public Hearings: The commission shall hold a public hearing prior to taking any action on:

1. An application for vacation;
2. An application for a preliminary plat except for an application under the abbreviated plat procedure;
3. An application for final plat when the final plat differs significantly from the preliminary plat; and
4. The modification or removal of a condition of approval.”

Section 16.40.060 Procedure:

“E. The commission shall approve or disapprove a plat 60 days after it is filed or shall return it to the applicant for modification or correction, unless the applicant for plat approval consents to an extension of time. The commission shall adopt specific findings of fact and reasons for its action on the plat. The subdivider shall be notified in writing of the action and findings of the commission within five working days.”

IV. Summary of Comments

DNR DMLW LCS received brief responses of non-objection/no comments from the Alaska Department of Transportation (DOT), and Alaska Department of Environmental Conservation (DEC). DNR DMLW LCS received no other comments. DNR DMLW LCS thanks DOT and DEC for their review of the PD.

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 action(s) described in the PD.

Recommendation and Approval of the Final Finding and Decision follow.

Final Finding and Decision

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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.



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

March 03, 2025

Date

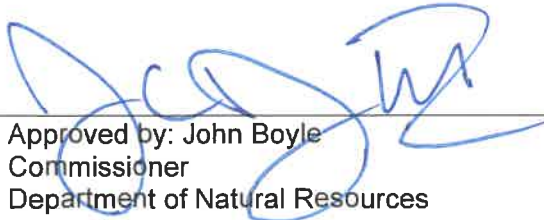
Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action(s) as described and referenced herein.



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

March 14, 2025

Date



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

18 Mar 25

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. 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>.

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

PRELIMINARY DECISION
Viekoda Bay Subdivision – ADL 232390

Proposed Land Offering in the Kodiak Island Borough
AS 38.05.035(e), AS 38.05.045

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

PUBLIC COMMENT PERIOD ENDS 5:00PM, FEBRUARY 25TH, 2025

I. Proposed Action(s)

Preliminary Decision: Viekoda Bay Subdivision - ADL 232390

Attachment A: Vicinity Map

Attachment B: Public Notice

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

Draft Mineral Order (Closing) MO 1289

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 project area. If approved, surveyed parcels will be offered for sale.

LCS proposes to sell land within the Viekoda Bay project area for the purpose of providing land for settlement by developing a subdivision of no more than 45 parcels varying in size no smaller than 5 acres. Subdivision design may include additional tracts as necessary. The project area consists of approximately 660 acres, with approximately 350 acres identified for disposal by this proposed action. The project area may be subdivided and offered in multiple stages.

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/subdivision, 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.

Proposed Related Action: The related action will be developed separately, however; public notice is being conducted concurrently.

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Mineral Order (Closing): DNR proposes to close the project area to new mineral entry. 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 amendments and special exceptions to area plans, land classifications, and mineral orders.

IV. Administrative Record

The project file, Viekoda Bay Subdivision - ADL 232390, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- *Kodiak Area Plan for State Lands (KAP, adopted 2004) and associated land classification files;*
- *2008 Kodiak Island Borough Comprehensive Plan Update;*
- *Alaska Interagency Wildland Fire Management Plan 2024;*
- *Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes;*

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- 1979 *Exploratory Soil Survey of Alaska*;
- *Soil Survey and Vegetation of Northeastern Kodiak Island Area, Alaska*;
- *Cultural Resource Survey Report for Viekoda Bay, Kodiak Island, Alaska*. (2019).
- DNR case files: Trapping cabin ADL 201737 and ADL 228612; 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 26 air miles west of the City of Kodiak, within Section 1, Township 27 South, Range 24 West, and Sections 26, 35, 36, Township 26 South, Range 24 West, all Seward Meridian, within the Kodiak Island Borough (KIB). The project area consists of approximately 350 acres identified for disposal by this proposed action.

Platting Authority: The project area is within the Kodiak Island Borough and subject to the borough's platting authority.

Native Regional and Village Corporations: The project area is within the boundaries of the Koniag Regional Corporation. The villages of Port Lions, Anton Larsen Bay, Afognak, and Ouzinkie are within 25 miles of this proposed action and notice will be sent to traditional councils of Afognak, Ouzinkie, Port Lions, Sun'aq of Kodiak, and Uganik.

VII. Property Description

Township 26 South, Range 24 West, Seward Meridian

Section 26: That portion of Lot 1 in the SW1/4.

Section 35: Lot 1 excluding the NE1/4 NE1/4.

Section 36: That portion of Lot 1 in the SW1/4 excluding the NE1/4 SW1/4.

Together containing 393 Acres more or less.

According to the plat accepted by the United States Department of Interior in Denver, Colorado on January 9, 1980.

Township 27 South, Range 24 West, Seward Meridian

Section 1: Lot 1

Containing 268 Acres more or less.

According to the plat accepted by the United States Department of Interior in Denver, Colorado on January 9, 1980.

VIII. Title

Title Report No. 11301, current as of November 14, 2018 indicates that the State of Alaska holds fee title to the land and mineral estate within Section 1, Township 27 South, Range 24

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West under Patent 50-86-0241, dated May 29, 1986. The applicable State case file is GS 998. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

Title Report No. 11300, current as of November 14, 2018 indicates that the State of Alaska holds fee title to the land and mineral estate within the SW1/4 of Section 26, Section 35 excluding the NE1/4 NE1/4, and Section 36 excluding the NE1/4 SW1/4 under patent 50-85-0371, dated May 29, 1985. The applicable State case file is GS 999. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

An updated Title Report has been requested for the parcel covered by this decision. As of the date of issuance of this decision the report remains outstanding. In order to not delay the issuance of this decision a careful review of the area was accomplished to identify title issues associated with this land. Any title actions identified by the outstanding title report and omitted from this decision will be incorporated into the Final Finding and Decision and addressed accordingly

State Reservations of Title:

Retention of and Access to Mineral Estate: In accordance with *Section 6 (j) of the Alaska Statehood Act* and *AS 38.05.125 Reservation [of Rights to Alaska]*, the State retains ownership of the mineral estate that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper and silver, 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 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 **XIII. Access To, Within, and Beyond Project Area.**

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, information received during agency review, and an aerial field inspection conducted on June 12, 2015. 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: Viekoda Bay is a long, narrow bay extending for approximately 15 miles from the head of the bay in a northwesterly direction where it intersects with Shelikof Strait and Kupreanof Strait. The project area is located on Kupreanof Peninsula near the head of the bay, extending upland from the northeast shore. The coastline in Viekoda bay is rocky and intermittently steep, with pocket beaches becoming more frequent in the southern half of the project area.

The northern portion of the project area is defined by mountain slopes that extend upland from the shore. This area has a moderate slope that increases in grade as it extends upslope. Areas of level ground are relatively sparse along this mountainside. The southern portion of the project area includes uplands defined by gently rolling hills, spruce stands, and small creeks.

View: The views downhill towards Viekoda Bay are mostly unobstructed, with some limited views to the northwest towards Shelikof Strait. Views to the north are dominated by an unnamed mountain with a peak elevation of approximately 2,000' above sea level. Views upland and parallel to the shoreline are of rolling hills that exist in the upland portion of the project area.

Vegetation: Native vegetation communities in the project area are described in the KAP as “high brush in the form of alder, sedges and fescue grasses”. Sitka spruce grows in relatively small stands scattered intermittently throughout the upland portions of the project area.

Soils: The US Department of Agriculture (USDA) Natural Resources Conservation Service, Web Soil Survey currently has no data available for the project area. Additionally, Kodiak Island has not been evaluated for non-irrigated or irrigated soil capability classes by USDA. The primary resources referenced in this decision are two reports titled “Soil survey and vegetation: Northeastern Kodiak Island Area, Alaska” (Reiger & Wunderlich, 1960), and “Exploratory Soil Survey of Alaska (USDA 1979), however broad inferences made from these resources should be limited due to the age of the publications.

The soil class throughout most of the project area is defined as dystric cryandeps, composed of loamy soil, on hilly to steep topography. The soil series within this soil class is defined as the “Kodiak” soil series. The Kodiak soil series profile contains a layer of organic matter that overlies an approximately 1-foot thick layer of volcanic ash from the Novarupta eruption of 1912. This volcanic ash layer overlies dark reddish-brown silt loam that is high in organic matter, friable, and usually moist. The Kodiak soil series is well drained, and typically supports native grasses, alder, and small stands of Sitka spruce. Though there is no USDA land capability class for Kodiak Island, the USDA Exploratory Soil Survey of Alaska evaluated the agricultural potential of this area as

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good to fair rangeland for cattle, but a lower proportion of desirable species and conflict with brown bears are identified as potential issues. The same report assessed low suitability for large-scale crops but noted that grasses and vegetables can be grown on level to moderately sloping ground. The primary limitation to cultivation of grasses and vegetables is low soil temperatures throughout the growing season and steep or rough terrain.

KAP states that the coastline of Viekoda Bay within the project area is a mix of sand and gravel beaches that slope upward from the Mean High Water (MHW) to the beginning of steeper terrain and as such, mooring locations exist at irregular intervals along the coastline. KAP states that no permafrost exists on Kodiak Island.

Wetlands: The National Wetlands Inventory map shows that the southern half of the project area appears to contain small areas of freshwater emergent wetlands, and less than one acre of freshwater forested/shrub wetlands. There appear to be approximately 6 acres of estuarine and marine wetland, but this wetland type straddles the tideline and falls within the 50-foot continuous easement upland from the MHW.

Dredging or filling of wetlands may require a permit from the US Army Corps of Engineers.

Geologic Hazards: Kodiak Island is one of the most seismically active regions of Alaska, and risks associated with earthquakes, tsunamis, volcanoes, and slope failure are present throughout the island. The project area in Viekoda Bay is susceptible to these geologic hazards as well. Powerful earthquakes in this area have proven to be capable of damaging or destroying structures and foundations, and the Kodiak Island Borough has developed building codes based on the National Earthquake Hazard Reduction Program probabilistic seismic hazard maps and recommendations. Tsunami risk can accompany earthquakes in coastal areas of Kodiak Island. There have been multiple severe tsunamis that have inflicted significant damage on the coastal settlements of Kodiak Island, the most recent of which came in 1964 following the 9.2 magnitude earthquake. The entirety of the project area is located directly adjacent to the coastline of Viekoda Bay, therefore there is an inherent risk of tsunamis throughout the project area.

Regional seismic activity also includes a risk of volcanic eruptions or other activity. The Alaska Volcano Observatory has documented 19 volcanoes in the western reaches of the KIB on the Alaskan Peninsula that are active, dormant, or potentially active. Though these volcanoes are separated from the project area by Shelikof Strait, impacts from large eruptions can still affect Viekoda Bay and the entirety of the Kodiak Archipelago. The 1912 eruption of Novarupta (AKA Nova Erupta) blanketed Kodiak Archipelago in a layer of volcanic ash that remains visible in the soil profile through the present day. In addition to risk of volcanic ash carried in the air, volcanic eruptions can also generate landslides, pyroclastic flows, and lava flows that can produce floods or tsunamis in coastal areas along Shelikof Strait.

The steep slopes of Kodiak Island are also prone to slope failure and landslides. The geology of the island is characterized by highly fractured bedrock and unconsolidated sediments that contribute to a potential for debris and mud flows, slumps, and landslides. These underlying factors can be exacerbated by seismic activity, freeze-thaw

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cycles, saturation from snowmelt, and heavy rainfall. Successful bidders are strongly encouraged to consider geologic hazards during building planning.

During agency review of the proposed project, the Division of Geological and Geophysical Surveys (DGGS) noted that there is potential for seasonal flooding and erosion of parcels adjacent to streams or the coastline. Information received from DGGS and information gathered during field inspection did not indicate 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 2015 field inspection and information received from the Division of Forestry, fire risk in the area is likely low. There is no reported history of fires within this area. The project area is not within an organized Fire Service Area.

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 "Full." The policy on areas with the "Full" management option reads that wildfires within this management option are "high priority but below critical. Provides for protection of moderately populated areas, cultural and paleontological sites, developed recreational facilities, physical developments, administrative sites and cabins, structures, high-value natural resources, and other high-value areas. This classification is applicable to broad areas as well as specific sites." It also states that there is no guarantee of protection from wildfire in any management option. It is the responsibility of landowners to mitigate and minimize risk to their property before it becomes threatened by a wildfire.

Flood Hazard: There is no Flood Insurance Rate Map available for the project area, however there is potential for seasonal flooding and erosion of parcels adjacent to water bodies, especially in low-lying areas.

In 2011, FEMA and the State of Alaska initiated a multi-hazard risk assessment for earthquake, tsunami, and flood hazards for Kodiak Island, however it has not been finalized and is not yet publicly available.

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). No water rights have been identified within the vicinity of the project area. There is no well or water quality information within the area. Potential water sources in the area include surface water collection, rain catchment, and possibly from wells. Water quality is unknown. Additional information on wells, water quality, and drinking water may be obtained from the Alaska Department of Environmental Conservation.

Utilities: No known services exist within the project area.

Waste Disposal: No waste disposal facilities are available or accessible from the project area. All on-site wastewater disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

X. Background:

The Viekoda Bay project area was designated settlement in the 2004 Kodiak Island Area Plan because of the desirable location along a scenic coastline with numerous recreational opportunities and suitable topography for small-scale development. During project development of the nearby Kupreanof Shores Subdivision, the Viekoda Bay Subdivision was identified by DNR adjudicators as another regional subdivision project that could generate public interest and significant revenue. This is the first time that there has been a State land offering within the Viekoda Bay project area.

The project area includes at least one trapping cabin located in the general vicinity of the unnamed anadromous stream (AWC code 253-32-10020). The cabin is described in a 2019 report as “well hidden” in a grove of spruce trees that are adjacent to another unrelated cultural site. In addition to the cabin, there are also smaller outbuildings including a framed shed, an a-frame style outhouse, buckets, tarps, and other various waste. This cabin and associated outbuildings were permitted to an individual in 1979 (ADL 201737) and the permit was transferred to their spouse in 2003 (ADL 228612). This permit was temporarily suspended in 2013, and then closed in 2018 because the permittee failed to provide any proof of trapping since 2003. As a result, KIB considered the property to be in tax foreclosure on April 19, 2021. However on February 23, 2022 KIB received the requested sum of \$40.62 and issued a Certificate of Redemption. These actions have created a cloud on the title of this section, which DMLW Realty is currently working to resolve. DNR is moving forward with authorization of the land sale; however, any parcels affected by cloud on title will not be offered until cloud is cleared.

Viekoda Bay is known to contain important wildlife habitat for a variety of aquatic and terrestrial species. The area plan specifically notes the presence of an anadromous stream, winter range for deer, and brown bear feeding areas that exist within the project area. For these reasons Viekoda Bay is a relatively popular place for hunting, fishing, and wildlife viewing opportunities. Many parcels sold in this area will likely become small hunting or fishing cabins from which landowners can access Kupreanof or Shelikof Strait from Viekoda Bay or the upland areas adjacent to the project area.

The northern half of the project area includes sections 26, 35, and 36 of Township 26 South, Range 24 West and is bordered on the upland side by tentatively approved State land. The southern half of the project area includes section 1 of Township 27 South, Range 24 West and is bordered to the east by land owned by the Afognak Native Corporation. Afognak ownership includes the upper reaches of the anadromous stream and the unnamed lake from which the creek flows. There is no private property adjacent to or in the immediate vicinity of the project area. Section 12 of Township 27 South, Range 24 West was originally included in the project area, but this Section is within the boundary of the legislatively designated Kodiak National Wildlife Refuge area (AS 16.20.030(a)(9)) and was removed from the project. This area is State-owned land and is outside of the federal Kodiak National Wildlife Refuge. If the boundary of the State-designated Kodiak National Wildlife Refuge is adjusted to only include the federally managed lands, the southern portion of the Viekoda Bay settlement area may be considered for future sale.

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Viekoda Bay Subdivision – ADL 232390

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The Viekoda Bay project area is within the Kodiak Island Borough's Conservation zoning district and is subject to borough zoning requirements. These requirements stipulate a minimum lot area of 5 acres, and a minimum width of 250 feet on each side. Subdivision design will conform to these requirements. Due to the topography, access, and the shape of the project area, some parcels will be larger than 5 acres.

The most straightforward means of access is by watercraft or floatplane via Viekoda Bay. Boat launching can be accessed by the City of Kodiak, St. Herman Harbor, or St. Paul Harbor. A boat launch is also accessible by the Anton Larson Bay Road. The coastline in this area is generally defined by small rocky bluffs but is also interspersed by mixed gravel and pebble beaches that may provide staging areas to upland areas. DMLW will retain access corridors through the proposed development areas (see Attachment A Vicinity Map) so that the general public will still have access to retained state lands beyond the upland boundaries of the offered parcels.

This area is recognized for opportunities related to wildlife and remote recreation. DMLW is seeking to design a proposal that will be consistent with historical use, will enhance recreational and residential opportunities for property owners, and will retain access and recreational opportunities for the general public. In addition to preserving these opportunities for the public, the sale of the proposed subdivision is predicted to provide economic return to the State of Alaska. All property within the Viekoda Bay subdivision will be waterfront property that is accessible directly from Viekoda Bay. Based on preliminary market evaluation, DMLW believes that this project should provide a good return on the State's investment.

A public scoping meeting was held in the Kodiak Public Library in September, 2016 to discuss project development in KAP management units K-01, K-02, K-03, K-04, K-05, (all Kupreanof Peninsula units) and K-09 (Viekoda Bay). According to the field inspection report "several people came and went; good conversations provided reinforcement of public interest in buying State lands". Participants in the meeting expressed that there is a strong need for more private land on Kodiak Island. After the public scoping meeting, PDT adjudicators met with the Kodiak Island Borough Planner who confirmed that officials from KIB favor development of all of the proposed land sale projects being proposed on Kodiak Island. In addition to meetings with the public and KIB planning officials, project adjudicators also met with the Soil and Water Conservation District board. The proposal was favorably received, although the Soil and Water Conservation District expressed some reservations regarding the remoteness of the lands and possible interactions between settlement and livestock.

XI. Planning and Classification

The project area is located within the Kodiak Area Plan (KAP, adopted 2004), Kodiak Region (management unit K-09). Lands within this unit are currently designated Settlement, and classified Settlement under Classification Order No. CL SC-04-001. The project area consists of a portion of the management unit. LCS reviewed the general management intent of the area plan and management unit for consistency with the proposed offering.

Unit K-09 Considerations: Because of its location along the coast and the presence of several areas of suitable topography, this unit is designated Settlement (Se), although the adequacy of suitable anchorages will be carefully evaluated prior to disposal. Disposals and/or authorizations should protect the anadromous stream, particularly those parts that are used as brown bear feeding habitat. Wildlife

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movement corridors and public access to the coast are to be maintained. Movement corridors and access trails are to be coordinated with similar uses in the adjacent upland unit, K-10. Development during the planning period is appropriate. Access to areas of outdoor recreation activities should be retained.

Subdivision design will account for topography and parcel access (such as beach access and anchorage), as well as access to lands beyond the subdivision. LCS will retain a minimum buffer of 300 feet on either side of the anadromous stream (AWC # 253-32-10020) to protect fish and wildlife habitat and public access. LCS intends to retain a minimum of two additional access corridors to State-owned lands for the purposes of allowing wildlife movement, access to outdoor recreation activities, and other generally allowed uses. These access corridors will connect to State-owned lands beyond the subdivision, including the adjacent K-10 unit.

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.

Coordination and Public Notice: As required by AS 38.05.945, public notice will be given for all decisions involving the sale, lease, or disposal of State land. Notice will also be given to all parties known or likely to be affected by an action proposed by the state or an applicant to the state, including upland property owners of adjoining state tidelands or submerged lands.

Management guidelines require DNR review of the Kodiak Island Comprehensive Plan, zoning map, and zoning ordinance of the Kodiak Island Borough prior to issuing permits, leases, or other forms of use authorizations. LCS review of the Kodiak Island Comprehensive Plan did not indicate any conflicts with the proposed State land disposal.

Cultural Resources: Management guidelines call for coordination with the Office of History and Archaeology (OHA) if OHA determines that a cultural survey may be required during agency review of a proposed land disposal. Cultural surveys should be considered where OHA reported sites to exist or where there is a high potential for such sites to exist.

LCS coordinated with OHA to complete a cultural resource survey of the project area in 2019. The report identified three prehistoric archaeological sites and recommended that if any other unanticipated sites are identified, work should be stopped immediately, and the Alaska Office of History and Archaeology (OHA) is to be notified. In further communications with the OHA, a buffer of 500 feet was recommended for the archaeological sites identified. LCS will maintain a 500-foot buffer between these sites and any parcels, and will continue to coordinate and cooperate with OHA as necessary throughout the project development process.

Fish and Wildlife Habitat and Harvest Areas: No specific management intent for fish and wildlife habitat and harvest regarding settlement is stated in this section. However, the

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upland areas beyond the project area contain wildlife habitat that has been documented by ADFG. LCS is aware of the significance of these upland areas as winter range and harvest area for black-tailed deer and the importance of the anadromous stream as brown bear habitat and a wildlife corridor. LCS has considered the information presented in this section during development of the project area. LCS will mitigate potential impacts to wildlife habitat through subdivision design to avoid sensitive habitat areas and maintain movement corridors.

The conditions aimed at mitigating impacts to fish and wildlife habitat are as follows. DNR-DMLW has consulted the ADFG regarding the proposed project and has received comments and recommendations. LCS will continue to coordinate with ADFG as necessary. Public access corridors will be retained as state land, and which will also provide corridors for wildlife movement from the coast to the upland areas beyond. These retained land corridors are spaced at regular intervals throughout the project approximately one per mile, and they are each no less than 330 feet wide.

Floating Facilities: Management guidelines state that float-homes or other floating facilities should not be authorized in tidelands adjacent to Settlement areas. A floating facility may only be authorized in these areas if 1) there is no other prudent and feasible alternative site, 2) the facility will not impair the functions of the resources and uses identified in Chapter 2 of the KAP Area Plan, and 3) if it is determined in the permitting process that it is in the overall best interest of the state. The state may also issue a short-term authorization, not to exceed two years, if the owner of the float-home or float facility is to be occupied while the upland owner is constructing a residence on their upland parcel(s).

Forestry: The management guidelines state that subdivision disposals shall preclude the sale of merchantable timber but will not preclude cutting trees or other vegetation as part of the land clearing or site development process, or the salvage of trees damaged from wind throw, insects, or disease. The project area contains scattered stands of timber, but not in quantity or density sufficient to support a commercial timber harvest.

Grazing: The management guidelines stipulate that grazing leases will not be authorized on state lands that are designated settlement.

Instream Flow: There are currently no streams or other waterbodies within the project area that are subject to instream flow reservations. However, streams maybe considered for in-stream flow reservations under *AS 46.15.145* for the purposes of 1) protecting fish and wildlife habitat, 2) recreation and park purposes, 3) sanitary and water quality purposes, and 4) navigation and transportation purposes.

Material Sites: Management guidelines state that if a settlement area contains sand and gravel deposits, rock sources or other similar high value material resources, a pit area should be identified during subdivision design and retained in state ownership for future use. DNR is not aware of any high-value materials within the project area and does not intend to retain a material site.

Recreation, Tourism, and Scenic Resources: This section does not have any management intent specific to settlement. The stated goal of the KAP is to provide lands

for accessible outdoor recreational opportunities through multiple use management and cooperative planning. DNR intends to retain public access corridors in the project area to maintain opportunities for the public to access State owned upland areas (See Attachment A: Vicinity Map). Due to the remote and low-density nature of the proposed subdivision, LCS anticipates minimal impacts to recreation, tourism, or scenic resources in the project area.

Settlement: The KAP provides specific management guidelines regarding:

- Planning and coordination with local governments and Kodiak Island Borough comprehensive plans
- Types of settlement and land offerings
- Protection, Management, and enhancement of other resources within the project area
- Design guided by considerations such as environmental, resource development, cost of public services, public access, and retention of public use rights.

These guidelines have been considered in the development of this proposal. The proposed project will attempt to minimize any impacts to recreation opportunities or environmental resources. The project is consistent with local plans and zoning. LCS will solicit input from the KIB and will coordinate throughout the public notice and comment process.

Shorelines, Stream Corridors, and Coastal Areas: DNR will prioritize protecting public use in stream corridors. Prior to disposal of stream corridor lands, DNR will consult with other agencies and the public, and will assess and protect other uses, habitat, and wildlife within the corridor. Pursuant to AS 38.05.127, legal public access will be reserved to and along the shore of public or navigable waterbodies in the project area. KAP requires a 100-foot building setback from anadromous waters; however, pursuant to ADFG recommendations, LCS will retain a minimum 300-foot buffer from the ordinary high water mark on both sides of the anadromous stream. This buffer is intended to protect the habitat of salmon and other wildlife species by conserving riparian areas, and provide for public access and recreation. Management guidelines also require a 50-foot building setback for all other public water bodies. Viekoda Bay is the only other public waterbody identified within or adjacent to the project area. Per the request of ADF&G, DNR has increased the building setback along Viekoda Bay to 100-feet.

Subsurface Resources: This section provides guidelines regarding mineral development and closure. A mineral closure decision must be made by the Commissioner of DNR within standards set by AS 38.05.185(a), which requires a determination that mining is incompatible with an existing significant surface use. Mineral Closing Orders are recommended for use at the time that an area is being considered for disposal for purposes of settlement or other forms of development that would be inconsistent with mining activity. LCS proposes to close the entirety of the project area (approximately 660 acres) to mineral entry. There are currently no known mineral deposits in the project area, nor are there any mining claims or other orders within the project area that may conflict with a mineral closing order.

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Public Access Easements, Neighborhood Trails, and Public Access: Prior to subdividing the project area, DNR will retain corridors of state land for the purpose of public access through the project area. The public will have right of access within these areas of retained state land. Per the KAP, the width of access corridors shall be not less than 50 feet in width, with additional buffers included if necessary to minimize land use conflict or impacts to fish and wildlife habitat or cultural resources.

LCS will retain section line easements unless 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, and will establish easements to and along navigable and public waters as required in *11 AAC 51.035-045*.

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

Mineral Activity and Order(s): No mineral activity has been identified on these lands. The entirety of the project area (approximately 660 acres) will be closed to new 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 entire 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 the past, current, and proposed land estate uses for land disposals. To allow new mineral location within the boundaries of the parcels encompassed by this decision could create serious conflicts between land estate and mineral estate users. The KAP states that Mineral Closing Orders are recommended for use at the time that an area is being considered for disposal for purposes of settlement or other forms of development that would be inconsistent with mining activity.

Local Planning: The project area is within the KIB 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 Kodiak Island Comprehensive plan. 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 Kodiak Island Borough (KIB) and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. However, information on current or traditional use is welcomed and can be given during the public comment period. See the **Section 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 primarily by watercraft from the City of Kodiak boat launches or from the Anton Larsen Bay boat launch. The distance from the City of Kodiak to the project area by sea is approximately 55 nautical miles. Access via the Anton Larsen Bay boat launch reduces the distance to approximately 36 nautical miles. The project area may also be reached by aircraft such as a floatplane or helicopter. The distance from the City of Kodiak municipal airport to the project area is approximately 26 miles. Auction participants are advised that this area is remote and is subject to strong winds, significant ocean currents, and rough waters typically generated from conditions in the Shelikof Strait to the northwest. It is not uncommon for floatplane landing or even small boat approach to the shoreline to be difficult or restricted due to local weather and sea conditions.

Subdivision design will include apparent natural safe moorages and beaches that may act as staging areas. Access to upland areas will be retained by DNR as public access corridors placed at intervals down the Viekoda Bay coastline. Subdivision design will take topography into consideration and will preserve public access to lands beyond the project area and within the project area boundaries. The project will only offer waterfront parcels.

The project area is subject to the platting authority of the KIB. 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*, 11 AAC 51.045 *Easements To and Along Navigable and Public Water*, and 11 AAC 53.450(c), *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 smaller than those listed above may be determined public or navigable consistent with 11 AAC 51.035 *Determination of Navigable and Public Water* and AS 38.05.965 (14) and (21) *Definitions*.

The waters of Viekoda Bay have been determined to be public and navigable adjacent to the project area. All tidal waters are considered navigable under the *Submerged Land Act* (67 Stat. 29, P.L. 31, May 22, 1953). Anadromous waterbodies are considered public; therefore the unnamed anadromous stream (AWC 253-32-10020) has been determined to be public within the project area. LCS will retain a minimum of 300 feet either side of the anadromous stream. Parcels will be subject to access reservations in accordance with AS 38.05.127 *Access to Public or Navigable Water* and: a 100 foot building setback from any other anadromous water bodies identified; a 100-foot building setback from the MHW of Viekoda Bay; and, a 50-foot building setback from any additional water bodies

identified as public or navigable prior to completion of survey in accordance with the KAP.

Building Setbacks From Public or Navigable Water. In accordance with the KAP, if subdivision is deemed feasible, LCS proposes to place a note on the final survey plat describing a building setback upland from the OHW or MHW of public or navigable water to protect access, fish and wildlife habitat, and personal property. Except for utilities, or minor accessory structures for uses that must be in or adjacent to the water body in order to function, structures and subsurface sewage disposal systems will not be permitted within the building setback.

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 or MHW of public or navigable water bodies in accordance with AS 38.05.127 *Access To Navigable or Public Water*;
- a minimum 50-foot building setback from the OHW of any non-anadromous or non-high-value public water bodies, in accordance with the KAP;
- A minimum 100-foot building setback from MHW of Viekoda Bay, in accordance with KAP and ADF&G recommendation;
- A minimum of 100-foot setback from OHW of any other anadromous or high-value lake or stream identified, in accordance with the KAP;
- 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.

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Retained Lands: The state will retain the following areas:

- A buffer of 300 feet on either side of the anadromous stream (AWC # 253-32-10020) to protect fish and wildlife habitat and provide public access.
- A minimum of two additional access corridors, no less than 330 feet in width, to State-owned lands for the purposes of allowing wildlife movement, access to outdoor recreation activities, and other generally allowed uses.

XIV. Hazardous Materials and Potential Contaminants

A standing timber frame cabin with associated outbuildings and debris was observed near the mouth of the anadromous stream, outside of the development area. Records research indicates that the structure was first permitted as a trapping cabin in 1980. There are no notes or other documented evidence suggesting the presence of specific hazardous materials or waste; 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 specifically 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 Kodiak Island Borough, 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.

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.

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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 1, 2024, through February 22, 2024. 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.

DNR DMLW LCS received brief comments of non-objection from the following agencies: Division of Parks and Outdoor Recreation; DNR Division of Forestry & Fire Prevention; and the Alaska Department of Transportation & Public Facilities.

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

Alaska Department of Fish and Game (ADF&G) Comment:

ADF&G Comment: Although the proposed project is unlikely to have an impact on terrestrial wildlife, there are some specific species and habitats that will need to be considered during planning and development.

Eagles and their nests are protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Where nests are identified within one-half mile of the project footprint, ADFG recommends a protection buffer. If any nests are identified within one-half mile of the project area, ADFG recommends buffers or building setbacks. Per the USFWS mapping tool, the project area is known to contain bald eagle nests. The USFWS National Bald Eagle Management Guidelines provide appropriate buffer distances. In addition to bald eagles, other known species within the project area include red-breasted merganser, black oystercatcher, black-legged kittiwake, additionally there are two species that are classified as Species of Greatest Conservation Need by the 2015 Alaska Wildlife Action Plan: the short-tailed albatross and the Steller's eider. ADFG recommends incorporating the Bald Eagle and Migratory Bird details found in the wildlife section of DNR's subdivision offering notices into the Viekoda Bay offering.

DNR DMLW LCS Response: The time and effort taken for review and comment are appreciated. The Bald and Golden Eagle Protection Act prohibits anyone without a permit from taking (which includes disturbing) bald or golden eagles. These restrictions apply any time, regardless of land ownership status, and are enforced by the USFWS. The National Bald Eagle Management Guidelines (USFWS, 2007) provides guidelines for avoiding the disturbance of eagles or their nests (whether occupied or not), particularly during the breeding/fledging season. Generally, guidelines recommend avoiding potentially disturbing activities within 330feet of a nest if the activity is visible from the nest, or within 660 feet of a nest if not visible from the nest. Additionally, individuals may seek an eagle take permit if their proposed activities are likely to disturb eagles. In order to mitigate potential impacts to eagles, DNR will provide a minimum 330-foot buffer from the two known eagle nests within the project area if the nests remain present at the time of survey. Additionally, DNR will withhold the sale of any parcels within 330 feet of any eagle nest identified at the time of survey. DNR will include Bald and Golden Eagle Protection Act information in subdivision offering materials.

ADF&G Comment: The project area contains habitat for a variety of marine mammals that are protected under the Marine Mammal Protection Act and the Endangered Species Act. There is one key (>50 animals) harbor seal haulout at the head of Viekoda Bay, greater than 500 meters from the project boundary. Areas identified as key haulouts indicate likely pupping activity; disturbances in these areas can lead to separation between mothers and pups, resulting in pup death. Maintaining a minimum 500 meter buffer from human activity is advised.

Marine mammal species listed under the Endangered Species Act and protected by the Marine Mammal Protection Act have habitats adjacent to the proposed area, including the fin whale, North Pacific right whale, and sperm whale, with the Steller sea lion, humpback whale, Northern sea otter having Critical Habitat adjacent to the project area. Other species protected species not listed under the ESA but similarly protected under the MMPA inhabit the project area. Viekoda Bay is also a Biologically Important Area for humpback whale feeding (July-September), fin hale feeding (June-August), and gray whale migration (November-January and March-May).

Coastal development and traffic from aircraft and boats have the potential to negatively impact marine mammals. To minimize disturbance, it is important to adhere to advisories or mitigation measures provided by the National Marine Fisheries Service (NMFS) and USFWS.

ADFG recommends incorporating information about marine mammals, including approach regulations, safe viewing practices, and additional details on minimizing disturbances, within the wildlife section of the subdivision offering notice.

DNR DMLW LCS Response: The project boundary is approximately two miles from the referenced harbor seal haulout at the head of Viekoda Bay. Of note, during Agency Review, the project area included lands within Section 12, Township 27 South, Range 24 West, Seward Meridian. This area has been removed from the project area due to the Kodiak National Wildlife Refuge legislatively designated area. The current project area is now further from the identified seal haulout. DNR will incorporate information from the National Marine Fisheries Service about marine mammals, including approach regulations, safe viewing practices, and additional details on minimizing disturbances, within the wildlife section of the subdivision offering materials.

ADF&G Comment: There is a small lake in Section 12 T27S, R24W, SM that likely supports a population of Dolly Varden, but it is unknown at this time if the lake supports anadromous species. In Section 6, T27S, R23W, SM there exists an additional lake beyond the scope of the proposed project area. ADFG requests that any management action with regard to this lake be treated as an anadromous body of water. The outlet stream is catalogued (AWC 253-32-10020), while the potential existence of a barrier to fish passage at the lake outlet remains uncertain, it is possible that an impediment could be intermittent or temporary, contingent on flow conditions.

DNR DMLW LCS Response: The comments are appreciated. As noted in the response above, the portion within Section 12, Township 27 South, Range 24 West, has been removed from the project area. The land within Section 6, Township 27 South, Range 23

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West is owned by the Afognak Native Corporation, and is beyond the scope of DNR's authority to manage. However, DNR will reserve a minimum buffer of 300 feet on either side of the anadromous outlet stream.

ADF&G Comment: The shoreline of the project area contains eelgrass beds. Eelgrass serves as crucial habitat for fish species, waterfowl, and aquatic birds. Eelgrass enhances the ecosystem by positively influencing chemical conditions with its ability to absorb carbon dioxide and release oxygen. This process contributes to mitigation of ocean acidification.

DNR DMLW LCS Response: The comments are appreciated.

ADF&G Comment: The most recent comprehensive subsistence study in Port Lions (2022 study year) shows this portion of Viekoda Bay as a search and harvest area for large land mammals.

DNR DMLW LCS Response: The comments are appreciated. DNR will retain access corridors to upland areas, as well as easements along the MHW of Viekoda Bay to ensure continued access for search and harvest.

ADF&G Comment: ADFG concurs with the reservation of access corridors, the concept of larger parcels (~5 acres in size) to accommodate wildlife movement, and the reservation of a 300-foot buffer on both sides of the anadromous stream. ADFG also recommended extending the stream buffer seaward by 300 feet and providing restrictions for water-related or water-dependent facilities such as for docks, boat ramps, mooring buoys, and similar structures. ADFG recognizes the KAP standard 50-foot setback from the MHW, but recommends a wider reservation of at least 100' for further protection.

DNR DMLW LCS Response: The comments are appreciated. DNR has increased the building setback from MHW of Viekoda Bay from 50 feet to 100 feet. The extent of the proposed project area ends at the mean high water mark, therefore the recommended 300 foot seaward buffer extension is outside of the scope of the project area. However, placement of any facilities below MHW in this area would require a separate authorization and notice process.

DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA) Comment: The OHA notes the presence of several cultural resource sites within the project area and provides a general recommendation of a 500' buffer.

DNR DMLW LCS Response: The importance of cultural resources is recognized and has been considered in the development of the project concept design. A minimum buffer of 500 feet has been established around all known cultural resource sites. A cultural resource survey was completed in the project area during 2019, however LCS acknowledges that the possibility of additional cultural resources remains. If additional cultural resource sites are discovered during development of the project area, LCS will immediately contact OHA.

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DNR Division of Oil and Gas (DOG) Comment: Response of non-objection also recommended making purchasers aware of the State reservations of all mineral interests, including leasable minerals such as oil and gas.

DNR DMLW LCS Response: LCS appreciates your review of our proposal. Sales brochures will inform applicants that the State of Alaska retains ownership of the mineral estate of the land that it sells, and reserves the right to enter onto the land for the purposes of exploring, developing, and producing any mineral resources. The sale brochure will also inform applicants that mineral orders do not apply to non-locatable minerals or the exploration, development, or production of such.

DNR Alaska Division of Geological & Geophysical Surveys (DGGS): Response of non-objection also details the mineralogy and mining history of the area within and nearby the project area. The information notes that there are likely gold grades in or near the project area, but that volume and continuity are low and unlikely to be sufficient to support large-scale mining development.

DNR DMLW LCS Response: The comments detailing the mineral potential of the project area are much appreciated. DNR proposes to close the project area to new mineral entry. The entirety of the project area (approximately 660 acres) will be closed to new 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 following agencies or groups were included in the agency review, but no comment was received:

- Department of Commerce, Community, and Economic Development
- Department of Environmental Conservation
- Department of Natural Resources
 - Division of Agriculture
 - Mental Health Trust Land Office
 - Office of Project Management and Permitting
 - State Pipeline Coordinator's Section
- Alaska Railroad
- Kodiak Soil and Water Conservation District
- Alaska Association of Conservation Districts

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.

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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 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 1289 without further notice. The 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. 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 1289. Upon approval and issuance of a FFD OR these actions, a copy of the decision and orders will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the appeal OR 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, FEBRUARY 25TH, 2025

XVIII. Alternatives and Discussion

LCS is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision consisting of up to 45 parcels varying in size and offer those parcels for sale. The development and offering of these parcels may be completed in multiple stages. This proposal includes Mineral Order 1289.

Alternative 2: Do not subdivide the project area prior to offering. Offer the project area as a remote recreational cabin staking area.

Alternative 3: (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 an opportunity for the public to

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obtain land for settlement in a desirable 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 opportunities related to recreation and harvest in this area, the location relative to the communities of Port Lions and the City of Kodiak, and the direct waterfront access from Viekoda Bay, the project area is better suited to subdivision prior to offering. In addition to these factors that make land ownership in the Viekoda Bay Subdivision attractive for potential landowners, Alternative 1 allows for protection and/or reservation of important fish and wildlife habitat, public use areas, cultural resource sites, and beach staging areas. 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 maximize public interest and financial return to the State. Offering the project area as a remote recreational cabin staking area would provide opportunities for Alaskans to purchase and develop remote parcels; however, this alternative is unlikely to maximize opportunity and/or revenue. Viekoda Bay project area contains reasonably contiguous high quality water frontage, which is better suited to planned development to maximize opportunity, while protecting access and mitigation potential impacts to wildlife.. Alternative 2 is not preferred.

Alternative 3 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 uniquely suited to remote settlement and recreational opportunities and is consistent with regional development. Alternative 3 is not preferred.

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

Recommendation follows.

XIX. Recommendation

This Preliminary Decision for the proposed disposal of State lands and Mineral Order 1289 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.

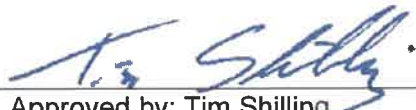
This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of State lands and Mineral Order 1289. If the decision is approved, Mineral Order 1289 will accompany and precede any FFD issued.



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

January 14, 2025

Date



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

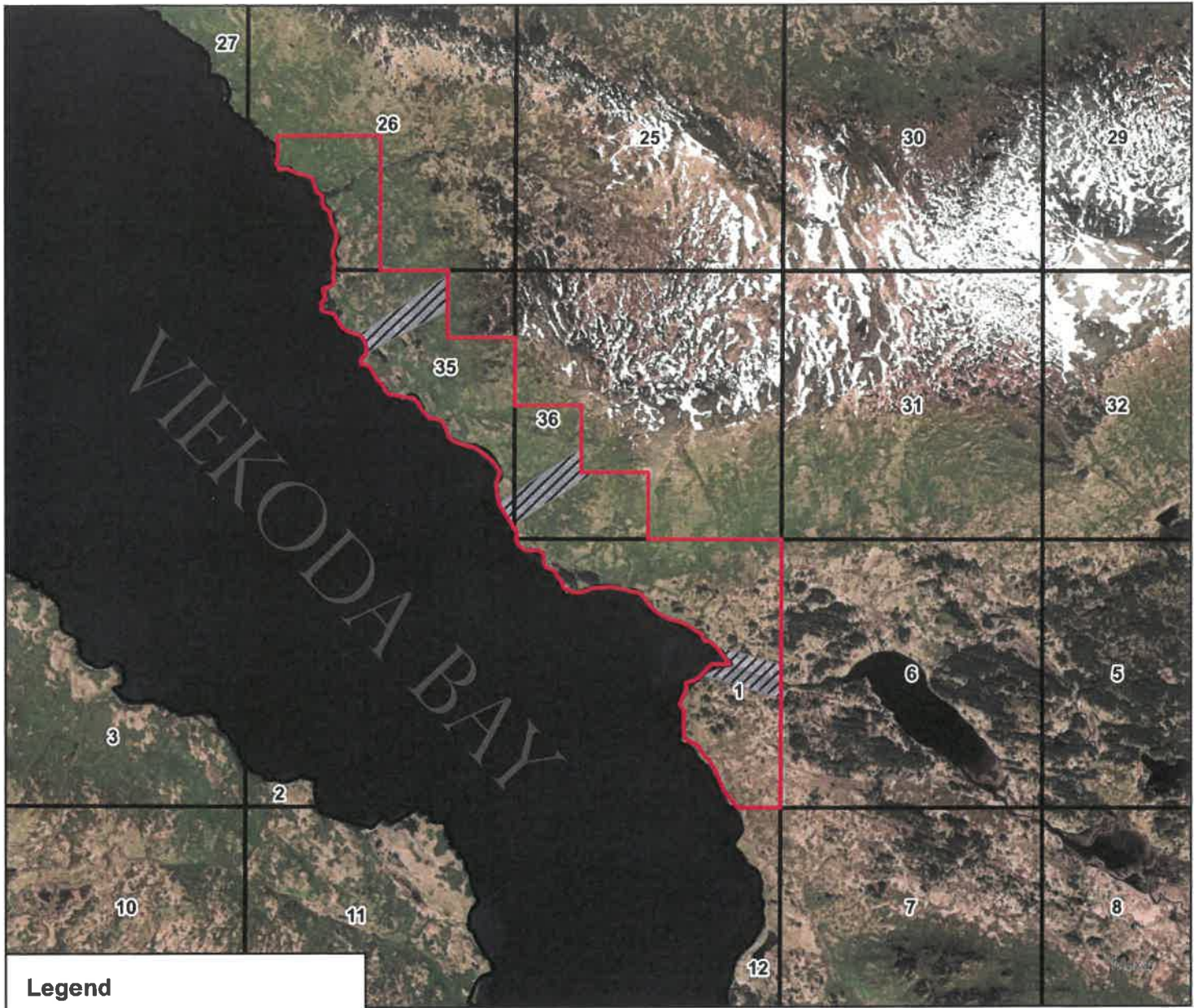
January 14, 2025

Date






Attachment A: Vicinity Map

to the Preliminary Decision for a
Proposed Land Offering in the Kodiak Island Borough
Viekoda Bay Subdivision - ADL 232390



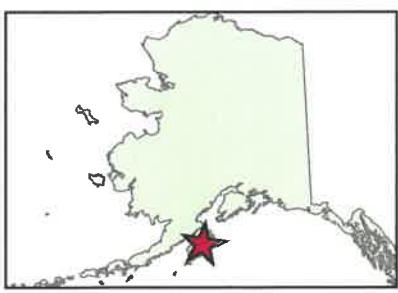
Legend

-  Project Area
-  Approximate Retained Lands
-  Section Grid

Seward Meridian
Range 24 West
Township 27 South, Section 1
Township 26 South, Sections 26, 35, 36



USGS QUAD 1:25,000
Kodiak D4 SE, Alaska
For more information contact:
Evan Buchert
Department of Natural Resources
Division of Mining, Land, and Water
Land Conveyance Section
Phone: 907-269-8655
Fax: 907-269-8916
Email: 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:
Viekoda Bay Subdivision – ADL 232390

COMMENT PERIOD ENDS 5:00PM, FEBRUARY 25TH, 2025

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 26 air miles west of the City of Kodiak, within Section 1, Township 27 South, Range 24 West, and Sections 26, 35, 36, Township 26 South, Range 24 West, Seward Meridian, within the Kodiak Island Borough (KIB). The project area consists of approximately 350 acres identified for disposal by this proposed action.

Project size: Approximately 660 acres.

Proposed Offering: up to 45 parcels sized from 5 to 18 acres

To obtain a copy of the Preliminary Decision, Mineral Order, or instructions on submitting comment, go to <https://landsales.alaska.gov/> or <https://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 8:00AM and 4:30PM 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 <https://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, Thursday, February 13th, 2025.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on the Preliminary Decision, and Draft 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, Tuesday, February 25th, 2025.** 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 or related actions. Written comment may be received by email, fax, or postal mail. To submit comments or for direct inquiries, contact Evan Buchert: land.development@alaska.gov, or 550 West 7th Ave Ste. 640, Anchorage 99501. If you have questions, call Evan Buchert at 907-269-8655.

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 1289 without further notice. A copy of the Final Finding and Decision and the 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.