

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

PRELIMINARY DECISION
Tip Levarg Subdivision – ADL 229594

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, JULY 7, 2021

I. Proposed Action(s)

Preliminary Decision: Tip Levarg Subdivision - ADL 229594

Attachment A: Vicinity Map

Attachment B: Public Notice

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

Draft Mineral Order (Closing) MO 1235

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

LCS proposes to sell land within the Tip Levarg Subdivision project area for the purpose of providing land for settlement by developing a subdivision of no more than 90 parcels, varying in size, no smaller than 1.5 nominal acres. The project area consists of approximately 160 acres identified for disposal by this proposed action. 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 prior to survey/subdivision, 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.

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 2 of 17

Proposed Related Action(s): The 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. Refer to the Mineral Activity and Order(s) subsection of this document for more information on this proposed related action.

The related action will be developed separately. However; approval of the proposed actions is dependent upon one another in that one action will not proceed without approval of all actions.

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

See **Section VIII. 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 will be issued.

II. Method of Sale

LCS 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 <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, Tip Levarg Subdivision – ADL 229594, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Kenai Area Plan for State Lands (KAP, adopted 2000) and associated land classification files;
- Alaska Interagency Wildland Fire Management Plan (2020 Review);

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 3 of 17

- Alaska Department of Fish and Game Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes;
- Federal Emergency Management Agency, Flood Insurance Rate Map 020012 2730 A;
- U.S. Fish and Wildlife Service, National Wetlands Inventory Map of the project area;
- USDA, Natural Resource Conservation Service Custom Soil Report for this Project, Dated September 5, 2018;
- Kenai Peninsula Borough Comprehensive Plan 2019;
- Kenai Peninsula Borough 2019 Hazard Mitigation Plan, and
- DNR case files: public easement ADL 209352, material site ADL, 231493, material sale ADL's 226830, 233066, and 233741 and, other cases, documents, reports, etc. referenced herein.

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

VI. Location

The project area is located within DNR's Southcentral Region, approximately 14-miles south of Soldotna and approximately 1-mile southwest of the Kasilof River at approximately milepost 14-14.5 Cohoe Loop Road, within Section 36, Township 3 North, Range 12 West, Seward Meridian, within the Kenai Peninsula Borough (KPB). The project area consists of approximately 160 acres identified for disposal by this proposed action.

Platting Authority: The project area is within the Kenai Peninsula Borough 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, Inc regional corporation. The Kenai Natives Association, Incorporated, Kenaitze Tribal Council, Ninilchik Natives Association, Incorporated, Ninilchik Traditional Council and Village of Salamatof will receive notice of this proposed action.

VII. Property Description

The S1/2NW1/4 and the N1/2SW1/4, Section 36, Township 3 North, Range 12 West, Seward Meridian, Alaska, according to the plat approved by the U.S. Surveyor General's Office on July 19, 1921, containing 160 acres, more or less.

VIII. Title

Title Report No. 11198, current as of October 15, 2018 indicates the State of Alaska holds fee title to the land and mineral estate within the project area under Patent 1220719, dated June 20, 1961. The applicable State case file is SCH 10. The parcel is subject to the reservations,

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 4 of 17

easements and exceptions contained in the federal patent including a right-of-way for Federal-Aid Secondary Route No. 4611, Cohoe Road.

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.).

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 **Section XIII. Access To, Within, and Beyond Project Area**.

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.

IX. Physical Characteristics and Hazards

Information about the project area is based on internal research, information received during agency review, and an on-ground by road field inspection conducted on 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.

Terrain and Major Features: The project area ranges from approximately 150 to 200 feet above sea level, gently sloping from west to east. The project area is bounded on the north by an active material site, and on the east, a bluff overlooking wetlands near Crooked Creek. Cohoe Loop Road bisects the project area in a north/south direction, creating easterly and westerly portions of the project area.

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 5 of 17

View: The view is localized with no significant terrain features.

Vegetation: The July 2018 field inspection confirmed the project area to be a mixed forest of spruce and aspen in the overstory, with tall grass and flowers in the understory.

Soils: Soils within the project area generally consist of Soldotna silt loam, on 0-4 percent slopes, with a Nonirrigated Capability Class rating of 3, according to the USDA, Natural Resource Conservation Service Custom Soil Report for this Project, Dated September 5, 2018. Areas with class III soils may be appropriate for agriculture. LCS will highlight the agriculture potential in the offering materials. The area has no known permafrost.

Wetlands: The KPB land cover map indicates the possible existence of freshwater forested/shrub wetlands within the eastern portion of the project area near the bluff.

Geologic Hazards: According to information provided by DNR, Division of Geological and Geophysical Surveys (DGGS), there is potential for glacier outburst floods affecting nearby Tustumena Lake and Kasilof River which could impact the proposed subdivision. Volcanic ashfall is common with events from Katmai in 1912, Augustine Volcano in 1976, and Redoubt Volcano. The region's overall seismic hazard potential is high. Standard best building practices should be used to accommodate the regional seismic hazard.

Fire Information: Pursuant to observations from the July 17, 2018. field inspection and information received from the DNR Division of Forestry, fire risk in the area is likely high. The project area is served by Central Emergency Services Station #1 and the Soldotna Fire Department.

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 Division of Forestry. The current fire management option for 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".

Flood Hazard: The project area is within FEMA Flood Insurance Rate Map Community Panel 020012 2730 A. The project area is within flood zone D, defined as areas of undetermined, but possible, flood hazards.

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). No water rights have been identified within the vicinity of the project area. Information from nearby well logs indicate that well depths in the vicinity typically range from 33 to 200 feet. Potential water sources in the area include drilled wells and water

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 6 of 17

delivery. Water quality is unknown. Additional information on wells, water quality, and drinking water may be obtained from the Alaska Department of Environmental Conservation.

Utilities: This area is currently served by Homer Electric Association, Incorporated (HEA), and ENSTAR Natural Gas Company. Alaska Communications provides voice and internet service.

Waste Disposal: The Central Peninsula Landfill is located at mile 98.5 of the Sterling Highway. There are also transfer sites located along the Sterling Highway in Kasilof and Ninilchik. All on-site wastewater disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

X. Background

The State of Alaska received patent to the project area in 1961 as School Trust Land. This area was identified in the KAP as suitable for settlement and identified as Management Unit 117D, a 188 acre settlement area. Cohoe Loop Road runs in a north/south direction from milepost 14 to milepost 14.5, bisecting the unit. Tehama Avenue provides access to and through the area west of Cohoe Loop Road. Tehama Avenue provides access from Cohoe Loop Road to several subdivisions and private parcels west of the project area.

The KAP designated Management Unit 117C as a 37 acre material site. Unit 117C is located west of Cohoe Loop Road, adjacent to the north boundary of unit 117D west of Cohoe Loop Road, and the north boundary of the project area. The Department of Transportation and Public Facilities (DOT&PF) identified this area as an important site for materials. The KAP references an ILMA issued to DOT&PF (ADL 226830) for use of the material site. In November of 2013, a decision (ADL 231493) was issued to expand the material site east of Cohoe Loop Road to include a portion of unit 117D, and the material site now encompasses the N1/2 of the NW1/4 of Section 36.

LCS coordinated with the Resource Assessment and Development Section (RADS regarding the KAP management intent that states, "ILMA issued to DOT&PF (ADL 226830) and may still be of value for materials". LCS is coordinating with SCRO on material site issues. LCS believes the expansion of the material site area east of Cohoe Loop Road, into the settlement area, satisfies the management intent of the KAP. Refer to **Section XI. Planning and Classification** for more information. The material site area east of Cohoe Loop Road has not been developed at this time. In recent years, a contractor enlarged the active pit area west of Cohoe Loop Road to the south and created an encroachment of the material site into the subdivision project area. Subdivision design may include retaining lands or one or more larger lots around the encroachment area to mitigate the impact.

LCS is coordinating with SCRO to establish buffers along the south side of the material site on both sides of Cohoe Loop Road. Pursuant to a request from ADF&G, LCS proposes to reserve a 50-foot Public Access Easement (PAE) from Cohoe Loop Road, east to Crooked Creek.

The project area contains non-irrigated land capability class III soils, which are suitable for agriculture. Larger lots will provide an opportunity for purchasers interested in small agriculture properties to take advantage of the desirable soils. The minimum parcel size for the proposed subdivision is approximately 1.5 nominal acres. However, LCS proposes to develop larger

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 7 of 17

parcels within the subdivision to allow for small-scale agricultural use. Pursuant to coordination with the DNR Division of Agriculture (DAg), LCS will promote the suitability of the parcels for garden agriculture activities. 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*.

The project area is bordered on the east by KAP Management Unit 117A which is designated wildlife habitat. Crooked Creek runs through this unit, and the PAE mentioned above would provide access to this area. Unit 117A includes the Crooked Creek State Recreational Site, an ILMA (ADL 221151) with the Division of Parks and Outdoor Recreation (DOPOR), located north of the project area.

The south side of the project area is bordered by a Preference Right conveyance that is now Rhodes Estates Subdivision. The lots in Rhodes Estates parcels range in size from 1.25 to 1.5 acres. The subdivision includes several lots on Quintin Lake. Naiad Drive, a platted road in the subdivision, provides access to the southeast corner of the Tip Levarg project area. This proposal will provide lots of similar size to the Rhodes Estates Subdivision and consistent with the surrounding development.

The west side of the project area is bordered by existing subdivisions. Most of the lots along the west side of the project area are 5 acres in size; two lots adjacent to the southwest corner are in the 20-acre range. Tehama Avenue runs west from Cohoe Loop Road, through the project area to these subdivisions. Subdivision design will dedicate Tehama Avenue as the access to Cohoe Loop Road for those lands westly of Cohoe Loop Road.

A July 17, 2018 field inspection found electric and telephone utilities present. Trails throughout the project area were evidence of recreational vehicle use on the property. Conversations with SCRO confirm the material site area as also being a popular location for ATV and snowmachine use, as well as target practice. Staff also observed open test holes within the project area.

The general area around the project is a mix of municipal entitlement, university, private and recreational land. The proposed subdivision design will be consistent with surrounding land development and will have access to the Cohoe Loop Road via platted roads. Most of the project area contains Class III non-irrigated land capability class soils, suitable for agriculture; which will be described in offering materials. The proposed project will generate revenue for the State and will offer opportunity for residential, small farming, and recreational uses.

XI. Planning and Classification

The project area is within Kenai Area Plan (KAP, adopted 2000), Region 6, Kasilof River Drainage, Unit 117D. Lands within this unit are currently designated Settlement, and classified Settlement land under Land Classification Order No. SC-99-002. The project area consists of 160 acres of the 188-acre management unit. The portion of Unit 117D within the NE1/2NW1/4 of section 36 has been reserved as a material site. LCS reviewed the general management intent of the area plan and Unit 117D for consistency with the proposed offering.

Unit 117D of Region 6, Kasilof River Drainage, Considerations: The Resource or use for which the unit is designated/Management intent states: This unit is suitable for settlement. Flat, appears well drained and forested.

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 8 of 17

Other resources and uses information notes that the easement along the West Cohoe Loop Road forms the east boundary of the unit, and that there is an ILMA issued to DOT&PF (ADL 226830) and may still be of value for materials. KAP Map 6a-Kasilof River depicts that portion of the W1/2 of 36 lying east of Cohoe Loop Road as part of Unit 117D, and the acreage described for Unit 117D (188-acres) matches this description. ADL 226830 is a material sale issued to DOT&PF and is located outside of the project area. Although Unit 117D includes those lands east of Cohoe Loop Road, the project area only includes that area with the S1/2NW1/4 and N1/2SW1/4 of section 36, excluding those lands within the DOT material sale site.

Area-wide Considerations: LCS reviewed the area plan's guidelines in Chapter 2 Areawide Land Management Policies. LCS will incorporate these considerations 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: Areawide management guidelines for fish and wildlife habitat and harvest do not address any specific management intent or management guidelines specific to settlement. However, management guidelines provide that DNR and the Alaska Department of Fish and Game (ADF&G) will evaluate the use or development of State lands and the benefits or impacts it may have. ADF&G reviewed the proposed Tip Levarg project and stated no objection to the development of this subdivision, but requested LCS incorporate a 50-foot public access easement along the north boundary of the project area, east of Cohoe Loop Road, to provide access to lands to the east of the project area. LCS believes the proposed project will result in minimal if any negative impact to fish and wildlife habitat and harvest in the project area. Management Unit 117A abuts the eastern boundary and provides mitigation space for any impact to fish and wildlife habitat, harvest, or concentration or movement of waterfowl or wildlife.

Forestry: Management guidelines allow for timber harvest in settlement units if not otherwise prohibited by management intent. LCS does not anticipate a pre-sale timber harvest.

Heritage Resources: Management guidelines provide that cultural surveys or inventories should be conducted prior to the design of land offerings in areas that the DNR Office of History and Archaeology (OHA) determines to have high potential to contain important heritage sites and for which information is inadequate to identify and protect these sites. Management intent also provides that when found, heritage sites should be reported to the OHA. LCS coordinated with OHA early in the development of this proposed project. OHA indicated there are no reported cultural resource sites within the identified area and determined that no cultural resource survey was recommended. OHA will be notified should any discovery of cultural resources occur during the development of this project and offering material will include information regarding archaeological sites.

Materials: Management guidelines provide that generally, if a unit is designated Settlement but contains high-value material resources, a pit area will be identified

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 9 of 17

prior to the land offering and be retained in public ownership. A material site is located along the north side of the proposed land sale area in Management Unit 117C. The material site has been expanded to include an approximately 40-acre portion of Management Unit 117D within the NE1/4NW1/4. The USDA, custom soil report describes the gravel source “poor” for the entire project area. DNR does not intend to retain a material site in this project area.

Mineral Resources: Areawide management guidelines do not address mineral resources or mineral orders for areas designated settlement; however, *KAP Land Use Designations* states that areas designated Settlement should be closed to mineral entry prior to sale. There are no known mineral claims or activities within the project area, and LCS proposes to close the project area to mineral entry should this project be approved. During agency and division review, DMLW mining section had no objection to closing the project area to mineral entry.

Settlement and Agriculture: Management guidelines applicable to this proposed project provide for coordination with local governments; the identification of open space or recreational lands within a subdivision where appropriate; and to the extent feasible, evaluation of flood and erosion hazards in connection with the proposed disposal. LCS staff reviewed the KPB Comprehensive Plan (and 2019 update) and found no conflicts with this proposed offering. The KPB will be included in the public notice process. LCS has not identified any lands within the project area to be retained specifically for open space or recreational use, however, LCS may retain portions of the project area adjacent to the material site encroachment in State ownership, as necessary. The project area is within FEMA Flood Insurance Rate Map Community Panel 020012 2730 A, within flood zone D, defined as areas of undetermined, but possible, flood hazards. However, information from the USDA custom soils report did not identify any specific concerns with erosion issues. DNR Division of Agriculture (DAg) reported that the area has soils appropriate for agricultural uses; however, parcels to be offered will not be limited to agricultural use.

Shoreline, Stream Corridors and Wetlands: Management guidelines provide that when transferring land out of State ownership that public access adjacent to waterbodies must be retained, and guidelines provide for minimum widths for building setbacks or retained lands along certain types of waterbodies. LCS has not identified any public water bodies within the project area. LCS proposes to include a 50-foot public access easement along any identified public water body.

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. LCS has not identified any trails within the project area which merit consideration for reservation.

Transportation and Utilities: Management guidelines provide that before a land offering DNR will work with DOT&PF to identify appropriate locations, if needed, for access, and will also identify responsibilities for transportation facilities. DOT&PF provided comment during agency review and LCS followed up to coordinate with DOT&PF. DNR intends to design access and parcel layout with future use in mind and will coordinate with DOT&PF and KPB as appropriate.

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 10 of 17

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): The entirety of the project area (approximately 160 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. Closing the entire area to mineral entry is consistent with the KAP Land Use Designation for settlement.

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. Area plan land use designation for settlement states that, areas designated settlement should be closed to mineral entry prior to sale.

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*, and the *Kenai peninsula Borough Hazard Mitigation Plan*. Review of those plans did not indicate any conflicts with the proposed State land disposal.

XII. Traditional Use Finding

The project area is located within the Kenai Peninsula Borough (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 during the public comment period. See the **Section VIII. Submittal of Public Comments** at the end of this document and *Attachment B: Public Notice* for details on how to submit comment.

XIII. Access To, Within, and Beyond Project Area

Vehicle access to the project area is via Cohoe Loop Road, which bisects the project area from milepost 14 to milepost 14.5 in a north/south direction. Tehama Avenue, a public access easement authorized under ADL 209352, a KPB maintained road, provides access from Cohoe Loop Road through the westerly portion of the project area to Barrel Stove Street, an unconstructed ROW along the west side of the project area. Naiad Drive touches the southwest corner of the project area. LCS proposes to dedicate Cohoe Loop Road and Tehama Avenue, in addition to additional internal subdivision access, as necessary. The project area is within the KPB Road Maintenance Unit W3. Subdivision design will take into account topography and access to lands beyond the project area and within the project area boundaries. DOT&PF will not allow direct access from lots onto Cohoe Loop Road. Legal access to individual lots will be via established roads, and onto platted easements and rights-of way created through

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 11 of 17

subdivision design. The project area 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.

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*, and 11 AAC 53.450, *Buffer Strips, Reserved Areas, and Public Easements*.

For the purposes of AS 38.05.127:

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

LCS has not identified any public, navigable, or anadromous 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 water body.

Easements, Setbacks, and Reservations: 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. Standards for easements are provided in 11 AAC 51.015 or by local platting ordinances. 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 easements;
- utility easements;
- 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 50-foot public access easement along the north boundary of the project area, east of Cohoe Loop Road;

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 12 of 17

- 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;
- 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.

Retained Lands: LCS may retain a portion of the project area adjacent to the material pit encroachment.

XIV. Hazardous Materials and Potential Contaminants

During ground field inspections conducted on July 17, 2018, field 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.

LCS 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, LCS is of the opinion that the benefits of offering the land outweigh the potential risks.

XV. Survey, Platting, and Appraisal

After evaluating 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.

This proposed project area is located within the Kenai Peninsula Borough, 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 DNR issues a Final Finding and Decision, if this proposed action is approved.

In accordance with *AS 38.05.840 Appraisal*, an appraisal meeting DNR standards will be required within two years of the date fixed for the sale of any parcel developed under this

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 13 of 17

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.

XVI. 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 June 25, 2019 through July 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 Final Finding and Decision, if one is issued.

Division of Geological & Geophysical Surveys (DGGS) Comment: DGGS provided information on area soils. Indicated that nearby Tustumena Lake and Kasilof River may be affected by glacier outburst floods, and volcanic ashfall is common in the area. The proposed subdivision is located approximately 70 miles from the Castle Mountain fault and the region’s overall seismic hazard potential is high. Standard best building practices should be used to accommodate the regional seismic hazard.

DNR DMLW LCS Response: The review and information submitted are greatly appreciated and will be considered in the development and design of this project.

DNR Division of Parks and Outdoor Recreation, Office of History and Archaeology (OHA) Comment: There are no known cultural resource sites within the identified area. No survey is recommended at this time.

DNR DMLW LCS Response: LCS appreciates your review of our proposal. OHA will be notified should any discovery of cultural resources occur during the development of this project and offering material will include information regarding archaeological sites.

Department of Fish and Game (ADF&G) Comment: During discussions ADF&G had no objection to the proposed project, but requested that subdivision design incorporate a public access easement along the north boundary of the project area from Cohoe Loop Road east to Unit 117A.

DNR DMLW LCS Response: LCS appreciates your review of our proposal. LCS is consulting with SCRO to establish a 100-foot buffer along the south side of the material site, east of Cohoe Loop Road, and establish a Public Access Easement (PAE) as requested. Subdivision design may include the reservation of a PAE, as necessary.

Department of Transportation and Public Facilities (DOT&PF) Comment: During consultation with DOT&PF the following guidance was provided. “No direct access to North Cohoe Loop road other than platted subdivision roads shall be permitted. The State of Alaska, by law (AS 19.25.200), requires all properties accessing Department of Transportation & Public Facilities

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 14 of 17

(DOT&PF) roads to be permitted subject to provisions listed in 17 AAC 10.020. Property owners must apply to the DOT&PF Right-of-Way section for a permit.

DOT&PF is in support of all access to individual lots via established roads (Tehama Avenue), platted easements, and internal circulation created through subdivision design.

Tehama Avenue access development (both east and west of North Cohoe Loop) will require a DOT&PF Approach Road Application (ARR) as part of the driveway permitting”.

DNR DMLW LCS Response: LCS appreciates your review of our proposal. DNR intends to design access and parcel layout with future use in mind and coordinate with DOT&PF, and the KPB as appropriate. LCS intends to design the subdivision with no direct parcel access onto Cohoe Loop Road.

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

- Department of Natural Resources;
 - Division of Forestry;
 - Division of Oil and Gas;
 - Division of Parks and Outdoor Recreation;
 - Mental Health Trust Land Office;
 - Office of Project Management and Permitting; and
 - State Pipeline Coordinator’s Section;
- Department of Commerce, Community, and Economic Development;
- Department of Environmental Conservation;
- Alaska Railroad;
- University of Alaska;
- Alaska Association of Conservation Districts; and
- Kenai Soil and Water Conservation District;

XVII. Submittal of Public Comments

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

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

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 15 of 17

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 LCS responses will be issued as a subsequent Final Finding and Decision, and Mineral Order 1235 without further notice. All related actions will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without approval of all actions.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the Final Finding and Decision, and Mineral Order 1235. Upon approval and issuance of a Final Finding and Decision these actions, a copy of the decision, and order will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration process to any party who provides timely written comment.

LCS 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 B: Public Notice*.

DEADLINE TO SUBMIT WRITTEN COMMENT IS 5:00 PM, WEDNESDAY, JULY 7, 2021

XVIII. Alternatives and Discussion

LCS is considering the following alternatives:

Alternative 1: (Preferred) Survey and plat a subdivision consisting of no more than 90 parcels varying in size, no smaller than 1.5 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: (No Action) 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 Final Finding and Decision, will allow LCS to create and design a subdivision which will provide for the best use and 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 Soldotna and Homer,

Preliminary Decision

Tip Levarg Subdivision – ADL 229594

Page 16 of 17

existing developed access, 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 action are dependent upon one another, and if DNR does not approve the project, the related actions will not be processed.

Alternative 2 does not meet the legislative and public desire for DNR to offer State-owned land for private ownership. Retention of this land would inhibit DNR 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. Alternative 2 is not preferred.

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

Recommendation follows.

I. Recommendation

This Preliminary Decision for the proposed disposal of State lands, and draft Mineral Order 1235 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, or draft Mineral Order 1235. If the decision is approved, Mineral Order 1235 will accompany and precede any Final Finding and Decision issued.

(signature on file)

Prepared by: Terry Hess
Natural Resource Specialist III
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

May 26, 2021

Date

(signature on file)

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

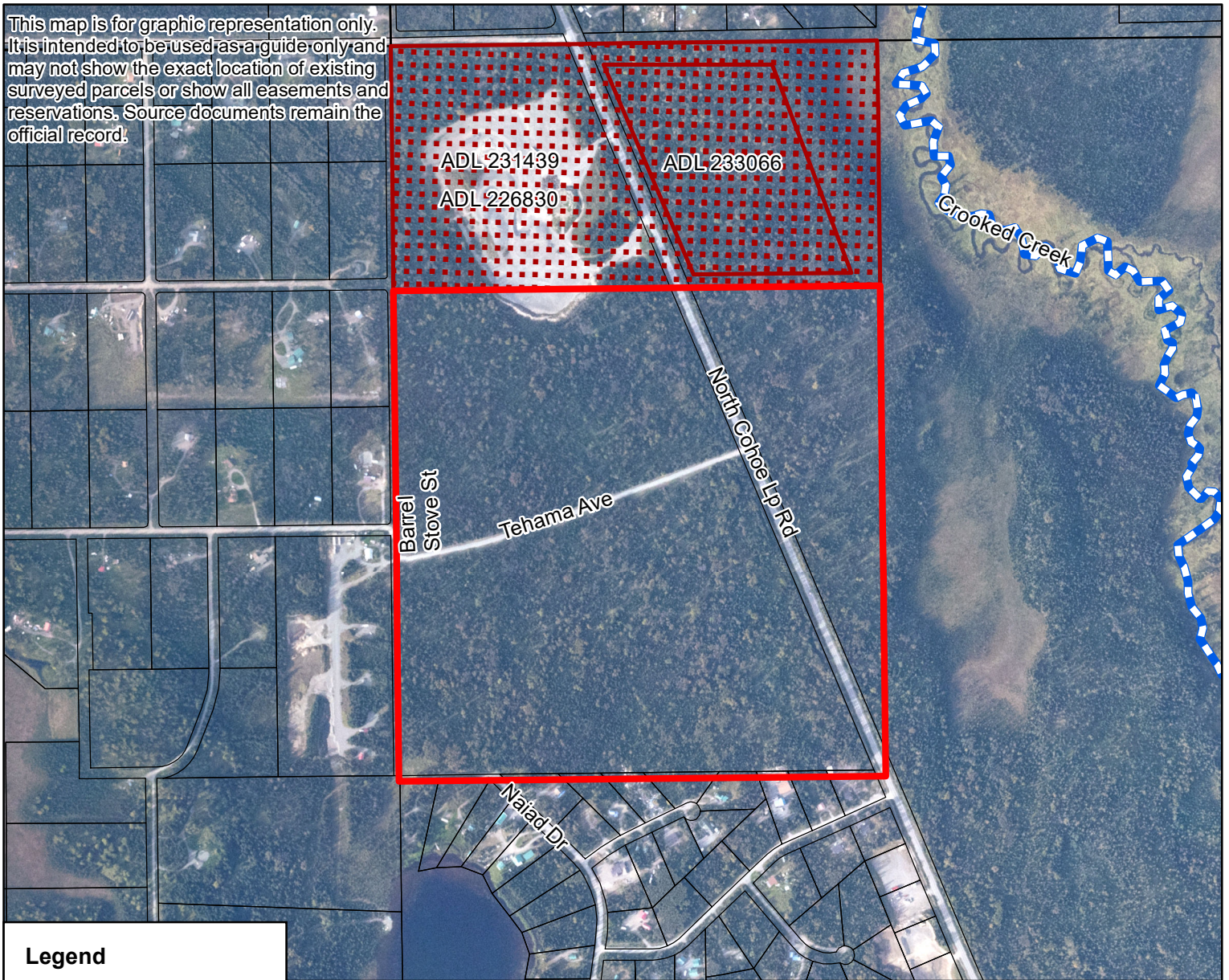
June 2, 2021

Date



Attachment A: Vicinity Map Tip Levarg Subdivision ADL 229594

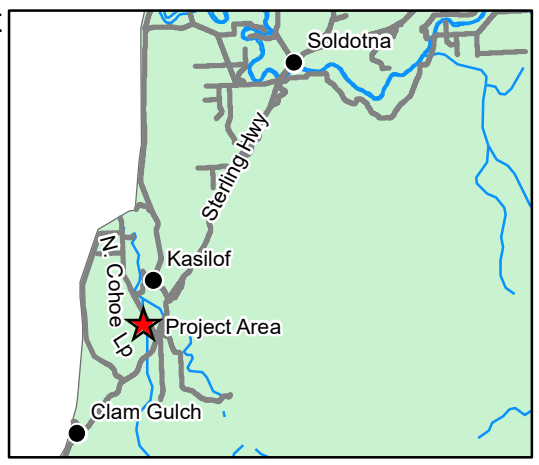
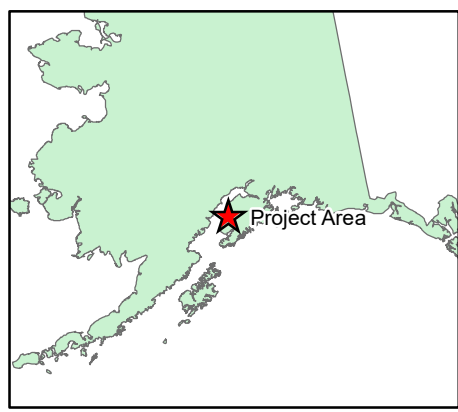
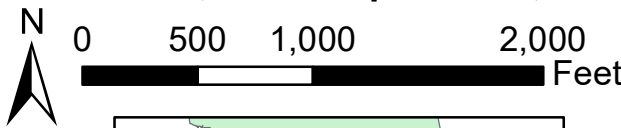
This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



Legend

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

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



RG 6/24/2019
USGS QUAD 1:63,360
 Kenai B-4
 For more information contact: Terry Hess
 Department of Natural Resources, Division of Mining, Land, and Water, Land Sales Section
 Phone 907.269.8591
 Fax 907.269.8916
 Email: land.development@alaska.gov

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

ATTACHMENT B: PUBLIC NOTICE

Requesting Input for
a Proposed Land Offering:
Tip Levarg Subdivision – ADL 229594

COMMENT PERIOD ENDS 5:00PM, WEDNESDAY, JULY 7, 2021

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

Location The project area is located within DNR's Southcentral Region, approximately 14-miles south of Soldotna and approximately 1-mile southwest of the Kasilof River at approximately milepost 14-14.5, Coho Loop Road, within Section 36, Township 3 North, Range 12 West, Seward Meridian, within the Kenai Peninsula Borough (KPB).

Project size: 160 acres proposed development area.

To obtain a copy of the Preliminary Decision, and 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 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, Wednesday, June 30, 2021.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on the Preliminary Decision and 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, JULY 7, 2021.** Only persons from whom DNR DMLW LCS 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 email, fax, or postal mail. To submit comments or for direct inquiries, contact DNR DMLW Land Conveyance Section at land.development@alaska.gov, fax # 907-269-8916, or 550 W. 7th Ave., Ste. 640, Anchorage, AK, 99501. If you have questions, call Terry Hess at 907-269-8591.

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, Mineral Order 1235, without further notice. A copy of the Final Finding and Decision and related action will be sent to any persons who commented timely on the Preliminary Decision.

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