

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

PRELIMINARY DECISION
PROPOSED CONVEYANCE OF STATE LAND UNDER AS 29.65

CITY OF WHALE PASS MUNICIPAL LAND ENTITLEMENT SELECTIONS ADL 108743
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PUBLIC COMMENT PERIOD ENDS 4:30 PM, FRIDAY, JUNE 4, 2021

I. PROPOSED ACTION

Preliminary Decision: City of Whale Pass Municipal Land Entitlement Sections - ADL 108743

Attachment A: City of Whale Pass

Attachment B: Public Notice

Primary Proposed Action: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining Land and Water (DMLW), Land Conveyance Section (LCS) proposes to convey in part, and reject in part, lands selected by the City of Whale Pass (hereinafter City) in order to fulfill their general grant land entitlement under *AS 29.65.030 Determination of Entitlement for Newly Incorporated Municipalities*. See *Attachment A: City of Whale Pass* for a depiction of the project area.

The City has selected seven parcels contained within Unit 5, Subunit 5a of the Prince of Wales Island Area Plan¹ (POWIAP). The City relinquished approximately 7.5 acres of its selected lands and approximately 320 acres will be adjudicated in this decision.

LCS proposes to convey approximately 294 acres of state owned vacant, unappropriated, unreserved (VUU²) general grant land to the City and has determined that there are no over-riding state interests that merit retaining these selections in state ownership.

LCS proposes to reject the conveyance of approximately 26 acres of the city selections because the land is ineligible for conveyance or DNR has otherwise determined it is not in the State's best interest to convey the land out of state ownership.

Public Notice of Proposal: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public is invited to submit written comments on this Preliminary Decision (PD).

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

¹ The Prince of Wales Island Area Plan (POWIAP), adopted in October 1998, determines the management intent, land use designations, and management guidelines that apply to all state lands in the applicable planning area. This plan forms the basis for the land use classifications that constitute vacant, unappropriated, unreserved land for purposes of determining the eligibility of state land for potential conveyance to a municipality under *AS 29.65 General Grant Land*.

² *Vacant, unappropriated, unreserved (VUU)* land is general grant land patented or tentatively approved to the state from the United States, excluding minerals as required by 6(i) of the Alaska Statehood Act, and is conveyable under the *Municipal Entitlement Act (AS 29.65 General Grant Land)*.

II. AUTHORITY

The proposed actions in this PD are authorized pursuant to Alaska Statute (AS) and Alaska Administrative Code (AAC), particularly *AS 29.65 General Grant Land*, *AS 38.05.035(e) Power and Duties of the Director*, *AS 38.05.125 Reservation*, *AS 38.05.127 Access to Navigable or Public Water*, *AS 19.10.010 Dedication of Land for Public Highways*, *11 AAC 51 Public Easements*, and *11 AAC 55 Land Planning and Classification*

III. ADMINISTRATIVE RECORD

The administrative record for this PD consists of Alaska Division of Lands (ADL) case file 108743, the Prince of Wales Island Area Plan (POWIAP, adopted October 1998), the Alaska Department of Fish and Game (ADF&G) Alaska Anadromous Waters Catalog & Atlas to the Catalog, Alaska Department of Environmental Conservation (DEC) Contaminated Sites Database, and the Alaska Southeast Transportation Plan. Additional files and resources are incorporated by reference.

IV. SCOPE OF DECISION

The scope of this proposal, under the statutes described in the preceding **Section II Authority**, is limited and specific to a determination of whether it is found to be appropriate to convey the subject parcels to the City of Whale Pass. This decision includes a review of third-party interests, stipulations necessary to effectuate this decision, and an evaluation of whether the public interest in retaining state ownership of the land outweighs the City's interest in obtaining the selected lands as provided in *AS 29.65.050 Fulfillment of Land Entitlement*. In this decision, LCS will also determine whether the City's municipal entitlement land selections meet requirements under *AS 29.65.070(c) Selection and Conveyance Procedure*, and whether it is appropriate to allow the City to exercise immediate management authority for conditional sales and leases on land approved for conveyance.

V. DESCRIPTION

A. Location and Geographical Features

The City of Whale Pass is located on the northeastern portion of Prince of Wales Island tucked into a protective bay with Thorne Island sitting outside the entrance of the passage and is bordered on the east by Kashevarof Passage. The major bodies of water in the Whale Pass area are Whale Passage and Neck Lake. The north end of Whale Passage has extensive tidal flats, and several anadromous streams flow into the bay. The community of Whale Pass is connected to the Prince of Wales Island road system via the United States Forest Service (USFS) forest development roads (FDR).

<i>City/Municipality:</i>	City of Whale Pass
<i>Meridian:</i>	Copper River (C)
<i>Regional Native Corp.:</i>	Sealaska Corporation
<i>Native Village Corp.:</i>	Klawock Cooperative Association
<i>Tribes:</i>	Central Council of the Tlingit and Haida Indian Tribes of Alaska
<i>USGS Map Coverage:</i>	Petersburg Quadrangle (1:250,000) Petersburg A-4 (1:63,360)

B. Legal Description, Land Status, and Third-Party Interests

Table 1 identifies the City land selections adjudicated in this decision by parcel number, Township (T), Range (R), Section (S), and includes title status, date, state case file and any third-party interests affecting those state owned. The State holds fee title to the land and mineral estates through Patent from the United States Department of Interior, Bureau of Land Management (BLM). The State will only convey the land estate on lands approved for conveyance to the City. *AS 38.05.125* requires the State retain the mineral estate.

Table 1

Parcel	MTRS	State Case File	Title/ Date	Third Party Interests
1	C066S080E31	NFCG 148	PA 50-89-135 1/31/1989	ADL 105617, Private Easement, Utility, Issued
	C066S079E36			ADL 104742, Private Easement, ROW, Issued ADL 105617, Private Easement, Utility, Issued
2	C066S079E23	NFCG 148 NFCG 344	PA 50-89-135 1/31/1989 PA 50-96-697 9/17/1996	USFS Road 27, 66' (AA 45088) USFS Road 30, 100' (AA 45088)
3	C066S079E23	NFCG 148 NFCG 344	PA 50-89-135 1/31/1989 PA 50-96-697 9/17/1996	USFS Road 30, 100' (AA 45088) USFS Road 30-520, 66' (AA 45088)
4	C066S079E26 C066S079E35	NFCG 148	PA 50-89-135 1/31/1989	USFS 30, 100' (AA 45088)
5	C066S079E35	NFCG 148	PA 50-89-135 1/31/1989	USFS Road 30, 100' (AA 45088)
6	C067S079E02	NFCG 148	PA 50-89-135 1/31/1989	USFS Road 30, 100' (AA 45088) USFS Road 25, 100' (AA 45088) USFS Road 30-490, 66' (AA 45088)
7	C066S079E36	NFCG 148	PA 50-89-135 1/31/1989	USFS Road 30-491, 66' (AA 45088)

VI. PRELIMINARY DECISION

A. Background

Whale Pass became a Second-class city on January 31, 2017. On April 6, 2017, DNR certified a municipal land entitlement of 295.832 acres to the City of Whale Pass pursuant to AS 29.65.030. This is the first Municipal Entitlement conveyance decision for the City.

B. Planning, Classification and Mineral Orders

1. Planning

The land selections are all located in Unit 5 within the Prince of Wales Island Area Plan (POWIAP) and are governed by the management intent and classifications found therein. The management intent and plan designation for each management unit are described in Chapter 3 of the plan. These plan designations convert to land use classifications, which establish what land the State may convey under the Municipal Entitlement Act (*see AS 29.65.130(10) Definitions*).

Management intent has the same level of authority as a plan designation under 11 AAC 55.030(c)(6) *Land Use Plan*. In all instances, whether it is a municipal selection affected by a non-conveyable classification or a management guideline/intent that requires the State to retain land, the effect is the same: the selection is not conveyable to the Borough *unless* a plan amendment changes the classification, the management guideline/intent, or both.

2. Land Use Classification

The land selections proposed for conveyance in this decision are classified as Resource Management (RMG), Public Recreation (PUR), or Settlement (STL) which are conveyable classifications under AS 29.65. Wildlife Habitat Land (WHB) is a non-conveyable classification and is not eligible for conveyance under AS 29.65. Table 2 shows the land use designations and classifications derived from the POWIAP for the land selections adjudicated in this decision.

Table 2 POWIAP Unit 5, Subunit 5a

Parcel	MTRS	Designation	Land Use Classification	Management Intent
1	C066S080E31 C066S079E36	Gu	Resource Management Land (RMG)	Multiple uses

Parcel	MTRS	Designation	Land Use Classification	Management Intent
2, 3	C066S079E23	Gu S	Resource Management Land (RMG) Settlement Land (STL)	Suitable for settlement and recreational uses
4	C066S079E26,35	Gu	Resource Management Land (RMG)	Suitable for settlement and community uses
5	C066S079E35	Ha	Wildlife Habitat (WHB)	Retain
6	C067S079E02	S	Settlement Land (STL)	Suitable for industrial or commercial uses
7	C066S079E36	S	Settlement Land (STL)	Suitable for settlement

3. Mineral Orders

The mineral estate is reserved to the State pursuant to *AS 38.05.125 Reservation*.

State lands previously closed to mineral entry will remain closed to protect options for community and commercial centers in the Whale Pass community. Table 3 below lists out the Mineral Orders (MO) and the areas they pertain to. There are no other known mineral orders affecting the City's selections

Table 3

Parcel	Area	Mineral Order
1	All	None
2	Tract O – south portion	None
	Tract O – north portion	MO 573 (closed)
3	All	MO 573 (closed)
4	W1/2 NE1/4 (C066S079E35)	None
	C066S079E26 – north portion	MO 1011 (closed)
	C066S079E35 – east portion	
5	All	MO 1011 (closed)
6	All	MO 573 (closed)
7	Tract F	MO 573 (closed)
	Tract G	MO 273 (closed)

C. Traditional Use Finding

A traditional use finding under *AS 38.05.830 Land Disposal in the Unorganized Borough* is required only within unorganized boroughs. The City of Whale Pass is a Second-class city and eligible for municipal entitlement under *AS 29.65.030*; therefore, identification of traditional uses is not required. All the City's municipal entitlement land selections are located within its legal boundary.

D. Access

Public access will be reserved in accordance with *AS 19.10.010*, *AS 19.30.400 Identification and Acceptance to Rights-of-Way*, *AS 38.05.125*, *AS 38.05.127*, and *11 AAC 51*.

The community of Whale Pass is connected to the Prince of Wales Island road system which provides access to most of the City's municipal entitlement selections. The City also has a Seaplane Float Harbor Facility that provides access to floatplanes when the weather allows. The main local roads within the City are Beach Road (FDR 3065), Snoose Creek Road (FDR 3060), Loop Road (FDR 25), and Exchange Cove Road (FDR 30).

1. Section-line Easements

As required under *AS 19.10.010*, and in accordance with *11 AAC 51.025 Section Line Easements*, a public access easement of 100 feet wide will be reserved along each section

line on lands approved for conveyance. If a section line forms a boundary of a selection being conveyed, then the easement will be 50 feet wide measured from the section line. If a section line runs through a selection being conveyed, then the easement will be 50 feet wide measured on each side of the section line, for a total width of 100 feet.

2. Trails, Rights-of-way, RS 2477, and Easements

A review of state records identified rights-of-way, easements, reservations, and exceptions in the U.S. Patent affecting some of the City's land selections as disclosed in Table 1, above. LCS is not aware of any RS2477 or other major trails within the proposed municipal entitlement. There are two active easements located within the municipal entitlement area, Parcel 1. ADL 105617 is an easement issued to the Alaska Power and Telephone Company. ADL 104742 is an easement issued to Rytful Adventures LLC.

3. Navigable and Public Water

The State will retain ownership of the bed of navigable water, including all gravel bars and islands, and will convey the bed of public waters to the City. A survey will determine the Ordinary High Water Mark (OHWM) of the navigable waters, and the Mean High Water Mark (MHWM) on marine meandering shorelines, identify islands, and determine the specific areas to be retained by the state. At the time of survey, field work may find that a body of water or a waterway is different than identified in this decision. If this occurs, the results of the survey work will be reviewed further within DNR. If the field work is determined to be accurate, then the survey results will supersede the recommendation in this decision.

Navigable Waters: Pursuant to 11 AAC 51.035 *Determination of Navigable or Public Waters*, a water body is navigable if it is at least 50 acres in size or a waterway at least 50 feet wide from OHWM to OHWM. A water body will also be considered navigable if it is found it is navigable for a useful public purpose in accordance with AS 38.05.965 *Definitions*, otherwise, it will be considered public water in accordance to 11 AAC 51.035. Additionally, ownership of land adjacent to navigable water does not create any right of title to land below the OHWM of the navigable water.

All tidal waters are considered navigable under the Submerged Lands Act (67 Stat 29, PL 31, 5/22/1953). The MHWM is established at the time of survey.

Public Waters: Pursuant of 11 AAC 51.035, a water body is considered public water if it is at least 10 but less than 50 acres in size or at least 10 feet but less than 50 feet wide from OHWM to OHWM. Ownership of the land under or adjacent to public water does not grant an exclusive right to use of the water (AS 38.05.126 *Navigable and Public Water*).

4. Easements To and Along Navigable and Public Water

A public access easement on the bed and 50 feet in width upland of the OHWM will be reserved on all public water bodies and waterways, and a public access easement 50 feet in width upland of the MHWM will be reserved on all navigable waters in accordance with AS 38.05.127 and 11 AAC 51. This easement is referred to as the 'along' easement. The 'to' easement is to be established approximately once each mile and is often provided on section line easements of 50 feet in width adjacent to the section line on each side (AS 19.10.010 and 11 AAC 51.025). The 'along' easement applies to these waterbodies and the 'to' easement is intended to provide access to the 'along' easements.

An alternative upland access route may be reserved if LCS finds that access along an easement reserved under 11 AAC51.045(d)(1) *Easements To and Along Navigable and Public Water* is difficult because of topography or obstructions.

Navigable Waters

Navigable waters may or may not be anadromous. Exposed sand or gravel bars that are within and are not above the OHWM are part of the waterbody bed. Only those lands determined to be uplands that are above the OHWM or MHWM are intended to be conveyed.

The navigable water in this decision is marine and encompasses Whale Pass. The upland shore will have a 50-foot public access easement on those lands approved for conveyance to the City.

Public Waters

Waterbodies determined to be public waters under *11 AAC 51.035* may or may not be anadromous. The beds of public waters are to be conveyed with the adjoining approved lands.

Big Creek (108 Creek) in Section 23, Township 66 South, Range 79 East, Copper River Meridian is an anadromous water body (Catalog # 106-30-10800), as well as being considered a public water. It will have public access on the bed and 50 feet upland along the shore.

E. Reservation of Mineral Estate

A conveyance of VUU general grant land to a municipality under *AS 29.65* conveys no interest in the mineral estate. All mineral related permits, licenses, claims, and leases affecting the land for conveyance, if any, will remain under the authority of the State.

In accordance with Section 6(i) of the Alaska Statehood Act and *AS 38.05.125*, the State, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing, and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with *AS 38.05.130 Damages and Posting of Bond* and other applicable statutes and regulations.

F. Hazardous Materials and Potential Contaminants

It is the responsibility of the State to protect the overall public interest if there is a reasonable expectation that hazardous contamination may exist on land being proposed for disposal. Based on review of the Alaska Department of Environmental Conservation's (DEC) list of contaminated sites and comments received, no hazardous material or contamination from hazardous material is known at this time to affect these selections. The environmental risk associated with this proposed conveyance is found to be minimal, if non-existent, at the time of this PD.

The City is expected to inspect these selections and familiarize itself with regards to the condition and quality of the land. The State of Alaska 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 here for conveyance. The State assumes no liability for removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor any liability for the remediation of the site should such substances ever be identified. The City, by selecting these lands and requesting their conveyance through this PD, recognizes the surrounding areas of identified contaminated sites and will take the land "as is."

G. Survey

A state approved survey is required prior to issuance of a conveyance document. If no approved survey exists, then one must be performed by an Alaska Registered Land Surveyor under direction of the DNR DMLW Survey Section. The City is responsible for the expense of any survey. A survey determination may be requested by the City at any time subsequent to the Final

Finding & Decision (FFD). There is no requirement under *AS 29.65.070* to appraise the land prior to conveyance.

H. Conditional Leases and Sales

The City will receive management authority and equitable title to all land approved for conveyance once the FFD is effective. This will allow the City to approve conditional leases and make conditional sales pursuant to *AS 29.65.070(b)*, but not to dispose of land approved for conveyance until the land has been surveyed and ownership transferred to the City.

I. Unauthorized Use

DNR has not physically inspected all areas of the selected lands for the presence of unauthorized use but has reviewed department records and found no trespass sites within the selected parcels. The City is expected to inspect all its land selections to familiarize itself with the condition and quality of the land.

J. Disposition of Leases, Permits, and Applications

Administration of any active leases, permits, and easements for the surface estate issued by the State on land to be conveyed will be transferred to the City when the FFD becomes effective, unless such authorizations are specifically excluded from the conveyance. Any pending applications that have not been adjudicated and issued will be closed and notified.

K. Cultural Resources

The Alaska Office of History and Archaeology (OHA) maintains the Alaska Heritage Resources Survey (AHRIS) which is an inventory of all reported historic, prehistoric, and archaeological sites in the State. There are three recorded cultural resources (historic, prehistoric, and archaeological sites, locations, remains, or objects) within the municipal entitlement selections of the City of Whale Pass. Two sites, PET-00770 and PET-00771, have been evaluated for their significance previously and determined not to be significant. PET-00778, known as the 108 Creek Terrace Site, has not been formally evaluated.

Future projects that may be proposed by the City of Whale Pass on selected lands could affect unidentified cultural resources. Should any cultural resources be encountered, the City will need to take those actions required by law to protect such resources in accordance with *AS 41.35.070(d) Preservation of Historic, Prehistoric, and Archeological Resources Threatened by Public Construction*.

L. Form and Width Requirement

Each municipal entitlement land selection is required to be compact in form with its length not exceeding approximately four times its width pursuant to *AS 29.65.070(c)*. Review of the City's land selections proposed for conveyance in this decision indicates that the selections are consistent with this statute.

M. DMLW and Agency Review

The intent of an agency review is to request comments from agencies that may be affected by a municipal entitlement land conveyance decision. Agencies are given the opportunity to evaluate and comment on the municipality's land selection to determine if the State should retain all or a portion of the selected lands, and if so, provide supporting reasons for the requested action. Additionally, agencies are requested to identify any stipulations that may be appropriate if the land is to be conveyed out of state ownership. 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 (AR) was conducted from July 12, 2019 to August 9, 2019. Comments pertinent to this proposed action received during agency review have been considered and addressed below.

Comments from Alaska Department of Fish & Game (ADF&G)

The Alaska Department of Fish and Game (ADF&G) has reviewed the Municipal Entitlement Selections for the City of Whale's Pass (ADL 108743). The current review is for approximately 325 acres of state land selected by the City of Whale Pass on the northeast portion of Prince of Wales Island within Sections 23, 26, 35 and 36, T66S, R79E; Section 31, T66S, R80E and Section 2, T67S, 79E, CRM.

Several anadromous streams are in the vicinity of these selections. 108 Creek flows through and adjacent to a portion of the selected lands within Section 23, T66S, R79E, CRM (Parcels 2 and 3). 108 Creek is identified in ADF&G's Anadromous Waters Catalog (AWC #106-30-10800) as being important habitat for chum, coho, pink and sockeye salmon, Dolly Varden and steelhead trout. The Statewide Harvest Survey from ADF&G's Sportfish Division highlights the importance of 108 Creek for sport fishing, which sees an average of 348 Angler days (2013-2017) with up to 237 coho and 5,404 pink salmon harvested in 2015 and 2017 respectively. Recognizing the importance of 108 Creek, DNR's Prince of Wales Area Plan-Whale Pass Subunit designated the portion of land surrounding the mouth with Habitat and Public Recreation classifications (Chapter Three, page 79).

Neck Lake Creek flows from Neck Lake into Whale Passage within Section 35, T66S, R79E, CRM and adjacent to Parcel 5. Neck Lake Creek is identified as being important habitat for chum, coho and pink salmon (AWC # 106-30-10750). The Prince of Wales Area Plan-Whale Pass Subunit designated the area around Parcel 5 with Public Facilities and Recreation classifications (Chapter Three, page 79). A 2012 Community Harvest Survey by ADF&G Subsistence Division indicates that parcel 6 (part) is used to access Neck Lake Creek for coho fishing. Additionally, the same survey documented use of parcels 2 - 7 for deer hunting, and all parcels for berry picking or firewood gathering.

The Prince of Wales Area Plan-Whale Pass Subunit identifies management guidelines for state owned lands along stream corridors (Chapter Two: Settlement and Shorelines and Stream Corridors Sections, pages 21-24). The plan states that "...DNR will place a higher priority on protecting public use values than on providing opportunities for private ownership or development of land. Disposals near streams with important recreation value will be designed to protect habitat and protect access to and along the stream for fishing, hiking, camping, and other recreational activities. Similarly, disposals near streams that have important fish or wildlife habitat or wildlife value will be designed to ensure the protection of the habitat or wildlife" (Chapter Two, Page 22). For lands in which the management intent is to permit recreation uses such as fishing, the plan recommends a minimum of 100 feet upland of the ordinary high water mark of anadromous streams to be retained in state ownership. This would apply to the lands in Parcel 5 adjacent to Neck Lake Creek. While the lands adjacent to 108 Creek within or adjacent to Parcels 2 and 3 were designated as either General Use or Settlement, the plan still recommends that priority be given to designing disposals to protect habitat of and access to anadromous waterbodies.

The retention of 100-foot buffers along 108 and Neck Lake Creeks would protect the integrity of the aquatic habitats important for the spawning and rearing of anadromous fishes and ensure public access to these resources is maintained. Furthermore, such a buffer would provide travel corridors for wildlife such as Sitka black-tailed deer and black bear, which are popular game species in the area. Additionally, section line easements and public access easements to and along public waterbodies should be retained as per AAC 51.065 and AS 38.05.127 respectively. This would include 108 and Neck Lake Creeks as well as land within Parcel 1, Section 31, T66S, R80E, CRM which borders marine waters.

DNR DMLW LCS Response: LCS concurs with ADF&G's recommendation to protect public access, wildlife habitat, and fish habitat and the maintenance of public access. However, LCS does not have the authority to impose habitat protection buffers in perpetuity on land conveyed out of state ownership. However, because Parcel 5 has a

land classification of Wildlife Habitat Land, which is not a conveyable classification, LCS is proposing to retain this parcel in state ownership. Parcels 2 and 3 are appropriately classified and are eligible to be proposed to be approved for conveyance to the City with a public access easement along 108 Creek, per AS 38.05.127. However, DOF requests Parcel 3 be retained in state ownership for access to the Southeast State Forest as well as the use of the timber within the parcel.

Comments from DNR, Division of Forestry (DOF)

DOF is concerned about the northernmost parcels, Parcels 2 and 3 in Section 23. The parcels along Big Creek are adjacent to the Southeast State Forest (SESF). The SESF is classified for long term use for commercial forest management. The DOF does not recommend disposal of the parcels west of the Big Creek due to the long-term management objectives of the State Forest and the potential for use conflicts if the municipality develops the area. Reconnaissance of the State Forest unit has confirmed the need to access the State Forest unit through this area. A route has been identified that uses the old forest road on the southern end of the selected parcels on the west side of Big Creek. Access to the timber in this unit of the SESF is not practical from other directions because of topography and the existing subdivisions. The Division of Forestry requests that if the parcels are conveyed, that the DOF is reserved a perpetual access easement through these parcels for timber activities.

The DOF has identified commercial timber on the western parcels in Section 23. We have scheduled the timber sale within the next five years. We have done preliminary work on the area and will be issuing a Preliminary Best Interest Finding this fall for a proposed timber sale. The removal of the acreage will hinder the economics of the sale and reduce revenue to the State at a time when the revenue is needed for both the establishment of the infrastructure to the unit and the Division's budget. We recommend withholding the parcels or the timber rights for the resource for the initial harvest.

DNR DMLW LCS Response: LCS understands and concurs with DOF's reasons for retaining land west of the Big Creek (108 Creek) and will retain Parcel 3 in the State's interest.

Comments from DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA):

Review of the Alaska Heritage Resources Survey (AHRs) database indicated there are three known cultural resource sites within the identified ADL area. Two sites PET-00770 and PET-00771 have been evaluated for their significance previously and determined to not be significant, as such we do not have concerns with their removal from State management. PET-00778, known as the 108 Creek Terrace Site, has not been formally evaluated and may be significant. As such, we request that the site area is excluded from the entitlement area until a qualified professional can assess the potential significance of the site. Recommendations for a buffer area is 300' as a minimum, the buffer does not need to extend across the creek on the E side of the point provided.

For the rest of the entitlement area, please keep in mind that only a very small portion of the State has been surveyed for cultural resources and therefore the possibility remains that previously unidentified resources may be located within the project area. As such, should inadvertent discoveries of cultural resources occur, our office should be notified so that we may evaluate whether the resources should be preserved in the public interest (as specified at AS 41.35.070[d]). Any information provided helps the State better manage Alaska's heritage resources.

Examples of cultural resource sites that could be encountered include: historical cabin remains (collapsed, standing, or foundations); adits; dredges or other mining equipment;

cultural depressions or pits; graves or cemeteries; prehistoric tools or artifacts; and paleontological (fossilized) remains.

DNR DMLW LCS Response: LCS appreciates OHA's review of this proposed conveyance. However, LCS does not have the authority to impose 100-foot buffers along streams in perpetuity on land conveyed out of state ownership. Per AS 38.05.127, a public access easement on the bed and along 108 Creek extending 50 feet upland from OHWM will be reserved to the State. While the statutory purpose for this easement is public access, it may have the added benefit of protecting important habitat and culturally sensitive areas along 108 Creek. In this case, the State will be retaining the parcel that runs along 108 Creek per the request of DOF and their need of the land.

Division of Environmental Conservation, Contaminated Sites Program (DEC)

Using the CS ArcGIS map, we did not find any contaminated sites within the proposed parcels.

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

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

- Department of Commerce, Community & Economic Development
- Department of Natural Resources
 - Division of Oil and Gas
 - Division of Parks and Outdoor Recreation
 - Division of Geological and Geophysical Surveys
 - Division of Mining, Land and Water
 - Public Access Assertion and Defense
 - Mining Section – Southeast Region
 - Southeast Regional Office
 - Land Conveyance Section

VII. Submittal of Public Comments

See Attachment B: Public Notice for specific date and conditions

Pursuant to AS 38.05.945 Notice, LCS is issuing public notice inviting comment on this PD.

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.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, 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 proposal is approved and no significant change is required, the PD, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent FFD 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 an appeal of the FFD. Upon approval and issuance of a FFD, a copy of the decision will be made available online at <http://dnr.alaska.gov/mlw/muni/> and 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 the attached Public Notice.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, FRIDAY, JUNE 4, 2021**

VIII. DISCUSSION AND ALTERNATIVES

A. Discussion

This PD covers approximately 322 acres of City municipal entitlement land selections located within Unit 5, Subunit 5a, of the POWIAP. *Attachment A: City of Whale Pass*, as part of the decision, depicts the general location of the City of Whale Pass's land selections.

Based on state agency review and thorough evaluation of the selected lands, LCS determines through this decision that Parcels 1, 2, 4, 7, and a portion of 6 have no overriding interests that would preclude them from conveyance. The acreage approved for conveyance under AS 29.65 will be credited towards fulfillment of the City's municipal entitlement. Management authority will be transferred once the FFD becomes effective.

LCS proposes to reject Parcel 5 consisting of 3.46 acres, from the City's land selections. Parcel 5 carries the classifications of Wildlife Habitat Land, which is a non-conveyable classification and does not meet the standard for VUU land under AS 29.65. Due to the important wildlife values identified on this parcel, it is not appropriate to convey to the City.

LCS also proposes to reject Parcel 3. DOF requested the 22.47-acre parcel stay within state ownership for access into the Southeast State Forest.

The City relinquished its selection on the north portion of Parcel 6 so that they will not fall over their entitlement acreage.

This decision further determines that, for those lands proposed to be conveyed to the City, certain conditions and restrictions are appropriate and necessary to ensure the protection of important resources and public access. This decision therefore imposes restrictions and reservations to be included in the conveyance document, to ensure adherence to pertinent state statutes and administrative code. Restrictions and reservations are listed in **Section IX. Recommendation.**

B. Alternatives

The following alternatives exist:

1. Take no action to approve or reject the City's land selections. This alternative would, in effect, preclude the City's ownership of lands considered to be important to their land base. This action would be inconsistent with the purpose of the Municipal Entitlement Act and inconsistent with the basis for the disapproval of a municipal entitlement selection. Such selections can only be rejected when the State's interests outweigh the interest of the city, and there is no basis for such a determination.

2. Reject the City's selections in their entirety. This alternative would have the same effect as Alternative #1 and would, similarly, be inconsistent with the statutory basis for rejection of a municipal selection.
3. Approve, in part, with management authority transferred and reject, in part, retaining lands in state ownership. This alternative is effective in meeting the intent of the Municipal Entitlement Act to convey appropriately classified state general grant land to the City.

IX. RECOMMENDATION AND PRELIMINARY DECISION

A. Recommended Alternative

This decision determines that Alternative 3 is the preferred action and best fits the intent of the Municipal Entitlement Act. The City of Whale Pass land selections, in part, are approved for conveyance. The lands that are to be conveyed are subject to the conditions, restrictions, and reservations listed below.

B. Recommended Conditions, Restrictions, and Reservations

Conditions

1. As provided by *11 AAC 51.035*, the State will retain in state ownership the bed of all navigable waters, including any waters determined to be navigable in fact, from the outermost OHWM, including all gravel bars and islands.
2. As required under *AS 38.05.127* and *11 AAC 51*, the location of the OHWM of navigable waters, including any waters determined to be navigable in fact, will be determined at the time of survey to determine the specific area to be retained by the State.
3. As required under *AS 38.05.127* and *11 AAC 51*, the location of the MHWM and OHWM of public waters will be determined at the time of survey.
4. Management authority will transfer to the City on those lands approved for conveyance once the FFD becomes effective.
5. Management authority for public access easements is transferred to the City once the FFD becomes effective. No such easements may be vacated, abandoned or otherwise extinguished or rendered incapable of reasonable use by the public without approval of the State, unless an alternative means for reasonable public access is provided and approved by the State.
6. Administration of state leases and permits pertinent to the surface estate will be transferred to the City once the FFD becomes effective. Administration of issued state leases and permits, in the mineral estate will remain with the state.
7. Once the FFD is effective, the City may execute conditional leases and make conditional sales on lands approved for conveyance, prior to issuance of a state patent in accordance with *AS 29.65.070(b)*.
8. The net chargeable acreage approved for conveyance shall be credited towards partial fulfillment of the City's municipal land entitlement pursuant to *AS 29.65.010*.
9. Notification to the Alaska State Historic Preservation Office in accordance with *AS 41.35.070(d)* is required upon discovery of historic, prehistoric, or archaeological sites, locations, remains or objects.

Restrictions and Reservations

Conveyance document will be issued subject to the following restrictions and reservations:

1. Valid existing rights, including reservations, easements, and exceptions in the U.S. Patent, or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights-of-way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any.
2. Reservation of a 50-foot-wide easement on each side of all surveyed and unsurveyed section lines in accordance with *AS 19.10.010* and *11 AAC 51.025*.

3. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the MHWM of marine waters pursuant to AS 38.05.127 and 11 AAC 51.
4. Reservation of a continuous public access easement, 50 feet wide, upland of and adjacent to the OHWM of all navigable waters, waters determined to be navigable in fact, and on the bed and 50 feet upland along public waters pursuant to AS 38.05.127 and 11 AAC 51.
5. Reservation of the mineral estate pursuant to Section 6(i) of the Alaska Statehood Act and AS 38.05.125; and reservation of reasonably necessary access to the mineral estate in accordance with AS 38.05.130.

C. Recommended Action on Municipal Selections

This decision recommends conveyance of certain state owned vacant, unappropriated, unreserved general grant land to the City of Whale Pass, and rejects a portion of lands selected, all located in the Copper River Meridian of Southeast Alaska.

Lands Proposed for Conveyance

Table 4 below lists those lands proposed to be approved for conveyance in this decision. The estimated acreages for conveyance do not account for any exclusions, and exact acreages would be determined by survey. The final acreage amount will be credited towards partial fulfillment of the City's municipal land entitlement.

Table 4

Parcel	MTR	Section: Legal Description	Acres
1	C066S080E	Sec. 31: Remainder SE1/4 NE1/4 ASLS 81-217 (1.54 ac.), That portion of State Tract A excluding those lands located southerly of a line extending from the NW corner of Lot 1, Block 10 to the SE corner of Lot 12, Block 9 ASLS 81-217 (85.82 ac.), SW1/4 NW1/4 ASLS 81-217 (40 ac.)	127.36
	C066S079E	Sec. 36: That portion of State Tract B ASLS 81-217, located easterly of Block 9, excluding Southeast State Forest	20.21
2	C066S079E	Sec. 23: That portion of Gov Lot 3 located easterly of FDR 27 (8.93 ac.), That portion of the Remainder SW1/4 SE1/4 located easterly of FDR 27 and easterly of FDR 30 (2.95 ac.), That portion of Tract O located easterly of FDR 30 and located westerly of a line extending from the NW corner Tract O to the northerly corner of Lot 1, Block 6, ASLS 81-217 (3.96 ac.)	15.84
4	C066S079E	Sec. 26: That portion of the Remainder of SW1/4 SE1/4 ASLS 81-217 located with the S1/2 NE1/4 and located southerly and westerly of FDR 30	19.46
		Sec. 35: That portion of the Remainder E1/2 NE1/4 ASLS 2000-20 excluding those lands located easterly of a line from the NW corner of Lot 10 Block 13 northerly along an extension of the westerly boundary of ASLS 2000-20 (19.42 ac.), W1/2 NE1/4 ASLS 2000-20 (80 ac.)	99.42
6	C067S079E	Sec. 2: That portion of NE1/4 NE1/4 located westerly of FDR 25 and southerly of FDR 30 (1.56 ac.)	1.56
7	C066S079E	Sec. 36: State Tracts F (5.75 ac.) and G ASLS 81-217 (4.77 ac.)	10.52
Approximate Total Proposed to be Conveyed			294.37

Lands Proposed for Rejection

Table 5 below lists those lands that were selected by the City that are proposed to be rejected for conveyance in this decision. These include lands to be retained by the State because the interest of the State outweighs that of the City, or where the land holds a non-conveyable classification.

Table 5

Parcel	MTR	Section: Legal Description	Acres
3	C066S079E	Sec. 23: All lands located southerly of FDR 30 and westerly of 108 Creek (4.28 ac.), All lands located easterly of FDR 30-520 and west of 108 Creek in the W1/2 SE1/4 (18.17 ac.)	22.47
5	C066S079E	Sec. 35: That portion of State Tract H (ASLS 81-217) located easterly of FDR 30 in SE1/4 SE1/4 SE1/4	3.49
Approximate Total Proposed to be Rejected:			25.96

The City relinquished approximately 7.5 acres of their selection so that their proposed acreage comes in closer to their entitlement of about 296 acres. The acreage relinquished is the north portion of Parcel 6, specifically that portion of State Tract H (ASLS 81-217) located northerly of FDR 30-490 and easterly of FDR 30 in the N1/2 NE1/4 NE1/4 of Section 2, Township 67 South, Range 79 East, Copper River Meridian.

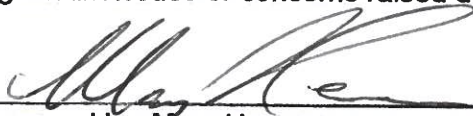
D. Preliminary Decision

The following are the findings for this Preliminary Decision:


1. That it is appropriate to convey 294.37 acres of state-owned land to the City of Whale Pass (Parcels 1, 2, 4, 7, and a portion of 6). LCS has determined that the State's interest in retaining this land does not outweigh the City's interest in obtaining it.
2. That it is appropriate to reject 25.96 acres of city land selections where the interest of the State in retaining the land outweighs the City's interest in obtaining it (Parcel 3) and where the land classification make the land ineligible for conveyance (Parcel 5).

This Preliminary Decision, described above, represents the preferred alternative that has been reviewed and considered. After review and consideration of materials in this PD, LCS finds that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

After public notice, the subsequent review process may result in changes to the preferred alternative(s) or disapproval of the proposed action altogether. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.


 Prepared by: Mary Hermon
 Natural Resource Specialist II
 Land Conveyance Section
 Division of Mining, Land and Water
 Department of Natural Resources
 State of Alaska

5/5/2021
 Date

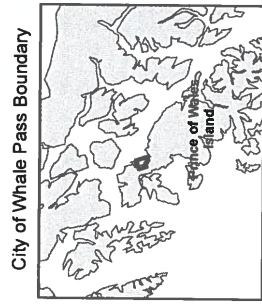
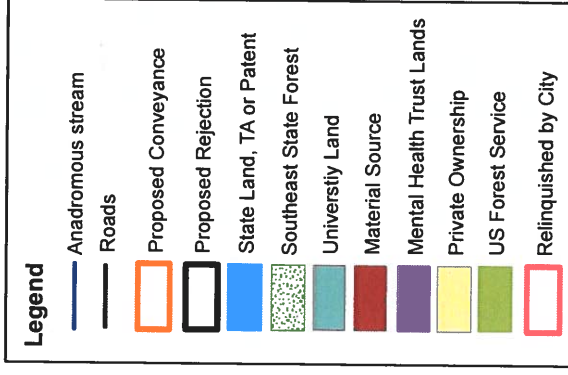
for

 Approved by: Rachel Longacre
 Section Chief
 Land Conveyance Section
 Division of Mining, Land and Water
 Department of Natural Resources
 State of Alaska

May 3, 2021
 Date

ATTACHMENT A

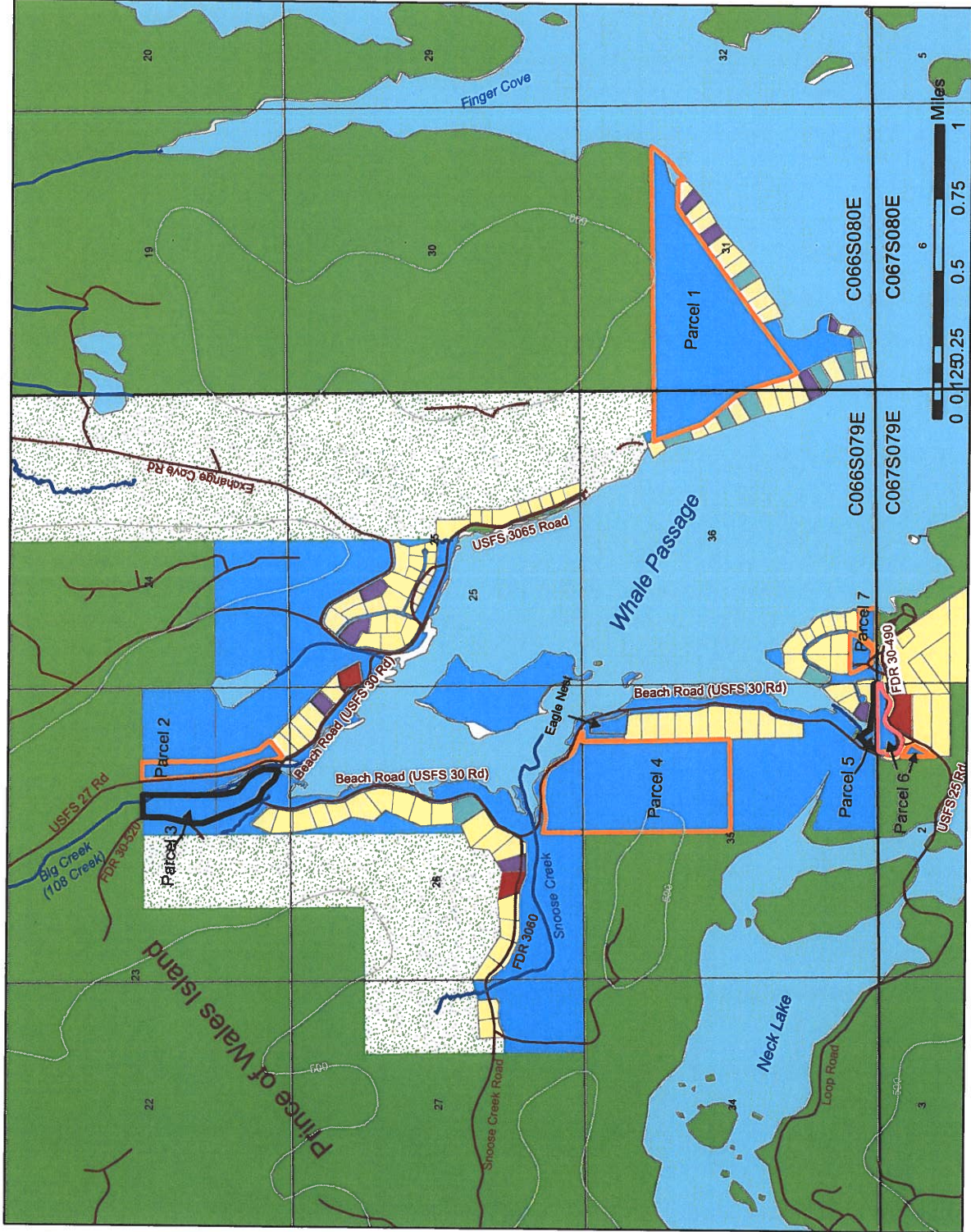
City of Whale Pass

Municipal Entitlement
 Preliminary Decision
 ADL 108743



Created by: SOA-DNR-DMLW-LCS_ME

May 2021



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.



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

Attachment B: PUBLIC NOTICE

Requesting Input for a Proposed Conveyance Under AS 29.65
City of Whale Pass Municipal Land Entitlement Selections – ADL 108743

COMMENT PERIOD ENDS: 4:30 PM, FRIDAY, JUNE 4, 2021

The Department of Natural Resource (DNR), Division of Mining Land and Water (DMLW), Land Conveyance Section (LCS) has prepared a Preliminary Decision (PD) for a proposal to convey approximately 294 acres of state owned vacant, unappropriated, unreserved (VUU) general grant land to the City of Whale Pass, in order to partially fulfill their municipal land entitlement under AS 29.65.030. These land selections are within Unit 5 of the Prince of Wales Island Area Plan (PWIAP). DNR finds that the proposed conveyance is consistent with the requirements of AS 29.65, and that the City's interest in obtaining these state lands outweigh the State's interest in retaining them.

DNR proposes to reject approximately 26 acres of city selection because the land classification was inappropriate for conveyance, and therefore cannot be conveyed out of state ownership and the interest of the State in retaining the land outweighs the City's interest in obtaining it.

To obtain the notice, Preliminary Decision, or instructions on submitting comment, go to the DMLW Land Sales website at: <http://landsales.alaska.gov/>; the DMLW Municipal Entitlement website at: <http://dnr.alaska.gov/mlw/muni/>; or <https://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 10:00 AM and 5:00 PM in Anchorage at 907-269-8400, Fairbanks at 907-451-2705, or the Southeast Land Office in Juneau at 907-465-3400 (TTY for the hearing impaired 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, May 28, 2021.

Pursuant to AS 38.05.945 Notice, the public is invited to comment on this PD which proposes to transfer ownership of state land to the Petersburg Borough. **The deadline for submitting public comment is 4:30 PM, Friday, June 4, 2021.** Only persons from whom LCS receives timely written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision (FFD). Comments must be received in writing to the Division of Mining, Land and Water, Attention: Mary Hermon, at 550 West 7th Avenue, Suite 640, Anchorage, Alaska 99501, by fax at (907) 269-8916, or by email at mary.hermon@alaska.gov. If you have questions, call Mary Hermon at (907) 269-6546.

If no significant change is required, the PD, including any minor changes and a summary of comments and responses, will be issued as the FFD, without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

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