

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

FINAL FINDING AND DECISION

of a
Noncompetitive Sale to Preference Right Applicant – ADL 223574
AS 38.05.102

and its
RELATED ACTIONS:
Amendment to the Kodiak Area Plan SC-04-001A02
AS 38.04.065
Land Classification Order CL SC-04-001A02
AS 38.04.065 and AS 38.05.300
Mineral Order 1247 (Closing)
AS 38.05.185 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) issued on December 29, 2020. The PD (attached) and related actions have had the required public review.

I. Recommended Actions

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends offering for noncompetitive sale a parcel of state-owned land for private ownership pursuant to Alaska Statute (AS) 38.05.102 *Lessee Preference*. The parcel is located on the north side of Kiliuda Bay on Kodiak Island, approximately nine miles northeast of Old Harbor, and is approximately five acres in size. The legal description for the parcel is Alaska State Land Survey No. 99-13, Tract A, Kiliuda Bay, according to the plat recorded in the Kodiak Recording District on July 27, 1999, as Plat No. 99-19, containing 5.02 acres, more or less.

There are three related actions with this proposal:

Area Plan Amendment: DNR proposes to amend the Kodiak Area Plan (KAP, adopted December 20, 2004) and create a new management unit K-57C and designate it as Settlement. The proposed plan amendment SC-04-001A02 will remove the subject parcel from Unit K-55 and place into the new management Unit, K-57C. The management intent for the parcel will be replaced with, “This unit is designated Settlement (Se). Development or disposal during the planning period is appropriate. Suitable development will support operation of a private commercial hunting and fishing lodge, economic development, and tourism”. The remainder of land in Unit K-55 retains its current designation and management intent.

Land Classification Order: In relation to the Area Plan Amendment, DNR proposes to reclassify the project area within K-57C, in a Land Classification Order, from Habitat to Settlement.

Mineral Order: DNR proposes to close the project area to new mineral entry through Mineral Order (MO) 1247.

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

II. Authority

DNR has the authority under *AS 38.05.102 Lessee Preference* 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."

For related actions, *AS 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, *AS 38.05.185 Generally*, and *Title 11, Sections 55.010-030* of the Alaska Administrative Code (AAC) 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 drafts of related actions were published and distributed in the following manner:

- Posted under State of Alaska Online Public Notice from December 29, 2020 to February 1, 2021.
- Posted on DNR Land Sales website from December 29, 2020 to February 1, 2020.
- Mailed, with a request to post for 30 days, to the Kodiak Post Office per *AS 38.05.945(c)(4) Notice*.
- Mailed to the Kodiak Public Library with a request to post for 30 days.
- Emailed to Sun'aq Tribe of Kodiak, Koniag, Incorporation, Old Harbor Native Corporation, Alutiiq Tribe of Old Harbor, and Afognak Native Corporation per *AS 38.05.945(c)(2)-(3) Notice*.
- Emailed to the Kodiak Mayor's Office, Janel Day (Associate Planner of Kodiak Island Borough), Kodiak Borough Mayor Bill Roberts, Erin Welty (Director of Kodiak Island Borough, Community Development), and the applicant. There were no adjacent landowners within the vicinity to notify.
- The Alaska Center for the Environment, the Alaska Soil and Water Conservation District, the Alaska Miners Association, and University of Alaska Land Management Department, and Trustees for Alaska received notification by email.

The public notice stated that written comments were to be received by 5:00 PM, February 1, 2021 in order to ensure consideration and eligibility to appeal. For more information, refer to the attached Preliminary Decision.

IV. Comments Received

DNR DMLW LCS received comments from the State of Alaska, Department of Natural Resources, Division of Forestry and the State of Alaska, Department of Fish and Game. All comments received during the public comment period are summarized and addressed below.

DNR Division of Forestry Comment: The Division of Forestry has no concerns with this preference right sale.

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DNR DMLW LCS Response: LCS appreciates your review.

Alaska Department of Fish and Game (ADF&G) Comment: The Alaska Department of Fish and Game has reviewed the Preliminary Decision for ADL 223574, which proposes to authorize a land sale of a 5.02-acre parcel along the north side of Kiliuda Bay on Kodiak Island under AS 38.05.102, which allows for the noncompetitive sale of state lands to long-term leaseholders.

The current leaseholders of the 5.02-acre parcel, Edge of the Wilderness, LLC, doing business as Kodiak Adventures Lodge, operate it as a fishing and hunting lodge with commercial guiding/outfitting occurring. The parcel has been under lease to several different persons since 1999 with the applicant stating that structures on the site date back to the 1960's or 70's.

The parcel lies within Unit K-55 of the Kodiak Area Plan. Unit K-55 occupies 65,207 acres of Shearwater Peninsula and was designated as Habitat. In order to proceed with the proposed land sale, DNR would require a concurrent Area Plan Amendment to reclassify from Habitat to Settlement, only the ~5 acre portion of this unit. The remainder of the unit would remain Habitat land. The parcel is subject to 50' public access easements upland of mean high water (MHW) pursuant to AS 38.05.127. Additionally, the parcel is subject to 100' building setback upland of the MHW line as well as 25' utility and public access easements along the interior lot lines. The adjacent tideland lease will not be a part of the sale.

ADF&G does not have any specific concerns regarding impacts to fish and wildlife resources that may result from the sale of this parcel. However, ADF&G would like to express concern regarding impacts of the proposed land sale on public access and use of those resources as the applicant has exhibited a history of attempting to limit public access in the vicinity of this lease. While the current structures on site have been grandfathered in and are allowed to occur within the 50' public access and 100' building setbacks upland from MHW, we would like to stress that the proposed land sale does not confer the right of the applicant to obstruct public access within this easement, despite the existing infrastructure and that the applicant shall not add any additional structures or obstructions. Additionally, the public shall not be obstructed from access along the 25' easements along the parcel's interior lot lines. Furthermore, pursuant to the Public Trust Doctrine, the sale of this parcel shall not prevent the public from the full use and enjoyment of the adjacent public lands and waters, including the beaches below MWH, which will remain in state ownership.

Thank you for the opportunity to review and comment on this proposed disposal of state land.

DNR DMLW LCS Response: LCS appreciates ADF&G's review. In accordance with AS 38.05.127 *Access to Navigable or Public Water*, this parcel will be subject to access reservations including a 50-foot continuous public access easement upland from the median high-water line along Kiliuda Bay, 25-foot utility and public access easements along the interior lot lines, and a 100-foot building setback and 100-foot-wide riparian buffer from the ordinary high-water line of Kiliuda Bay in accordance with the Kodiak Area Plan. Existing structures within the 50-foot public access and 100-foot building setbacks are allowed to remain, but no additional structures or obstructions shall be constructed or added. This sale does not allow the applicant to block public access within the easements, despite the presence of buildings within the easement. The sale of this parcel shall not interfere with the Public Trust Doctrine and prevent the public from the full use and enjoyment of the adjacent public lands and waters, including the State-owned beaches below the median high-water line.

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V. Traditional Use Finding

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

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

VI. Modifications to Decision

The recommended actions have not been modified from the original proposed actions described in the PD. The area plan amendment and land classification order have been edited to further clarify the creation of the new management unit, K-57C. The designation and overall management intent of the subject parcel as presented in the PD remains unchanged.

VII. Stipulations

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

1. The lessee must remain in good standing with respect to the terms of the lease until the lease is relinquished. If the lessee is not in good standing at any time prior to relinquishment of the lease, the purchase process will be halted until the lessee regains good standing as determined by LCS. The upland parcel that is the subject of this decision will be relinquished from lease ADL 223574 and the remaining tideland area currently under lease will continue to be leased by the applicant until such a time as the lease expires or is terminated.
2. A notice to proceed to appraisal will be issued if no appeals are received, or when appeals are resolved, after issuance of a Final Finding. Within two years from the date of the notice to proceed to appraisal, the applicant must hire an appraiser from DNR's Approved Appraiser list. The appraiser must apply for appraisal instructions issued by DMLW, and then must submit a completed fair market value appraisal to LCS in accordance with the appraisal instructions.
3. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in this notice, the applicant must submit the following to DMLW:
 - A completed and signed Declaration of Intent Form;
 - A signed and notarized Relinquishment of Land Lease form; and
 - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as deposit plus land sales contract application and recordation fees. Fees are established under to *11 AAC 05.100 Land Disposals* and *11 AAC 05.200 Recorder's Office* and are subject to change. Some fees have been reduced by Director's Order Number 3.
4. Prior to and until the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such a contract is issued. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

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Special Note: The applicant must complete steps 1-3 above by **May 12, 2024**, in order to ensure the applicant has a signed land sales contract before the lease expires on **August 12, 2024**. Failure to do this may result in the loss of the right to purchase this parcel of land or cause the applicant to enter into a lease renewal and incur associated costs.

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

Recommendation and approval of the Final Finding and Decision follow.

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VIII. Final Finding and Decision

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

The findings presented above have been reviewed and considered. Public notice has been accomplished in accordance with *AS 38.05.945 Notice*, and comments received were considered. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. LCS recommends proceeding with the proposed action as described in the Preliminary Decision and this Final Finding and Decision.

[signature on file]

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

4.5.2021

Date

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

[signature on file]

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

4.7.2021

Date

[signature on file]

Approved by: Corri A. Feige
Commissioner
Department of Natural Resources
State of Alaska

4.13.21

Date

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Reconsideration Provision

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may request reconsideration, in accordance with *11 AAC 02*. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040(c) and (d)*, and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under *11 AAC 02.030*, appeals and requests for reconsideration filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$250 under the provisions of *11 AAC 05.160 (a)-(b)*.

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with *11 AAC 02* before appealing this decision to Superior Court. A copy of *11 AAC 02* may be obtained from any regional information office of the Department of Natural Resources.