

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

FINAL FINDING AND DECISION

of a
Land Offering in the Kenai Peninsula Borough
Anchors Aweigh North Subdivision – ADL 233192
AS 38.05.035(e), AS 38.05.045

and its
RELATED ACTION:
Mineral Order 1259 (Closing)
AS 38.05.185 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated October 19, 2022. 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 Anchors Aweigh project area (ADL 233192), as described in the PD and modified herein. 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 Anchors Aweigh project area, LCS may develop a subdivision of no more than 20 parcels no smaller than 2 acres. The project area is located within the Kenai Peninsula Borough (KPB) 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 action with this proposal:

Mineral Order: DNR DMLW LCS proposes to close the project area to new mineral entry through Mineral Order (MO) 1259.

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 38.05.300 *Classification of Land*, and AS 38.05.185 *Generally* allow for mineral orders.

III. Public Participation and Input

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

- Posted under State of Alaska Online Public Notice from October 21, 2022, to November 30, 2022.
- Posted on DNR Land Sales website from October 20, 2022, to November 30, 2022.
- Notices mailed to the Kenai Peninsula Borough per AS 38.05.945(c)(1).
- Mailed to postmasters in Anchor Point with a request to post for 30 days, per AS 38.05.945(c)(4).
- Mailed to the library in Anchor Point with a request to post for 30 days.
- Mailed to Cook Inlet Region, Inc. (regional corporation) per AS 38.05.945(c)(2)-(3).
- Mailed to 164 landowners of properties within one mile of the offering, the Native Village of Ninilchik, the Ninilchik Native Association Inc., the Ninilchik Traditional Council, the Seldovia Village Tribe, and the Seldovia Native Association.
- Sent notification to area state legislators and to multiple state agencies.

The public notice stated that written comments were to be received by 5:00PM, November 30, 2022, 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 the KPB ordinances and codes. During the process the public will have opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

Subdivision design will be submitted to the KPB for review in accordance with Title 20 *Subdivisions* of their ordinance.

Section 20.25.90 *Notice* provides the requirements for notification of affected property owners.

Section 20.25.100 *Approval-Commission Authority-Notification Required* states, in part, “Within 60 days from the date of acceptance by the planning director of the preliminary plat, the commission shall determine if the preliminary plat complies with the provisions of law and this chapter, and shall approve, conditionally approve, or disapprove the plat...”

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IV. Summary of Comments

DNR DMLW LCS received brief comments from the Alaska, Department of Transportation & Public Facilities (DOT&PF), the KPB Donald Gilman River Center, and eight written comments signed by nine individuals. Five individual comments expressed general opposition to the project or stated that it was not in the State's best interest. One comment was submitted in support of the project. Another comment supported the project but suggested that it may be better suited for commercial development. One comment objected to the subdivision being developed without restrictive covenants to protect property values and wildlife. Most comments included suggestions to modify the project design from the PD if the project moves forward. All comments received during the public comment period are summarized below by topic.

DOT&PF Comment: Thank you for the opportunity to review the proposal. DOT&PF has no additional comments at this time.

DNR DMLW LCS Response: LCS thanks DOT&PF for continuing to review and comment on the project.

Donald Gilman River Center Comment: The subject parcels are located within a mapped flood zone D, which is unregulated, with undetermined flood risk. No floodplain permits are required for proposed future development.

DNR DMLW LCS Response: LCS thanks you for reviewing and providing feedback on the project.

Individual Comment: Looks like this subdivision makes good use of these very buildable home lots.

DNR DMLW LCS Response: LCS thanks you for commenting in support of the project.

Individual Comment: One comment was opposed to adding 30 new driveways onto the Sterling Highway and provided a sketch map of potential access points and roads for the subdivision to the highway.

DNR DMLW LCS Response: LCS thanks you for your comment and sketch map. As discussed in the PD, DOT&PF will not permit any new driveway access onto the Sterling Highway. To provide access to and from the highway, LCS will dedicate public access along the two existing roads in the project area (ADL 212303 and ADL 214612). Both access roads lead west from the Sterling Highway to residential areas adjacent to the project area. Tall Tree Avenue and Cottonfield Avenue will provide additional highway access for the east and southwest portions of the subdivision.

Individual Comment: If the state moves forward, current property owners should have the first right to buy the land.

DNR DMLW LCS Response: LCS thanks you for your comment. LCS cannot exclusively offer the parcels to current property owners first. However, if the project is approved, Alaska residents will have the first opportunity to purchase the land in a future auction. The State of Alaska sells subdivided land in accordance with *AS 38.05.045 Generally* through auctions, and over the counter (OTC) sales programs. If the project proceeds to sale, the parcels will initially be offered in an auction, whereas by law one must be an

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Alaska resident to participate. Auction participants may win up to two parcels. Any unsold parcels may be offered in an OTC sale. OTC sales allows for anyone, including residents, non-residents, and businesses alike, to purchase parcels at a fixed price on a first-come, first-served basis.

Individual Comment: Please make these parcels available through State of Alaska sales and not through private realtors.

DNR DMLW LCS Response: LCS thanks you for your comment. As described above, the State of Alaska sells appraised, subdivided land through sealed-bid auction and OTC sales programs. If the project proceeds, the parcels will be offered to Alaska residents in a future auction. After the auction, any remaining unsold parcels may be offered in an OTC sale for anyone to purchase. DNR will finance all purchases with a 5% down payment, details are available online at:

<https://dnr.alaska.gov/mlw/landsales/info/financing/>

Individual comment opposing commercial activities in the project area: One comment stated they "...vehemently oppose any commercial activity on the parcels."

DNR DMLW LCS Response: LCS thanks you for your comment. The Kenai Area Plan (KAP [adopted 2000]) designated and classified the land within the project area for settlement. According to the KAP, "Lands where fee simple interest is sold or other disposal of state interest under exchange or conveyance programs occur may be used for commercial or noncommercial purposes, unless otherwise specifically stated in sale documents." LCS does not intend to add encumbrances against commercial activities in sales documents. Future landowners may choose to form a homeowners association (HOA), or, petition the KPB to form a local option zoning district to prevent commercial use of the parcels within the subdivision. See LCS's response to deed restrictions and covenants detailed later in this section.

Individual comment regarding commercial use of the parcels within the project area: One comment suggested that future development along the highway should be commercial given that there are several smaller residential parcels available closer to the inlet, which are more sought after and would justify the expense of developing smaller residential parcels.

DNR DMLW LCS Response: LCS thanks you for your comment. The residential parcels overlooking the inlet are also sold at a premium price due to their location near the water, whereas offering smaller parcels away from the inlet within the Anchors Aweigh project area would be more affordable to a wider range of Alaskans. LCS's preliminary background research of similar sized parcels in the area indicated that offering smaller parcels with newly developed access roads would provide a better return on the State's investment than by offering larger parcels with no new road access. LCS does not control the post-patent use of subdivision parcels once they are sold, and if allowed by borough zoning or ordinance, a purchaser might be able to pursue commercial use. However, selling more parcels, that are smaller in size, would provide more Alaskans with increased opportunities to purchase State land.

Comments against the project: Five comments were submitted opposing the development of the subdivision. Three of the commenters also provided suggestions to alter the project design to mitigate their concerns if the project move forward (suggestions to modify the project are

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grouped with similar comments later in this section of the document). One comment stated that “...establishing the proposed subdivision is not in the best interest of the state, the ecosystem, and wildlife, or established property owners.” A similar comment stated they believed the “...best interest of the state, the area, and habitat would be to maintain the property in its present condition.” Another comment stated their family is opposed to the northern half of the subdivision. One comment submitted on behalf of other property owners in the Buena Vista Subdivision was opposed to the project. A similar comment expressed opposition to the sale of the proposed 60 acres of land.

DNR DMLW LCS Response: LCS thanks you for your comments. LCS intends to proceed with the project with some modifications to the project design (see section **VI Modifications to the Decision**). 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.” There have been no prior state land offerings in the vicinity of the project area and the land within the Anchors Aweigh Subdivision contains the only parcel of state settlement-designated land in the area. The project area is within a popular locality on the Kenai Peninsula, close to amenities, and almost entirely surrounded by other subdivisions successfully developed by the KPB, and private developers. The alternative would be to retain the land in perpetual state ownership, which DNR would have to manage. Retaining the land in the project area does not meet the legislative and public desire for DNR to offer State land for private ownership.

Individual Comment: One comment stated that their family's main concern was that project development would substantially change the nature of the area. “Due to the spruce bark beetle effects, we lost most of the spruce trees on our land, so that there is no real forest buffer that would shield us from the views and activity of a development to our east, where it is proposed.”

DNR DMLW LCS Response: LCS thanks you for your comment. LCS intends to increase parcel sizes to help preserve the natural setting and rural feeling of the area (see section **VI Modifications to the Decision**). Spruce beetles have devastating effects to spruce forests in Alaska. However, spruce trees have been reclaiming the project area since approximately 2011 when the Alaska Division of Forestry (DOF) planted white spruce after the land was commercially logged in the 1990s. LCS does not intend to create vegetation buffers around the subdivision to limit impacts to the surrounding viewshed for adjacent property owners (also see the discussion on noise and traffic). However, the unnamed Stariski Creek tributary in the northern project area will be retained within a minimum 50-foot buffer (see section **VI Modifications to the Decision**). The retained area might act as a visual buffer to some living within and near the project area.

Comments regarding deed restrictions and covenants: Six comments also called for creating covenants or deed restrictions to protect local property values, habitat, and prevent commercial activities in the subdivision. Two comments objected to the subdivision being constructed without established covenants. One comment called for creating deed restrictions preventing commercial ventures; another called for deed restrictions disallowing multifamily developments on the parcels; one comment called for deed restrictions preventing the needless cutting of trees; and one comment called for deed restrictions limiting the number of residences/buildings placed on any given property within the subdivision.

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DNR DMLW LCS Response: LCS thanks you for your comments. LCS does not create covenants or deed restrictions for subdivisions unless it is in the greater public interest, such as retaining public trails and recreation areas, or protecting anadromous waters and wildlife habitat. Another issue is enforcement. Covenants are the prerogative of an HOA to govern any arising issues. The KPB does not enforce private covenants, easements, or deed restrictions (Sect. 20.60.170.B). Any restrictive covenants placed on the parcels would be enforceable by the landowners, which could open DNR to being enjoined in any potential civil actions as the owner of all unsold parcels, or parcels still under contract. As noted from the public comments received, different parties have different potential interests in the properties. Restricting the use of the property could restrict the equitable use of potential future purchasers. By not restricting the use through covenants or deed restrictions, the parcels remain open to multiple use, and the subsequent landowners can organize to create restrictions and self-govern if they so choose. Landowners may be able to petition the KPB to form a Local Option Zoning District (Ord. 21.44) over all or part of the project area. Members of the public will have an additional opportunity to ask questions and submit comments during the KPB's platting meeting. The KPB will also conduct a public comment period prior to approving the final project design.

Comments regarding increasing parcel sizes: Four comments called for increasing parcel sizes within the subdivision. One commenter stated their preferred option is to offer fewer parcels that were larger in size. Another comment stated that offering parcels between 7-10 acres would be more in alignment with adjacent parcels to the subdivision. Another comment preferred parcels to be 5 acres, but no smaller than 2 acres, in size; and one comment called for offering as large parcels as possible to help preserve habitat.

DNR DMLW LCS Response: LCS thanks you for your comments. Parcel sizes in the vicinity vary substantially, though generally within the 1–10-acre range. LCS intends to increase the minimum parcel size to no smaller than 2 acres (see section **VI Modifications to the Decision**). This will allow DNR to create a subdivision design which fits with the surrounding development, and provides a suitable return on the State's investment.

Comments regarding impacts to wildlife and habitat: Four comments raised concerns about impacts to wildlife and habitat. One comment described the area as a haven for wildlife due to the proximity of the subdivision to the Stariski Creek bluff and that development will push habitat out of "an ecologically sensitive area." Another comment expressed concern over direct and indirect adverse impacts to the habitat and wildlife from subdivision development and activities. One commenter expressed concern over the loss of habitat for moose, black bear, and eagles, which are often seen on their property. The same commentator stated that "...continued loss of protected land will drive these animals into more encounters with humans and possibly loss of life. And that by creating 30 additional properties it would be a matter of time before an unwanted interaction occurs." The last comment described the location of a small pond in the northern project area that feeds into the stream that drains into Stariski Creek where bald eagles nest, and moose, bear, are found in the area. The commenter went on to say that eagle nests change location over time.

DNR DMLW LCS Response: LCS thanks you for your comments. ADF&G was consulted during agency review and did not express concern over impacts to wildlife or habitat in relation to the subdivision. The project area is surrounded by other

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subdivisions and was logged in the 1990s. Habitat is defined under Alaska Administrative Code 11 AAC 55.230. Under the KAP, wildlife habitat is land that is primarily valuable for fish and wildlife resource production; or contains a unique or rare assemblage of a single or multiple species of regional, state, or national significance. Given that the project area is not used for wildlife resource production, nor contains one or more rare assemblages of species of significance, it is not considered essential habitat on a management level. LCS understands that wildlife is often seen in the area and will increase the minimum parcel sizes to help preserve the areas natural, rural setting (see section **VI Modifications to the Decision**). The increased parcel sizes should help to reduce the likelihood of negative human wildlife encounters by lowering the number of parcels sold and people moving into the subdivision. The increased parcel sizes will also provide landowners with more than enough buildable space to develop their properties without having to clear all their land, which should also provide additional room for wildlife to move between built areas of the subdivision. The unnamed Stariski Creek tributary located in the northern project area will also be retained. A minimum 50-foot buffer will be established along the waterbody, which will preserve a large tract of vegetation along the north and south banks of the stream and will also provide wildlife with an additional corridor to migrate through the area (see section **VI Modifications to the Decision**).

The results of LCS's background research and field activities did not identify any eagle nests in the project area. LCS will not sell land within 660 feet of an eagle's nest. If any bald eagle nests are located within 660 feet of any parcels, the affected parcels will not be offered for sale until the nest has been determined to be abandoned or is no longer present. Land auction brochures include information about eagle nest regulations and protection. Eagles are protected from disturbance and "take" under the Bald and Golden Eagle Protection Act. The USFWS provides guidance on avoiding disturbance to nesting bald and golden eagles during recreational activities or development projects at <https://www.fws.gov/alaska/pages/migratory-birds/eagles-other-raptors/eagle-permits>. For more information, or to report an eagle's nest, contact the Anchorage USFWS Fish and Wildlife Conservation Office at (907) 271-2888.

Comments regarding the needless cutting of trees: Four comments expressed concerns over removing too many trees to develop the subdivision. Three comments were opposed to clearcutting and/or removing significant numbers of trees and wildlife habitat needed to achieve the subdivision. One comment recounted how the complete removal of trees in the past altered snow drift patterns along Tall Tree Avenue and Coastal Vista Circle, which significantly complicates snow removing activities.

DNR DMLW LCS Response: LCS thanks you for your comments. LCS does not intend to clearcut any trees for the subdivision. However, LCS intends to increase the parcel sizes to reduce the number of parcels within the subdivision. LCS understands that wildlife is often seen in the area, however the project area is not designated or classified as habitat by the KAP, ADF&G, or the KPB. As previously discussed, the unnamed stream in the northern project area will be retained (see section **VI Modifications to the Decision**). The stream runs from wetland habitat on the east side of the Sterling Highway and empties into Stariski Creek, west of the project area. Clearing high numbers of trees can alter snow drift patterns. Trees are usually cleared from residential parcels to make room for buildings or structures, which can also act as a buffer to snowdrifts depending on their size and location. When the project area was logged in the

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1990s there was little left in place to buffer against winds and snowdrifts once the land was cleared. LCS intends to increase the minimal parcel size within the subdivision (see section **VI Modifications to the Decision**). This will provide landowners with plenty of buildable space to settle on the land without having to remove all the trees and vegetation from their properties. Aerial images of the region indicate that most, if not all of the existing private parcels in the vicinity have not been clearcut and many trees remain on both developed and undeveloped parcels. The same would likely hold true in the Anchors Aweigh Subdivision given that healthy trees provide many benefits to landowners when left undisturbed.

Comments regarding increased noise and traffic: Four comments stated that the subdivision will result in increased traffic and noise for area residents. Two comments stated that the high number of residential parcels would bring increased noise and traffic to those living adjacent to the subdivision. One comment described how highway noise can be considerable from trucks gearing down, up and down the highway and that if trees are removed for the subdivision, the resulting increase in noise level will be felt by “all living on the west side of the highway.” Another comment called for creating a vegetation buffer along Tall Tree Avenue and Cottonfield Avenue to help reduce noise and traffic concerns for the adjacent subdivision.

DNR DMLW LCS Response: LCS thanks you for your comments. Developing 30 new parcels would bring increased traffic to the area. LCS does not intend to place any vegetation buffers along roads in the project area. However, LCS will increase the minimum parcel size, which will reduce the number of parcels offered for sale (see section **VI Modifications to the Decision**). The reduced number of parcels will lower the number of people in the subdivision, which should reduce traffic congestion and noise volume. The increased parcel sizes will give future landowners sufficient buildable space without having to clear all the vegetation, likely leaving undisturbed areas intact to help buffer noise and visual effects to surrounding landowners. Field inspections and aerial images indicate that much of the project area was previously cleared by DOF in the 1990s when the area was commercially logged. Future landowners would likely have options to build in areas that have been previously cleared, saving time and costs associated with development. White spruce saplings planted within the project area around 2011 will continue to mature and reclaim undisturbed areas of the subdivision after it is developed. The trees may eventually form additional buffers to shield noise and subdivision activities away from adjacent landowners.

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

Pursuant to public comments, the recommended action has been modified from the original proposed action described in the PD to reduce the number of parcels in the subdivision to no more than 20 parcels, no smaller than 2 acres in size.

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In addition, the recommended action has been modified from the PD to retain land within a minimum distance of 50 feet along Stariski Creek tributary that bisects the northern portion of the subdivision.

Recommendation and Approval of the Final Finding and Decision follow.

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LCS recommends proceeding with the action as described in the PD and modified herein. 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.

/S/ Tim Shilling

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

3/10/2023

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.

/S/ Christianna Colles

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

3/10/2023

Date

/S/ John Boyle

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

3/17/2023

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>.