

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

PRELIMINARY DECISION
Fritz Creek Heights Subdivision – ADL 232826

Proposed Land Offering in the Kenai Peninsula Borough
AS 38.05.035 (e), AS 38.05.045

RELATED ACTION(S):
Proposed Mineral Order (Closing)
AS 38.05.185 and AS 38.05.300

PUBLIC COMMENT PERIOD ENDS 5:00PM, WEDNESDAY, MARCH 4TH, 2020

I. Proposed Action(s)

Preliminary Decision: Fritz Creek Heights Subdivision - ADL 232826

Attachment A: Vicinity Map

Attachment B: Area Data Summary Table

Attachment C: Public Notice

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

Draft Mineral Order (Closing) MO(C) 1229

Primary Proposed Action: The primary proposed action of this Preliminary Decision (PD) of the State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Land Sales Section (LSS) is to offer for sale State-owned land within the identified project area. If approved, surveyed parcels will be offered for sale.

Located within DNR's Southcentral Region, approximately 10 miles northeast of Homer, the project area is within Section 21, Township 5 South, Range 12 West, Seward Meridian, within the Kenai Peninsula Borough (KPB). The project area consists of approximately 17 acres identified for disposal by this proposed action. See *Attachment A: Vicinity Map* for a depiction of the project area.

In accordance with the governing area plan and proposed related action for the purposes of providing land for settlement, DNR proposes to sell land within the Fritz Creek Heights Subdivision project area. In order to offer these lands for sale, if approved and deemed feasible, DNR may develop a subdivision of no more than 6 parcels, no smaller than 2 acres. This proposed project area is located within the KPB and therefore survey, platting, and access to and within the project area will be subject to the relevant subdivision standards. The project area may be subdivided and offered in multiple stages.

If this proposed primary action is approved, the actual area offered for sale may consist of all or only a portion of the overall project area. After consideration of public comment, the size and boundaries of the project area will be described in a subsequent Final Finding and Decision (FFD), if the project proceeds to that step. Additional adjustments may be made

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prior to survey, as described in the applications to the platting authority, as needed to reserve areas for public use, minimize conflicts between uses, or ensure compliance with platting requirements. Although actions under this proposal are limited to the stated maximums, additional offerings may be authorized under future proposals, which could increase the density of privately-owned parcels within, adjacent to, or near the project area.

Proposed Related Action(s): This related action will be developed separately, however; public notice is being conducted concurrently.

Mineral Order (Closing): DNR proposes to close the project area to new mineral entry. There is no known mineral activity. Refer to the Mineral Activity and Order(s) subsection of this document for more information on this proposed related action.

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 VIII. Submittal of Public Comments** at the end of this document and *Attachment C: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, DNR DMLW moves forward with the proposal, a FFD will be issued.

II. Method of Sale

DNR DMLW proposes to offer for sale land within the project area as described herein, through a future offering under *AS 38.05.045 Generally*.

Parcels offered through this action are offered fee-simple for the surface estate only. For more information about the land sales program, please visit the website at <http://landsales.alaska.gov>.

III. 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 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." 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.

IV. Administrative Record

The project file, Fritz Creek Heights Subdivision - ADL 232826, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Kenai Area Plan for State Lands (KAP, adopted 2001) and associated land classification files;

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- *Alaska Interagency Wildland Fire Management Plan (2019 Review)*;
- *Alaska Department of Fish and Game (ADF&G) Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*;
- *USDA, Natural Resource Conservation Service Custom Soil Report for this project, dated August 22, 2018*; and
- Other case files, reports, and orders referenced in this decision.

V. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section III**.

Authority, is limited and specific to DNR DMLW's proposal to offer State-owned land within the defined project area for disposal as described herein and conduct the mineral order as described herein. The scope of this proposal does not include the control of post-patent use and DNR DMLW does not intend to impose deed restrictions for this purpose. The subdivision may be conducted in multiple stages.

VI. Description

Location: Within DNR's Southcentral Region, approximately 10 miles northeast from Homer. See *Attachment A: Vicinity Map and Attachment B: Area Data Summary Table* for additional information.

Platting Authority: The project area is within the KPB and subject to the borough's platting authority.

Native Regional and Village Corporations: The project area is within the boundaries of the Cook Inlet Region Incorporated (CIRI). The villages of Ninilchik, Seldovia and Kenai and Soldotna are in close vicinity of this proposed action and notice will be sent to the Ninilchik Native Association, Inc., the Seldovia Native Association, Inc, the Kenai Native Association, Inc., the Ninilchik Traditional Council, the Seldovia Village Tribe, the Kenaitze Indian Tribe, and CIRI.

Legal Description: That portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ & the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, Township 5 South, Range 12 West, Seward Meridian, located within the Homer Recording District, Third Judicial District, Alaska.

Title: Information from Title Report No. 9754, current as of July 18, 2017 indicates the State of Alaska holds fee title to the land and mineral estate within the project area under Patent 50-90-0365, dated July 13, 1990. The applicable State case file is 1081. The parcel is subject to the reservations, easements and exceptions contained in the federal patent.

State Reservations 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 [of Rights to Alaska]*, the State retains ownership of the mineral estate 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 and silver, etc.), and leasable minerals (such as oil, gas, coal, etc.).

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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 surface 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 land estate owner will be compensated for damages resulting from mineral exploration and development.

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

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

Where they exist within the project area, State third-party interests will be described in land sales brochures.

Physical Characteristics and Hazards: Attachment B: Area Data Summary Table describes the project area’s physical characteristics. Information about the project area is based on internal research, information received during agency review, and ground field inspections conducted on May 11, 2017, and July 17, 2018. This is by no means a complete description of the project area and if this proposal is approved and the area offered for sale, it will be the responsibility of interested parties to inspect individual parcels prior to purchase to familiarize themselves with the physical characteristics of the land.

Soils: Soils within the project area generally consist of Mutnala silt loams and Coal Creek Silt loam. The Mutnala silt loams are well drained, while the Coal Creek silt loam is poorly drained. The depth to restrictive features is more than 80 inches. The project area is rated as a “poor” gravel source, and the soils are categorized as non-irrigated capability class IV, V and VI soils. DNR, Division of Agriculture (DAg) provided information during agency review, which stated that this project area contains a minority proportion of soils suitable for agricultural development, generally along the eastern project boundary. See DMLW and Agency Review Section for more information.

Wetlands: No wetlands have been identified within the project area. However, during agency review the Homer Soil & Water Conservation District (HSWCD) suggested that there may be wetlands present within the project area.

Geologic Hazards: Geologic hazards are common throughout Alaska. Information received from DGGS and information gathered during field inspection did not indicate

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any specific geologic hazards for this area. Should any geologic hazards be discovered in the development of this proposal, information will be included in offering materials.

Fire Information: Fire history indicates that 5,400 acres, approximately 2,000 ft north of the project area was burned in 2005. Several small fires ranging from 0.1 to 2.1 acres have occurred in the immediate area between 2000 to 2018. The project area is within the Homer Volunteer Fire Department and Kachemak Emergency Service Area.

Potential for wildland fire is high in southcentral Alaska and other certain parts of the state. Landowners with structures are encouraged to follow the Alaska Wildland Fire Coordinating Group *Firewise Alaska* recommendations. Offering materials include information regarding wildland fire prevention.

Fire management options and policies for the area are identified in the Alaska Interagency Wildland Fire Management Plan available from the DNR Division of Forestry. The current fire management option for most of the project area is “Critical.” The policy on areas with the “Critical” management option reads, “Wildfires occurring in the Critical Management Option or that threaten critical sites are assigned the highest priority for suppression actions and assignment of available firefighting resources.” It also states that the designation of a fire management option does not ensure protection from wildfire, and that a protection response will be based on various factors. “Ultimately it is the personal responsibility of the landowner to mitigate and minimize risk to their property and structures and to be ‘Firewise’.”

Flood Hazard: The project area is within FEMA Flood Insurance Rate Map Community Panel #0200124375A (Not Printed). The project area is outside of any defined flood zone. There is potential for seasonal flooding and erosion of parcels adjacent to water bodies, especially in low-lying areas.

Water Resources: All surface and subsurface waters on all lands in Alaska are a public resource, subject to appropriation in accordance with the Alaska Water Use Act (AS 46.15). There are seven water rights in the vicinity of the project area, within Section 21, Township 5 South, 12 West, Seward Meridian. Water right (ADL 44517) is west of the project area and shares a common boundary line. Certificate No. 1210 was issued on January 28, 1974. The right was for the use of 7,200 gallons per day from a tributary of Fritz Creek for residential and agricultural purposes. Other water rights within Section 21 include ADL’s 44513 and 80608, and ADL’s 24746, 24739 and 32714. These rights encompass several types and uses, including for commercial, agricultural and residential purposes. The majority of the water rights reside in the W½ of Section 21. Information from well logs indicate that well depths in the vicinity typically range from 8 to 121 feet. Water quality is unknown.

Background: The project was identified pursuant to a recommendation within the KAP (updated 2001). LSS pursued the project after a public access easement was requested for that portion of Tom Cat Drive within the project area. Lands surrounding the project area are owned by the KPB, State, and private individuals. There are no known 3rd party interests, or potential conflicts. There are no known current uses of the land. Private properties nearby range in size from 0.34 to 20 acres. Most private properties in the immediate area have been subdivided into approximately 1-acre, 2-acre, or 5-acre parcels.

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El Cajon, Greenwood Heights, Newell Park, Spring Mountain, Sphagnum and Lo-Do Subdivisions are within Section 21 and were subdivided between 1976 and 2014. Some of these original subdivisions have been resubdivided or have had additional subdivision of unsubdivided remainder parcels. Privately owned parcels have been developed, many of which have constructed access roads and driveways, houses and recreational cabins. No recent State land offerings have been conducted in the Homer area.

Ground field inspections were conducted of the proposed project area on May 11, 2017 and July 17, 2018. Legal access to the project area is via East End Road near milestone 9, north onto Greer Street, then west onto Hill Avenue and northwest onto Tom Cat Drive. The project area is accessible by highway vehicle access year-round. The land was found to be gradually sloping, and it contained alder, willow, spruce, other low shrubs and tall grasses. Views from the project area include mountain hillsides, and portions of the Kenai Mountains, Bear Cove and Kachemak Bay may be visible. During the 2018 inspection, Tom Cat Drive was observed to be upgraded and culverts were installed to improve drainage down slope. Electric utility is available to the project area as secondary service, Homer Electric Association has existing infrastructure adjacent to the project area on either side of Tom Cat Drive. The area is currently served by ENSTAR Natural Gas Company and GCI Communication Corporation. No known trespasses, or junk was observed at the time of the inspection.

During Agency Review of this proposed project, the original proposal included up to 10 parcels, no smaller than 1-acre. Pursuant to agency comment, LSS has increased the proposed parcel size no smaller than 2-acres, and decreased the maximum number of parcels to 6. These larger parcels will allow for adequate building, well, and septic sites, and will allow for flexibility in designing a subdivision which accounts for individual site conditions. The project area encompasses approximately 17 acres. LSS has considered the quality of the land, existing development, and general land use to incorporate into the subdivision design. The development patterns are highly variable within the vicinity; however, the majority of the subdivided lots range between 3 and 5 acres. By selling the land as subdivided lots, the State can maximize opportunity for land ownership and revenue to the State. The Fritz Creek Heights Subdivision is in a highly desirable area, close to amenities, and has very good access.

Planning and Classification: The general management intent of the area plan, region, and unit were reviewed for consistency with the proposed offering. The project area is within Kenai Area Plan (KAP, adopted 2001), Region 7, Homer, Unit 215. Lands within this unit are currently designated Settlement, and classified Settlement under Land Classification Order No. SC-99-002. The project area consists of all the management unit.

Unit 215, Region 7, Homer Considerations: The management intent for Unit 215 provide that the lands should be retained or conveyed subject to managing the Fritz Creek corridor for habitat and recreation if it supports anadromous fish or high value resident fish species. LSS received a comment from the Alaska Department of Fish & Game (ADF&G) which stated, “ADF&G staff are not aware of any tributaries to Fritz Creek that should support anadromous or resident fish species.” Since the tributary to Fritz Creek, within the project area does not support anadromous or high-value resident fish, LSS does not intend to convey lands subject to a habitat corridor.

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Area-wide Considerations: LSS reviewed the area plan's guidelines in Chapter 2 Areawide Land Management Policies. These considerations will be incorporated into the design and development of the project. Lands to be retained in public ownership, conditions, and reservations will be included on the plat and in offering materials as appropriate. Specific area-wide management intent and management guidelines affecting this proposal are discussed below.

Fish and Wildlife Habitat and Harvest: Management guidelines apply to areas designated for fish and wildlife habitat and provide for mitigation measures when authorizing uses of these areas, as well as authorizations within riparian zones. Unit 215 resides approximately 700 feet northeast of Fritz Creek. There is a small drainage within the project area, which feeds into a tributary of Fritz Creek. There was no water found in this drainage during field inspection.

Forestry: Management guidelines provide that in units designated other than Forestry (including Settlement), a percentage of forest cover is available for timber production and included in the timber base unless prohibited by the management intent for the specific unit. The project area is relatively small, with limited forest resources. LSS does not intend to harvest timber prior to or in conjunction with the development of this proposed project.

Heritage Resources: Management guidelines provide that cultural surveys or inventories should be conducted prior to the design of land offerings in areas the state Office of History and Archaeology (OHA) determines have high potential to contain important heritage sites and for which information is inadequate to identify and protect these sites. OHA reviewed the proposed Fritz Creek Heights Subdivision project area to determine the potential for negative effects on heritage resources and stated that their database did not indicate any known heritage resource sites in the proposed subdivision. Staff determined that a cultural resource survey was not required. OHA will be notified should any heritage resources be discovered during the development of this project and offering materials will include information regarding heritage sites and the requirement to notify OHA if any heritage resources are discovered.

Materials: Management guidelines state that if a unit is designated Settlement but contains high-value material resources, a pit will be identified and retained in public ownership for future use before lands are offered for sale. The project area does not contain high-value material resources, and LSS does not intend to retain a pit area.

Settlement and Agriculture: Applicable management guidelines include provisions for coordination with local government, commercial use of parcels, subdivision design, and erosion and flood control. These guidelines have been considered in the development of this proposal.

Shorelines, Stream Corridors and Wetlands: Management guidelines provide that legal access will be reserved along the shore of waterbodies. There are no known public waterbodies within the project area. The small drainage within the project area does not appear to be public, and LSS does not intend to reserve access along

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this drainage. Management guidelines also provide for the designation of high-value wetlands within the planning area. No high-value wetlands have been identified within the project area. See the *Access To and Along Public or Navigable Waters* section for more information.

Trails and Access: Management guidelines require that prior to the disposal of state lands, trails that merit consideration for protection should be identified and reserved. No trails have been identified within the project area. Access to and within the area will be reserved along existing roads, section-line easements, and platted easements and rights-of-way as appropriate. See the Access To, Within, and Beyond the Project section for more information.

Transportation and Utilities: Management guidelines provide that before a land offering DNR will work with the Department of Transportation and Public Facilities (DOTPF) to identify appropriate locations for access and transportation facilities, if necessary. The proposed project is located on a constructed road, and access is directly from the road. DOTPF was consulted during the Agency Review of the proposed project.

The proposed offering is consistent with area-wide land management policies and general management intent of the KAP and specific management unit.

Mineral Activity and Order(s): No mineral activity has been identified on these lands. The entirety of the project area (approximately 17 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 affect current existing mining claims.

Mineral orders which close an area to mineral entry, close the applicable area to new exploration and development of locatable minerals. 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 exploration and development.

Mining activity for locatable minerals would be incompatible with the past, current, and proposed land estate uses for land disposals. To allow new mineral location within the boundaries of the parcels encompassed by this decision could create serious conflicts between land estate and mineral estate users.

Local Planning: The project area is within the KPB and property purchased through this proposed offering will be subject to the applicable zoning, ordinances, and restrictions of the borough. The project area is within the boundary of the *Kenai Peninsula Borough Comprehensive Plan* (Review Draft, December 2017). Review of that plan did not indicate any conflicts with proposed land disposal.

Traditional Use Finding: The project area is located within the KPB 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

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during the public comment period. See the **Section VIII. Submittal of Public Comments** at the end of this document and *Attachment C: Public Notice* for details on how to submit comment.

Access To, Within, and Beyond Project Area: Access to the project area is via the Sterling Highway, east onto East End Road, north onto Greer Street, west onto Hill Road, then northwest onto Tom Cat Drive. Standard highway vehicles may be used to access the proposed subdivision. Access beyond the project and to parcels will be via Tom Cat Drive. There is a public access easement (ADL 232738) for that portion of Tom Cat Drive crossing State land. LSS proposes to dedicate that portion of Tom Cat Drive within the project area as part of the subdivision and platting process. LSS proposes to design a subdivision wherein all lots access directly onto Tom Cat Drive. The project is within the KPB Road Maintenance and Service Area, Unit S7. Subdivision design will take into account the topography, and access to lands beyond and within the project area. This project is subject to the platting authority of the KPB. Approval of platting actions and dedication of rights-of-way will require separate processes and public notices through the borough. No new roads, or dedications are recommended through this Preliminary Decision.

Access To and Along Public or Navigable Waters: In accordance with AS 38.05.127 *Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include 11 AAC 51.035 *Determination of Navigable and Public Water* and 11 AAC 51.045 *Easements To and Along Navigable and Public Water*.

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*.

DNR has not identified any public, navigable, anadromous or high-value resident water bodies within the project area. If any such water bodies are discovered, parcels will be subject to access reservations in accordance with AS 38.05.127 *Access to Public or Navigable Water*, and a 50-foot building setback from the OHW of the a public or navigable water body and 100-foot building setback from anadromous or high-value fish waters.

Easements, Setbacks, and Retained Lands: Subdivision design may include a variety of easements, setbacks, and retained lands, which will be identified on the subdivision plat and included in related documents. Final width and location of easements and reservations will be determined as part of the local platting process, which will include an additional opportunity for public participation.

Parcels and subdivision design may be subject to a variety of reservations or restrictions where appropriate:

- public access easement(s);

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- utility easement(s);
- a 50-foot-wide section line easement on each side of surveyed or protracted section lines on State-owned land in accordance with *AS 19.10.010 Dedication of Land for Public Highways* and *11 AAC 51.025 Section-line Easements*; section-line easements may be vacated under *AS 19.30.410 Vacation of Rights-of-Way* and *11 AAC 51.065 Vacation of Easements* as part of the subdivision development;
- a 50-foot continuous easement upland from the OHW of public or navigable water bodies in accordance with *AS 38.05.127 Access To Navigable or Public Water*;
- a 5-foot survey easement from the nearest practical point on the property boundary to control monuments within the parcel and an easement with a radius around the control monument, and as applicable, a 5-foot direct line-of-sight easement from the control station to an azimuth mark or other control monument; 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.

Hazardous Materials and Potential Contaminants: During the ground inspections conducted on May 11, 2017 and July 17, 2018, DMLW staff did not observe any environmental hazards within the project area. There are no known environmental hazards present within the project area; however, the State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for conveyance. The State further assumes no liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances eventually be found. Interested parties are encouraged to inspect the property and familiarize themselves with the condition and quality of the land prior to bid or application submittal.

DNR DMLW recognizes there are potential future environmental risks when previously vacant land is occupied. Many of the activities increasing these potential risks are regulated by other agencies, such as the regulation of septic system installation by the State of Alaska, Department of Environmental Conservation. This risk is no greater than when vacant private land undergoes development. Given that this land was specifically designated Settlement for transfer into private ownership, and given the high degree of interest from both the legislature and citizens in transferring State-owned land into private ownership, DNR is of the opinion that the benefits of offering the land outweigh the potential risks.

Survey, Platting, and Appraisal: After evaluation of public comment and conditions of the land, DNR will determine if it is in the State's best interest to offer the proposed project area. In order to offer the property, a combination of survey, subdivision, and/or platting actions may be required.

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This proposed project area is located within the KPB, and therefore survey and platting will be subject to the relevant subdivision standards. The borough's platting requirements provide for separate public notice periods and processes for platting actions. These additional opportunities for public involvement occur after a FFD is issued, if this proposed action is approved.

In accordance with *AS 38.05.840 Appraisal*, an appraisal meeting DNR DMLW standards will be required within two years of the date fixed for the sale of any parcel developed under this proposed action. Even though the sale of project area parcels in multiple offerings over time will mitigate "flooding" the market, the two-year appraisal requirement must still be followed.

Project research and development includes consideration of economic factors utilizing market data and project development costs compiled by DNR DMLW staff, to evaluate the economic feasibility of a project. Since it commonly takes several years for the project development process, *AS 38.05.840* ensures the current market conditions are addressed in order to obtain a realistic minimum bid or purchase price for the sale of State land.

VII. 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 preliminary decision. Agency review was conducted from March 29, 2019 through April 12, 2019. 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 LSS received brief comments of non-objection from the following agencies:

DNR Division of Parks and Outdoor Recreation (DPOR) and DNR State Pipeline Coordinator's Section:

- *DPOR noted that they do not have any issues with the proposed action.*
- *The State Pipeline Coordinator's Section (SPCS) reviewed the proposed action and has no concerns. There are no AS 38.35 pipeline rights-of-way, applications, or AS 38.35 proposed pipelines in the vicinity.*

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

DNR Division of Oil and Gas (DOG) Comment: DOG noted that the lands adjacent to the project area are not available for oil and gas leasing; however, the Cook Inlet areawide oil and gas lease sale is within a mile of the project, and the nearest issued oil and gas leases are approximately four miles north of the project.

DNR DMLW LSS Response: LSS appreciates your review of the proposal. The information has been included in this PD.

DNR Division of Agriculture (DAg) Comment: DAg noted that the parcel contains a minority proportion or soils suitable for agricultural development, generally along the eastern project

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boundary. DAG recommended that offering materials highlight the suitable soils for the applicable parcels.

DNR DMLW LSS Response: LSS appreciates your review of our proposal. LSS will include information about ag soils in the offering materials.

ADF&G Comment: ADF&G noted that their staff are not aware of any tributaries to Fritz Creek within the project area that should support anadromous or resident fish species.

DNR DMLW LSS Response: LSS appreciates your review of the proposal. The information has been included in this PD.

HSWCD Comment: The HSWCD provided general comments and specific comments pertaining to the project area and LSS addressed the specific comments according to topic:

Suitability of Proposed Access Routes: The proposed lot boundaries and legal access created through platted rights-of-way and easements should be designed only after onsite soils evaluation of the soils and hydrology to confirm the suitability of proposed access routes.

DNR DMLW LSS Response: LSS will not be creating new rights-of-way or building new roads as a part of this proposed project. This proposed subdivision will be dedicating the existing easement for that portion of Tom Cat Drive (ADL 232738, Public Road Easement, 60-foot) within the project area. Easements will be platted as necessary, see the Easements, Setbacks and Retained Lands section for more information. Per KPB Code of Ordinances, *Title 20-Subdivisions, Chapter 30 - Proposed street layout-Requirements, 20.30.50 - Legal Access*, LSS will meet the necessary requirements to provide legal access from Tom Cat Drive to individual lots.

Known Soil Concerns & Shallow Water Tables: The HSWCD noted that “the proposed subdivision area has challenging soils, slopes, and hydrology for installing roads and other residential infrastructure and suggested that lots should be larger than 2 acres. Tom Cat Drive has been shown to have unstable soils and a high capacity to frost heave and create soil boils.” The HSWCD supported LSS’s statement that “Known soil concerns will influence the project’s design and feasibility and such features will be described in the project file and offering materials where relevant.” The HSWCD recommended contacting a local soil scientist to obtain information.

Another related comment stated that “willow brush” vegetation on a parcel may reflect shallow water tables and can be used as a quick indicator of areas that are unsuitable for roads, driveways, foundations, and septic tank absorption fields. Such areas should be evaluated onsite to determine soil suitability for development.

DNR DMLW LSS Response: If this proposed project is approved in a subsequent FFD and the project proceeds to development, the subdivision will be designed by a licensed surveyor. Per KPB Code of Ordinances, *Title 20 Subdivisions, Chapter 40 – Wastewater Disposal, Section 100-Soils analysis and report*, LSS will require an engineer licensed in the State of Alaska to conduct a soil analysis and report. Test holes and borings will be performed to yield representative data for the entire subdivision, and

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Fritz Creek Heights Subdivision – ADL 232826

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soils in a usable wastewater disposal area will be delineated and shown by a percolation test in accordance with *Title 18, Alaska Administrative Code (AAC), 72.070(a)(1)*. The engineer's report will address all aspects of development including driveways, foundations and wastewater disposal. The results of the soils testing will influence the final design of the project.

Subdivision design will also account for the potential for shallow water tables, as they pertain to the soil suitability. Prior to the issuance of this PD, a *USDA Natural Resource Conservation Service Custom Soil Report* was created for this project. In this report, the majority of the soils were noted as well-drained (~80%). Onsite data and test results will be detailed in a soils report and percolation test conducted by a licensed engineer, if this project proceeds to development.

Wetland-Upland Complex: The HSWCD provided information that suggests wetlands are present. According to KPB Wetlands Map, several types of ecosystems relevant to wetlands exist in the project area and are defined as "wetlands-upland complex (WU)", "discharge slope (S)", and "Lutz spruce, willows and alders (LA)". These physical characters are mapped and defined on KPB Maps as SLA and WU units. In areas of Wetland-Upland Complex, wetland areas are so interspersed with non-wetland areas that distinguishing them on the 1:25,000 scale wetland map was not possible. Discharge slopes typically occur at the transition between wetland and upland where the boundary can be indistinct, these wetlands often support high water tables only seasonally. Additional information on wetlands was noted to be available on the Cook Inlet Wetlands website.

DNR DMLW LSS Response: As noted above, if this proposed project is approved in a subsequent FFD and the project proceeds to development, the subdivision will be designed by a licensed surveyor. The final design of the subdivision will account for wetland areas as part of lot design. Additionally, LSS will inform the general public that wetlands may be present in the area. If the proposed project, and subsequent FFD is approved, the offering materials will include information on wetlands, including the requirement for a United States Army Corps of Engineers permit for construction in wetlands.

Unnamed Tributary of Fritz Creek: The HSWCD provided a LiDAR map, with annotation that shows the general location of the stream referenced by LSS. HSWCD noted that this stream is a tributary to Fritz Creek and should be treated as requiring a 100-ft setback as per the KPB Code of Ordinances, *Title 20 - Subdivisions, Chapter 20.30 – Subdivision Design Requirements, 20.30.040 Streets within 100 feet of waterbodies*. A second map provided shows the channels relationship to the soil map from the web soil survey report provided by the HSWCD.

DNR DMLW LSS Response: If this proposed project is approved in a subsequent FFD and the project proceeds to development, the subdivision will be designed by a licensed surveyor in accordance with KPB Code of Ordinances, Title 20 – Subdivisions. KPB Code of Ordinances, *Title 20 - Subdivisions, Chapter 20.30 – Subdivision Design Requirements, 20.30.040 Streets within 100 feet of waterbodies* states:

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“No dedications are allowed 100 feet of the ordinary highwater line of a waterbody unless necessary for access to a lot where no reasonable alternative access exists or the dedication provides access to a bridge or public facility, waterbody or water course. Final plats must comply with KPB 20.60.050 and 20.60.060.”

The KPB code referenced by the HSWCD does not mandate or imply setbacks to any waterbody. It does provide that no dedications are allowed within a 100-feet of the OHW of a waterbody unless necessary for access, where no reasonable alternative access exists, or the dedication provides access to a bridge, public facility, waterbody or watercourse. DNR granted a public access and utility easement (ADL 232738) for the previously constructed portion of Tom Cat Drive within the project area. LSS proposes to plat and dedicate a ROW for Tom Cat Drive if the Fritz Creek Heights Subdivision proceeds to development. LSS is not proposing to dedicate any new roads for access within the Fritz Creek Heights Subdivision. Access to individual lots will be from Tom Cat Drive, and the construction of driveways for the proposed lots will require the proper permits through the KPB.

End of this agency’s comment summary by topic. LSS appreciates your comment and review of the proposed project.

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

- Department of Environmental Conservation;
- Department of Natural Resources;
 - Division of Geological & Geophysical Surveys;
 - Division of Forestry;
 - Office of Project Management and Permitting;
 - Mental Health Trust Land Office;
- Department of Environmental Conservation;
- Department of Transportation and Public Facilities;
- Department of Commerce, Community and Economic Development;
- University of Alaska; and
- Alaska Railroad.

VIII. Submittal of Public Comments

See Attachment C: Public Notice for specific dates and conditions.

Pursuant to *AS 38.05.945 Notice*, DNR is issuing public notice inviting comment on this Preliminary Decision, 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)* 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.

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LSS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision, 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 Preliminary Decision, and draft mineral order including any deletions, minor changes, and summary of comments and LSS responses will be issued as a subsequent FFD, and Mineral Order 1229 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 DNR DMLW LSS receives timely, written comment during the identified comment period will be eligible to file an appeal of the FFD or Mineral Order 1229. Upon approval and issuance of these actions, a copy of the decision, and mineral order 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 the Department's Public Information Center. For more information refer to *Attachment C: Public Notice*.

DEADLINE TO SUBMIT WRITTEN COMMENT IS 5:00PM, WEDNESDAY, MARCH 4TH, 2020

IX. Alternatives and Discussion

DNR DMLW is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision consisting of up to 6 parcels, no smaller than 2 acres, and offer those parcels for sale. The development and offering of these parcels may be completed in multiple stages. This proposal includes the mineral order.

Alternative 2: Do not subdivide the project area prior to offering. Offer the project area as a single, 17-acre parcel. This proposal includes the mineral order.

Alternative 3: (Status Quo) Do not offer this project area for private ownership. Retain the land in State ownership.

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." Furthermore, *AS 38.05.045 Generally* has placed this charge with DNR, and the legislature has provided funding to administer the land sale program.

Alternative 1 provides a method for DNR to meet the obligations laid out in the Constitution and statute and maximizes public interest. This offering provides an opportunity for the public to obtain land for settlement in a desirable area. This proposal, if approved in a subsequent FFD, will allow DNR DMLW to create and design a subdivision which will provide for the best use and

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Fritz Creek Heights Subdivision – ADL 232826

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development of the land and financial return to the State. Alternative 1 provides the greatest opportunity for more Alaskans to purchase land within this area. Due to the unique amenities of the area, location relative to the communities of Homer, Kachemak, and Fritz Creek, and the proximity to existing residential private property; the project area is better suited to subdivision prior to offering. Alternative 1 is preferred.

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

Alternative 2 does not maximize public interest and financial return to the State. Offering the project area as a single parcel would limit the offering to only one purchaser and deny many Alaskans the opportunity to purchase land in this desirable area. Additionally, subdividing the project prior to offering will allow for the dedication of the existing Tom Cat Drive. Alternative 2 is not preferred.

Alternative 3 is not preferred. The Legislature and the public have indicated a desire for DNR DMLW to offer State-owned land for private ownership. Retention of this land would inhibit DNR DMLW from meeting its constitutional, statutory, and legislative goals. Not offering the project area would deny many Alaskans the opportunity to obtain land in an area that is suited to settlement and consistent with the surrounding development.

For the aforementioned reasons, Alternative 1 is the preferred alternative.

Recommendation follows.

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Fritz Creek Heights Subdivision – ADL 232826

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X. Recommendation

This Preliminary Decision for the proposed disposal of State lands and Mineral Order 1229 described throughout this document and its attachments, are consistent with the overall management intent for State-owned land. Alternative 1 is the preferred alternative because it provides the maximum opportunity for offering State land to the public and helps meet the mission of the land sales program. The Preliminary Decision described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

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 and Mineral Order 1229. If the decision is approved, Mineral Order 1229 will accompany and precede any Final Finding and Decision.

[signature on file]

Prepared by: Daniela Fawcett
Natural Resource Specialist II
Land Sales Section
Division of Mining, Land, and Water
Department of Natural Resources
State of Alaska

1/24/2020

Date

[signature on file]

Approved by: Timothy Shilling
Natural Resource Manager II
Land Sales Section
Division of Mining, Land, and Water
Department of Natural Resources
State of Alaska

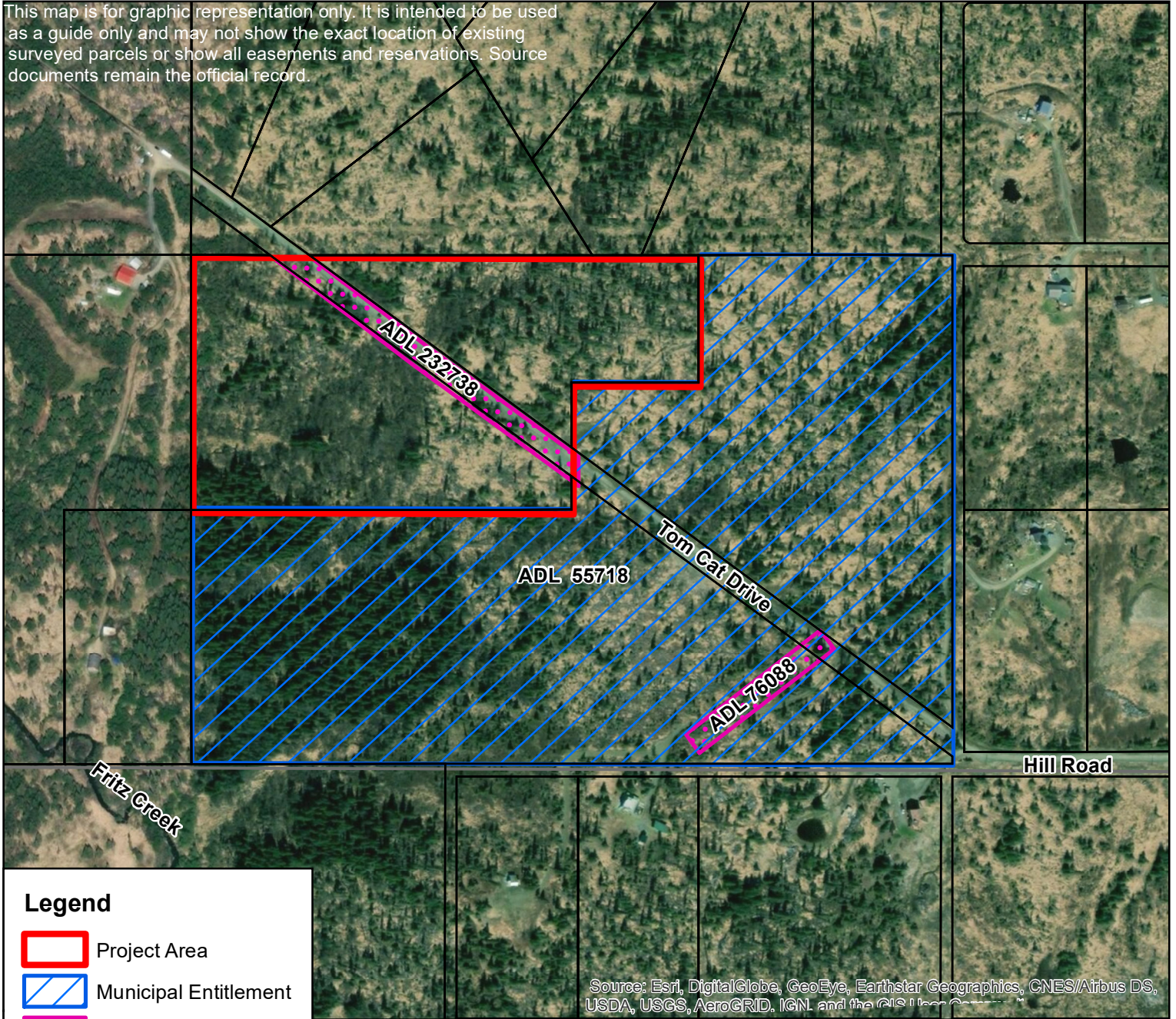
1/24/2020

Date



Attachment A: Vicinity Map Fritz Creek Heights Subdivision ADL 232826

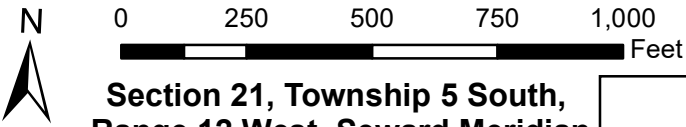
This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Legend

- Project Area
- Municipal Entitlement
- Easement
- Parcels
- Section Line



RG 03/28/2019

Section 21, Township 5 South, Range 12 West, Seward Meridian

USGS QUAD 1:63,360
Seldovia C-4
For more information contact:
Daniela Fawcett
Department of Natural Resources
Division of Mining, Land, and Water
Land Sales Section
Phone: 907-269-5639
Fax: 907-269-8916
Email: land.development@alaska.gov



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

ATTACHMENT B: AREA DATA SUMMARY TABLE

to the
Preliminary Decision

for a
**Proposed Land Offering in the Kenai Peninsula Borough
Fritz Creek Heights Subdivision – ADL 232826**

Offering Information	
Proposed Number of Parcels	Up to 6 parcels
Proposed Parcel Size	Varying in size no smaller than 2 acres
Proposed Related Actions	Mineral order (closing) No. 1229
Project Area	
Location	Located within DNR's Southcentral Region, approximately 10 miles northeast of Homer.
Project Area Acreage	Approximately 17 acres
USGS Topography Map	USGS Quad Seldovia C-4
Legal Description	The N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ & the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21 within Township 5 South, Range 12 West, Seward Meridian; within the Kenai Peninsula Borough (KPB).
Title	Patent #50900365
Area Plan and Classification	Kenai Area Plan (KAP, adopted 2001), Region 7, Management Unit 215. Lands are designated settlement and classified as settlement lands.
Mineral Orders	None. Project area will be closed to mineral entry prior to offering.
Physical Characteristics	
Access	The legal access is from the Sterling Highway along constructed roads to the project area. Tom Cat Drive is a gravel, borough maintained road, constructed through the project area. The road was recently upgraded by the borough and a series of culverts were installed. Legal access to individual lots will be via platted easements and rights-of-way created through subdivision design, or directly from Tom Cat Drive.
Terrain and Major Features	Gently rising slopes beginning at 450' above sea level, gaining in elevation to the northeast to approximately 550' above sea level.
View	Mountain hillsides and vistas are visible from the project area. The Alaska Range, Mt. Redoubt and/or Mt. Iliamna can be seen in the distance.

Attachment B: Area Data Summary Table

Fritz Creek Heights Subdivision – ADL 232826

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Soils	<p>The project area contains Mutnala silt loams and Coal Creek silt loam. The depth to these restrictive features is more than 80 inches. The Mutnala silt loams are well drained and the Coal Creek silt loam is poorly drained. The project area is rated as a “poor” gravel source, and it contains class IV, V and VI soils.</p> <p>Known soil concerns will influence the project’s design and feasibility and such features will be described in the project file and offering materials where relevant.</p> <p>The parcel contains a minority proportion or soils suitable for agricultural development, generally along the eastern project boundary. DAg recommended that offering materials highlight the suitable soils for the applicable parcels.</p>
Wetlands	None identified. Dredging or filling of wetlands may require a permit from the US Army Corps of Engineers.
Vegetation	Willow brush, scattered spruce and birch.
Water Source	Water may be available from surface waters, drilled wells or hauled water. An 8-foot to 10-foot hand-dug well and a 121-foot drilled well have been reported in Section 21, just outside the project area. Water quality is unknown. Water distribution services may be available through the City of Homer.
Anadromous Waters	None identified
Local Management Information	
Fire Protection	Critical Fire Management Option. The project area is within the service areas for the Homer Volunteer Fire Department and Kachemak Emergency Service.
Game Management Unit	15C
Local Authority	KPB exercises authority for planning, platting, taxes, and zoning for the project area.
Flood Zone	The project area is within Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, Community Panel #0200124375A (Not Printed).
Utilities	This area is served by Homer Electric Association Incorporation (HEA), ENSTAR Natural Gas Company and GCI.
Waste Disposal	Solid waste services are provided by the Homer Transfer Facility, KPB. All on-site waste water disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
Setbacks, Reserved Areas, Easements, and Conditions	
Building Setbacks	Parcels are subject to a 50-foot building setback from the ordinary high water (OHW) of water bodies determined to be public or navigable, in accordance with the area plan. Water-dependent structures may be allowed within the building setback. Additional setbacks may be required by the KPB plating authority.

Public Access and Utility Easements	<p>Parcels may be subject to the following:</p> <ul style="list-style-type: none"> • public access easement(s); • utility easement(s); • a 50-foot-wide section line easement on each side of surveyed or protracted section lines on State-owned land in accordance with <i>AS 19.10.010 Dedication of Land for Public Highways</i> and <i>11 AAC 51.025 Section-line Easements</i>; section-line easements may be vacated under <i>AS 19.30.410 Vacation of Rights-of-Way</i> and <i>11 AAC 51.065 Vacation of Easements</i> as part of the subdivision development; • a 50-foot continuous easement upland from the OHW of public or navigable water bodies in accordance with <i>AS 38.05.127 Access To Navigable or Public Water</i>; • a 5-foot survey easement from the nearest practical point on the property boundary to control monuments within the parcel and an easement with a radius around the control monument, and as applicable, a 5-foot direct line-of-sight easement from the control station to an azimuth mark or other control monument; and • additional reservations and/or restrictions required through the KPB platting authority.
Retained Lands	None identified
Public or Navigable Water Bodies	None identified. If any water bodies are deemed public or navigable within the project area prior to platting, DNR DMLW will comply with statutory requirements to provide access to and along said water bodies.
Additional Information	
Native Regional Corporations	Cook Inlet Regional Incorporated
Villages and Tribal Councils	Ninilchik Village, Seldovia Village, and the Seldovia Tribal and Ninilchik Traditional Councils.
Oil and Gas Activity	A Cook Inlet Areawide oil and gas lease sale is within a mile of the project area, and the nearest issued DNR oil and gas leases are approximately 4 miles north of the project.
Mining Activity	None known

Comments	<p>Table 3.8, Resource Allocation Summary Table, KAP lists Unit 215 as 10 acres; however, through an area plan consultation with the Resource Assessment & Development Section, DNR, the entire 17-acre parcel was determined to be designated settlement and classified as settlement land. This typo requires no further actions.</p> <p>The USGS Seldovia C-4, 1:63K topo map depicts a tributary of Fritz Creek as crossing the project area. This tributary is not depicted on the USGS Seldovia C-4 NW, 1:25K topo map, nor was it identified during field inspection. The Land Sales Section does not propose to reserve an access easement or building setback along this stream unless it is determined to meet the criteria of a public water body per <i>11 AAC 53.035</i>, or if the Alaska Department of Fish & Game (ADF&G) determines it is an anadromous waterbody and/or supports high value resident fish species. ADF&G has been contacted.</p> <p>The portion of Tom Cat Drive, beginning at the junction with Hill Avenue and ending immediately before the project area was issued a KPBE easement. The Department of Natural Resources, Southcentral Regional Office issued a 60-foot wide public access and utility easement (ADL 232738) along that portion of Tom Cat Drive crossing the project area.</p>
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ATTACHMENT C: PUBLIC NOTICE

Requesting Input for
a Proposed Land Offering:
Fritz Creek Heights Subdivision – ADL 232826

COMMENT PERIOD ENDS 5:00PM, WEDNESDAY, MARCH 4, 2020

This proposed project includes offering for sale surveyed parcels in a future offering under the method and the related actions as described in the Preliminary Decision document. The project may be subdivided and offered in multiple offerings over time.

Location: Located within DNR's Southcentral Region, approximately 10 miles northeast of Homer.

Project size: ~17 acres proposed development area

Proposed Offering: up to 6 parcels, no smaller than 2-acres.

To obtain the notice, Preliminary Decision, Mineral Order, or instructions on submitting comment, go to <http://landsales.alaska.gov/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10AM and 5PM in Anchorage at 907-269-8400, Fairbanks at 907-451-2705, or the Southeast Land Office in Juneau at 907-465-3400 (TTY for all locations: 711 for Alaska relay or 800-770-8973) or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Friday, February 14, 2020.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on either the Preliminary Decision, or Mineral Order for which notice is being conducted concurrently. If commenting on more than one proposed action, separate comments should be submitted for each. **The deadline for public comment is 5:00PM, WEDNESDAY, MARCH 4, 2020.** Only persons from whom DNR DMLW LSS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Written comment may be received by fax, email or postal mail. To submit comments or for direct inquiries, contact Terry Hess, 550 W. 7th Avenue, Suite 640, Anchorage, AK 99501. fax # 907-269-8916, land.development@alaska.gov. If you have questions, call Daniela Fawcett at 907-269-5639.

If no significant change is required, the Preliminary Decision and related action including any minor changes and a summary of comments and responses, will be issued as the Final Finding and Decision, and Mineral Order 1226, without further notice. A copy of the final finding and decision will be sent to any persons who commented timely on the preliminary decision.

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