

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

**PRELIMINARY DECISION**  
**ADL 223574**

**Proposed Noncompetitive Sale to Preference Right Applicant**  
*AS 38.05.102*

**RELATED ACTIONS**

**Proposed Amendment to the Kodiak Area Plan - AS 38.04.065**  
**Proposed Land Classification Order – AS 38.04.065 and AS 38.05.300**  
**Proposed Mineral Order (Closing) – AS 38.05.185 and AS 38.05.300**

**PUBLIC COMMENT PERIOD ENDS 5:00 PM, MONDAY, FEBRUARY 1, 2021**

**I. Proposed Actions**

*Preliminary Decision: Approval of Noncompetitive Preference Right Parcel Sale ADL 223574*

*Attachment A: Vicinity Map*

*Attachment B: Public Notice*

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

*Draft Amendment to the Kodiak Area Plan SC-04-001A02*

*Draft Land Classification Order CL SC-04-001A02*

*Draft Mineral Order (Closing) MO 1247*

Primary Proposed Action, Noncompetitive Sale: The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has received an application from Lawrence Carroll and Paul Miller to purchase a parcel of state-owned land pursuant to Alaska Statute (AS) 38.05.102 *Lessee Preference*. The proposed decision will allow the parcel to be sold through a noncompetitive sale to the applicant. 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.

*AS 38.05.102 Lessee Preference* allows the granting of a preference right purchase or lease to those holding leases authorized under *AS 38.05.070-105 Alaska Land Act* who are currently in good standing. A 1981 amendment to *AS 38.05.070 Generally* made this section inapplicable to short-term leases.

Proposed Related Actions: The related actions will be developed separately; however public notice is being conducted concurrently.

*Area Plan Amendment:* DNR proposes to amend the Kodiak Area Plan (KAP, adopted December 20, 2004) to change the designation of approximately 5.02 acres within unit K-55 from Habitat (Ha) Use to Settlement (Se); state land sold under *AS 38.05.102 Lessee Preference* must have a Settlement classification. Refer to the Planning Classification.

## Preliminary Decision

AS 38.05.102 Preference Right – ADL 223574

Page 2 of 15

and Mineral Orders subsection of this document for more information on this proposed related action.

*Land Classification Order:* In relation to the Area Plan Amendment, DNR proposes to reclassify the project area within unit K-55, in a Land Classification Order, from Habitat to Settlement. Refer to the Planning, Classification, and Mineral Orders subsection of this document for more information on this proposed related action.

*Mineral Order (Closing):* DNR proposes to close the parcel to new mineral entry. No mineral claims or mining activity have been identified within the project area. Refer to the Planning, Classification, and Mineral Orders subsection of this document for more information on this proposed related action.

These related actions 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 conducted concurrently and will include the PD for noncompetitive sale (ADL 223574), draft Area Plan Amendment SC-04-001A02, draft Land Classification Order CL SC-004-001A02, and draft Mineral Order 1247.

See **Section VII. 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 Final Finding and Decision (FFD) will be issued.

## 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. Administrative Record

The project file for Alaska Division of Lands (ADL) 223574 constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Kodiak Area Plan adopted December 20, 2004;
- Kodiak Island Borough Comprehensive Plan Update adopted January 2008;
- DNR case files: ADL 227926; tideland lease ATS 1678; LAS 11336;

## Preliminary Decision

AS 38.05.102 Preference Right – ADL 223574

Page 3 of 15

- Federal case file A-056431; and
- State of Alaska casefile GS 1006.

### IV. Scope of the Proposal

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

The proposed related actions will be issued concurrently with the FFD. These actions are described in more detail in the Planning, Classification, and Mineral Order Subsection (v)(e)(3) on page 7.

### V. Description

- a. **Location:** Within DNR's Southcentral Region, the subject parcel is located on the northeast side of Kiliuda Bay, approximately 9 miles northeast of Old Harbor and 40 miles southwest of the City of Kodiak. See *Attachment A: Vicinity Map* for additional information.

*USGS Map Coverage:* Kodiak B-4

*Platting Authority:* Kodiak Island Borough

*Native Councils and Corporations:* Old Harbor Native Corporation is the village corporation, Koniag Incorporation is the regional ANCSA corporation, and the local tribal organization is the Alutiiq tribe of Old Harbor.

- b. **Legal Description:** The legal description for the parcel is Alaska State Land Survey No. 99-13, Tract A, Kiliuda Bay, recorded in the Kodiak Recording District on July 27, 1999, as Plat No. 99-19, containing 5.02 acres, more or less. See *Attachment A: Vicinity Map*.

The legal description of the mineral order is the same as the subject parcel.

- c. **Title:** The State received title to the land on February 18, 1964 under a modified tentative approval. The state file is GS 1006. Title Report 11752 was issued May 31, 2019. No third-party interests were identified. The parcel is subject to the reservations, easements, and exceptions contained in Federal Patent 50-2010-0074 dated December 17, 2009. A new title report will accompany and may modify a FFD.

*State Reservation of Title:*

*Retention of and Access to Mineral Estate:* In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation*, the State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper, silver, etc.) and leasable minerals (such as oil, gas, coal, etc.)

## Preliminary Decision

AS 38.05.102 Preference Right – ADL 223574

Page 4 of 15

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

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

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

*Native Interest:* The subject parcel is within the boundaries of the Koniag Incorporated regional corporation. There are no Native interests identified with this parcel.

*Other Conflicts or Pending Interest:* None.

d. Background and Discussion:

*Background*

The State received title to the subject parcel from the Bureau of Land Management (BLM) through a Tentative Approval issued on February 18, 1964 and subsequent Patent 50-2010-0074 issued on December 17, 2009.

The State issued a 25-year lease for the subject parcel under the authority of *AS 38.05.070-.075 Alaska Land Act* on August 13, 1999 to Robert A. Morgan II of Kodiak Adventures. Approved leasehold uses include commercial guiding/outfitting, fishing, and a lodge operation. Use of the parcel for solely non-commercial and private uses are prohibited under the lease agreement, and improvements require pre-approval under a development plan. This lease is recorded at Book 166, Pages 802-820 in the Kodiak Recording District.

The lease was subsequently assigned from Robert Morgan to Larry A. Jarrett on August 13, 1999 (Book 166, Pages 821-822 in the Kodiak Recording District). An amendment recorded in Book 166, Page 823-828 and executed on August 13, 1999 amended the lease term to 30 years setting the lease expiration date as August 12, 2029.

## Preliminary Decision

AS 38.05.102 Preference Right – ADL 223574

Page 5 of 15

On April 6, 2006, the lease was assigned from Larry Jarrett to Kodiak Adventures Lodge, LLC, a limited liability company established by Mr. Jarrett naming himself as the only member. Amendment No. 2 and Assignment No. 3 are incorporated into a single document recorded as document number 2009-000334-0 in the Kodiak Recording District on March 9, 2009, assigning the lease to the Edge of the Wilderness, LLC and updating bulk fuel tank farm capacity and distance requirements. On June 30, 2008 an indemnification and hold harmless agreement of Edge of the Wilderness, LLC (Lawrence J. Carroll) and the applicant of ADL 227926, Kodiak Adventures Lodge, LLC (Larry Jarrett), agreed to amend the lease agreement to include the tideland lease identified as ADL 227926. Lease Amendment 3 dated June 4, 2013 and recorded at Document number 2013-001081 in the Kodiak Recording District acknowledges the combining of tidelands lease ADL 227926 with land lease ADL 223574, and effectively releases Kodiak Adventures Lodge, LLC and Larry Jarrett from future obligations of tidelands lease ADL 227926.

In 2013, Edge of the Wilderness, LLC applied to purchase Tract A, ASLS 99-13, Plat 99-19, Kodiak Recording District containing 5.02 acres, more or less, which is the uplands portion of ADL 223574. The application does not request to purchase the tidelands portion of the leasehold.

Improvements on the parcel include a lodge and three buildings. According to the applicant, the lodge and gear shed were built in the late 1960s and early 1970s and have undergone several renovations. A four-bedroom building was built on the property in 2000 for use by guests. Current lodge owners have undertaken complete remodels of all buildings from 2008 to present. The owners live at the site year-round. The 1999 lease includes a development plan for infrastructure improvements. Interest in buildings and improvements has changed hands in conjunction with various lease assignments as follows:

- Robert A Morgan and Mary Morgan quitclaimed all interest in subject parcel real estate to Dorothy and Larry Jarrett via a quitclaim issued August 12, 1999 and recorded at Book 166 Page 829.
- On May 9, 2003 Dorothy Jarrett quitclaim all interest in Tract A to Larry Jarrett at document 2005-001309-0 in the Kodiak Recording District.
- Kodiak Adventures Lodge, LLC and Larry A Jarrett quitclaimed to Edge of the Wilderness, LLC all interest in the subject parcel on June 30, 2008 recorded as document 2008-001234-0.

Water rights certificate of appropriation recorded on document number #2012-001108-0 to Edge of the Wilderness, LLC, allows use of a spring on the property for the lodge and year-round residential uses.

The Edge of the Wilderness, LLC, doing business as Kodiak Adventures Lodge, operates as a fishing and hunting lodge under business license 923932 and guiding transport license.

## **Preliminary Decision**

AS 38.05.102 Preference Right – ADL 223574

Page 6 of 15

As of the time of this PD, there are no liens associated with Edge of the Wilderness.

### *Discussion*

Under *AS 38.05.102 Lessee Preference*, the State may sell land noncompetitively to a long-term leaseholder whose lease was authorized under *AS 38.05.070-105 Alaska Land Act*. The lessee must be in good standing, and the sale must be in the best interest of the state.

The original lease was issued in 1999 under the authority of *AS 38.05.070-.075 Alaska Land Act* as amended, as stated on the lease agreement. DMLW finds that the issuance authority qualifies the lease for preference right claims under *AS 38.05.102 Lessee Preference*.

The preference right applicants and current leaseholders of the parcel are in good standing with the terms of the lease as of the last lease inspection conducted by the Southcentral Regional Office of DNR and as of the writing of this document. Title Report 11752 shows no third-party interests or liens. Therefore, the applicant qualifies under *AS 38.05.102 Lessee Preference* for a preference right claim.

The applicants and previous leaseholders have added substantial improvements to the land including a lodge and two buildings built in the 1960s and improved upon in 2000 under an improved development plan. The sale of the parcel allows improvements to remain *in situ* and provides the applicants assurances required for future planning, raising capital, expanding business operations, and passing property to heirs. If the State chooses to retain the parcel in state ownership and declines to renew the lease, the applicants will be required to remove the improvements from the land and restore it to its original condition. The applicant may lose the improvements if they are immobile, causing the applicant detriment.

The existence of improvements on the site is an indicator used by DMLW to determine how actively a site is used and for what purpose. In this case, it appears the site is actively used by the applicant for commercial purposes. The use of the parcel and its location support the economic viability and growth of tourism in Alaska and the City of Kodiak as guests travel through the city en route to the lodge.

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

The parcel and surrounding land are classified as Habitat in the Kodiak Area Plan. KAP management goals include providing economic opportunities for jobs and income by managing state land and resources to support a vital, self-sustaining local economy; additional goals include maintaining or enhancing the quality of the natural environment including fish and wildlife habitat and harvest opportunities and maintaining long-term productivity and quality of renewable resources including fish and wildlife.

## **Preliminary Decision**

AS 38.05.102 Preference Right – ADL 223574

Page 7 of 15

The primary management goal for KAP Unit K-55 (the unit encompassing the subject parcel) is the maintenance of the habitats' productivity, with provisions for human use of the fish and wildlife resources present. The long-term management intent of the unit is for multiple uses, primarily habitat and dispersed recreation. The KAP requires management for protection of winter range for deer, brown bear denning sites and stream concentration areas, ridges containing concentrations of mountain goats, and anadromous streams.

The use of the site has been for commercial hunting and fishing lodge for over 20 years. The sale or long-term lease renewal of this site into private ownership continues a course of action under which the State supported and approved of a commercial lodging and fishing and hunting enterprise, while the classification of surrounding lands as habitat supports sustainability of wildlife and fish habitat. The sale of this land does not change the use of resources of fish and wildlife habitat from what it is today; those resources are still managed and protected by Alaska Department of Fish and Game statutes and regulations. The future owners of the parcel are still beholden to Alaska laws and regulations protecting these resources.

Additionally, the parcel is located on the edge of Kiliuda Bay, at the bottom of a steep gradient, and is approximately 5 acres in size. Both the location and size of the parcel mitigate any impacts a sale or continued commercial use of the site might have on protection of wildlife habitat for deer, brown bear, and mountain goats. There are no anadromous streams on the parcel. Therefore, a sale or lease renewal of the land does not conflict with the management intent of KAP. However, before any sale or lease of the parcel, DMLW must collect public input on and approve a plan amendment, changing the parcel classification to settlement and allowing for a land disposal under state law.

The State could reason that retainment of this parcel in state ownership is consistent with land planning; surrounding land will be retained in state ownership pursuant to the KAP and is classified as habitat. The consequences of such a decision are that the applicant will be required, at the end of the leasehold, to remove all structures from the land and return it to its original condition. That will cost the current leaseholder substantial amounts of time and money, as these improvements are not accessible by road. It will also cause a small business whose main draw is location and proximity to fishing and hunting to discontinue operations as is.

Another option the State considered is to offer the applicants a lease renewal. Under this scenario the State retains long-term interest in the land and the option to decline to re-lease the parcel in the future. The lease receives site control for a given period of time that may guide planning and business operations. At the end of any lease the State may choose not to enter into a new lease and the parcel would revert to Habitat lands, matching the land use classification and management guidelines of surrounding lands. The lease renewal offers the applicants the option to continue using the site for commercial enterprises as they currently are, while preserving state ownership and state use of lands in the future.

The State expends resources managing leases that may outweigh the benefits of any revenue earned from them.

## Preliminary Decision

AS 38.05.102 Preference Right – ADL 223574

Page 8 of 15

For the reasons outlined above, the sale of the subject parcel is beneficial both to the State, and to the prospective applicant. The sale provides land for settlement to the applicant and is the site of used and useful improvements. It provides maximum use for the public benefit in that it provides land to the private sector, the proposed parcel use does not disturb or curtail nearby state land uses, and it supports the long-term viability of a small business.

e. Planning, Classification, and Mineral Orders:

1. *Planning:* The subject parcel is located within Unit K-55 of the Kodiak Area Plan adopted December 20, 2004. Recommended land use within this management unit includes the maintenance of the habitat's productivity, with provisions for human use of the fish and wildlife resources present. The plan designates the subject parcel as Habitat.

Area Plan Amendment: An amendment to the Kodiak Area Plan is necessary to change the subject parcel's designation and management intent. The proposed plan amendment SC-04-001A02 will re-designate the subject parcel to Settlement Land and state new management intent. This subject parcel was previously within management Unit K-55 on the Shearwater Peninsula and will be placed into new management Unit K-57C. This amendment only affects the approximately 5-acre subject parcel proposed for sale and does not include any tidelands that are not considered uplands for this sale. 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". The remainder of the land in Unit K-55 retains its current designation and management intent. Multiple use, factors affecting the area, resource inventory, present and potential land uses, and compatible classifications have been considered. These factors are listed in *AS 38.04.065(b) Land Use Planning and Classification*. If DNR approves the preference right sale, the plan amendment will accompany the FFD. The approval of an area plan amendment is a separate action, occurring concurrent with the FFD.

2. *Land Classification Order:* The State classified the subject parcel as Habitat under Classification order (SC-004-001A02) based on the Kodiak Area Plan adopted December 20, 2004.

Land Classification Order: In relation to the Area Plan Amendment, DNR proposes to reclassify the subject parcel in a Land Classification Order, from Habitat to Settlement. This action only affects the 5.02-acre parcel. The remainder of the land in Unit K-55 retains its current classification. If DNR approves the preference right sale, the land classification order will accompany the FFD. The approval of the land classification order is a separate action, occurring concurrent with the FFD.

3. *Mineral Order:* DNR proposes to close the parcel to new mineral entry in accordance with *AS 38.05.185 Generally* and *AS 38.05.300 Classification of Land* for land disposals. There are no current mining claims located within the subject parcel. The proposed mineral order, if approved, will close the subject parcel to new mineral entry. Closing the subject parcel to mineral entry is consistent with the management intent of the KAP. If DNR approves the preference right sale, the mineral order will



## Preliminary Decision

AS 38.05.102 Preference Right – ADL 223574

Page 9 of 15

accompany the FFD. The approval of the mineral order is a separate action, occurring concurrent with the FFD.

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

Mining activity for locatable minerals would be incompatible with past, current, and proposed land estate uses for land disposal. Allowing new mineral location within the boundary of the parcel encompassed by the decision could create conflict between land estate and mineral estate users. Kodiak Area Plan subsurface management policy states that, in general, areas or parcels scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between land estate and mineral estate users.

4. *Local Planning*: This area is zoned “Conservation” by the Kodiak Island Borough, which allows for a variety of natural resource extractive uses as well as low-density residential use and other uses such as lodges.
5. *Flood Risk*: There are no FEMA flood maps available for this area.
- f. Traditional Use Findings: The subject parcel is located within the Kodiak Island Borough and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. There are no anticipated significant changes to traditional uses of the land and resources of this area as a result of the proposed action. Additional information on traditional use is welcome during the public comment period and if this proposal is approved, LCS will address the information received in a subsequent FFD, if one is issued. See the **Section VIII Submittal of Public Comments** at the end of this documents and *Attachment B: Public Notice* for details on how to submit comment.
- g. Access, including Access To and Along Public or Navigable Water:  
*Public Access*: Access to this parcel is via Kiliuda Bay by boat or airplane.

*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, Buffer Strips, Reserved Areas, and Public Easements*.

This parcel will be subject to access reservations in accordance with *AS 38.05.127 Access to Public or Navigable Water* including a 50-foot public access easement to the mean high-water line along Kiliuda Bay, and a 100-foot building setback and riparian buffer from the ordinary high-water line of Kiliuda Bay in accordance with the KAP.

## Preliminary Decision

AS 38.05.102 Preference Right – ADL 223574

Page 10 of 15

### *Easements and Setbacks:*

- A 50-foot continuous public access easement upland from the mean high water line along Kiliuda Bay as noted above and in compliance with *AS 38.05.127 Access to Navigable or Public Water* and *11 AAC 51.045(c)(1) Easements To and Along Navigable and Public Water* as depicted on ASLS 99-13, Plat 99-19;
- A minimum 100-foot building setback and 100-foot wide riparian buffer from the OHW of public or navigable water bodies, in accordance with the Kodiak Area Plan for any new structures or improvements, while existing structures are grandfathered in and may remain in place;
- Utility easements as depicted on ASLS 99-13, Plat 99-19; and
- Additional reservations and/or restrictions required through the local platting authority.

Where appropriate, reservations and restrictions are depicted on the plat and described in the Plat 99-19 notes. *11 AAC 51.015 (c) Standards for Public Easements* reserves the dedicated easement to the State.

- h. Reservation of Mineral Estate: In accordance with section 6(i) of the Alaska Statehood Act and *AS 38.05.125 Reservation*, the State, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with *AS 38.05.130 Damages and Posting of Bond* and other applicable statutes and regulations.

- i. Hazardous Materials and Potential Contaminants:

There is no known contamination of, or hazardous materials on, the subject parcel. The applicant is expected to inspect the subject parcel to ascertain the quality and condition of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed for conveyance to the applicant. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

DNR DMLW 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 Department of Environmental Conservation. The risk is no greater than when private vacant land undergoes development. Given this land has been designated as commercial – 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, DNR is of the opinion that the benefits outweigh the potential risks.

- j. Survey: This parcel is surveyed as Alaska State Land Survey No. 99-13, Tract A, Kiliuda Bay, Plat 99-19, Kodiak Recording District containing 5.02 acres, more or less. See attached vicinity map.

## **Preliminary Decision**

AS 38.05.102 Preference Right – ADL 223574

Page 11 of 15

- k. Compensation/Appraisal: If the purchase is approved, the parcel will be sold at fair market value as required by *AS 38.05.840(a) Appraisal*. At the appropriate time, LCS will notify the applicant to begin the appraisal process and will provide a list of approved appraisers. The DMLW Appraisal Unit will provide appraisal instructions to an approved appraiser. The applicant bears the cost of appraisal. The date fixed for sale under *AS 38.05.840(a) Appraisal* and the valuation date of the appraisal will be set as the date of inspection by the appraiser.

## **VI. DMLW and Agency Review**

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD. Agency review was conducted between November 6, 2020 through November 27, 2020. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision, if one is issued.

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

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

DNR Division of Oil and Gas (DOG): DOG thanked DMLW for the opportunity to review and comment on the project. DOG has no objection to the proposed conveyance or associated classification or mineral orders and does not have any authorizations or pending applications on the subject lands.

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

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

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

- Department of Fish and Game, Department of Environmental Conservation, DNR Division of Geological and Geophysical Surveys, and DNR State Historic Preservation Office.

## **VII. Submittal of Public Comments**

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

## **Preliminary Decision**

AS 38.05.102 Preference Right – ADL 223574

Page 12 of 15

Pursuant to *AS 38.05.945 Notice*, LCS is issuing public notice inviting comment on this Preliminary Decision, draft area plan amendment, draft land classification order, 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) Notice* may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, draft area plan amendment, draft land classification order, 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 PD, draft area plan amendment, draft land classification order, and draft mineral order, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent FFD, KAP Amendment No. SC-04-001A02, Land Classification Order CL SC-004-001A2, and Mineral Order 1247 without further notice. All related actions will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without approval of all actions.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the FFD, KAP Amendment No. SC-04-001A02, Land Classification Order CL SC-04-001A02, and Mineral Order 1247. Upon approval and issuance of a FFD and these actions, a copy of the decision, orders, and amendment will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration process to any party who provides timely written comment.

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

**DEADLINE TO SUBMIT WRITTEN COMMENT IS  
5:00 PM, MONDAY, FEBRUARY 1, 2021**

## **VIII. 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 area of the purchase parcel will be the area of the lease that is relinquished; the remaining area currently under lease will continue to be leased by the applicant until such as time as the lease expires or is terminated.

## **Preliminary Decision**

AS 38.05.102 Preference Right – ADL 223574

Page 13 of 15

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 LCS:
  - 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 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.

Special Note: The applicant must complete steps 1-4 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 will result in the loss of the right to purchase this parcel of land or may need 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.

## **IX. Discussion and Alternatives**

LCS is considering the following alternatives:

### Alternative 1: Sell

Offer the subject parcel for sale as proposed in this decision in accordance with *AS 38.05.102 Lessee Preference*.

### Alternative 2: Lease

Issue a lease renewal to the applicant.

### Alternative 3: Retain

DNR will take no action and retain the subject parcel.

## **Preliminary Decision**

AS 38.05.102 Preference Right – ADL 223574

Page 14 of 15

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

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

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

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

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

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

**Preliminary Decision**

AS 38.05.102 Preference Right – ADL 223574

Page 15 of 15

**X. Recommendation and Preliminary Decision**

This Preliminary Decision for the proposed disposal of State lands, KAP Amendment No. SC-04-001A02, Land Classification Order CL SC-04-001A02, and Mineral Order 1247 described throughout this document and its attachments are consistent with the overall management intent for State-owned lands. Alternative 1 is the preferred alternative because it is the maximum best use of state land, addresses a land claim under preference right statutes, and helps meet the mission of the land sales program. The PD described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

The 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, KAP Amendment No. SC-04-001A02, Land Classification Order CL SC-04-001A02, and Mineral Order 1247. If the decision is approved, KAP Amendment No. SC-04-001A02, Land Classification Order CL SC-04-001A02, and Mineral Order will accompany and precede any Final Finding and Decision issued.

\_\_\_\_\_(signature on file)\_\_\_\_\_  
Prepared by: Kelsey M. Anderson  
Natural Resource Specialist III  
Land Conveyance Section  
Division of Mining, Land, and Water  
Department of Natural Resources  
State of Alaska

\_\_\_\_12/29/2020\_\_\_\_\_  
Date of Signature

\_\_\_\_\_(signature on file)\_\_\_\_\_  
Approved by: Rachel Longacre  
Section Chief  
Land Conveyance Section  
Division of Mining, Land and Water  
Department of Natural Resources  
State of Alaska

\_\_\_\_12/29/2020\_\_\_\_\_  
Date of Signature



Larry Carroll  
ADL 223574






### Attachment A: Vicinity Map

Proposed Noncompetitive Sale  
Pursuant to AS 38.05.102

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

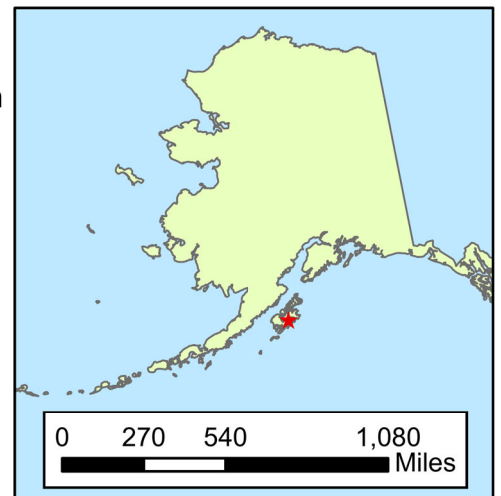


**LEGEND**

-  Kodiak National Wildlife Refuge
-  ADL 223574, Preference Right Sale
-  ADL 227926, Tidelands Lease
-  25' Utility and Public Access Easement
-  50' Public Access Easement per AS 38.05.127

USGS QUAD 1:63,360  
Kodiak B-4

#### Section 17, Township 33 South, Range 24 West, Seward Meridian



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



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

**ATTACHMENT B: PUBLIC NOTICE**

**Requesting Input for Proposed Noncompetitive Sale to  
Preference Right Applicant - ADL 223574**  
*AS 38.05.102*

**RELATED ACTIONS**

**Proposed Amendment to the Kodiak Area Plan - AS 38.04.065**  
**Proposed Land Classification Order – AS 38.04.065 and AS 38.05.300**  
**Proposed Mineral Order (Closing) – AS 38.05.185 and AS 38.05.300**

**COMMENT PERIOD ENDS 5:00 PM, MONDAY, FEBRUARY 1, 2021**

The Alaska Department of Natural Resources (DNR), Division of Mining Land and Water (DMLW), Land Conveyance Section (LCS) is conducting a public notice for a noncompetitive land sale nine miles northeast of Old Harbor and 40 miles southwest of the city of Kodiak. 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.

To obtain the notice, Preliminary Decision (PD), or instructions on submitting comment, go to <http://dnr.alaska.gov/mlw/landsale/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10:00 AM and 5:00 PM in Anchorage at (907) 269-8400 or Fairbanks at (907) 451-2705 or the Southeast Land Office in Juneau at (907) 465-3400 or TTY: 711 for Alaska Relay or 1-800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Monday, January 25, 2021.

Pursuant to *AS 38.05.945 Notice*, the public is invited to submit comments on the Preliminary Decision, Area Plan Amendment, Land Classification Order, or 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 5:00 PM, MONDAY, FEBRUARY 1, 2021.** Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision (FFD). Written comment may be received by fax, email, or postal mail. To submit comments or for direct inquiries, contact Kelsey M. Anderson by mail at 550 West 7<sup>th</sup> Ave, Suite 640, Anchorage, AK 99501 or by fax at (907) 269-8916 or by email at [kelsey.anderson1@alaska.gov](mailto:kelsey.anderson1@alaska.gov). If you have questions, call Kelsey M. Anderson at (907) 269-8851.

If no significant change is required, the PD and related actions, including any minor changes and a summary of comments and responses, will be issued as the FFD, Area Plan Amendment SC-004-001A02, Land Classification Order CL SC-004-001A02, and Mineral Order 1247, without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

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