

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
Tip Levarg Subdivision – ADL 229594
AS 38.05.035(e), AS 38.05.045

and its
RELATED ACTION:
Mineral Order 1235 (Closing)
AS 38.05.185 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated June 2, 2021. The PD (attached) and related action has 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 Tip Levarg Subdivision project area (ADL 229594), as described in the PD. 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 Tip Levarg Subdivision project area, LCS may develop a subdivision of no more than 90 parcels, varying in size, no smaller than 1.5 nominal acres. This project area is located within the Kenai Peninsula Borough 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 proposes to close the project area to new mineral entry through Mineral Order (MO) 1235.

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 use consistent with the public interest." In addition, if it is deemed appropriate, DNR has the

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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 amendments and special exceptions to area plans, land classifications, and mineral orders.

III. Public Participation and Input

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

- Posted under State of Alaska Online Public Notice from June 2, 2021, to July 7, 2021.
- Posted on DNR Land Sales website from June 2, 2021, to July 7, 2021.
- Notices mailed to the Kenai Peninsula Borough per AS 38.05.945(c)(1).
- Mailed to postmasters in Anchor Point, Clam Gulch, Cooper Landing, Kasilof, Kenai Ninilchik, Soldotna, and Sterling with a request to post for 30 days, per AS 38.05.945(c)(4).
- Mailed to the library in Copper Landing, Homer, Kasilof, Kenai, Ninilchik and Soldotna with a request to post for 30 days.
- Mailed to the Cook Inlet Region, Incorporated per AS 38.05.945(c)(2)-(3).
- Mailed to 65 landowners within a mile of the offering, the Kenai Native Association, Kenaitze Indian Tribe, Ninilchik Native Association, Ninilchik Traditional Council, Salamotof Native Association, and the Village of Salamotof, the Kenai and Soldotna Chambers of Commerce, and the City of Soldotna.
- Sent notification to area state legislators and to multiple state agencies.
- Notified parties via the DNR Land Sales subscribers lists by email and the DNR Land Sales accounts.

The public notice stated that written comments were to be received by 5:00PM, July 7, 2021, 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 Kenai Peninsula Borough 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 Kenai Peninsula Borough for review in accordance with Title 20 *Subdivisions* of their ordinance.

Section 20.10.100. *Notice; Public Hearing*. This section states that notices shall be mailed at least 14 days before the public hearing to all record owners of property within a distance of 600 feet of the exterior boundary of the property that is the subject of the application or hearing.

Section 20.25.100. *Approval—Commission authority—Notification required*. Within 60 days from date of acceptance by planning director, the commission shall determine if

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plat complies with provisions and will approve or disapprove and shall notify the subdivider of its action.

IV. Summary of Comments

DNR DMLW LCS received comments from five agencies, seven private individuals and a petition signed by fifty-four petitioners. All comments received during the public comment period are summarized below.

LCS received brief comments of non-objection from the Division of Parks and Outdoor Recreation and the Alaska Mental Health Trust Land Office.

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

Department of Transportation and Public Facilities (DOT&PF) Comment: DOT&PF appreciated LCS's response to their comments submitted during Agency Review and advised LCS of the continued need for uninterrupted use of MS 461-001-1, along the north boundary of the project area. DOT&PF also advised LCS of an upcoming pavement preservation project on Coho Loop Road. DOT&PF requested continued coordination with Central Region DOT&PF.

DNR DMLW LCS Response: LCS will continue to coordinate with DOT&PF's Central Region and the Platting Authority as subdivision design progresses. LCS will also coordinate with DNR's South Central Region Office (SCRO) with regards to the use of the material sites north of the project area.

Department of Natural Resources, Division of Agriculture (DAg) Comment: The soils in the project area are suitable for agriculture.

DNR DMLW LCS Response: From our research and the comments submitted by DAg, we are aware of good Capability Class III soils comprising most of the project area. We intend to include this information in the offering brochure should this decision be approved and move forward to sale. Subdivision design may include larger parcels within the subdivision to allow for small-scale agricultural use.

Department of Natural Resources, Division of Oil and Gas (DOG) Comment: Oil and gas Lease Sale Tract (LST) C10060 is in the Cook Inlet Areawide sale and is offered annually unless leased.

DNR DMLW LCS Response: Thank you for your review, information about the LST will be included in the offering material.

Comments regarding access through Rhodes Estates Subdivision: Seven landowners from the Rhodes Estates Subdivision commented that they were opposed to using Thalia Lane and Naiad Drive as access to the project area, that the roads in the Rhodes Estates Subdivision are not State or Borough maintained roads, but privately maintained by the subdivision owners. They felt that additional traffic through the subdivision would cause a hardship for the owners in Rhodes Estates in the form of increased maintenance cost, dust and mud, danger to children, and increase vandalism and theft.

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DNR DMLW LCS Response: Thank you for your comments, LCS understands your concerns. The primary access to that portion of the project area west of Cohoe Loop Road will be Tehama Avenue not Thalia Lane and Naiad Drive. However, Naiad Drive is a dedicated-constructed Right-of-Way (ROW) connecting to the section line easement and Barrel Stove Street. Although DNR does not propose the use of Thalia Lane or Naiad Drive as primary access, legal access along this route currently exists. The subdivision is within the platting authority of the Kenai Peninsula Borough (KPB), and subject to KPB platting ordinance, including dedication of ROWs. Final width and location of ROWs, easements, and reservations will be determined as part of the KPB platting process, which will include an additional opportunity for public participation.

Individual Comment regarding wetlands: One comment stated “Also environmentally there are wetlands at the end of Naiad Dr where Waterfowl, Moose and many other natural habitats utilize year-round. This would be a devastation to Alaska Wildlife as well!”

DNR DMLW LCS Response: The wetlands at the end of Naiad Drive appear to mostly be on private property. Any construction or development within the wetlands may require a permit from the Army Corps of Engineers.

Individual Comment regarding access: One comment suggested placing an easement on Barrel Stove Street, between Tehama and the section line to create access.

DNR DMLW LCS Response: LCS anticipates that the KPB will request a ROW dedication along Barrel Stove Street as part of subdivision design and the platting process.

Petition: A petition signed by multiple people (54) who live, do business, and or visit Thalia Lane was included with one of the emailed comments. The petition stated, “We the undersigned are opposed in your intensions of using Thalia Lane/Naiad Drive as access point to the Tip Lavarg Subdivision (ADL 229594).”

DNR DMLW LCS Response: LCS understands the concerns of the petitioners. See the response above regarding access along Thalia Lane and Naiad Drive. The primary access to that portion of the project area west of Cohoe Loop Road will be Tehama Avenue. Access to individual parcels will be shorter via Tehama Avenue then from Thalia and Naiad so it is unlikely that purchasers would prefer to travel a longer distance on bumpy roads to access their property.

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 and/or Additional Information

The recommended action has not been modified from the original proposed action(s) described in the PD.

Recommendation and Approval of the Final Finding and Decision follow.

I. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities. 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 action is consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.

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

7/14/2021
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/ Martin W. Parsons
Approved by: Martin W. Parsons
Director
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

7/14/2021
Date

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

7/20/2021
Date

Reconsideration Provision

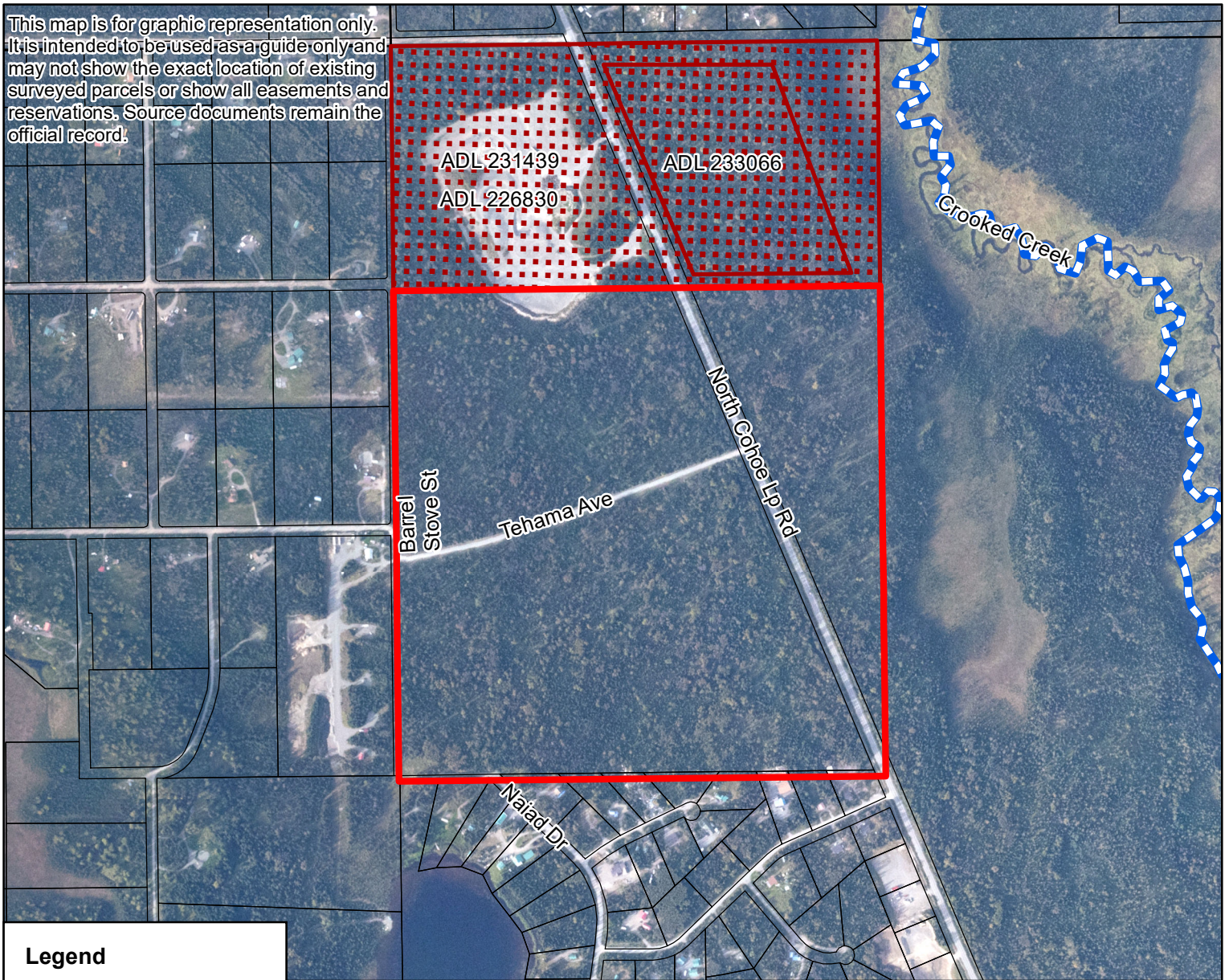
A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may request reconsideration, in accordance with *11 AAC 02*. Any reconsideration request must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040(c) and (d)* and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Ave., Ste. 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Under *11 AAC 02.030*, appeals and requests for reconsideration filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a) and (b)*.

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







Attachment A: Vicinity Map Tip Levarg Subdivision ADL 229594

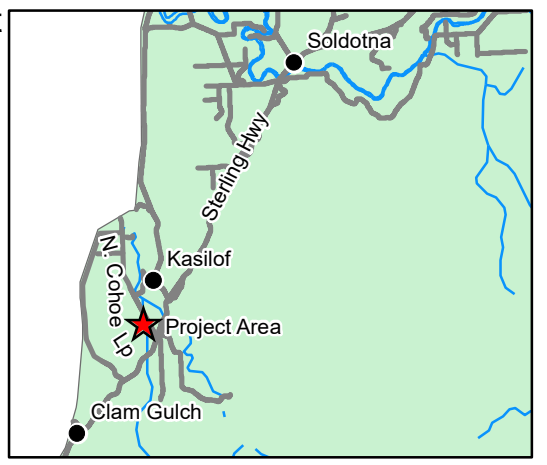
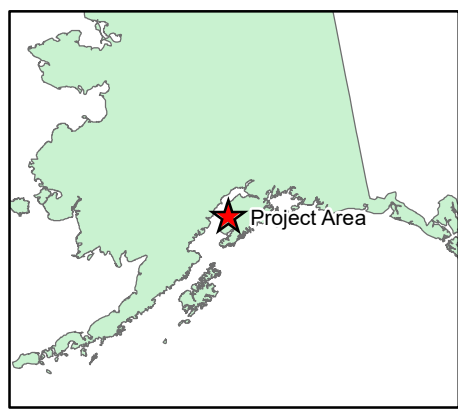
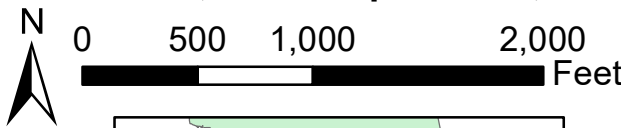
This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



Legend

-  Project Area
-  Resource Sale
-  Private Parcels
-  Anadromous Stream

Section 36, Township 3 North, Range 12 West, Seward Meridian.



RG 6/24/2019

USGS QUAD 1:63,360

Kenai B-4
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