

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

**PRELIMINARY DECISION**  
**ADL 233873**

**Proposed Noncompetitive Sale to Preference Right Applicant**  
*AS 38.05.035(e), AS 38.05.035(b)(7)*

**RELATED ACTIONS:**

**Proposed Amendment to the Prince William Sound 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, THURSDAY, JUNE 15, 2023**

**I. Proposed Action**

*Preliminary Decision: Approval of Noncompetitive Preference Right Parcel Sale ADL 233873*

*Attachment A: Vicinity Map*

*Attachment B: Public Notice*

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

*Draft Amendment to the Prince William Sound Area Plan SC-88-004A05*

*Draft Land Classification Order CL SC-88-004A05*

*Draft Mineral Order (Closing) MO 1273*

Primary Proposed Action, Noncompetitive Sale: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has received an application from Rebekah Chapek to purchase a parcel of state-owned land pursuant to Alaska Statute (AS) 38.05.035(b)(7). The proposed decision will allow the parcel to be sold through a noncompetitive sale to the applicant. The subject parcel is located near Three Mile Bay along Old Sawmill Bay Road, approximately 1.75 miles southwest of downtown Cordova. The subject parcel is within the NW1/4SE1/4 of Section 32, Township 15 South, Range 3 West, Copper River Meridian, containing 0.064 acres, more or less. See *Attachment A: Vicinity Map* for a depiction of the subject parcel.

AS 38.05.035(b)(7) allows a remnant of state land determined to be unmanageable to be conveyed to an adjoining landowner for its fair market value.

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

*Area Plan Amendment:* DNR proposes to amend the Prince William Sound Area Plan (PWSAP, adopted 1988, amended 2007). Before a sale, the subject parcel must be

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classified as Settlement Land. The amendment to the PWSAP will create Subunit 27F, a new subunit with a designation of Settlement (S). This new subunit will encompass the subject parcel only. Refer to **Section V. Description**, subsection e. Planning, Classification, and Mineral Orders of this document for more information on this proposed action.

*Land Classification Order:* In relation to the Area Plan Amendment, DNR proposes to reclassify the subject parcel in a land classification order from Public Recreation Land and Water Resource Land to Settlement Land. Refer to **Section V. Description**, subsection e. Planning, Classification, and Mineral Orders of this document for more information on this proposed action.

*Mineral Order (Closing):* DNR proposes to close the subject parcel to new mineral entry. **Section V. Description**, subsection e. Planning, Classification, and Mineral Orders of this document for more information on this proposed 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 the approval of all actions.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal. Public notice for all actions is being conducted concurrently.

See **Section VII. Submittal of Public Comments** and *Attachment B*: Public Notice for details on how to submit a comment for consideration. If LCS moves forward with the proposal after considering timely, written comments, a Final Finding and Decision (FFD) will be issued.

## **II. Authority**

DNR has the authority under *AS 38.05.035(b)(7)* 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." The authority to execute this decision has been redelegated to the Section Chief of the DMLW Land Conveyance Section.

For related actions, *AS 38.04.065 Land Use Planning and Classification*, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for amendments and special exceptions to area plans, land classifications, and mineral orders.

## **III. Administrative Record**

The case file for Alaska Division of Lands (ADL) 233873 constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Prince William Sound Area Plan (PWSAP, adopted 1988, amended 2007) and associated land classification files;
- State of Alaska, 2004 Informal Opinion Attorney General (January 21). Application of Public Trust Doctrine to avulsed uplands;

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- Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes; and
- DNR case files: Alaska Tideland Survey (ATS) No. 103 and Public Easement ADL 30602.

### 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 applicants. 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. The local zoning authority will handle restrictions regarding land use.

### V. Description

- a. Location: The subject parcel is located within DNR's Southcentral Region along Old Sawmill Bay Road, near Three Mile Bay, approximately 1.75 miles southwest of downtown Cordova, within Section 32, Township 15 South, Range 3 West, Copper River Meridian. See *Attachment A: Vicinity Map* for additional information.

*USGS Map Coverage: Cordova C-5*

*Platting Authority: City of Cordova*

*Regional Corporation: Chugach Alaska Corporation*

*Federally Recognized Tribe: Native Village of Eyak*

*Village Corporation: The Eyak Corporation*

- b. Property Description: An unsurveyed parcel containing approximately 0.064 acres, more or less, located within Section 32, Township 15 South, Range 3 West, Copper River Meridian. This parcel is adjoining and bounded on the south, east, and west by Lot 44, U.S. Survey No. 3601, and adjoining and bounded on the north by Alaska Tidelands Survey No. 103, filed under Plat Book 1, Page 19, Cordova Recording District, Third Judicial District, State of Alaska.
- c. Title: Information from Title Report No. 22872, current as of November 22, 2022, indicated the State of Alaska received title to the subject parcel under the Alaska Statehood Act, the Submerged Lands Act of 1953, and the Equal Footing Doctrine.

#### *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.)

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

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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, including Access To and Along Public or Navigable Water 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 Chugach Alaska regional corporation and federally recognized tribe, Native Village of Eyak. There are no Native interests identified with this parcel.

*Other Conflicts or Pending Interest:* None.

d. Background:

On September 14, 2021, Rebekah Chapek applied to DMLW to purchase a parcel of state-owned land pursuant to *AS 38.05.035(b)(7)*. The State received title to the subject parcel as tidelands under the Alaska Statehood Act, the Submerged Lands Act of 1953, and the Equal Footing Doctrine. Uplands adjacent to the subject parcel were surveyed under United States Survey (USS) No. 3567 in 1959 and USS No. 3601 in 1960. Both surveys contained field notes describing the subject parcel as "a small tideland cove" and "a tidal slough on the easterly shore of Orca Inlet." The adjacent tidelands were surveyed as Alaska Tideland Survey (ATS) No. 103 and conveyed in 1962. However, the subject parcel was not surveyed in this ATS or conveyed through Tideland Patent No. 36. The subject parcel existed as unsurveyed shallow tidelands at the time of these surveys. On March 27, 1964, a magnitude 9.2 earthquake struck the region. Portions of the Cordova area landscape experienced an uplift of 6-feet or more as a result of the earthquake. Tidal waters no longer influence the subject parcel, and this uplift may have contributed to the drying of the subject parcel. Per a 2004 informal Attorney General opinion, uplifted tidelands are conveyable as uplands.<sup>1</sup>

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<sup>1</sup> Tidelands affected by the ebb and flow of water are subject to the Public Trust Doctrine. However, uplifted tidelands are no longer covered by water and are not susceptible to the traditional, water-related public activities protected by the Public Trust Doctrine. Tidelands uplifted by an earthquake are still State-owned but now conveyable as uplands, including under *AS 38.05.035(b)(7)* without the Public Trust Doctrine applying to the property.

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The subject parcel is an unsubdivided remainder parcel requiring an Alaska State Land Survey to verify the upland status and to monument it for conveyance under State statutes.

The applicant owns the land surrounding three edges of the subject parcel. The other edge borders ATS 103 and contains a private road that crosses through several private parcels. This road appears to provide physical access for multiple landowners. No existing authorizations or current uses have been identified on the subject parcel.

e. Planning, Classification, and Mineral Orders:

1. *Planning:* The subject parcel is located within the Prince William Sound Area Plan (PWSAP, adopted 1988, amended 2007), Unit 27 – City of Cordova, Subunit 27C Mt. Eccles. The plan designates the subject parcel as Public Recreation and Water Resources, which converts to classifications of Public Recreation Land and Water Resource Land.

Area Plan Amendment: The subject parcel was classified by the PWSAP prior to analysis of earthquake uplift. Before a sale, the subject parcel must be classified as Settlement Land. Concurrent with this decision, an amendment to the PWSAP will create Subunit 27F, a new subunit with a designation of Settlement (S). This new subunit will encompass the subject parcel only, and will remove the 0.064 acres from Subunit 27C. Land within the proposed Subunit 27F is appropriate for settlement due to consistency with adjacent uses. Management intent is for disposal supporting private interests that are compatible with adjacent uses. 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*. The plan amendment will receive public notice. If LCS approves the noncompetitive sale, the plan amendment will accompany the Final Finding and Decision. The approval of an area plan amendment is a separate action. However, approval of the conveyance is dependent upon approval of the area plan amendment.

A goal of the PWSAP areawide land management policies for Settlement includes making suitable public land available to present and future Alaskans for private settlement purposes. Isolated parcels of State land in or near existing communities will be offered for settlement unless it is appropriate as a site for a school, gravel pit, road, park, sewer treatment plant, or other public facility. The subject parcel is a remnant of land that is adjacent to other private settlement parcels and is not appropriate for those uses. The PWSAP states that there are a few small parcels of state land surrounded by private land near the developed areas of Valdez, Whittier, and Cordova. These small parcels may be offered for sale if compatible with adjacent land uses. These small plots are not part of the areas designated for Settlement in the PWSAP.

A sale of the subject parcel supports the management goals of the PWSAP by providing an opportunity for private ownership of an isolated remnant of land currently owned by the state.

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2. *Land Classification Order*: The State classified the subject parcel as Public Recreation Land and Water Resource Land under Classification Order CL SC-88-004 based on the PWSAP adopted in 1988, and amended in 2007.

Land Classification Order: If approved by the Commissioner, the current land classification order will be amended to reclassify the subject parcel from Public Recreation Land and Water Resource Land to Settlement Land. This action affects the entirety of Subunit 27F. If DMLW approves the noncompetitive sale, the land classification order will accompany the Final Finding and Decision. The approval of the land classification order is a separate action, occurring concurrently with the Final Finding and Decision.

3. *Mineral Order*: No mineral activity has been identified on the subject parcel. The entirety of the subject parcel (approximately 0.064 acres) will be closed to new mineral entry if the mineral order is approved in accordance with AS 38.05.185 *Generally* and AS 38.05.300 *Classification of Land* for a land disposal. The proposed mineral order, if approved, will close the area to new mineral entry only and will not effect current existing mining claims. Closing the entire subject parcel to mineral entry is consistent with the management intent of the PWSAP.

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.

4. *Local Planning*: The project area is within the City of Cordova and is zoned "Unrestricted District." Per Title 18 – Zoning of Cordova Code of Ordinances, the minimum lot size in the unrestricted district must meet the requirements of current state regulations. Additionally, pursuant to AS 38.05.035(b)(7)(C), the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans.
5. *Flood Risk*: Pursuant to the Federal Emergency Management Agency (FEMA) map 0200370043C, effective December 15, 2016, the area is at low risk of a flood hazard. The base flood elevation zone is "AE."

f. Traditional Use Findings:

The subject parcel is located within the Unorganized Borough, and a traditional use finding is required under AS 38.05.830 *Land Disposal in the Unorganized Borough*. Information obtained from the PWSAP and adjudicatory research indicates that the surrounding area is currently used for settlement and limited commercial enterprises. The tidelands seaward of the subject parcel were conveyed into private ownership in 1962 and appear to have been filled for the operation of commercial enterprises.

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The subject parcel is located along Old Sawmill Bay Road and appears to be unused. LCS assumes that significant wild resource harvests take place in the broader state-owned tide and submerged land near the subject parcel. 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. If this proposal is approved, LCS will address the information received in a subsequent FFD if one is issued. See **Section VII. Submittal of Public Comments** 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:* Physical access to the subject parcel is by Old Sawmill Bay Road, an unpaved, private road not dedicated to or maintained by the City of Cordova. This private road travels through conveyed tidelands surveyed under ATS 103, the applicant's privately owned parcels, and the northwest portion of the subject parcel. The subject parcel is connected on three sides to land owned by the applicant. The applicant has legal road access to their privately-owned land in Tract B, U.S. Survey 3567, via a portion of Old Sawmill Bay Road authorized by public easement ADL 30602.

*Easements and Setbacks:*

- Utility easements; and
- Additional reservations and/or restrictions required through the local platting authority.

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

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 beyond the items mentioned above. 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, expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed for conveyance to the applicants. 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.

j. Survey: This parcel is determined to be unsurveyed. The parcel requires an Alaska State Land Survey to verify the status of the previous tidelands as uplands due to avulsion and to monument corners for conveyance under State statutes. The survey will result in a new legal description of the subject parcel. Upon DNR approval for the preference right

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purchase of this parcel, a survey of the subject parcel performed by an Alaska Registered Land Surveyor under the direction of the DMLW Survey Section will be required at the expense of the applicant. This survey must be approved by the State of Alaska and the City of Cordova.

LCS will issue a notice to proceed to survey if no appeals are received, or when appeals are resolved, after issuance of an FFD. The applicant must hire a surveyor, and the surveyor must apply to DMLW's Survey Section for Survey Instructions. After issuance of the Survey Instructions, the applicant must submit a completed survey to DMLW's Survey Section for review. The applicant's survey must be approved by DMLW and the local platting authority, if any, as set forth in the Survey Instructions. Upon approval and recordation of the survey, a notice to proceed to appraisal will be issued. The applicant bears the cost of survey.

- 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 Section will provide appraisal instructions to an approved appraiser. The applicant bears the cost of the 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 January 18, 2023, through February 8, 2023. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent FFD, if one is issued.

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

*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 and does not have any authorizations or pending applications on the subject parcel.

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.



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*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 Environmental Conservation, Alaska Mental Health Trust Land Office, Alaska Soil and Water Conservation District, University of Alaska Land Management, U.S. Fish and Wildlife Service, DNR Division of Agriculture, DNR Division of Forestry and Fire Protection, DNR Division of Geological and Geophysical Surveys, and DNR Division of Parks and Outdoor Recreation, State Historic Preservation Office.

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

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

Pursuant to AS 38.05.945 *Notice*, LCS is issuing public notice inviting comment on this Preliminary Decision, 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 a summary of comments and LCS responses will be issued as a subsequent FFD, PWSAP Amendment No SC-88-004A05, Land Classification Order CL SC-88-004A05, and Mineral Order 1273 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, PWSAP Amendment No SC-88-004A05, Land Classification Order CL SC-88-004A05, and Mineral Order 1273. Upon approval and issuance of 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 appeal process to any party who provides timely written comment.

DNR 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

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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, THURSDAY, JUNE 15, 2023**

#### **VIII. Stipulations**

If approved for conveyance, the applicant will be required to comply with the following stipulations to complete the land sale:

1. Once a Final Finding and Decision is signed and the appeal period is over without an appeal received, a notice to proceed to survey will be issued. The applicant must hire a surveyor and the surveyor must apply to the DMLW Survey Section for Survey Instructions. The applicant's survey must be approved by DMLW and the local platting jurisdiction, if any, as set forth in the Survey Instructions. Survey costs shall be borne by the applicant.
2. Upon approval and recording of the survey, a notice to proceed to appraisal will be issued. 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. DMLW Appraisal Section must approve the appraisal. Appraisal costs shall be borne by the applicant.
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 completed Veteran's Land Discount form (if eligible); and
  - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as a deposit plus land sales contract application and recordation fees. Fees are established under *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.

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.

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### **IX. Discussion and Alternatives**

The following alternatives were considered:

#### Alternative 1: Sell

Offer the subject parcel for sale as proposed in this decision in accordance with AS 38.05.035 (b)(7).

#### Alternative 2: Lease

Issue a lease to the applicant.

#### Alternative 3: Retain

DNR will take no action and retain the subject parcel.

Alternative 1 will provide settlement land to the private sector, generate revenue for the State, and is compatible with area plan management goals by providing an opportunity for private ownership of an isolated parcel of land currently owned by the state. The parcel is no longer covered by water and is not susceptible to the traditional, water-related public activities protected by the Public Trust Doctrine. Tidelands uplifted by an earthquake are conveyable as uplands, including under AS 38.05.035(b)(7) without the Public Trust Doctrine applying to the property. Therefore, it is in the best interest of the State to sell the parcel as proposed in this 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.” Alternative 1 provides a method for DNR to meet the obligations laid out in the Constitution and statute and supports DNR’s goal of providing lands for private settlement and supporting economic growth throughout Alaska. This is the preferred alternative.

Under Alternative 2, DNR will issue a lease 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. 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. The sale of the subject parcel is beneficial to both the State, and to the prospective applicants. It provides maximum use for the public benefit in that it provides land for private settlement, the proposed parcel use does not disturb or curtail nearby state land uses, and it supports the long-term growth and development of the nearby community.

Recommendation follows.

