

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

PRELIMINARY DECISION
ADL 109277

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

RELATED ACTIONS:

Proposed Amendment to the Juneau State Land 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, TUESDAY, SEPTEMBER 12, 2023

I. Proposed Action

Preliminary Decision: Approval in part and rejection in part of Noncompetitive Preference Right Parcel Sale ADL 109277

Attachment A: Vicinity Map

Attachment B: Public Notice

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

Draft Amendment to the Juneau State Land Plan SE-93-004A11

Draft Land Classification Order CL SE-93-004A11

Draft Mineral Order (Closing) MO 1282

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 Richard and Barbara Boehl (applicants) to purchase two surveyed parcels of state-owned land, hereinafter referred to as "requested parcels", pursuant to Alaska Statute (AS) 38.05.035(b)(7). This decision proposes to convey in part and reject in part lands requested by the applicants. Both requested parcels are located along the western bank of the Taku River, approximately 31 miles northeast of downtown Juneau within Sections 27 and 28, Township 38 South, Range 71 East, Copper River Meridian, and are 2.010 and 0.280 acres in size. See *Attachment A: Vicinity Map* for a depiction of the subject parcels.

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.

LCS proposes to sell Tract M-1, containing 0.280 acres, more or less, of Alaska State Land Survey No. 81-204, LADS No. 0334-83-3-2 (Taku River), according to the amended survey plat

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 2 of 15

filed in the Juneau Recording District on September 27, 1982, as Plat No. 82-85, hereinafter referred to as “subject parcel”.

LCS proposes to reject the sale of Tract M, containing 2.010 acres, more or less, of Alaska State Land Survey No. 81-204, LADS No. 0334-83-3-2 (Taku River), according to the amended survey plat filed in the Juneau Recording District on September 27, 1982, as Plat No. 82-85, hereinafter referred to as “rejected parcel”.

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

Area Plan Amendment: DNR proposes to amend the Juneau State Land Plan (JSLP, adopted 1993). Before a sale, the subject parcel must be classified as Settlement Land. The amendment to the JSLP will create Subunit 14a24, a new subunit within Unit 14a with a designation of Settlement (S). This new subunit will encompass only the subject parcel to be recommended for conveyance. 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 Wildlife Habitat 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.

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 3 of 15

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) 109277 constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Juneau State Land Plan (JSLP, adopted 1993) and associated land classification files;
- Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes; and
- DNR case files: NFCG 101, Noncompetitive Sale ADL 101784, Preliminary Survey Determination (SURV) No. 20235006; and
- Alaska State Land Survey (ASLS) No. 81-204.

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 requested parcels themselves qualify, (2) if it is in the State's best interest to sell the requested parcels, and (3) if it is in the State's best interest to sell the requested parcels 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 requested parcels are located within DNR's Southeast Region along the western bank of the Taku River, approximately 31 miles northeast of downtown Juneau within Sections 27 and 28, Township 38 South, Range 71 East, Copper River Meridian. See *Attachment A: Vicinity Map* for additional information.

USGS Map Coverage: Taku River C-6 SE

Platting Authority: City and Borough of Juneau

Regional Corporation: Sealaska Corporation

Federally Recognized Tribe: Central Council of the Tlingit and Haida Indian

Tribes of Alaska, Douglas Island Indian Association

Village Corporation: Goldbelt, Incorporated

- b. Legal Description:

- Rejected parcel:

Tract M, containing 2.010 acres, more or less, of Alaska State Land Survey No. 81-204, LADS No. 0334-83-3-2 (Taku River), according to the amended survey plat filed in the Juneau Recording District on September 27, 1982, as Plat No. 82-85.

- Subject parcel:

Tract M-1, containing 0.280 acres, more or less, of Alaska State Land Survey No. 81-204, LADS No. 0334-83-3-2 (Taku River), according to the amended survey

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 4 of 15

plat filed in the Juneau Recording District on September 27, 1982, as Plat No. 82-85.

Legal descriptions of the related actions mirror that of the subject parcel.

- c. Title: The State of Alaska received fee title to the land and mineral estate under Patent 50-89-0743 dated September 28, 1989. The applicable State case file is National Forest Community Grant (NFCG) No. 101. The requested parcels are subject to valid existing rights, including but not limited to platted easements and reservations. Title Report No. 22812 is pending return from the DMLW Realty Services Section. Any changes to title information found will be discussed in the Final Finding and Decision.

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 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. Refer to **Section V. Description**, subsection e. Planning, Classification, and Mineral Orders of this document for more information.

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.

On December 7, 2018, the Bureau of Land Management determined the Taku River adjacent to the project area as navigable for title purposes.

Native Interest: Both requested parcels are within the boundaries of the Sealaska regional corporation, Douglas Island Indian Association, and Central Council of

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 5 of 15

the Tlingit and Haida Indian Tribes of Alaska federally recognized tribes, and Goldbelt, Incorporated village corporation. There are no Native interests identified with this parcel.

Other Conflicts or Pending Interest: None.

d. Background:

The Taku River Subdivision is a remote community composed primarily of private recreational-type land along the Taku River. The State received tentative approval in 1980 and fee title to the land and mineral estate under Patent 50-89-0743 dated September 28, 1989. Prior to State ownership, settlement was authorized in the area through permits issued by the United States Forest Service (USFS). The requested parcels were surveyed as tracts through ASLS 81-204 alongside the parcels to be offered in the Fiscal Year (FY) 1983 State lottery program in the Taku River Subdivision. The Final Finding for the Taku River Subdivision, dated July 15, 1982, recommended that the state retain all tracts in ASLS 81-204 for public access to the larger tracts of retained state land within the ASLS.

On July 11, 2022, the applicants applied to DMLW to purchase two parcels of state-owned land pursuant to AS 38.05.035(b)(7). The applicants own Lot 30 of Block 3 within ASLS 81-204, a 1.350-acre parcel that was conveyed into private ownership during the FY 1983 State lottery program at Taku River (ADL 101784). The applicants' heir previously held a permit issued by the USFS authorizing the use of the land. The applicants' lot is surrounded by the requested parcels on three edges. The other edge is comprised of the ordinary high water (OHW) line of the Taku River. The applicants maintain a cabin on their lot and requested conveyance of Tract M for additional acreage in the vicinity of their cabin. Tract M-1 was requested for placement and usage of a 4' x 8' storage shed and access to a float they maintain on the Taku River. The storage shed, and access float currently occupy state-owned land.

AS 38.05.035(b)(7) requires that land to be conveyed is a remnant considered unmanageable by the director. The rejected parcel, Tract M, is larger than the 36,000 square-foot minimum lot size for the "Rural Reserve" zoning type issued by the City and Borough of Juneau (CBJ) and is situated to provide adequate public access from the Taku River to state uplands. The rejected parcel is not a remnant and is manageable. Therefore, conveyance is being rejected by this decision to allow continued retention by the state, as recommended in the Final Finding for the Taku River Subdivision. However, the subject parcel is smaller than the minimum lot size set by CBJ and is a triangular parcel bounded by the Taku River on one side and private land on two sides. Therefore, this parcel cannot provide public access to state-owned uplands and is unable to function for the public access purposes, that it was retained for. Furthermore, the subject parcel was legally created through ASLS 81-204 but is now considered nonconforming to the CBJ zoning requirements for a lot. Due to its small size, the subject parcel would not be sold individually by DNR through a competitive sale. The subject parcel qualifies for the proposed preference right sale under AS 38.05.035(b)(7), which provides for conveyance to an adjoining landowner for its fair market value a remnant of land that the Director considers unmanageable.

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 6 of 15

e. Planning, Classification, and Mineral Orders:

1. *Planning:* The requested parcels are located within the Juneau State Land Plan (JSLP, adopted 1993), Unit 14a – Taku River, Subunit 14a25 – Taku Uplands. The plan designates the requested parcels as Recreation – Dispersed, Fish & Wildlife Habitat, and Fish & Wildlife Harvest. The land designations convert to classifications of Public Recreation Land and Wildlife Habitat Land.

Area Plan Amendment: An amendment to the JSLP will create Subunit 14a24, a new subunit with a designation of Settlement (S). This new subunit will encompass the subject parcel only, which will remove the 0.280 acres from Subunit 14a25. Land within the proposed Subunit 14a24 is appropriate for settlement due to consistency with adjacent uses and the inability of the public to use the subject parcel for the reason it was retained for, a tract retained for public access to other state-owned uplands. 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 JSLP includes providing opportunities for private ownership and leasing land currently owned by the state. Isolated parcels of State land in or immediately adjacent to a previous DNR land offering can be offered for settlement unless appropriate for a material site, road, school, park, 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. A sale of the subject parcel supports the management goal of the JSLP by providing an opportunity for private ownership of an isolated remnant of land currently owned by the state.

2. *Land Classification Order:* The State classified the subject parcel as Public Recreation Land and Wildlife Habitat Land under Classification Order CL SE-93-004 based on the JSLP adopted in 1993. Land classified as Wildlife Habitat Land cannot be conveyed out of state ownership. A Land Classification Order is necessary to reclassify the subject parcel to Settlement Land before the proposed sale can be approved.

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 Wildlife Habitat Land to Settlement Land. This action affects the entirety of Subunit 14a24. 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 0.280-acre subject parcel will be closed to new mineral entry if the

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 7 of 15

mineral order is approved in accordance with *AS 38.05.185 Generally* and *AS 38.05.300 Classification of Land* for a land disposal. The proposed mineral order, if approved, will close the area to new mineral entry only and will not affect current existing mining claims. Closing the entire subject parcel to mineral entry is consistent with the management intent of the JSLP stating that mining has been determined to be incompatible with areas proposed for settlement.

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 CBJ and is zoned “Rural Reserve.” Per *Title 49 – Land Use, Chapter 49.25 - Zoning Districts, Article II – Zoning Districts, Section 49.25.200 – RR, Rural Reserve District*, Rural Reserve is intended for lands primarily in public ownership managed for the conservation and development of natural resources and for future community growth. In addition, recreation cabins, lodges and small seasonal recreational facilities may be allowed.

AS 38.05.035(b)(7)(C) states, “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.” The CBJ Community Development Department has confirmed that a sale of the subject parcel would not be in opposition to any of their land use plans.

5. *Flood Risk:* Pursuant to the Federal Emergency Management Agency (FEMA) map 02110C1100D, effective August 19, 2013, the subject parcel is located in an area of minimal flood risk.

f. Traditional Use Findings:

The subject parcel is located within the CBJ, and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. However, information on current or traditional use is welcomed and can be given during the public comment period. See **Section VII. Submittal of Public Comments** and *Attachment B: Public Notice* for details on how to submit comment. If this proposal is approved, LCS will address the information received in a subsequent FFD if one is issued.

g. Access, including Access To and Along Public or Navigable Water:

Public Access: Legal and physical access to the subject parcel is by the Taku River, a navigable waterbody. The northeastern edge of the subject parcel is connected to the parcel owned by the applicants.

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

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 8 of 15

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*.

For the purposes of AS 38.05.127:

- navigable waters are generally lakes larger than 50 acres in size or streams larger than 50 feet in average width;
- public waters are generally lakes larger than 10 acres in size or streams larger than 10 feet in average width; and
- waters may be determined public or navigable consistent with AS 38.05.965 (21) *Definitions*.

Taku River adjacent to the project area has been determined to be public. The subject parcel will be subject to access reservations in accordance with AS 38.05.127 *Access to Public or Navigable Water* and a 100-foot building setback from the mean high water line (MHW) of the anadromous water body described, as well as any additional water bodies identified as public or navigable prior to completion of survey in accordance with the JSLP.

Building Setbacks From Public or Navigable Water: If this proposal is approved, the subject parcel will be subject to a building setback upland from the MHW of public or navigable water to protect access, fish and wildlife habitat, and personal property. Except for utilities, water-dependent structures whose purpose is access to or across the stream or lake, or minor accessory structures for uses that must be in or adjacent to the water body in order to function, structures and subsurface sewage disposal systems will not be permitted within the building setback.

Easements, Setbacks, and Reservations: The subject parcel may be subject to a variety of reservations and restrictions where appropriate:

- Public access easements;
- utility easements;
- a 50-foot continuous easement upland from the OHW/MHW of public or navigable water bodies in accordance with AS 38.05.127 *Access To Navigable or Public Water*;
- a minimum 50-foot building setback from the OHW/MHW of all waters except anadromous water bodies, in accordance with the area plan;
- a minimum 100-foot building setback from the OHW/MHW of anadromous water bodies, in accordance with the area plan; 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. Reservations and restrictions not depicted on the plat may also be included in the conveyance document.

- 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

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 9 of 15

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: The parcel is surveyed as Tract M-1, containing 0.280 acres, more or less, of Alaska State Land Survey No. 81-204, LADS No. 0334-83-3-2 (Taku River), according to the amended survey plat filed in the Juneau Recording District on September 27, 1982, as Plat No. 82-85. A Preliminary Survey Determination (SURV 20235006) was received from the DMLW Survey Section on March 21, 2023, and stated that the subject parcel is determined to be surveyed.

k. Compensation/Appraisal: If the purchase is approved, the subject 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 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 April 18, 2023, through May 9, 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, DNR Division of Forestry & Fire Protection, 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 Leasing Section does not have any third-party interests in the area.

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 10 of 15

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 AS 38.05.125. Moreover, the proposed mineral order closing the parcel to locatable mineral entry does not apply to leasable minerals such as oil and gas.

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*.

DNR Division of Geological & Geophysical Surveys (DGGS): The subject parcel is located on the Taku River near the confluence of Fish Creek, about 2.5 miles from the Canadian border. The Taku River is a known glacial outburst flood course. Other hazards in the area include significant liquefaction potential, seasonal flooding, and mass movements. The subject parcel is located approximately 115 miles inboard of the mapped trace of the Fairweather fault, which has been active within the last 150 years. Potential hazards associated with the Fairweather fault include local surface displacement, strong ground shaking, and earthquake-induced ground failure; ground failure is most likely to occur in water-saturated, fine-grained sediments and in unstable debris and sediments on steep slopes. The region's overall seismic hazard potential is moderate.

This area has been subject to ash fall from erupting Cook Inlet and Alaska Peninsula volcanoes. Lastly, radon, a naturally occurring cancer-causing radioactive gas, is modeled to be high in the vicinity of the parcel.

DNR DMLW LCS Response: LCS appreciates the review of this proposed noncompetitive sale.

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, DNR Division of Agriculture, and DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology.

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.

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 11 of 15

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, JSLP Amendment No SE-93-004A11, Land Classification Order CL SE-93-004A11, and Mineral Order 1282 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, JSLP Amendment No SE-93-004A11, Land Classification Order CL SE-93-004A11, and Mineral Order 1282. 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 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, TUESDAY, SEPTEMBER 12, 2023

VIII. Stipulations

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

1. 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. DMLW Appraisal Section must approve the appraisal. Appraisal costs shall be borne by the applicant.
2. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within two years of an approved appraisal, 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

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 12 of 15

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.

3. 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.

IX. Discussion and Alternatives

The following alternatives were considered for the subject parcel:

Alternative 1: Sell the subject parcel

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

Alternative 2: Lease the subject parcel

Issue a lease to the applicant for the subject parcel.

Alternative 3: Retain the subject parcel

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 land currently owned by the state. The subject parcel is a tract surveyed through ASLS 81-204. The Final Finding for the Fiscal Year 1983 State lottery program in the Taku River Subdivision, dated July 15, 1982, recommended that the state retain all tracts in ASLS 81-204 for purposes of public access to the larger tracts of state-owned land within the ASLS. However, the subject parcel is a small, triangular parcel bounded on the southeast by the Taku River, on the west by private land, and on the northeast by Lot 30, ASLS 81-204, which the applicants privately own. 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.

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 13 of 15

Under Alternative 2, DNR will issue a lease to the applicant for the subject parcel. 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 a sale or lease could have generated. Additionally, the applicant's current use of the land for a shed would be considered an unauthorized use resulting in the initiation of a trespass case. Retaining the subject parcel in state ownership is not in the best interest of the State. This alternative is not preferred.

The following alternatives were considered for the rejected parcel:

Alternative 1: Sell the rejected parcel

Offer the rejected parcel for sale in accordance with AS 38.05.035 (b)(7).

Alternative 2: Lease the rejected parcel

Issue a lease to the applicant for the rejected parcel.

Alternative 3: Retain the rejected parcel

DNR will take no action and retain the rejected parcel.

Under Alternative 1, DNR would sell the rejected parcel to provide settlement land to the private sector, generate revenue for the State, and satisfy area plan management goals by providing an opportunity for private ownership of land currently owned by the state. The rejected parcel is a tract surveyed through ASLS 81-204. The Final Finding for the Fiscal Year 1983 State lottery program in the Taku River Subdivision, dated July 15, 1982, recommended that the state retain all tracts in ASLS 81-204 for purposes of public access to the larger tracts of state-owned land within the ASLS. The rejected parcel is larger than the 36,000 square-foot minimum lot size for the "Rural Reserve" zoning type issued by CBJ and is situated to provide adequate public access from the Taku River to state uplands. Conveyance of this parcel is being rejected by this decision in order to allow continued retention by the state. Therefore, it is not in the best interest of the State to sell the parcel. This alternative is not preferred.

Under Alternative 2, DNR will issue a lease to the applicant for the rejected parcel. 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. A lease would also restrict public access on the parcel. This is not in the best interest of the State. This alternative is not preferred.

Alternative 3 will retain the rejected parcel in State ownership for continued public access purposes as directed by the Final Finding for the Fiscal Year 1983 State lottery program in the Taku River Subdivision. The rejected parcel is situated to provide adequate public access from the Taku River to state uplands. Retaining the subject parcel in state ownership is in the best interest of the State. This is the preferred alternative.

For the reasons outlined above, Alternative 1 is the preferred alternative for the subject parcel, and Alternative 3 is the preferred alternative for the rejected parcel. The sale of the subject parcel is beneficial to both the State, and to the prospective applicants. It provides maximum

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 14 of 15

use for the public benefit in that it provides land for private settlement, and the proposed parcel use does not disturb or curtail nearby state land uses. Retention of the rejected parcel is beneficial to the State because it provides for maximum use for the public benefit in that it allows for continued public access.

Recommendation follows.

Preliminary Decision

AS 38.05.035(b)(7) Preference Right – ADL 109277

Page 15 of 15

X. Recommendation and Preliminary Decision

This Preliminary Decision for the proposed disposal of State lands, JSLP Amendment No SE-93-004A11, Land Classification Order CL SE-93-004A11, and Mineral Order 1282 described throughout this document is consistent with the overall management intent for state-owned lands. Alternative 1 is the preferred alternative for the subject parcel 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. Alternative 3 is the preferred alternative for the rejected parcel because it provides for maximum use for the public benefit in that it allows for continued public access.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of state lands JSLP Amendment No SE-93-004A11, Land Classification Order CL SE-93-004A11, and Mineral Order 1282. If the decision is approved, JSLP Amendment No SE-93-004A11, Land Classification Order CL SE-93-004A11, and Mineral Order 1282 will accompany and precede any Final Finding and Decision issued. A Final Finding and Decision will address any significant issues or concerns presented during the public review process.

The PD described above, as represented by the preferred alternatives, 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.

signature on file

Prepared by: John King
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Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

August 8, 2023

Date of Signature

signature on file

Approved by: Hannah Uher-Koch
Acting Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
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August 8, 2023

Date of Signature